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Photos courtesy of A&E Music Network

George Strait

Any serious discussion of copyright law is generally enough to make most people head for the nearest door. In this respect it is on a par with calculus. But you have not truly joined the ranks of the IFE professional unless you have had at least one mind-bruising encounter with inflight copyright issues. And unless you are thinking about getting out while the getting is good, be forewarned... trouble with the rights associated with intellectual property (such as songs and movies) can hit your desk with the force of a space shuttle launch.

Short of hiring a patent and copyright attorney (which you should certainly consult if the issues become thorny), the following tips may help no matter where you live or which copyright agencies you are proud to call your own.

HAVE YOU GOT THE RIGHT?

Like Athena springing fully-grown from the head of Zeus, a copyright springs into existence the moment its creator makes a tangible (i.e., copiable) work of art or literature or a work that conveys information or ideas. (Other requirements help distinguish a copyrightable new theory of relativity from a non-copyrightable new telephone book.)

YOU GOT THE RIGHT?

by Marcy Beaubelle

Tony Bennett



U2

Aretha Franklin



It is not necessary to register or claim a copyright to possess one, but it is generally done because of the additional legal protection it provides.

In the United States, protection of a creator's work was framed right into the original Constitution, but most countries have been around longer than the USA, and many have nurtured their homegrown geniuses with legal protection for well over two centuries. The idea behind legal copyright is to encourage art and science by giving its authors a monopoly, for a period of time, over their creative efforts. Not, I hasten to add, to create wealth for artists and scientists (that is just a side benefit), but because it seemed the best way to insure scientific progress for humankind and the creation of new intellectual and artistic works for the public good.

The author of a work will automatically own the legal right to reproduce or make copies of the work, to sell or distribute copies, to create derivative works or adaptations (a movie from a book, for example) and to perform or display the work in public. No one else has these rights unless the author sells or transfers some or all of them.

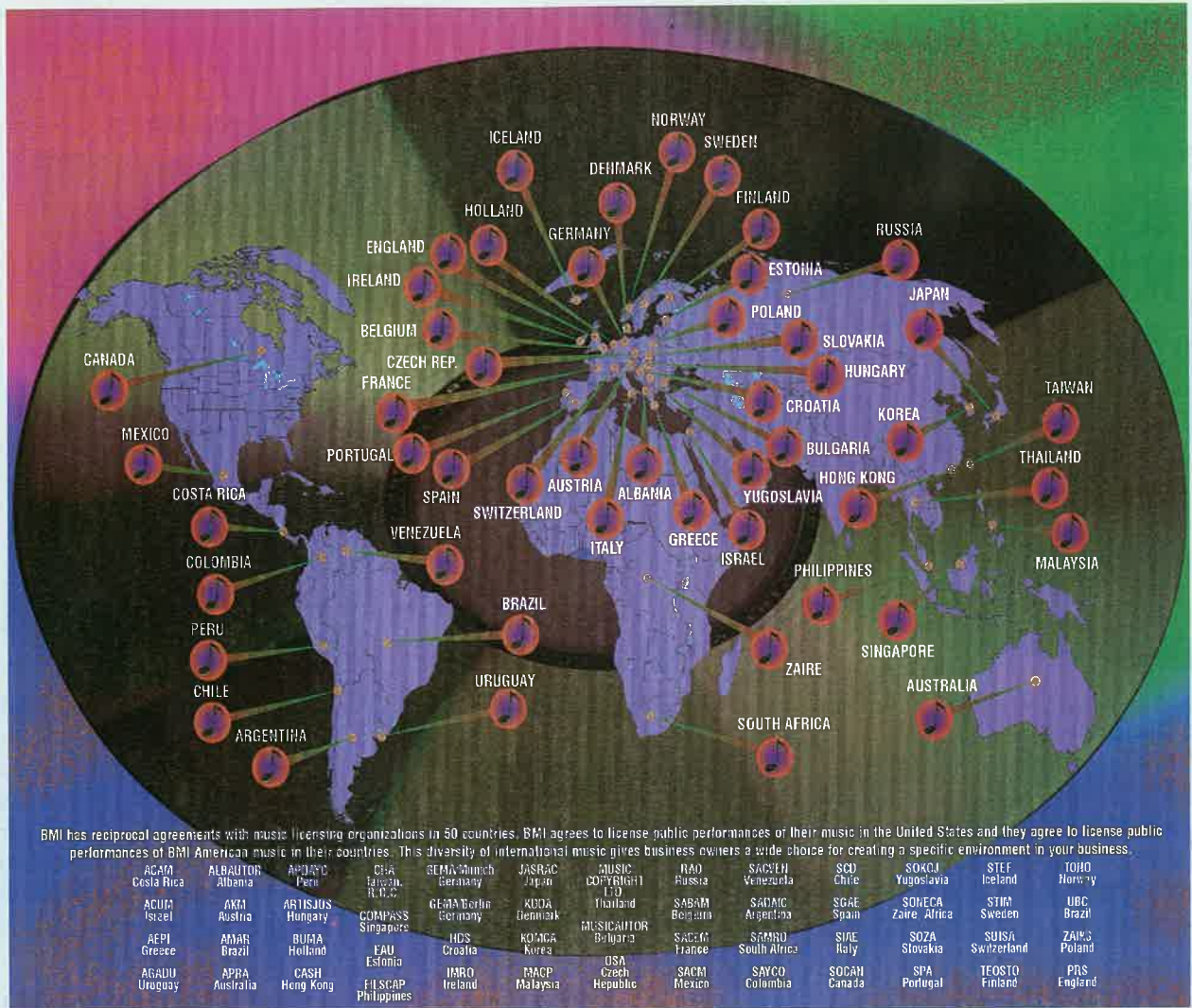
Of course, authors do sell and transfer their rights, and it can sometimes be complicated to determine who holds which rights. Nevertheless, it is of the greatest importance that an airline, which has distributed copies of a work to its fleet for the purpose of displaying the work to the public, understands who is clearing the right to use it.

The following check list defines the most basic parameters:

- Review your Performance Rights, Mechanical Reproduction Rights and Phonographic Recording Rights agreements, noting terms and checking for compliance. Note that some countries combine Performance and Mechanical Rights under one agency, and many countries do not require a Phonographic Rights agreement.
- Review your written or verbal understanding with each film distributor in terms of the clearance of copyrighted material (both domestically and internationally) contained in the movie. If you have no formal agreement, at least write down what the distributor has told you about the exhibition rights offered for the fees you are paying.
- Review your contracts for short-subject video. Custom videos are much more susceptible to copyright abuses than TV programs purchased for inflight exhibition, but in either case, the vendor should offer you the material with all rights cleared for inflight usage or you should seek clearance under another agreement.
- Check your advertiser audio and video contracts. Although this material rarely presents copyright clearance problems, as a matter of routine your advertising insertion orders should note that the advertiser has cleared all copyrights for inflight exhibition.

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BMI INTERNATIONAL AGREEMENTS



REAL MONEY VS. MONOPOLY MONEY

If you pause for a moment and think of a typical multi-channel audio and video system on an aircraft, for about 50 IFE equipped airlines in the world, flying millions of people who are normally listening to radios, and going to movie theaters and watching TV every day, it should come as no surprise that copyright licensing agencies worldwide act like policemen. As we blithely go through life taking in as much protected, copyrighted material as we can fit into our busy week, we do not worry much whether Elton John is being properly compensated. We do not worry because we know someone is watching out for his interests.



Natalie Cole

The trouble comes when these same diligently watching copyright licensing agents decide that they should have a 30% increase in inflight copyright fees (believe me, it has happened) or they determine that there are categories of inflight royalties for which they always had the right to charge but just never did and now they want their money.

At that point (which can sometimes feel like gunpoint) most airlines give the agency precisely what they demand. They do so (usually none too happily) without the vaguest idea if the fees are fair or reasonable or if they can have any effect on them. In the face of a legal monopoly with a good cause behind them, most companies just throw up

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Have You Got the Right?
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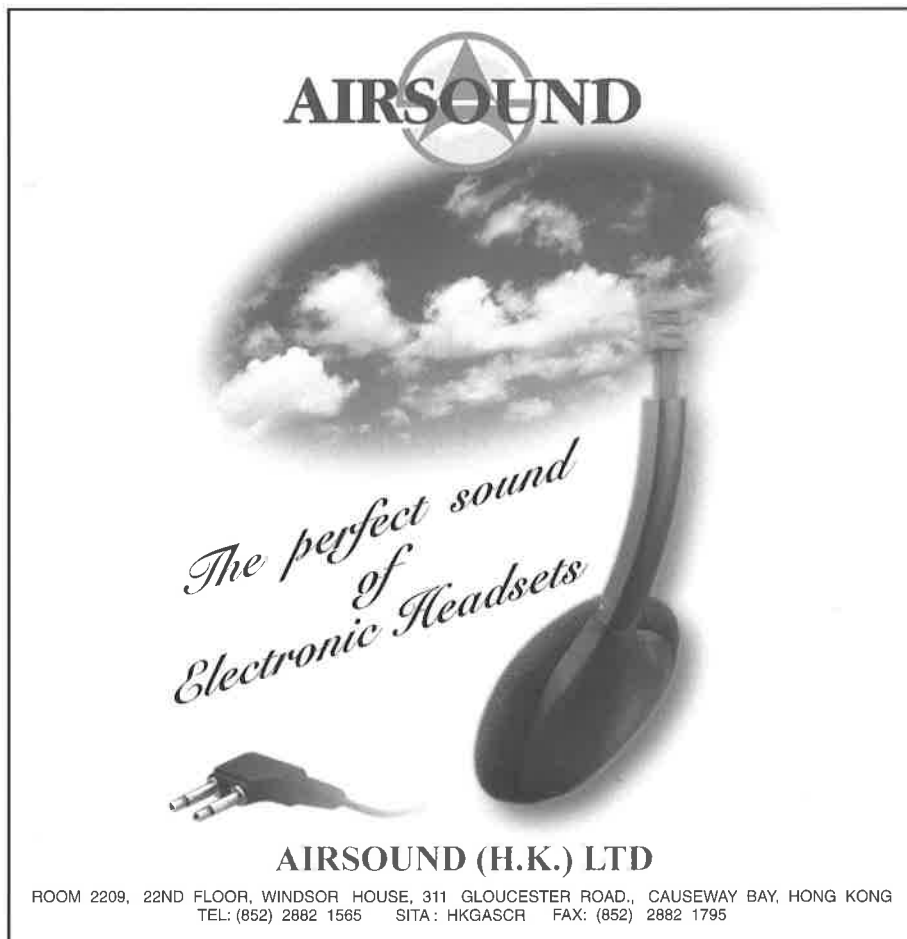
their hands. They don't know what the rules of the game are, but they suspect the ball is hard. And they are right.

Copyright licensing agencies are in the business of collecting payment for the licensing of music. They don't make anything or sell any service. They are never distracted from identifying potential licensees and collecting fees. That's all they do and they are very good at it. Because they have no competition, no one can say with authority what a fair and reasonable price is. In this scenario, whatever the market will bear is what the agency will (and does) take.

I am willing to wager that in spite of the real hardships besetting some of the Asian airline members of the WAEA, not one copyright licensing agency in that region will be denied their annual fee increase. Time and again, copyright licensing agencies are quick to note an airline's growth and profitability but very slow to acknowledge declines or losses. (In defense of ASCAP and BMI, the two U.S. performing rights societies, they did agree to cost modifications in the early 1990's after the economy hit the skids and U.S. airlines experienced grave financial declines. But it took serious and prolonged negotiations by AEI to reach these settlements.)

The point is that copyright licensing agencies have the authority to negotiate on behalf of their members, and they have full latitude in these negotiations. Although their clear, albeit unwritten, mandate is to obtain as much revenue as possible for their members, as legal monopolies they must behave reasonably or risk the full light of governmental scrutiny on their activities. This, and as far as I can tell, only this keeps their fees in check, and their door slightly open for negotiation.

So where do you begin to negotiate? I suggest you start by understanding your own history. Chart the cost of your copyright fees over the past ten years and calculate the annual percentage increases. Be sure to use the unit cost so that the fleet size variables are eliminated. Now chart the unit cost of your IFE expenditures. Has the cost of a movie exhibition gone up a comparable percentage over the past ten years? What about the cost of your audio programs or short-subject video costs? Compared to any other IFE costs, do your copyright fees increase at a comparable rate? Look at the airline's profitability; did the airline lose money while the agency continued to show gains? This information may be helpful to you the next time an increase is requested.



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