

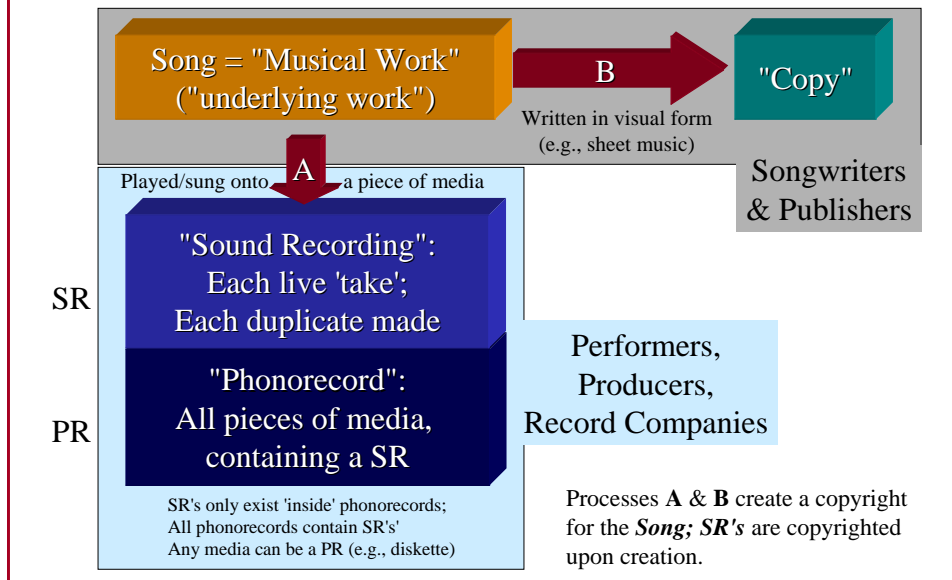
Leland Blues Pipeline

Introduction to Music Rights & Law for Performing Artists

Agenda

- What is Copyrighted?
- Exclusive Rights of a Copyright
- Types of Licenses and the Parties
- Rights Flows and Cash Flows
- Leland Blues Pipeline Venues*
 - Planned Venues
 - Desired Venues
 - Excluded Venues
- Conclusions
- Action Plan

What is Copyrighted?



Exclusive Rights of a Copyright

1. To **reproduce** the work (e.g. make a SR/Phonorecord, publish it as sheet music, or otherwise copy it—copy of copy)
2. To **distribute** copies of your work (e.g., distribute any of the SR/PR's, copies made under #1...e.g., selling/giving to public)
3. To **perform** the work publicly (live or replay of a recording, under #1)
4. To **create a derivative** work (another work based on it)

Copyright *means*...

1. **Reproduction:** local artist cannot make a SR/phonorecord of himself playing someone else's song (nor duplicates)
2. **Distribution:** local artist cannot sell or pass around copies/PRs of the recording made in #1
3. **Performance:** local artist cannot perform the music publicly (live or replay of his recording made in #1)
4. **Derivative:** local artist cannot create a special 'version' of the work

Definition: "Cover" – a SR/PR made by an artist *other than* the copyright holder (requires a Mechanical license to do this legally)

Quick Question: Demo Tape?

- Question:** Artist records himself playing several 'covers' (copyrighted songs), and makes a demo audio CD for loaning to the USO for consideration for a tour. Did he violate the 'reproduction' and 'distribution' copyrights of the owners of those songs?
- Answer: Yes.** The act of even private recording of a song (for *any* reason) violates CR law. Artist should get a Mechanical License, to cover the number of SR/PRs created. [Currently only 10.5 cents per song/per copy—not bad for a demo CD—available from Harry Fox Agency.]

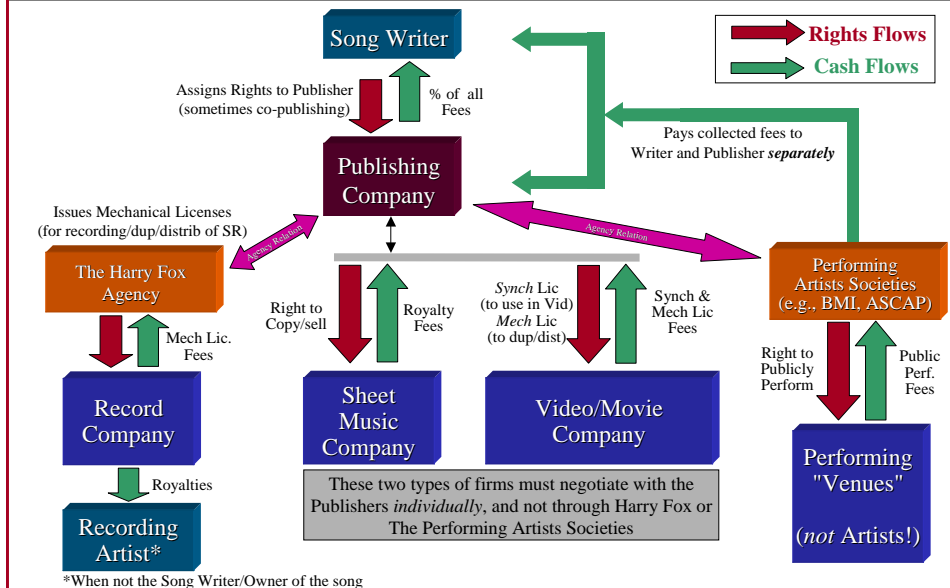
Types of Licenses & The Parties

| Type | Description | Who Pays | Who Collects | Who Gets |
|-------------------------|---|--------------------------------------|-------------------------------|-------------------------------|
| Mechanical | Right to make a SR (and duplicates of that SR) of a song ¹ , & the right to distribute them | Record Co. | Harry Fox agency | Copyright Owner/ Publisher |
| Synchronization | Right to use a song ¹ inside a single, initial, video recording (no rights to copy, perform, or distribute this) | Video Maker | Copyright Owner/ Publisher | Copyright Owner/ Publisher |
| Master Recording Rights | Right to use a SR inside a single, initial, video recording (no rights to copy, perform, or distribute) | Video Maker | SR Owner (RecordCo) | SR Owner (RecordCo) |
| Performance | Right to publicly perform a song ^{1,2} | Venue Holder (<i>not</i> artist) | BMI/ ASCAP/ SESAC | Copyright Owner/ Publisher |

¹ By 'song', I mean 'musical composition'—NOT a sound recording or phonorecord

² Regardless of non-profit-motive (with exceptions)

Rights Flows & Cash Flows



Blues Pipeline Venues

1. Blues Pipeline *planned* venue
 - Webcast of Newly Recorded, **Original** Music
 - ❖ Music Videos (streaming)
 - ❖ Music Audio (streaming)
 - ❖ Music Audio (MP3 download)
 - Sales of Music Video DVD's
2. Blues Pipeline *desired* venue
 - Webcast of Local Blues Festivals (video only)
 - ❖ Live and On-Demand
3. Blues Pipeline *excluded* venues
 - Anything to do with existing Sound Recordings
 - Anything to do with existing Broadcast venues
 - Anything requiring Foreign rights and agreements (if owner/writer does *not* have WW distribution rights)

1. Issues for *Planned* Venue

- Blues Pipeline 'Candidates'
- Overview of Pipeline Process
- Overview of Pipeline Legal/Rights Flows
- Blues Pipeline Duties to Artist
- The Challenge with Public Domain

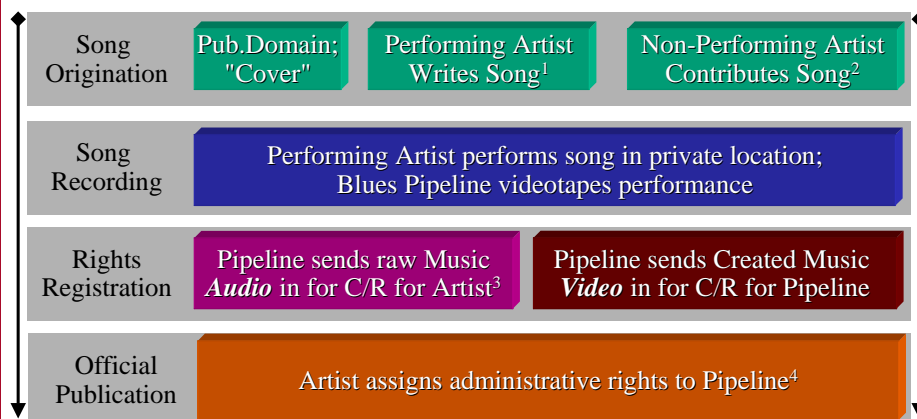
1. Original material,
without *any* requirements
for license fees or reporting,
without *any*
legal encumbrances

2. Covers,
with minimal fees and
manageable reporting
requirements

Blues Pipeline Candidates

- ❑ Limited legal/reporting staff implies:
 - Only Original music (copyright held by **artist** and **not** by **publisher**, unless artist has ironclad legal agreement with publisher/co-publisher for *free* use of the song, in Mech/Perf/Synch rights)
 - Only "Brand New" music (copyright held by artist and Pipeline –as publisher)
 - Public Domain music (verified by for-fee research groups)
- ❑ Video shoots at *places* which sign *location* agreements, and by *groups* that have “within-band” agreements (for the shoot and subsequent rights)
- ❑ Any covers must be inexpensive and with minimal reporting requirements

Overview of Pipeline Process



1. Song must NOT be already published *under the control* (even partial) of an *outside* party, unless it is 'contributed' by this outside party with full, for-free licenses to all rights (in writing).
2. Song must already be published, and full licenses granted to Artist & Pipeline (Synchronization, Derivatives, Mechanical, Performance), for-free, and in writing.
3. This is to copyright either an *original* work (if the Artist was the song writer), or a *derivative* work (if public domain, or a 'contributed' song).
4. Artist maintains sole ownership of the copyrights—LPB only admin's (for a fee) those rights

Pipeline Legal/Rights Flows

- ❑ Performing Artist—as Song Writer:
 1. Grants **Pipeline**—as Producer—a license for all *video* related rights (e.g, Synch/ Perf/ Master Recording), and “all other necessary” rights (e.g. use of photo, name, etc for the web)
 2. Assigns **Pipeline**—as Publisher—all of the administrative rights for the Song (but *none* of the copyrights)

Pipeline Duties to Artist

- ❑ Verify all licenses/agreements before recording the video
 - Copyrights, location permission, within-band agreements, any ‘bystanders’, Rights of Use (e.g., image)
- ❑ Record session, create outputs, do filings:
 - Raw music CD, and filing for Copyright (for artist)
 - Edited Digital Video files, and filing for Copyright (for Pipeline)
 - [Optional: Finished music *audio* CD, for non-Pipeline selling?]
- ❑ Publish/Promote:
 - Put content on Website
 - Sell the first copy to someone...(for registration)
 - Execute legal docs to “Publish” the song
- ❑ Remunerative: Any contracted revenues from website sales (DVDs, downloads, subscriptions, pay-per-view?), with documentation
- ❑ Industry: Register (audio) song/recording with relevant PRO’s (Performing Rights Organizations), and with Harry Fox Agency
- ❑ Costs: Pay one-time fair-market “gig-fee” for recording session, bear costs for location usage/rental, recording and media, website expenses, contract execution, filing fees for copyrights/registration/PRO’s

The Challenge of Public Domain

- ❑ There is no official/government database of such
- ❑ Copyrights *do* exist for specific versions and/or arrangements of these, in which an artist adds some "unique" elements to an underlying PD song.
- ❑ These "unique elements" can *only* be discovered on the official Copyright filing documents.
- ❑ Any 'cover' of a PD song would have to know *which elements* (of popular releases of the song) were copyrighted and which were PD—a research problem.
- ❑ Commercial *for-fee* research services do exist (bzrights.com, pubdomain.com)
- ❑ Pipeline will subscribe to these services to find a pool of usable songs for local artists to 'cover'

2. Issues for *Desired Venue*

- ❑ Desired Goal: Webcast of Live Performances of non-original material

- ❑ Live Performance 'Cover' Scenarios:
 - Local
 - Webcast
 - ❖ Live
 - ❖ Later

Live Performance Scenarios (Local)

1. Practicing in Backyard
2. Playing for-**FEE** at a Birthday Party
3. Playing for-*free* at a Block Party
4. Playing for-*free* at a Political Rally
5. Playing for-*free* at a Charitable Event
6. Playing for-**FEE** at a Charitable Event
7. Playing for-**FEE** at a Music Festival
8. Playing for-**FEE** at a small Blues Bar

Cover Scenarios: Who Pays? (1)

- Live Performance Scenarios (Local)
 - **Practicing copyrighted songs in backyard, with uninvited guests present, no one recording audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=NO:
 - ❖ Semi-private (I.e., social group only, neighborhood)
 - ❖ No money changes hands
 - ❖ Not a 'substantial body' of people

Cover Scenarios: Who Pays? (2)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at birthday party, performer getting paid, with invited guests of the family present, no one recording/broadcasting audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=NO:
 - ❖ Semi-private (I.e., social group only, families)
 - ❖ Compensation not relevant in a *non-public* perf
 - ❖ Not a 'substantial body' of people

Cover Scenarios: Who Pays? (3)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a community 'block party', no admission, no monies going to anyone (promoter, performers, workers), no one recording/broadcasting audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=NO:
 - ❖ Semi-private (I.e., social group only, small community)
 - ❖ No monies change hands
 - ❖ Not a 'substantial body' of people
 - ❖ (looks essentially like practicing backyard)

[Note: benefits by food vendors and 'optional' sponsor merchandise are OK.]

Cover Scenarios: Who Pays? (4)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a local political rally, no admission, no monies going to anyone (promoter, performers, workers), no one recording/broadcasting audio or video**
 - Sych=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=NO:
 - ❖ No monies change hands
 - ❖ Public, but no admission

[Note: Optional donations are OK.]

Cover Scenarios: Who Pays? (5)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a local Charity Benefit rally, admission charge, no monies going to anyone (promoter, performers, workers), net admissions proceeds to the Charity, no one recording/broadcasting audio or video**
 - Sych=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=NO:
 - ❖ Exempt under non-profit clause (even though public)
 - ❖ (Copyright owners have a right to refuse, but the law doesn't require venue owners to pre-pub the lists! Legal ambiguity.)

Cover Scenarios: Who Pays? (6)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a local Charity Benefit rally, admission charge, performers getting a gig-fee, net admissions proceeds to the Charity, no one recording/broadcasting audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=YES (paid by venue organizer):
 - ❖ Non-profit overridden by 'money changing hands'
 - ❖ Very public

Cover Scenarios: Who Pays? (7)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a local Blues Festival, admission charge, performers getting a gig-fee, net admissions proceeds to some Blues Charity (or promoter), no one recording/broadcasting audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=YES (paid by venue organizer):
 - ❖ Non-profit overridden by 'money changing hands'
 - ❖ Very public

Cover Scenarios: Who Pays? (8)

- ❑ Live Performance Scenarios (Local)
 - **Performing copyrighted songs at a local tiny Blues Bar, admission/cover charge, performers getting a gig-fee (or % of door), no one recording/broadcasting audio or video**
 - Synch=NO (no video recording)
 - Mech=NO (no duplicates of SR's made)
 - Perf=YES (paid by Bar owner):
 - ❖ For-profit, Public, Monies changing hands

[Note: the small size of the bar does not affect this—size exemptions apply *only* to playing **broadcast** radio/tv inside.]

Live Performance Scenarios (Webcast)

❑ What is a Performance? (1)

"Thus, for example: a singer is performing when he or she sings a song; a **broadcasting network is performing when it transmits** his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and **any individual is performing whenever he or she plays a phonorecord embodying the performance** or communicates the performance by turning on a receiving set. Although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself be a "performance" or "display" under the bill, it would not be actionable as an infringement unless it were done "publicly," as defined in section 101."

(source: <http://www4.law.cornell.edu/uscode/17/106.notes.html>)

Live Performance Scenarios (Webcast)

□ What is a Performance? (2)

"Clause (2) of the definition of "publicly" in section 101 makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, **but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process.** The definition of "transmit" - to communicate a performance or display "by any device or process whereby images or sound are received beyond the place from which they are sent" - is broad enough to include **all conceivable forms and combinations of wired or wireless communications media**, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a "transmission," and if the transmission reaches the public in my (any) form, the case comes within the scope of clauses (4) or (5) of section 106...Under the bill, as under the present law, a performance made available by transmission to the public at large is "public" even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission."

(source: <http://www4.law.cornell.edu/uscode/17/106.notes.html>)

Live Performance Scenarios (Recording)

1. Practicing in Backyard
2. Playing for **-FEE** at a Birthday Party
3. Playing for *-free* at a Block Party
4. Playing for *-free* at a Political Rally
5. Playing for *-free* at a Charitable Event
6. Playing for **-FEE** at a Charitable Event
7. Playing for **-FEE** at a Music Festival
8. Playing for **-FEE** at a small Blues Bar

+

Recording of AUDIO

Or

Filming of VIDEO

=

Fees Due!
Mech (for creation of SR)
Synch (for song 'fixing' in video)

[Note: this is rarely *enforced* for small events and for less-than-lifetime artists.]

Live Performance Scenarios (Webcast)

1. Practicing in Backyard
2. Playing for-**FEE** at a Birthday Party
3. Playing for-*free* at a Block Party
4. Playing for-*free* at a Political Rally
5. Playing for-*free* at a Charitable Event
6. Playing for-**FEE** at a Charitable Event
7. Playing for-**FEE** at a Music Festival
8. Playing for-**FEE** at a small Blues Bar

+

Transmission of AUDIO

Or

Transmission of VIDEO

=

Public Fees-due Performance!
(even if the original live performance was exempt)

Live Performance, Webcast (*Live, Video*)

| Event Type | Synch? | Mech? | Perf? |
|--|------------|-------|-----------------|
| Practicing in Backyard | Yes | No | Yes (webcaster) |
| Playing for- FEE at a Birthday Party | Yes | No | Yes (webcaster) |
| Playing for- <i>free</i> at a Block Party | Yes | No | Yes (webcaster) |
| Playing for- <i>free</i> at a Political Rally | Yes | No | Yes (webcaster) |
| Playing for- <i>free</i> at a Charitable Event | Yes | No | Yes (webcaster) |
| Playing for- FEE at a Charitable Event | Yes | No | Yes (webcaster) |
| Playing for- FEE at a Music Festival | Yes | No | Yes (webcaster) |
| Playing for- FEE at a small Blues Bar | Yes | No | Yes (webcaster) |

Live Performance, Webcast (*Later, Video*)

| Event Type | Synch? | Mech? | Perf? |
|--|--------|-------|-----------------|
| Practicing in Backyard | Yes | No | Yes (webcaster) |
| Playing for-FEE at a Birthday Party | Yes | No | Yes (webcaster) |
| Playing for-free at a Block Party | Yes | No | Yes (webcaster) |
| Playing for-free at a Political Rally | Yes | No | Yes (webcaster) |
| Playing for-free at a Charitable Event | Yes | No | Yes (webcaster) |
| Playing for-FEE at a Charitable Event | Yes | No | Yes (webcaster) |
| Playing for-FEE at a Music Festival | Yes | No | Yes (webcaster) |
| Playing for-FEE at a small Blues Bar | Yes | No | Yes (webcaster) |

Conclusion (1)

- ❑ The Requirement for *Synchronization* rights, when coupled with the *lack of a central agency* with which to negotiate such rights ‘in bulk’, greatly constrain (but not eliminate) the number of local music festival video recordings we are able to publish. [Our legal firm will serve in this capacity for covers we decide to fund and offer to the public.]
- ❑ The detailed *reporting* requirements for the Performing Rights Organizations also restrict this venture—we simply do not have the resources to manage relationships with third parties such as these. [We hope to bypass BMI/ASCAP reporting requirements by negotiating Perf rights from the original owner *as part of* the Synch rights negotiation.]

Conclusion (2)

- ❑ This means that we will NOT be able to webcast LIVE our festivals, since we cannot negotiate synch rights ahead of time (generally). But, after negotiating for the footage we captured, we can then webcast "On demand" all secured footage.
- ❑ There is the additional possibility that—since the local bands typically play the *same* songs at each festival—once we have acquired rights to a selection of covers in Year 1, we could webcast LIVE those selected cuts in *subsequent* years.

Conclusion (3) – Blues Pipeline Venues

| Format | Media Type | Delivery Type | Quality | Cost | Rights Needed |
|--------|------------|----------------|----------|-------------|---------------------|
| Video | Web | View(Stream) | Internet | Free/\$ | Synch/ Mech/Perf |
| Video | Web | Download | Internet | \$ | Synch/ Mech |
| Video | Physical | DVD/ Mail | High/DVD | \$ | Synch/ Mech |
| Audio | Web | Listen(Stream) | | Not Offered | |
| Audio | Web | Download | High/MP3 | \$ | Mech |
| Audio | Physical | CD/Mail | | Not Offered | |

Action Plan

1. Subscribe to Public Domain Databases (done)
2. Parcel out PD songs to local/interested artists
3. Identify covers in existing *video* footage & use our legal firm to pursue rights with current owners (trying for ALL rights: synch/mech/perf, so NO reporting to BMI/etc would be required for *video* usage)
4. Place MP3 versions on web-shop for sale (and for generating mech license totals for reporting/fees)
5. Get favorite covers from local artists, and attempt to get full S/M/P rights for as many as feasible/affordable
6. Schedule video shoots for these (and do contract work!)
7. Create enhanced video/MP3 versions, do filings, and create LBP products
8. Post/merchandise/promote on website(s)