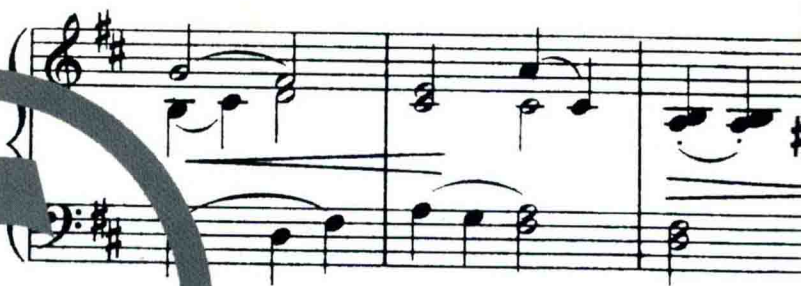


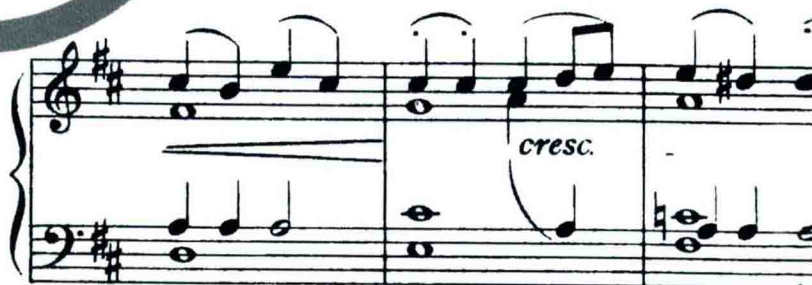


KOHN ON MUSIC LICENSING

FOURTH EDITION



AL KOHN
BOB KOHN



Wolters Kluwer
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The Art Of Music Licensing

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What neat repast shall feast us, light and choice,
Of Attic taste, with wine, whence we may rise
To hear the lute well touched, or artful voice
Warble immortal notes and Tuscan air?
He who of those delights can judge, and spare
To interpose them oft, is not unwise.

— *from a sonnet by John Milton (1608-1674)*

To Edna

FOREWORD

Like a father talking to his son or daughter, in telling of *The Art of Music Licensing*, Al unfolds an encyclopedia of experience and information, gently and gracefully sharing the wisdom and joy of an art and expertise of which, with all humility, he reveals himself to be a master.

The fascination, affection, and almost reverential respect that Al holds for the songwriters and artists that he represents is an essential guidepost for the reader. I would venture to say that Al's whole being, as it permeates *The Art of Music Licensing*, is as much a model and resource as the technical information and good advice that he shares. Like Al, there is a gentleness to the word of caution about pitfalls and short-sightedness, and because it is Al who advises, there is the implicit instruction that the pursuit of success in the practice of licensing need never be a cutthroat game.

To Al, successful negotiation and guidance of licensing comes from an understanding and respect for the real value of the creative work, the diligent study of the extremely complex issues, precedents and processes surrounding the field of licensing, and a sympathetic view of some of the fears and confusions of those who want to do the best for their clients' work (but are unsure as to how to proceed in the volatile and ever changing world of technology and labyrinthine law); but above all, one gets the message, imbedded in each sentence of the book, that fairness and understanding of both sides of the issues is the only road to ultimate success in the practice of the art of music licensing.

Al has spent a lifetime living his art, and what he shares in this prodigious work is much more than an encyclopedic textbook. Because Al has lived the golden ages of music, has been part of its creation and has represented the titans of music history, he is able to reveal, through loving anecdotes that illustrate the themes and premises of business practice, the real fun and energy, the behind-the-scenes personality, and understandable artistic compulsivity that is the world of music we inherit.

Al, as much as he is a teacher, is a bard weaving the history of the music business into a work that might well become a model for future attempts to communicate such complexity of information of any field or art form.

This book is a remarkable gift. It's much more than facts and figures. It's even much more than sound advice and a lifetime of wisdom.

It's Al, whom we all admire and love and who has managed, with the extraordinary partnership of a loving and gifted son, to help us remember who we are and might be, as we try to meet the challenges, and share the rewards and joys, of the music business.

Peter Yarrow
September 1992

Peter Yarrow is a member of Peter, Paul & Mary and has been represented through Warner Bros. Publishing by Al Kohn for over 30 years as the writer and co-writer of such songs as *Puff The Magic Dragon*, *Weave Me The Sunshine*, *Light One Candle*, *Torn Between Two Lovers*, and *Day Is Done*.

ABOUT THE AUTHORS

Al Kohn

Al Kohn, a 50-year veteran of the music industry, was Vice President, Licensing for Warner/Chappell Music, Inc., when he retired in 1993. Prior to his 23-year association with Warner Bros., he served for over 11 years as the U.S. representative for the London-based Francis, Day & Hunter music publishing organization, developing acquisition patterns which moved them into the global pop music market.

Prior to that Al was a member of the creative team at Hummert Radio Features and was the key arranger for some of the syndicate's major network radio programs including *Waltz Time* and *Manhattan Merry-Go-Round*. During World War II, Irving Berlin tapped Al to orchestrate his all-soldier show, *This Is the Army*.

He also served as an arranger for orchestras, including those of Paul Whiteman, Abe Lyman, Ted Dale, Orrin Tucker and others, and arranged night club revues at Lou Walter's Latin Quarter, Billy Rose's Diamond Horseshoe, and the Steel Pier Music Hall. Later, he served as a television arranger for the Milton Berle, Katherine Murray, George Jessel, Martha Raye, and Jane Pickens shows. He also arranged or conducted for Bob Hope, Billy Rose, Jerry Vale, and many others.

Al lives in Tarzana, California, and serves as member of the Board of Directors of the Johnny Mercer Foundation.

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Bob Kohn

Bob Kohn is an attorney, an expert in copyright and music industry matters, and a seasoned executive with experience in both the entertainment and high-tech industries. He was founder of EMusic.com, Inc. (NASDAQ:EMUS), the pioneering music download subscription service, where he served as Chairman until the company was sold to

Vivendi/Universal in June 2001. He is currently Chairman & CEO of RoyaltyShare, Inc., the premier provider of web-based royalty processing and digital revenue management solutions for the global entertainment industry. He also serves as Chairman of Laugh.com, a comedy record company, which he co-founded with the late comedian George Carlin.

He previously served as Vice Chairman of the Board of Borland Software Corporation (NASDAQ: BORL), one of the world's largest developers and marketers of computer software. He was also Vice President, Business Development of Pretty Good Privacy, Inc., a leading developer and marketer of encryption software, and Senior Vice President, Corporate Affairs, Secretary, and General Counsel of Borland International, Inc. Bob also served as Associate General Counsel for Candle Corporation, a developer of software for IBM mainframe computers, and Corporate Counsel for Ashton-Tate, a microcomputer software company.

Prior to Ashton-Tate, he was an associate attorney at the law offices of Milton A. "Mickey" Rudin in Beverly Hills, California, an entertainment law firm whose clients included Frank Sinatra, Liza Minnelli, Cher, and Warner Bros. Music. He also worked as Associate Editor of the Entertainment Law Reporter, for which he continues to serve as a member of the Advisory Board. He was also an Adjunct Professor of Law at Monterey College of Law, Monterey, California.

In 1994, Bob won the prize offered by the Encyclopedia Britannica for the best solution to a philosophical problem posed by the editors, and his winning essay, *Mind and Brain: The Genius of Fortune*, was published in the 1994 edition of the Britannica's *The Great Ideas Today*.

Bob became a member of the California Bar in 1981 after graduating from Loyola Law School, Los Angeles. He lives in Manhattan.

www.bobkohn.com

THE REASONS FOR THIS BOOK

One need go no further to seek the reasons for this book than to the many friends and colleagues of mine who have urged me over the years to memorialize my thoughts on its subject in writing. Since many of these same people are lawyers, I can only assume they are more interested in the expression of my practical experience as a licenser of music, than my knowledge of the law.

It should be no surprise, therefore, that, though this book is thoroughly intertwined with, and dependent upon, the law of copyright, the primary emphasis of this book is not on the law, but on experience and practice. A book on copyright law would have been easier to write, because, in writing such a book, one can rely on the large body of statutes and legal decisions with which to adorn the pages. In the pages which follow, citations are given for few legal decisions. Presented, instead, is how music publishers and other copyright owners think, or more accurately, should think, in connection with licensing the music in their repertoire.

In contrast to the acquisition side of music publishing, which involves acquiring the publishing rights to new music and established songs, music licensing, the subject of this book, concerns the revenue side of the music publishing business — what you do after you own the song. Of course, what is revenue to the music copyright owner is cost to the music user. Consequently, this book also addresses the other side of the coin — what you need to do if you want to use the song for commercial purposes.

Music licensing can thus be viewed from two perspectives: (1) the considerations used by music publishers and songwriters in earning a living from their music copyrights, and (2) the clearance of music rights by those who desire to use copyrighted music for commercial purposes.

Because my business career in the music industry has been spent largely in the employ of music publishers, this book will more naturally reflect the perspectives of the copyright owner and songwriter. Yet, my sympathy for those whose job it is to obtain music clearances has

concretely found its way into this book. The reader should find no contradiction in the expression of a music publisher's sympathies for the task of rights clearance. If the music publisher is doing its job correctly, the licensing of music rights by those who desire to use music commercially should be a simple, straightforward, and often rewarding effort. The music publisher's reward for facilitating the licensing effort is better representation of the songwriters whose livelihood may often depend on proper representation.

The reader is forewarned that some controversy may attend some of the opinions expressed in this book. Some will resent being shown that their language is confused, inconsistent, and often used unwittingly against their own best interest. At first, I hesitated to speak frankly, but, with a lifetime in this business behind me, I feel I have earned a license to finally declare, *Anything Goes*. Though some will inevitably disagree with the positions taken in this book, it is hoped that they will be viewed, if nothing more, as a call for a common understanding of the terms upon which we do business.

There's no business like show business. That issue was well settled by Ethel Merman. Yet, as Irving Berlin might have agreed, there would be no show business without music. For this reason, I could not begin without first thanking the many songwriters on behalf of whom I've had the great pleasure of working with over the years as a publisher representative and as an arranger and producer of successful radio and television productions.

AL KOHN
October 1992

ACKNOWLEDGEMENTS TO THE FOURTH EDITION

We have several people to thank for their assistance in the preparation of this latest edition, including the following individuals who furnished some of the forms, reviewed portions of the manuscript, or provided other information that made its way into this volume: Casey McGinty, Jonathan Kehl, Marc Ostrow, Steven Manus, James Grupenhoff, Paul John Birch, Christine Smith, Roy Kohn, Neil Gillis, Howard Singer, Bruce McKagan, Stephen Block, and Rich Bengloff. We also wish to thank David Rosenberg for his legal research and providing us with copies of the recent court decisions discussed in this edition. In reviewing the proofs for this edition, we discovered an omission we correct now by providing this very special acknowledgement to Paulette Hawkins, a dedicated music licensing professional, for the helpful information and insights she has provided the authors since the publication of the first edition.

We also wish to thank the team at RoyaltyShare, especially Bob's co-founders and colleagues Steve Grady and Scott Holcombe, whose collective efforts and wealth of experience have added greatly to our understanding of what digital media will require in the coming years. The technological infrastructure that RoyaltyShare is building is destined to become the key foundation for the management of rights, revenues and royalties for the exploitation of digital music, film and ebooks.

We again gratefully acknowledge the assistance we have received over the years from our friends at Aspen Law & Business, particularly our new editor Pj, who has marshaled the many resources necessary to produce this fourth edition.

Finally, we want to especially thank our new love, Susan Kamil, for not only her expert editorial eye which helped us see the forest through the trees, but for her constant encouragement and support, without which this edition may never have happened.

Again, above all, we thank that special person to whom we continue to lovingly dedicate this book.

AL KOHN
BOB KOHN
December 2009

ACKNOWLEDGEMENTS TO THE THIRD EDITION

The only people we really have to thank in connection with the preparation of this Third Edition are the thousands of lawyers, law students, law librarians, music industry professionals, and others who so often have expressed their desire for us to continually rekindle the flame of this work with the fuel of new material. “The only end in writing,” said Dr. Samuel Johnson, “is to enable the reader better to enjoy life, or better to endure it.” We had this very sentiment in mind as we wrote much of the new material on the Internet, and we hope it will be of some guidance to those who find the current challenges faced by the music industry something both to enjoy and to endure.

Of course, Dr. Johnson was also known to have said, “Sir, no man but a blockhead ever wrote except for money,” which reminds us that, without those who have faithfully purchased the prior editions, and continue to purchase our annual supplements, this new edition would not have been possible.

We must also gratefully acknowledge the assistance we have received over the years from our friends at Aspen Law & Business, particularly our editor Matt Gallaway, for his tireless efforts in keeping this book up to date, and to Rick Kravitz, for his tireless support of everyone involved in its publication.

Finally, we again thank the entire Kohn family, for, without their spending, this book would not have been necessary. Above all, we thank that special person to whom we have thrice lovingly dedicated this book.

AL KOHN
BOB KOHN
November 2001

ACKNOWLEDGEMENTS TO THE SECOND EDITION

We have several people to thank for their assistance in the development of the new materials we prepared for this edition. We wish to especially express our gratitude to Don Biederman, Esq. and Gary Ford for their review of selected chapters added to this work and to Lionel S. Sobel, Esq. for permission to include his materials on live musical performances. We also wish to thank the following individuals who furnished some of the forms or other information furnished in the new materials: Vincent S. Castellucci, Don Biederman, Esq., Michael Sandoval, Ronald H. Gertz, Esq., Bennett M. Lincoff, Esq., Joe DiMona, Don Williams, and Roy Kohn.

We also gratefully acknowledge the assistance of Noah J. Gordon, Esq., our editor, and the dedication, encouragement and cooperation we have received from Aspen Publishers, especially Dan Mangan and Richard Kravitz. Special thanks again to Joan Kanady for her tireless assistance in optically scanning, typing and editing the forms and other information that went into this volume and printing and copying numerous drafts of the manuscript. We also thank Joanne Butler, Esq. for her legal research.

We again thank the entire Kohn family, including Ted and Joanne Kohn, and their children Beth and Todd, for their continuous encouragement and, most especially, Lori, Katie and Joey for their patience and unwavering love and support during this intensive effort. We also thank Matthew D. Kohn, Esq. for his insight and experience in representing contemporary artists and firms in the entertainment field, and we welcome his wife Sharon, and her family, to the Kohn family. Above all, we wish to acknowledge the encouragement, support, and wisdom of the person to whom this book we lovingly dedicate.

AL KOHN
BOB KOHN
November 1995