



Music Copyright

Copyright
Eric E. Johnson
ericejohnson.com



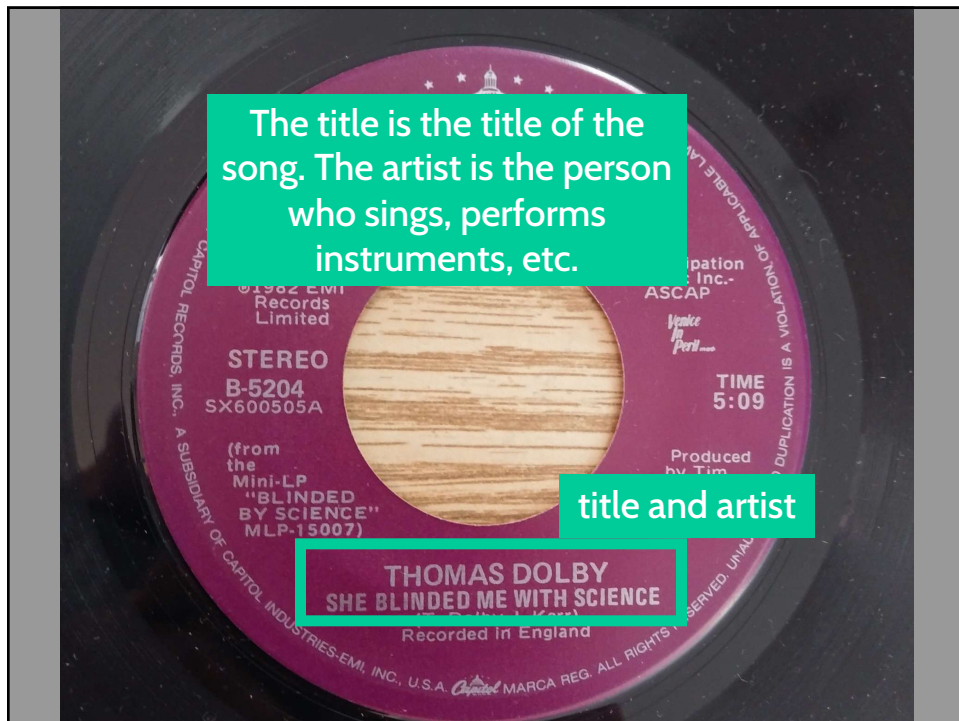
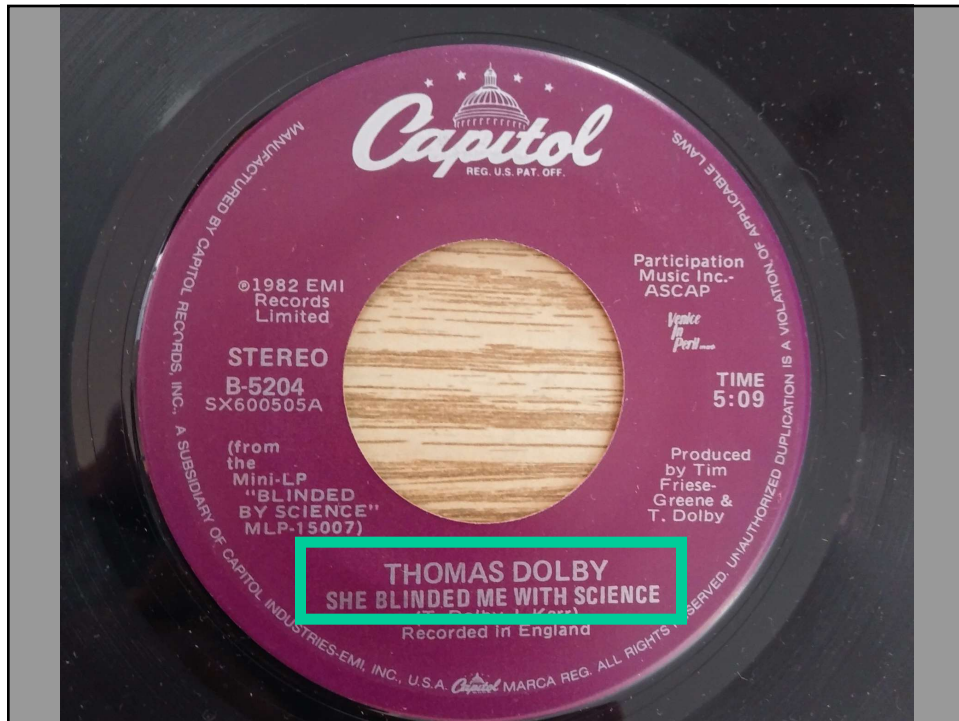
Konomark
Most rights sharable

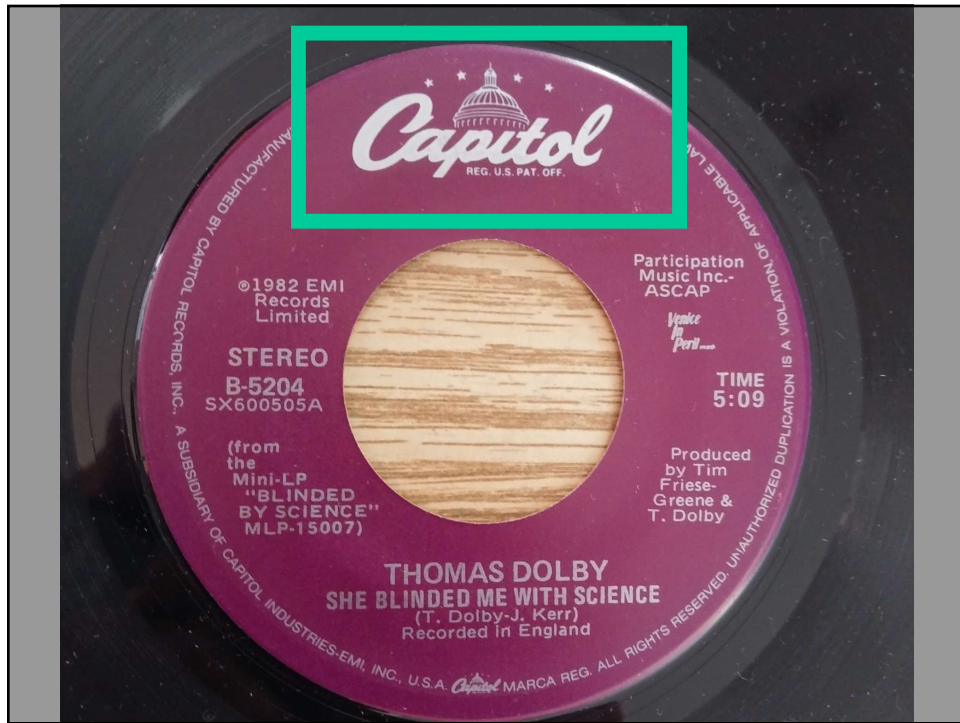
Separate copyright interests:

- Soundrecording (P)
- Musical composition (C)

Let's look at some records ...









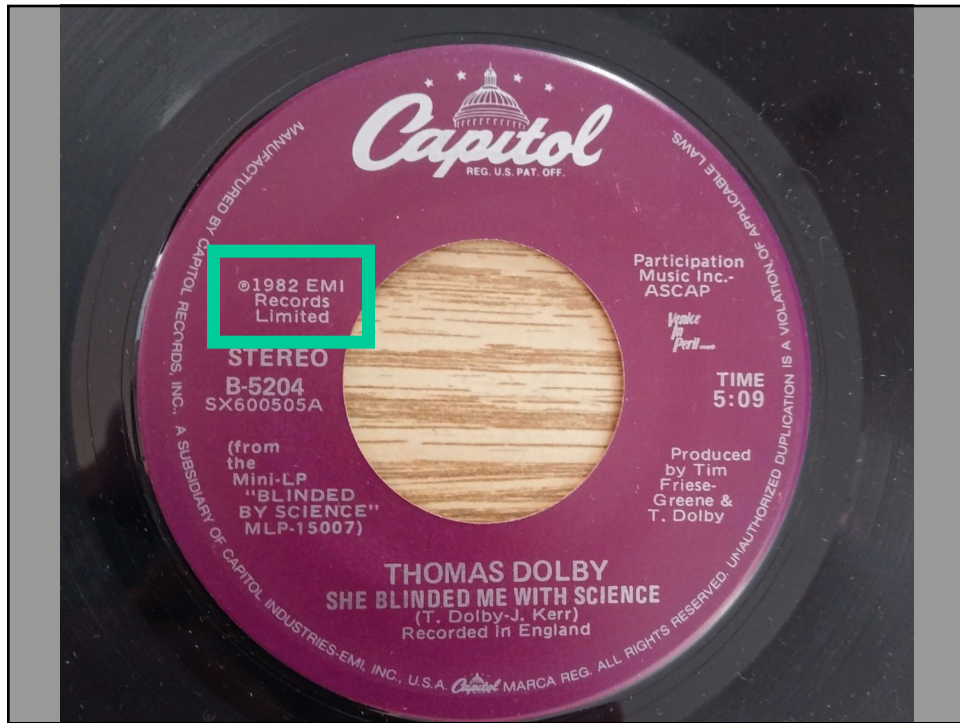
record's label

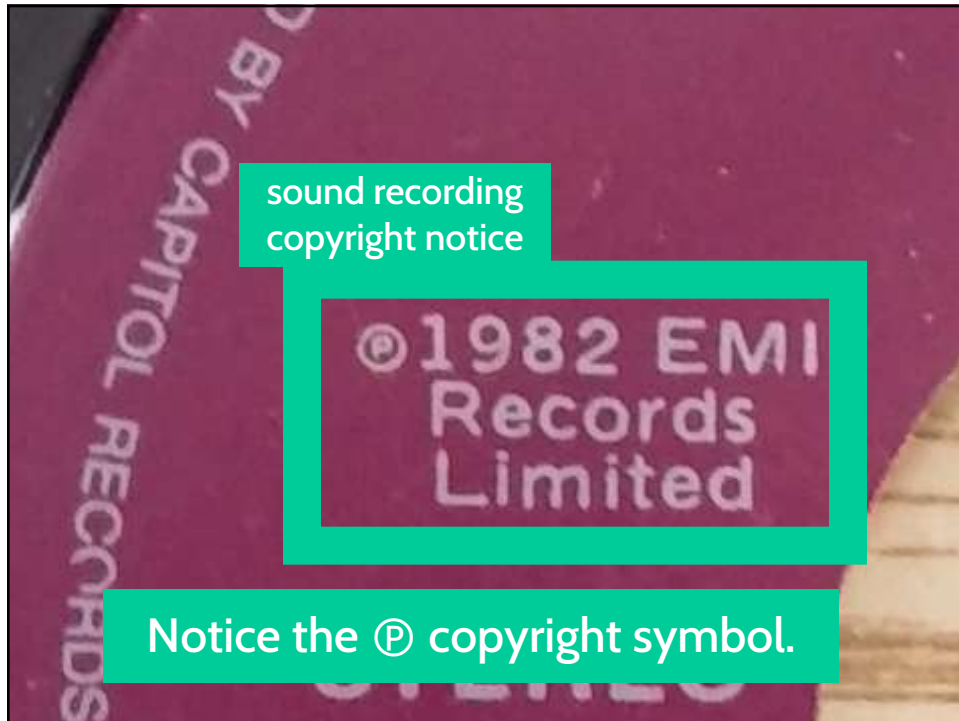


record label

The "record label" is the company that signs artists to recording contracts and then records them and sells "records," (i.e., sound recordings).

Generally, the record label owns the copyright in the sound recording.

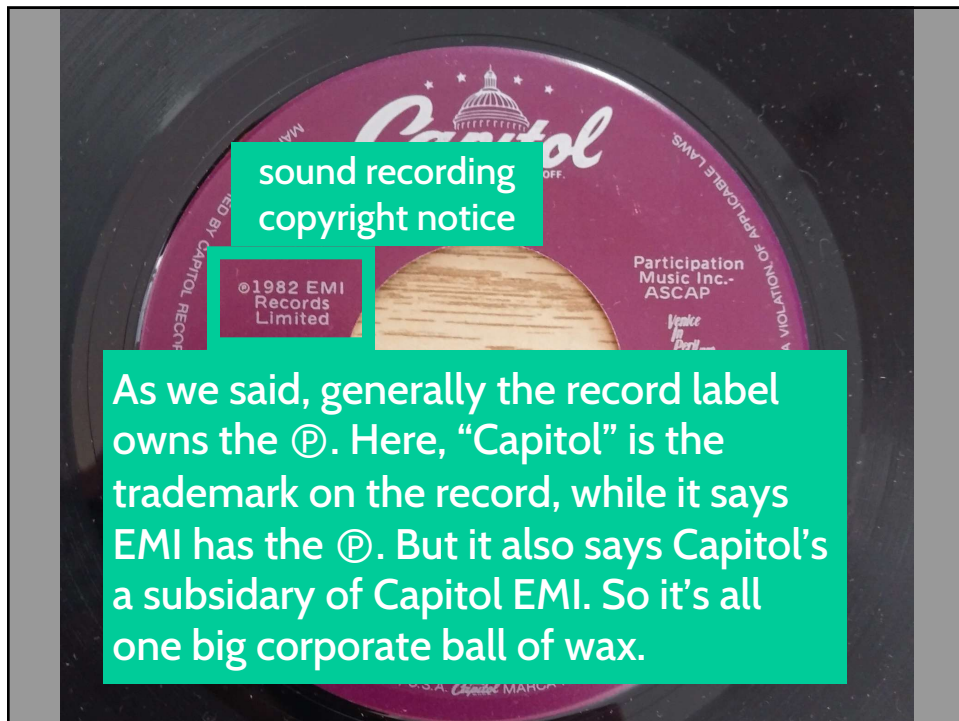




sound recording
copyright notice

©1982 EMI
Records
Limited

Notice the © copyright symbol.

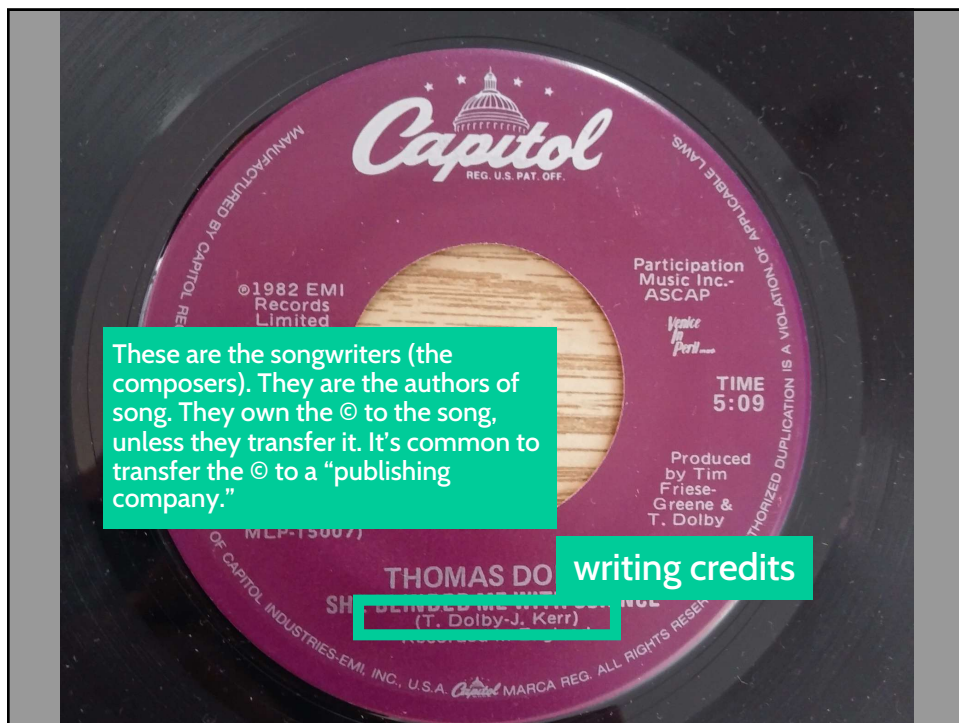
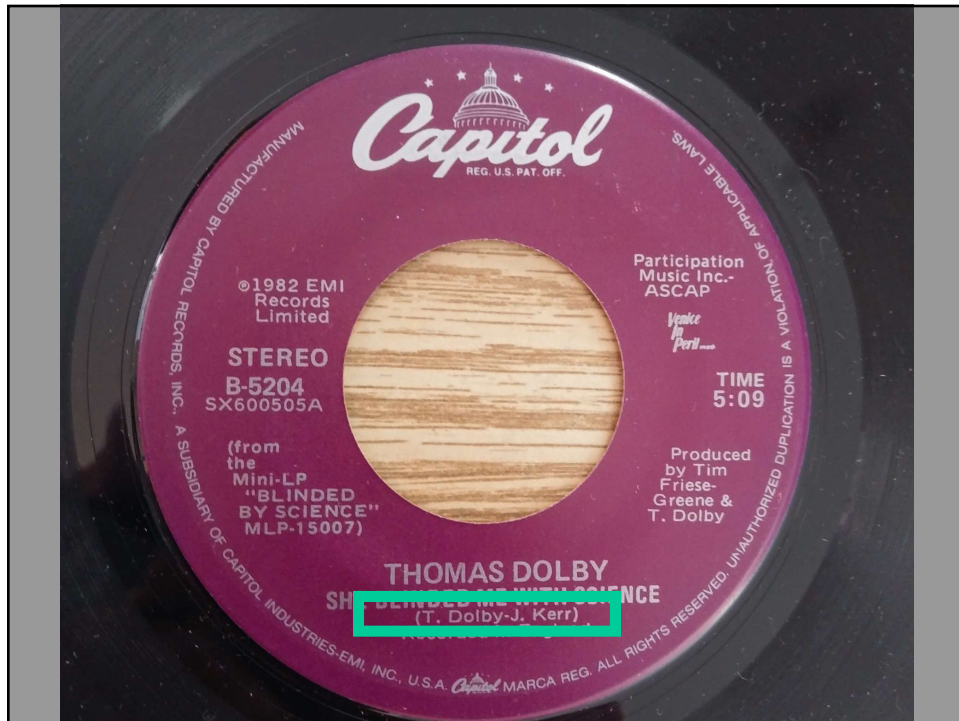


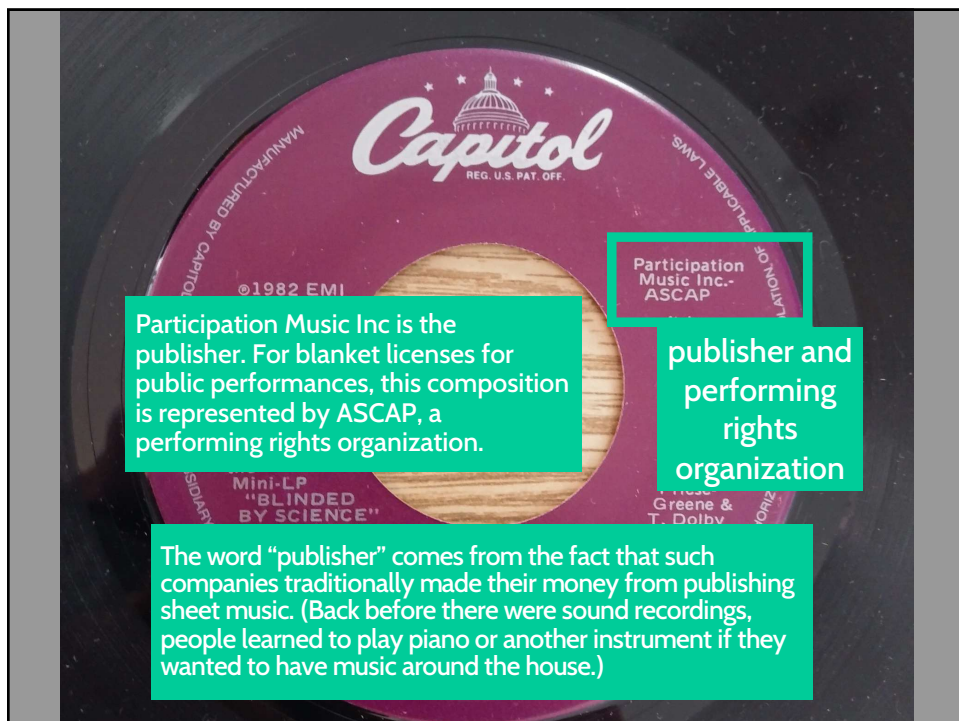
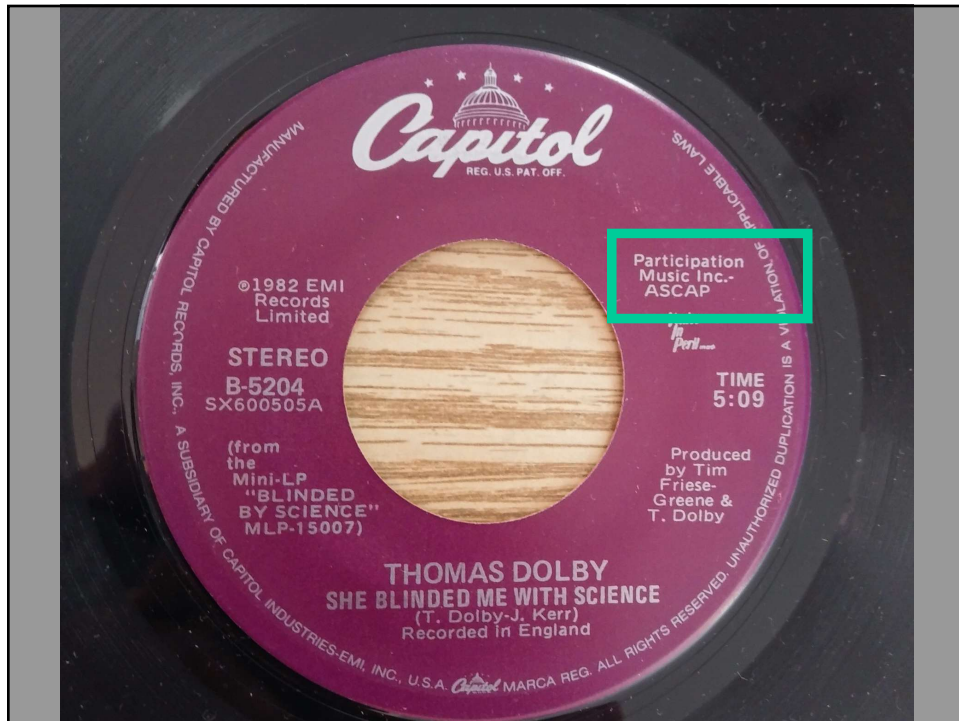
sound recording
copyright notice

©1982 EMI
Records
Limited

Participation
Music Inc.-
ASCAP

As we said, generally the record label owns the ©. Here, "Capitol" is the trademark on the record, while it says EMI has the ©. But it also says Capitol's a subsidiary of Capitol EMI. So it's all one big corporate ball of wax.



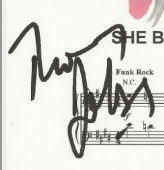
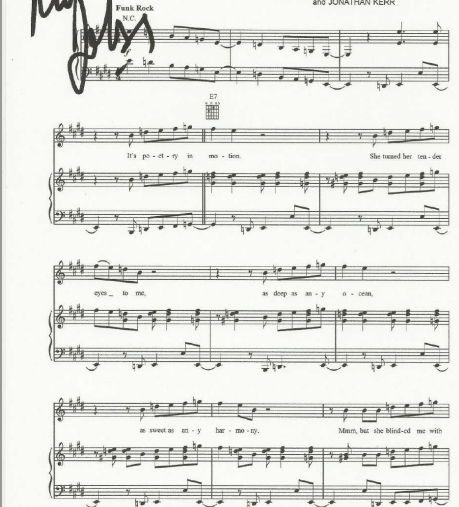


THOMAS DOLBY

SHE BLINDED ME WITH SCIENCE

Words and Music by THOMAS DOLBY ROBERTSON
and JONATHAN KERR

Funk Rock
N.C.

E7

It's po - et - ry in mo - tion. She turned her ten - der
eyes - to me. as deep as an - y - ou - can.
as sweet as an - y - ear - mo - roy. Mmm, but she blind-ed me with

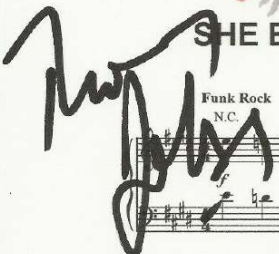

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writing credits

It's po - et - ry in mo - tion. She turned her ten - der

Capitol
REG. U.S. PAT. OFF.

©1982 EMI Records Limited

STEREO
B-5204
SX600505A

(from the Mini-LP "BLINDED BY SCIENCE" MLP-15007)

Participation Music Inc.-ASCAP

Voice
Percussion

Produced by Tim Friese-Greene & T. Dolby

TIME 5:09

THOMAS DO... writing credits

SH... (T. Dolby-J. Kerr)

as sweet as an - y har - mo - ny. Mmm, but she blind-ed me with

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This image shows a musical score with four staves. The top staff is a vocal line with lyrics. The second staff is a piano accompaniment. The third and fourth staves are additional piano accompaniment parts. A green box highlights the copyright notice at the bottom of the score.

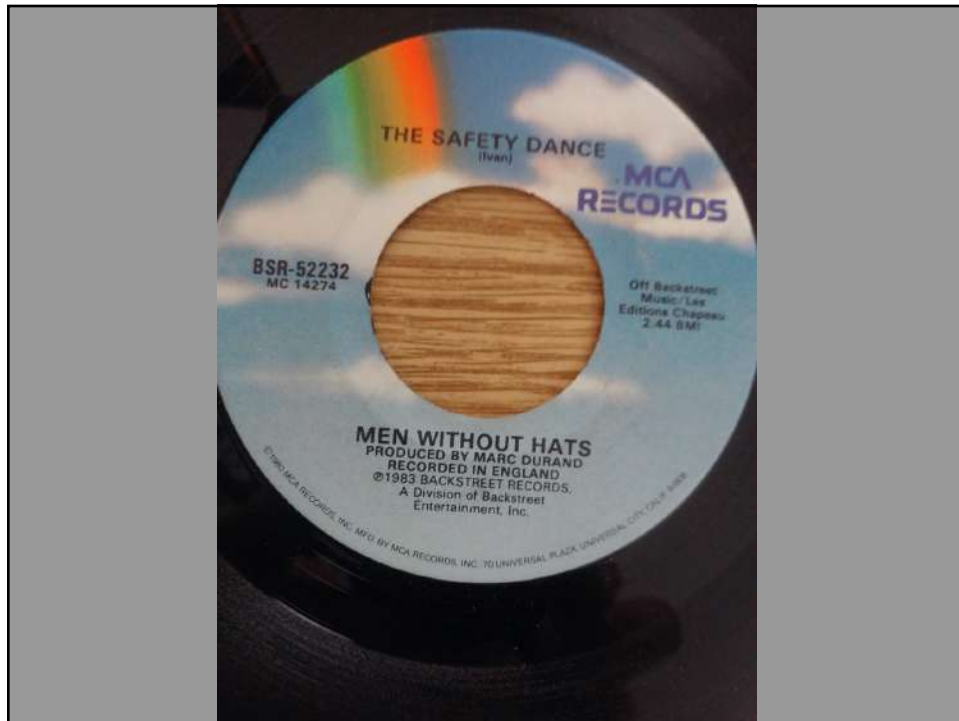
It's not clear why this is different than the publisher listed on the record label. (Although there are many plausible reasons.)

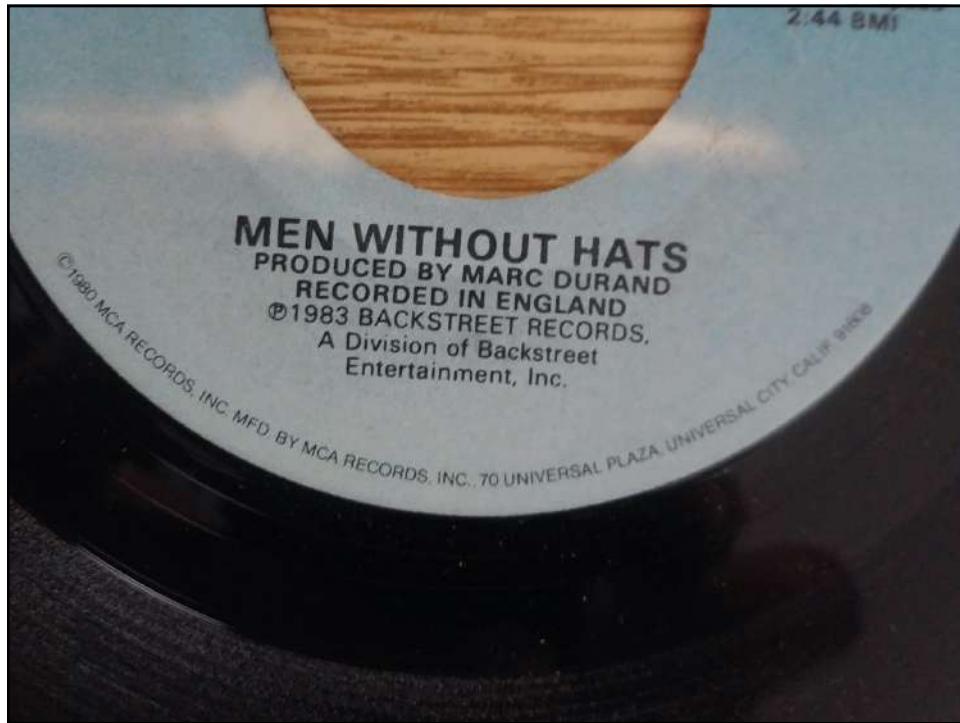
Mmm, but she blind-ed me with

copyright notice

Copyright © 1982 by Carlin Music Corporation and Scale Music & Sound Hits, Ltd.
International Copyright Secured All Rights Reserved Used by Permission

This image is identical to the one above but includes two additional annotations. A large green box on the left contains the text: "It's not clear why this is different than the publisher listed on the record label. (Although there are many plausible reasons.)". A smaller green box on the right contains the text: "copyright notice".







Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

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- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Reproduction, preparing derivative works, distribution— all of this is the same for compositions and sound recordings.

Subject
title has
(1) to **re**
(2) to **pr**
(3) to **di**
public b
lending;

For the public performance right, things are different:

- Compositions have the public performance right generally.
- Sound recordings only have it for digital audio transmission.

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or

(4) in the case of literary, **musical**, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform** the copyrighted work **publicly**;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to **display** the copyrighted work **publicly**; and

(6) in the case of **sound recordings**, to **perform** the copyrighted work **publicly by means of a digital audio transmission**.



Beethoven's 9th Symphony, composed and first performed 1824



Released 1980 on Deutsche Grammophon label

If I play this recording over loudspeakers to 100,000 people in a stadium—and assuming I have no licenses at all—do I have any copyright infringement liability?



If I play this recording over loudspeakers to 100,000 people in a stadium—and assuming I have no licenses at all—do I have any copyright infringement liability?



No.
I'm completely in the clear.
Why?

If I play this recording over loudspeakers to 100,000 people in a stadium—and assuming I have no licenses at all—do I have any copyright infringement liability?



No.
I'm completely in the clear.
Why?
There's no composition ©, because coming from 1824, the composition is in the public domain.
And there's no public performance right for a sound recording © (except for digital audio transmission, which I didn't do).

Musical composition ©

- Performance right
 - Radio stations, satellite radio, webcasters, stadiums, stores, etc. get rights to play through blanket licenses with performing rights societies (ASCAP/BMI/SESAC)
 - ASCAP and BMI are subject to consent decrees for licensing rates
 - Blanket licenses
 - do not cover movies or movie theaters
 - Performing rights societies divvy up the money
- Sound-alike recordings would infringe
 - But 17 U.S.C. § 115 gives you the right to get a compulsory license for non-dramatic musical works

Sound recording ℗

- Not protected originally – prior to 1972, sound recordings were protected under state laws, not federal law. As of 1972, new sound recordings were brought under the federal copyright scheme.
- As of 2018, federal copyright protection was extended to pre-1972 sound recordings, pre-empting state law.
- No performance right
 - E.g., radio stations can play the records, and the owner of the sound recordings cannot stop them or get any royalties
- Sound-alike recordings do not infringe ℗
- There is a performance right for webcasting and satellite radio (digital audio transmission)
 - Subject to compulsory licensing and royalty scheme under 17 USC § 114

Sound recording ©

- A sound-alike recording does not infringe the © sound-recording copyright!
 - All the fuzziness of substantial similarity for non-literal infringement is avoided.
 - 17 U.S.C. § 114(b): “The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording.”
 - ***BUT REMEMBER***, a sound recording could be the fixation for a © copyrighted musical composition or literary work!

Know your music licenses:

- Blanket performing-rights-society license
- Mechanical license
- Synchronization license
- Master use license

Blanket performing-rights-society license

- A license of the ©
- Grants the right to play music to the public
- Given to restaurants, sports arenas, television stations, radio stations
- But not movie theatres in U.S.
 - ASCAP v. Alden-Rochelle (1948) (antitrust laws prohibit requiring blanket licenses of theatres)

Mechanical license

- A license of the ©
- Grants the right to record a composition on to a phonorecord and distribute it
- Compulsory mechanical license available under 17 U.S.C. § 115
 - Applies to published, non-dramatic musical compositions
 - The Harry Fox Agency cuts deals on the same terms as § 115, but without the hassle

17 U.S.C. § 115

- Right to make cover versions
- Has contributed a lot of recorded music to the corpus of works

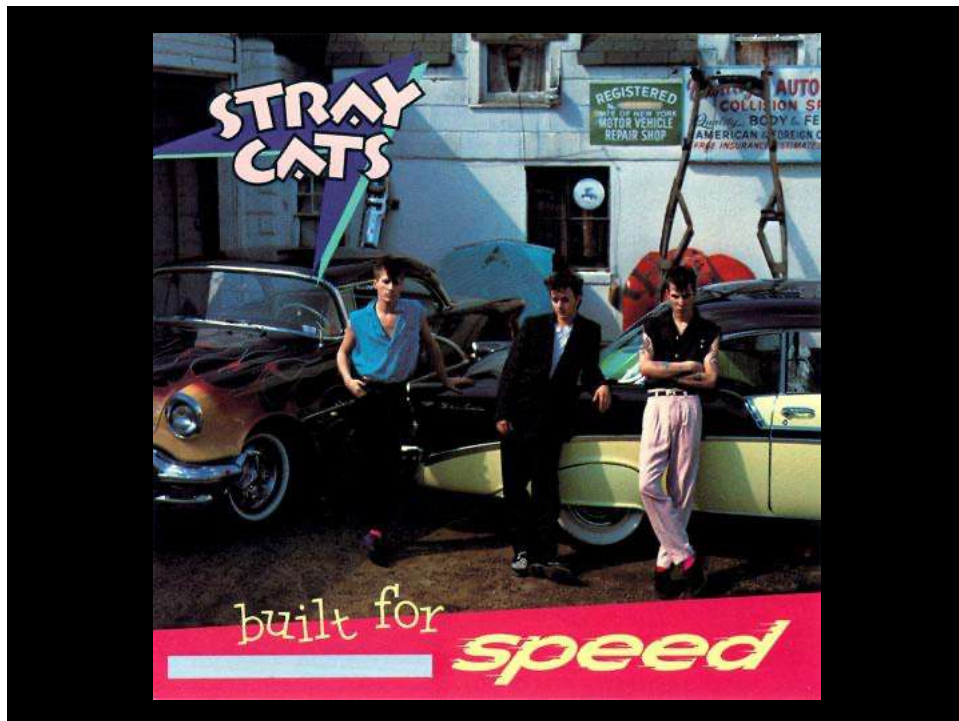
17 U.S.C. § 115

- “A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work ...”

Motola v. EMI America Records, Case No. 82-6308-PAR (CD. Cal. April 18, 1984)

Eddie Cochran's "Jeanie, Jeanie, Jeanie" (the original)

Well Jeanie, Jeanie, Jeanie come and dance with me
Well I teach you every dance from here and 'cross the sea
Well now first we hop, yeah-yeah-yeah, then we bop
Yeah-yeah-yeah, then we swap or rock 'n' roll
We'll do the stroll ...



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Stray Cats's "Jeanie, Jeanie, Jeanie"

Well, Jeanie, Jeanie, Jeanie come and dance with me
Well, there's a real wild party and the booze is free
First we'll fuck
Yeah, yeah, yeah tough luck
Yeah, yeah, yeah then we'll rock
We'll rock and roll, well, do what you're told ... "

Motola v. EMI America Records, Case No. 82-6308-PAR (CD. Cal. April 18, 1984)

"Although the musical arrangements in this case are, by plaintiff's own admission, quite similar, the changes in the lyrics are substantial and clearly beyond the scope of the § 115(a)(2) privilege. Regardless of whether these changes are detrimental or beneficial with regard to the income produced by 'Jeannie, Jeannie, Jeannie,' the ultimate effect is to change radically the tenor and appeal of plaintiff's song. The references to 'wild parties' and 'free booze' and the insertion of obscenities into the lyrics must certainly have the effect of 'pervert[ing], distort[ing], and travesty [ing]' plaintiff's composition. Musicians and record companies should be required and Congress has determined that they are required, to obtain the consent of the copyright owner before making these kinds of changes in a protected work." - *Judge Pamela A. Rymer*

Synchronization license

- A license of the ©
- Negotiate with publisher
- Grants the right to use a music composition © in synchronization with moving pictures in an audiovisual work (motion picture, television)
 - Purchased in combination with public performance rights, if needed (e.g., for motion pictures, b/c no blanket licenses)
- No compulsory sync license available

Master use license

- A license of the ℙ
- Grants the right to “use” (meaning make copies of) a sound recording ℙ
 - Such as putting into films, putting onto compilation albums, sampling
- Negotiate with record company
- No compulsory license available

Question:

How could a songwriter make money off a gratis sync license in a motion picture?

Question:

How could a songwriter make money off a gratis sync license in a motion picture?

Free advertising – people hear and like the song, and then buy it or stream it, getting royalties to the songwriter.

When the show is played on television, the composer will get performance royalties via blanket license fees through ASCAP, BMI, or SESAC.

Question:

What music licenses would you want for a remake of the 1988 film *Footloose*?

Question:

What music licenses would you want for a remake of the 1988 film *Footloose*?

1. *Public performance license, since no blanket license for U.S. movie theatres*
2. *Synchronization license (get in same document as above)*
3. *Master-use license, if you want to re-use sound recordings from the original movie in the remake*
4. *Mechanical license, to “print” CDs, since you’ll want a soundtrack album, and press vinyl because now that’s back.*

Question:

Can you do a cover version of “Back in Black” by AC/DC even if AC/DC doesn’t want you to? Can you play it live at the Viper Room in LA? Can you release it on CD, iTunes, Spotify?

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Yes!

Blanket licenses at performance venues allow you to play it live.

17 U.S.C. §115 allows you to record your cover version and distribute it on CD, iTunes, Spotify.

(But you won’t be able to put it in a motion picture without the publisher’s permission.)