



Using Copyrighted Music in Theatre in the UK

There are 2 bodies dealing with clearance of copyright for music in the UK: PRS for Music and PPL.

PRS for Music collect royalties for the people who published the music of the song.

This is usually the song's composers, their estate or their publishers, not the performers.

PPL collects royalties for the owner of the recording of a song.

This is usually the performers of the music, or their estate or record company.

If you are performing a song live, or quoting the lyrics of a song

You need to obtain permission from PRS.

If you are playing someone else's recording of a song

You need to obtain permission from PRS and PPL.

Legal Notice

This information is given as a guide only and is not intended for use as a source of legal, business or financial advice.

This guide contains descriptions of common practices in the UK theatre industry which, if copied, will result in copyright infringement.

All attempts have been made to verify the information provided in this guide, however the Association of Sound Designers assumes no responsibility for errors, omissions or contrary interpretation of the contents.

All figures are correct as of July 2014



This article was fact checked by PRS For Music, August 2011



This article was fact checked by PPL, August 2011

PRS for Music

<http://www.prsformusic.com>

have a Tariff T for Theatre usage. All fees below are ex VAT. A theatre can obtain licenses that cover the following:

An annual OEX Music license covering Overture, entr'acte and exit music (**Pre- and Post-show music**) but **does not** cover the use of music in the foyer and bar. This license costs between **£138.55 and £831.23** depending on the size and type of the theatre.

A weekly license covering Incidental (**underscoring**) or curtain music. This license costs between **£8.82 and £34.73** depending on the size and type of the theatre.

These first two licenses are for **venues** rather than for a **production**, and most established venues have these licenses in place. Licenses can be obtained for temporary venues. Typically a **PRS Form** is filled out for each production, that details what musical pieces are played, for how long and what category they fall into. This is so that PRS can determine how much to charge you, and how much money to give to which artists. Example forms can be found on the ASD website. The PRS form is typically filled out by the show's producer, though sometimes the venue will do this given sufficient information.

There exists a third category called **Interpolated music**. This refers to any music that can be "heard by" or are performed by the characters of the production, that the characters reference., or is perceived to be part of the dramatic world. This would include mobile ring tones, music from an onstage radio or TV, singing a song, etc. This is the trickiest category to obtain permission for as PRS is not able to grant permission for all music tracks. Some artists have stipulated that their musical works cannot be used in film, TV, theatre, either at all, or with certain conditions, i.e. they don't want their music to be used to endorse a product or be used in a way that they don't like, for example to be used in a scene with drug abuse. If you wish to use music by The Beatles, Jimi Hendrix, Michael Jackson, Phil Spector, Bob Dylan, Richard Rogers or anything Disney related you should talk to the PRS as soon as possible, though this is far from a definitive list of artists that it can be difficult to obtain permission for.

The idea is that you should contact PRS for Music at least **30 days before the first performance** with a list of interpolated music and details of the production. A Dramatic Rights Clearance Application can be obtained by contacting PRS's Concert Sales department on 0845 300 60 33. PRS then contact the license holder – the Publisher - who might be the composer, their estate or their record company - to seek permission to license the music for use in the production. Some license holders won't mind and permission will be granted for use of the music through PRS at the rates below. Or PRS will contact you and inform you that you need to arrange permission directly from the music publisher. This can be an arduous process. The publisher may want more information including script extracts and context of how their music is being used. They are free to set whatever price they like. Some publishing companies are very interested in film and TV usage as this gets large financial returns for them. Consequently they may try and apply those extremely high rates to your theatre production. Or they may have no interest in theatre, knowing that there's not a high return to be seen so they may not even reply - in this instance one can claim that you have used **"best endeavors"** to contact the rights holder. For these reasons it is best to try and obtain clearance for interpolated music as far in advance as possible, particularly if a track is particularly integral to a performance.

Of course it is often the reality that no-one knows exactly what music is going to be used and how long it is going to be played for until a few days or even hours before the first performance. **It is a copyright infringement to perform, or play a performance of a musical work without clearance, but one that out of necessity a lot of theatres infringe on a regular basis.** A **higher rate** is therefore charged for all these licenses by PRS if they are applied for after performances have started, and there is always the risk that the copyright owner may take legal action. The best strategy to remain within the law is to seek permission in advance for a number of tracks that you *might* use and then only pay for the ones that you *do* use.

The rates for interpolated music licensed through PRS For Music are varied. For productions where more than 30% of the running time has interpolated music controlled by PRS For Music, the rate varies from 1% to 9% of net box office receipts. For productions where less than 30% of the running time has interpolated music controlled by PRS, the cost per performance is:

Duration		Standard Rate	Higher rate		Duration		Standard Rate	Higher rate
0-2 minutes		£1.40	£2.10		28-32 minutes		£49.88	£74.82
2-4 minutes		£2.78	£4.17		32-36 minutes		£59.075	£88.613
4-8 minutes		£5.535	£8.303		36-40 minutes		£70.20	£105.30
8-12 minutes		£11.085	£16.628		40-44 minutes		£81.27	£121.905
12-16 minutes		£16.64	£24.96		44-48 minutes		£96.06	£144.09
16-20 minutes		£22.17	£33.255		48-52 minutes		£110.83	£166.245
20-24 minutes		£31.32	£46.980		52-56 minutes		£125.585	£188.378
24-28 minutes		£40.64	£60.96		56 minutes and over		£140.40	£210.60

This is the standard royalty for a West End theatre with less than 1001 seats. These rates are increased or decreased for different size and theatre types. For example a non-West End theatre with less than 1001 seats will have the rates decreased by 12%.

PRS for Music does not control the rights for ballets, opera, panto or musicals whose music has been specially written for them if you are performing that ballet, etc. But if you use the music from a ballet, opera, panto or musical in another performance you need to obtain a license from PRS.

PRS sometimes make deals to cover certain events, such as the **Edinburgh Festival**, with vastly simplified reporting and clearing mechanisms, and is cheaper. In 2014, for example, shows at the Edinburgh Festival that didn't charge for tickets with capacities under 1000 people didn't have to pay for their music usage, instead PRS received advertising via the Fringe. Other shows paid a simple percentage of their box office takings based on the length of music used in the show. Forms detailing the music used must be submitted for every production– even if there isn't any music – or face having 3% of their ticket sales automatically deducted by the Fringe Society. More info here: <https://www.edfringe.com/participants/prs-form>

PPL

<http://www.ppluk.com>

A theatre can obtain a flat fee license ("PPLPP031 Background Music Tariff - Theatres") of **£116.36 plus VAT** per year to cover foyer, pre-show, post-show and interval background music. This license is typically obtained by the venue rather than the theatre company.

There is a second tariff ("PPLPP032 Theatrical Productions Tariff") for music used in a performance. The fees apply per performance, based on total amount of time played ex VAT: This license is more likely to be obtained by the theatre company than the venue, though some venues will obtain this if given the required information

Duration		Rate
0 - 2.5 minutes		£2.55
2.5 - 5 minutes		£3.65
5 - 10 minutes		£7.30
10 - 15 minutes		£10.95
15-20 minutes		£14.60
every extra 5 minutes		an additional £3.65

PPL have a separate tariff for "PPLPP030 Amateur Theatrical Productions" that covers **both** pre-show, post-show, interval and music used in a performance for **£58.60 plus VAT** per year.

Any music not played from it's original release format does require the record labels permission before PPL will issue a public performance licence.

Finding out who owns the copyrights

This information is usually provided on a CD inlay cover. Typically this might look like this:

© Universal Music

© Sony UK

This indicates that Universal Music is the Publisher of the music, for the purposes of PRS for Music; and that Sony UK holds the rights to the recording of the song, for the purposes of PPL. Be aware that if you have bought a CD abroad it may show the details specific to that country - one company may hold or administer the rights for a certain song in the UK, but a completely different company might hold the rights for the same song in a different country.

Music downloaded over the internet very rarely contains information about who holds the copyrights. Finding this information is usually easy enough via Amazon.co.uk, Google, Wiki, etc. but again be careful that you get the information specific to your country. Be aware, the terms and conditions of most online stores detail that they supply material for personal listening only and forbid commercial use.

If you (or PRS/PPL) are unable to identify or locate the copyright holders after a diligent search, you can classify the piece as an **"orphan work"**. Using any work without having traced the copyright owner still means that at a future date the copyright owner can take legal action for the unauthorized use of their work. High-profile and long-running shows are more at risk for using orphan works because it is more likely that the copyright holder will become aware that their work has been used. The risks of exposure to legal action are reduced if you have made an extensive search and have documentary evidence of that search (dates of the searches, names of the resources used, the search terms employed, and any announcements made for example on a web-site or in a trade publication). In the case of an orphan work a statement can be made to PRS and PLL declaring **"work still in copyright, right-holder could not be traced"** and no payment is made. The **Enterprise and Regulatory Reform Act (ERRA) 2013** was recently passed. This new scheme will create a licensing body for orphan works. It is proposed that after a diligent search has been made, a license can be applied. The diligent search will be verified by an

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as yet unappointed authorising body. Then a license would be issued and you would pay a fee at a rate appropriate to the type of work and useage. That fee would be held for the missing rights holder to claim at a later date. This would protect you from the owner taking legal action for the unauthorised use of their work. This has yet to be implemented.

ERRA legislation - <http://www.legislation.gov.uk/ukpga/2013/24/part/6/crossheading/copyright-and-rights-in-performances/enacted>

ERRA in plain English - <http://www.ipo.gov.uk/hargreaves-orphanmyth.pdf>

Some places to track rights-holders for more obscure titles:

The European Digital Library - <http://www.theeuropeanlibrary.org/>

WATCH - <http://norman.hrc.utexas.edu/watch/>

The Guide to Musical Theatre (database of Grand Rights holders) - <http://guidetomusicaltheatre.com/>

Length of copyright & Works in the Public Domain

The length that a musical work remains under copyright in the UK is until **70 years after the death of the last surviving creator**. This was changed from 50 years in April 2009. If the music originates from outside the EU the copyright lasts for as long as the music is protected by copyright in its country of origin, provided that that does not exceed 70 years. After that time the work falls into the **Public Domain** which simply means that it is not covered by any intellectual property rights, and hence it can be freely used, copied, sampled, translated, re-arranged or adapted in any way without permission. The duration before a work falls into the public domain varies from country to country.

This is a good resource dealing with using US published work in the UK: <http://tinyurl.com/nc9w4n9>

Editing, sampling, remixing

There is a common myth that it is OK to sample a performance or recording so long as it is under 8 seconds, or 2 seconds. In fact anything that is **recognizable** as being part of a copyrighted work needs clearance, even if it is just a drum beat. It is simplest to treat a sample as if it were the original work itself.

Editing music is commonplace, such as shortening an intro, and is often accepted as a necessary part of the third-party use of music. However when you significantly alter, sample, remix, mash-up or have additional musical parts running alongside you are creating a **derivative work**. To license a derivative work involves a similar process to using interpolated music, in that you need special permission from the license holders themselves. They often will ask for extensive information about how the music is to be used, including script extracts and information about the play as a whole and its themes. You need to obtain permission from the publisher of the music, as well as the copyright holder of the sound recording that you are sampling.

Website usage

If you have cleared your music for use in a theatrical production, it does not mean you have the right to use that music on your website, trailers, etc. The permission you receive will usually only cover it's use in your theatre production for the dates and venue(s) specified, and any other use will require separate licensing and payments, as would extending the run of the show or touring it.

A company called Cue Songs (set up by Peter Gabriel) has been tasked with the job of licensing individual tracks for the purposes of website trailers and the such like. They do however have a limited number of artists that they are empowered to license, in which case they will direct you to the correct people (the publisher) to license the track from directly.

<http://store.cuesongs.com>

Using TV clips

Getting clearance for TV clips is a much tougher affair as there are no central clearing agencies like PRS for Music or PPL. You need to contact the copyright holder directly. When they make a programme they do not necessarily gather the permissions that may be required for use beyond what is required for broadcast. They may need to contact and make an

arrangement with each of the performers, creatives, crew originally involved with their production. Consequently costs can be high, so it is often cheaper to make something original. Dealing with larger companies like the BBC can be easier than tracing down production companies that might only have existed for the purposes of making a programme.

Using music abroad

Different countries across the world have different licensing bodies that work in different ways to clear music. Obtaining permission from a publisher often will usually only cover one country. The duration before a work falls into the public domain varies from country to country as well.

One publishing company may hold or administer the rights for a certain song in the UK, but a completely different company might hold the rights for the same song in a different country. Some countries don't recognize copyright usage in the same way we do and don't have similar means to collect and distribute royalties, or provide clearances. It is best to contact a venue in that country to obtain advice,

Examples:

Pre-show/Interval/Post-show music played by musicians

- A PRS annual license is needed by the theatre, with the music categorized on the PRS form as Entr'acte
- A PPL license is not required for this music

Pre-show/Interval/Post-show music sourced off commercial CD's

- A PRS annual license is needed by the theatre, with the music categorized on the PRS form as Entr'acte
- A PPL PPLPP031 license is needed by the theatre

Pre-show/Interval/Post-show music composed specially for the show

- No license is required from PRS or PPL

A piece of commercial music is played under a scene

- A PRS weekly license is needed by the theatre, with the music categorized on the PRS form as Incidental
- A PPL PPLPP032 license is needed by the theatre, sufficient to cover the total duration of all Incidental & Interpolated music used during the performance

We have mixed and sampled a number of different pieces of music to play under a scene

- You will need to contact PRS 30 days before the first performance to seek permission to use a derivative work. PRS will seek permission from the rights owner to grant permission for this.
- If the rights holder of the sound recording (℗) is different to the publisher (©) then you will need to seek permission from them as well.
- A PPL PPLPP032 license is needed by the theatre, sufficient to cover the total duration of each track used as if it were a separate track, and all Incidental & Interpolated music used during the performance

A piece of music played as if it is on a radio/TV onstage

- You will need to contact PRS 30 days before the first performance to seek permission to use an Interpolated work. PRS will seek permission from the rights owner to grant permission for this.
- A PPL PPLPP032 license is needed by the theatre, sufficient to cover the total duration of all Incidental & Interpolated music used during the performance

Characters dance to a piece of music

- You will need to contact PRS 30 days before the first performance to seek permission to use an Interpolated work. PRS will seek permission from the rights owner to grant permission for this.
- A PPL PPLPP032 license is needed by the theatre, sufficient to cover the total duration of all Incidental & Interpolated music used during the performance

Lyrics of music are quoted by characters

- You will need to contact PRS 30 days before the first performance to seek permission to use an Interpolated work. PRS will seek permission from the rights owner to grant permission for this.

A song is sung or performed by the characters onstage (for example, "Happy Birthday" is sung)

- You will need to contact PRS 30 days before the first performance to seek permission to use an Interpolated work. PRS will seek permission from the rights owner to grant permission for this.

We are performing Opera X (with permission from the publishers of the opera)

- Neither a PRS or PPL license is needed

We are using a piece of music from Opera X in our play

- You will need to contact PRS 30 days before the first performance to seek permission to use an Interpolated work. PRS will seek permission from the rights owner to grant permission for this.

Sample application forms

Sample application forms can be found online at
<http://www.associationofsounddesigners.com/copyright>

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