

# The Odyssey of Licensing Inflight Entertainment

By L. Barry Knittel

As members of the world's inflight entertainment industry, chances are you've got a lot on your mind. The last thing you want to think about is a plane full of dissatisfied travelers muttering to themselves and thinking about how they'll never fly with your airline again. This scenario is always just a step from becoming reality; what keeps it in the comfortable arena of imagination is often taken for granted until it is absent.

Think about all the behind the scenes work that occurs before your passengers even board the plane—meals are delivered, fuel loaded and baggage stored. What about the entertainment? Whether the flight is two hours or nine hours, passengers expect to be entertained. Imagine how many flight attendants would walk off the job if they were expected to entertain each traveler for the duration of the flight with that person's individual vision of what inflight entertainment should be!

Just as passengers expect to be entertained, airlines expect providers to offer top-notch audio entertainment and help with the selection of feature films, news, sports, short subjects and informational programming. Although an invaluable service, little thought is given to the time-intensive and often laborious process of developing entertainment packages that are featured as an integral part of the air travel experience.

If we may, let's take you back in time to 1909—far before most of us

were born. The founding fathers of the United States, following in the footsteps of their forefathers in Europe, passed the first U.S. copyright laws to protect the creative intellectual property of creators of music and literature. From John Phillip Sousa's "Stars And Stripes Forever," to Irving Berlin's "Cheek To Cheek," Elvis Presley's "Hound Dog," to The Spice Girls' "Spice Up Your Life," this copyright legislation safeguards the fruits of their creativity not only for U.S. authors and composers, but for those who create musical works anywhere in the world.

Think back to the early days of the worldwide inflight entertainment industry; the successes and failures of the first inflight audio in the mid-sixties and the breakthrough of the first regularly scheduled inflight movie premiering in 1961 on TWA Flight 40 from New York to San Francisco. Starring Lana Turner and Efrem Zimbalist, Jr., "By Love Possessed" was the first film to occupy the visual senses of those travelers jetting from America's sea to shining sea. Perhaps it was this lucky group who coined the phrase, "time flies when you're having fun," after experiencing this groundbreaking new inflight entertainment milestone.

Just as inflight entertainment is being pushed beyond the horizons of its original incarnation, so too copyright law evolves around the world. United States copyright law has been constantly

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Beatles-Pop/Rock



Andrea Bocelli-World Music



Shania Twain-Country



U2-Pop/Rock



Anita Baker-Soul



Tony Bennett-Jazz



Aerosmith-Pop/Rock

changing through numerous revisions and modifications ever since its inception in 1909. Advances in the technologies for creating and distributing creative content has necessitated these changes, most recently in 1995 to address the digital delivery of music and again in 1997 when Congress passed a twenty year extension of copyright to parallel the terms of copyright in other countries.

While copyright law changes to reflect the dynamics within the music community (e.g. phonographic records, cassettes, CDs, videos, and the Internet), so has the airline industry changed its demands on inflight entertainment by virtue of the expectations of their customers. From the early days of inflight entertainment through the present day, obtaining permission from the copyright

holders to use a sound recording continues to be an important, often underestimated, aspect of inflight entertainment.

Clearing licenses in the United States, for example, for the use of a particular song involves not one, but two copyrights. The first is the copyright in the sound recording and the second is the copyright in the underlying song.

Let's use the song, "Can't Help Fallin' In Love," to illustrate this process in the case of the inflight entertainment for a United States airline carrier. There have been numerous recordings of this song over the years, but let's look at two of these recordings as an example. Your passengers may hear the song performed by Elvis Presley on the RCA/BMG record label or even possibly the reggae-styled UB40 version recorded for Virgin Records. These recordings are owned by the respective record companies repre-

senting the artists' musical creation. The copyright of the actual sound recording, however, is completely separate from the publishers' copyright of the underlying song which may be featured in various recordings by different artists.

For AEI Inflight to secure the use of both versions of this song, licenses are arranged with the RCA/BMG record label for the Elvis recording and with Virgin Records for the UB40 version. Through this process, AEI Inflight is granted a "master use right" in the sound recording to re-record and distribute a particular song for use on an inflight entertainment program. This costly and time-intensive licensing process is repeated with thousands of record labels throughout the world.

Simultaneously, AEI Inflight clears the license of the underlying song



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through the Harry Fox Agency, representing over 13,000 music publishers. Acting as the publisher's agent, the Harry Fox Agency grants AEI Inflight a "mechanical right" to use the underlying song and reproduce multiple copies for each audio program distributed to airlines flying under the U.S. flag for each of their aircraft. In other countries, a publisher's mechanical rights may be represented by an agency such as MCPS (Mechanical-Copyrights-Protection Society Ltd.) in the United Kingdom or AMCOS (Australasian Mechanical Copyright Owners Society Ltd.) in Australia, Fujii, and New Zealand.

Last, but not least, AEI Inflight has separate license agreements with public performance rights organizations in the United States such as ASCAP (American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Inc.), and SESAC and their affiliated organizations around the world. These organizations represent the authors, composers and publishers' rights to collect performance rights fees for these songs, as well as millions of others on the inflight entertainment program.

Within each country, performance rights organizations collect and administer royalties on behalf of their domestic members as well as foreign affiliate members represented under reciprocity agreements. To illustrate this process, ASCAP, BMI, and SESAC may license their repertory of music to PRS (The Performing Rights Society Ltd.) in the United Kingdom, to JASRAC (Japanese Society for Rights of Authors, Composers and Publishers) in Japan or to MCT (Music Copyright Thailand Ltd.) in Thailand. Each airline is responsible for paying a performance rights fee to the rights organization located within that airline's coun-

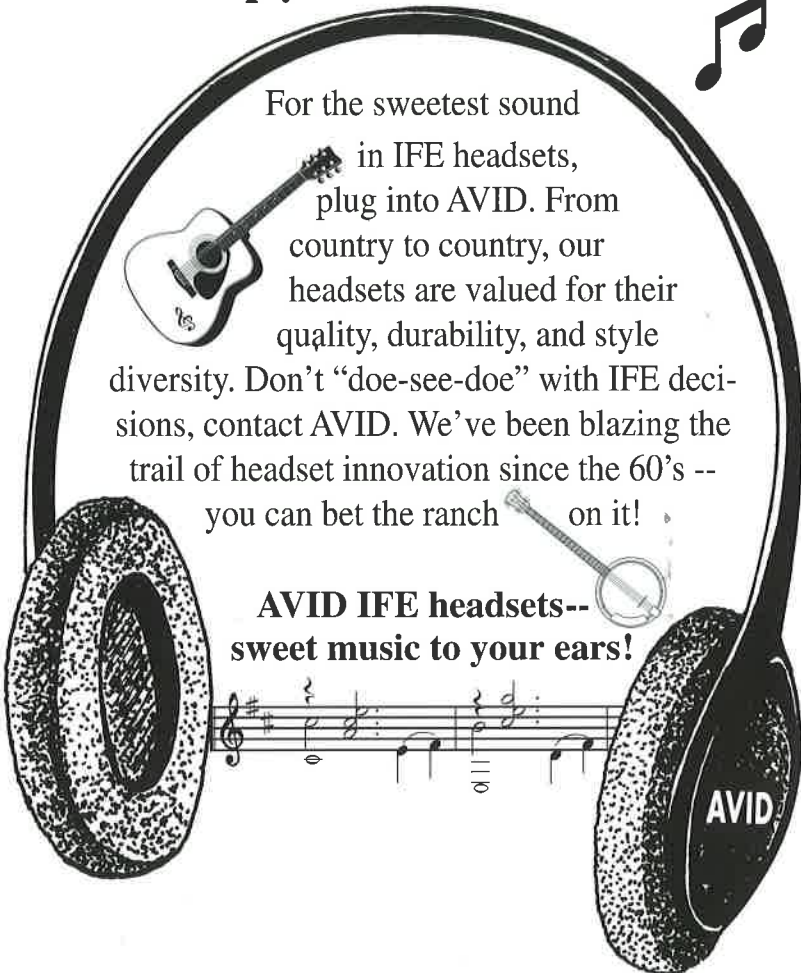
try of origin. These territorial organizations, such as PRS, JASRAC and MCT, will license and collect fees either from the music service provider(s) or directly from the airlines and distribute those fees back to their members as well as to the foreign affiliate rights organizations on behalf of their members represented under reciprocity agreements.

In most cases, performance rights organizations issue blanket licenses for

the use of an entire catalogue of music with fees based upon certain inflight variables such as the type of music (boarding or inflight entertainment), seating capacity or number of passengers flown. In turn, the airlines or their music service provider(s) will furnish a monthly or quarterly list of the music performed during the inflight entertainment so that the authors,

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composers and publishers of the performance rights organization may be compensated for these performances.

While our languages and cultures may differ, the copyright laws around the world are fairly similar in concept with only a few differences. When AEI Inflight programs for airlines, we deal with the record companies and rights organizations within that territory, but in many cases outside the United States, the airline itself must deal with the rights organization directly to secure a performance rights license. In some countries such as Canada, Holland and the United Kingdom, record companies have bundled their rights in a cooperative fashion and have licensing organizations such as AVLA (Audio-Video Licensing Agency Inc.), SENA (Stichting ter Exploitatie van Naburige Rechten) and PPL (Phonographic Performance Limited) to license all sound recordings on their behalf.

One of the main concerns raised by many carriers is why performance rights fees differ so much from country to country. In most cases the rights organizations offer identical usage rights. However, the rates have been driven, over time, by each country's particular licensing history, and so we see the disparate differences among airlines.

In the United States, it has been through mobilized industry efforts and legislative support that we have maintained the rates at their current level. In contrast, in nearly every case except the United States and Brazil, there is only one rights organization representing all the musical works in the world. These monopolistic enterprises have been operating in some instances for over 100 years and working with the airlines since the inception of inflight entertainment.

It is this history that has driven the disparity between rates.

Common sense tells us that the song, "Can't Help Fallin' In Love," has the same author and composer and sounds no different whether played in France, Thailand or Timbuktu. Why then should the rates vary substantially between countries for the identical use of this song?

As the airlines have made the world smaller by taking us to far-away places faster than we ever thought possible, and the Internet gives us access to boundless knowledge and information at the click of a mouse, why do we still accept disproportionately varying licensing rates for different countries? As WAEA has supported a technology group to standardize the distribution of entertainment on airlines, perhaps a similar group could be formed to harmonize the licensing rates for this industry. In this manner, any one airline would not be at a disadvantage simply because of its country of origin.

We need to have a better understanding of the music that's being used and what others are paying for that same use of music in order to achieve a standardized rate that reflects similar uses. Through AEI's computerized database, we can determine uses and evaluate appropriate rights fees for these uses.

The desire of rights organizations to negotiate a fair and reasonable rate on behalf of its members is often influenced by local lobbying efforts, in turn pushing the evolution of legislation to accommodate business requirements while protecting intellectual property rights within each country.

Now is the time for the airline industry, through WAEA, to establish a task force to evaluate various rights fees on a global basis and to set a standard by which the rights organizations should

be compensated in a fair and equitable fashion.

So, as you see, there are a variety of forces at work that serve to enrich and facilitate our inflight entertainment experiences. Without these sometimes complicated efforts, our inflight entertainment services would most likely be limited to a complimentary deck of playing cards and an assortment of newsstand magazines.

*Barry Knittel joined AEI Music as the corporate director of business affairs in 1995 and was promoted to president and chief operating officer in 1996. In 1998 he*



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*became the president and CEO of AEI Music Markets - Worldwide, a wholly-owned division of AEI focusing on worldwide business efforts in the areas of creating music compilations and the management and further development of AEI's music licensing relationships. Prior to joining AEI, Mr. Knittel was the Director of Licensing and Chief Negotiator for the American Society of Composers, Authors & Publishers (ASCAP). With ASCAP for 23 years, he was responsible for negotiating music licensing and employing music as a marketing tool on a worldwide basis. Mr. Knittel has a BA in Business from Kent State University. He is an active member of the Country Music Association, the International Confederation of Societies of Authors and Composers (CISAC), the National Academy of Recording Arts and Sciences, the National Association of Broadcasters, the National Cable Television Association and World Airline Entertainment Association (WAEA).*