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Richard E. Posell

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PRACTICAL ADVICE CONCERNING THE BUSINESS AND LEGAL ASPECTS OF VIDEOTAPING LIVE MUSICAL PERFORMANCES

*By Richard E. Posell**

The recent explosion in home video technology has given rise to a new vehicle for the presentation of live concert material: the musical video. Television, of course, has filmed and taped live musical material since its advent, but has essentially concentrated on the presentation of variety artists in a studio environment.

With the development of concert "events" (Woodstock and its progeny), filmakers steeped in the music of the 1960's found (for awhile) a profitable synthesis between the excitement of live music in a concert atmosphere and the intimacy and flexibility of film. In addition to the artistic possibilities, the commercial viability of the Rolling Stones performing to literally millions of theatre goers was not to be ignored.

But now, the movie audience grows older and smaller, and the concert tour business has declined significantly. The home video revolution is thought by many as destined to be as devastating to the live concert and concert film business as network television was to the cinema.

Meanwhile, the entertainment industry is adapting. Record companies have discovered that video cassette presentations of groups they wish to promote is a cost effective way to substantially expand the act's exposure. Virtually every major record company now has a video arm, and the entire artist roster of a record company must be considered eligible for video presentation in one form or another.

The primary spur to this new marriage of the visual and audible is the development of videotape and the methods by which it is displayed. In addition to cable television, which even in its present infancy has substantially expanded the available market for musical presentations (witness the success of MTV), the home video-cassette recorder and player, along with its stepsister, the video disc machine, provide a po-

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tentially lucrative secondary and parallel marketplace for recorded music.

Video cassettes and video discs (which together are often referred to as "videograms") are conceptually a transactional hybrid between the televised or filmed presentation of music, and the phonograph record. Television broadcasts and motion pictures are displayed onto a screen. The owner of the medium embodying the music (the film or tape) sells either the opportunity to see the performance and hear the synchronized music in a theatre or, in the case of television, the right to broadcast the visual and synchronized music to receivers. In phonograph records, however, there is only sound, and the medium embodying that sound is itself sold as a unit for private mechanical reproduction. With videograms, unlike with records, the consumer purchases a medium (disc or cassette) which gives him the opportunity to play music which has been synchronized with visuals embodied in that medium and sold as a unit for home use.

The current videogram market has concentrated primarily upon films. However, technical developments such as stereophonic television broadcasting and stereo videotape cassettes and video discs are now or will soon become available. These latter developments have excited many in the record industry who feel that high fidelity sound reproduction, enhanced by the video appearance of the artist while performing, will become popular.[1]

Many musical videograms may simply be secondary markets for television specials shot primarily for network or cable. In addition, promotional pieces produced by the record companies tend to be short, containing one or two songs at the most, and will not find their way to the videogram market, except perhaps, as part of a compilation or "best of" series. Promotional footage is often "conceptual": i.e., it is staged in a studio and utilizes planned visual components, which are often fantastic or arbitrary to create an appropriate mood. Conceptual pieces often require considerable post-production creativity and generally lack the spontaneity of live concert material. For these reasons, conceptual studio music is expensive. The studio and the labor costs are

1. The present optical laser disc system manufactured primarily by Philips, Pioneer, and Magnavox, already utilizes a form of stereophonic digital sound. The second generation of the RCA video disc system (CED system) also utilizes stereo. Videotape is presently available in stereo, although in the United States there is no simple way to reproduce the stereophonic sound through the television set. In Japan, stereo television sales already lead monophonic television sales, and there are many signs that this television sound revolution is just beginning. Many have noted that television sound is simply an FM broadcast which can carry a high-quality stereophonic sound to any television set capable of reproducing it.

extraordinarily high and there is ordinarily no live-paying audience to help defray this cost.

This is not to say that the studio or conceptual videogram does not have its place in the market; quite the contrary. Record companies are likely to expend their limited resources pleasing and promoting their "A" players, who will demand a conceptual approach. In many cases, the success of the artist justifies the expenditure. Even with long form (i.e., album length) conceptual videos, videogram sales (in combination with cable and other markets) may be adequate to defray most, if not all, of the costs of the video itself.

Videograms also present an opportunity for less widely accepted artists and art forms to find their way into literally millions of homes without crossing the impossible Rubicon of network, syndicated, or even pay television. Plays, operas, ballets, arcane music and arts of every sort, if economically reproducible, can be given their fair share of the market.

Economical production, of course, is the key, and the videotaping of live performances may provide a method of meeting this need. In the relative sense, it is not very expensive to tape a live performance. If there are no extraordinary performers' advances or conceptual requirements, a reasonably high-quality video containing fifty to sixty minutes of material can be shot, mixed and edited for less than $150,000. A studio production of the same length would be several times that cost.

The key to minimizing costs in live concert presentation is twofold. First, the artist must be convinced that the taping itself is simply ancillary to the main purpose of the performance which is to present a live concert to an audience for which the artist would otherwise be paid. Demands for substantial advances can seriously distort the economics of creating live concert videos.,

Second, the producer must employ a director and camera crew who are sufficiently familiar with available technology so that post-production costs are substantially minimized.[2]

For lawyers involved in the videotaping of live musical concerts,

2. For example, one important method of substantially reducing post production costs is a technique called "live switching." This technique, developed by network sport departments, relies on the utilization of one master monitor, and several isolated monitors. The director, with appropriate assistance, views all of the available shots as they occur and, during the course of the performance, instantaneously decides which of those shots should be recorded on the master tape. This obviously requires an intimate knowledge of the music and the visual aspects of the performance itself. At the end of the performance, the master tape contains a variety of shots giving the impression of an "edited" videotape of the performance.

several issues need to be addressed. The remainder of this article addresses the practical and legal obstacles faced by independent producers. Record companies and others who own or control artists' musical products (such as personal or business management companies) may not have the same problems as those involved only in production and marketing.

Videotaping live concerts involves many rights, including those pertaining to the copyright of the music embodied in videotape, and the personal rights of the performers who appear on the video. While the practical aspects of obtaining the necessary releases become easier when the compositions involved were created by and continue to be controlled by the act which is being taped (usually referred to as "controlled compositions"), the legal considerations remain the same no matter who controls these respective rights.[3]

With respect to the performance itself, the greatest obstacle to the reproduction of the act's performance is the record company which, with increasing frequency, either has complete control of the audio visual rights of its performers or controls those rights in conjunction with the act or its management.[4]

In addition, the act owns its own personality and characters, and can prevent commercial exploitation without consent.[5] It is therefore necessary to obtain both an artist's release and, in many cases, a separate agreement with the record company. With respect to the latter, the independent producer can expect to obtain that agreement only if part or all of the ownership of the copyright in the master video is delivered to the record company, or to the record company and artist jointly, thus limiting the independent producer's ability to recoup his investment through royalties on sales. While deals continue to vary widely, the independent producer should assume that the producer, record company and artist will share equally in the net proceeds after recoupment of production costs and payment of musical licenses.

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3. It is probable that an artist who grants permission to tape a performance, knowing of its intended use, would be estopped to deny the licensing of the music which the artist controls. *See* Royal v. Radio Corporation of America, 107 U.S.P.Q. 173 (S.D.N.Y. 1955).

4. In limited circumstances, the record company might also control the reproduction of the music onto tape, but only where a pre-existing recording is dubbed over the performance. This would rarely, if ever, occur in the taping of a live concert. "Sweetening" or other dubbing might occur in post-production on a limited basis, but this is not the same as utilizing a copyrighted phonograph record. The dubbing of a pre-existing copyrighted recording would occur most exclusively in conceptual or studio pieces which would most likely be financed and produced by the record company in any event.

5. Lugosi v. Universal Pictures, 25 Cal. 3d 813, 819, 630 P.2d 19, 160 Cal. Rptr. 323, (1979).

In the course of obtaining a formal artist's release, a number of issues should be considered and covered. The artist's release form should contain a provision permitting the reproduction of the act on videotape, its public performance in theatre or on television and the manufacture, distribution and sale of copies. It should also contain a clause permitting the right to utilize the act, its likeness, and biographical information for the purpose of exploiting and advertising the video and any subsequent copies.

Specific reference should be made to the manner in which such exploitation is expected to occur, including point of purchase promotion, print media advertising, and broadcast media performance for advertising and promotion. It is not uncommon for the artist and/or the record company to restrict the length of any promotional broadcast and to require prior consent to advertising and promotion. Such restrictions may be appropriate for domestic sales, but foreign distribution may be impossible to control. Consequently, careful consideration should be given to the practical effects of requiring prior consent to promotion conducted by licensees and sublicensees in foreign countries. It may be easier, and more practical, to delineate and limit the sublicensees who will be given the opportunity to distribute the product so that the artist can rely on the reputation and professionalism of the distribution organization.

In addition, almost all performers will want some approval over the final sound of their music which is embodied on the video. Since post-production is always required, whether or not live switching is utilized,[6] the artist's release should contain a specific description of the opportunity which performers or their managers will be given by the producer to monitor and, if necessary, to improve the recorded music. When that opportunity has passed, whether taken or not, the artist must be specifically estopped from requiring changes or prohibiting the manufacture or distribution of the video in any form because of musical content.

A producer must be aware that many video formats, particularly video discs, may be limited to fifty or sixty minutes of music. A live performance, on the other hand, as actually recorded on videotape, may be well in excess of that. Obviously, significant editing will occur. The artist's release should contain a provision permitting the producer to edit the sequence in which the song or segments of the performance

6. *See supra* note 2.

occur, and to resynchronize the music in accordance with these changes (without changing the sound itself).

If foreign distribution is contemplated, the release should also permit the producer and its licensees to utilize translations and subtitles in connection with the final version of the videogram, and in advertising and sales displays. Where major corporate logos are likely to be used in the marketing of the videogram software, such as Pioneer or Selectavision, an express provision permitting those logos to appear at the beginning and the end of the video should be included.

It is unclear whether, and the extent to which, releases of audience shots are required. The right of privacy held by an individual who is photographed in a public or semi-public place is itself a weighty subject of an independent article. The four protectable interests of a plaintiff claiming violations of these rights, delineated by Dean Prosser in his famous 1960 article,[7] are flexible and vague and therefore create an element of risk in any unauthorized commercial use of another's likeness.

It could be argued that California Civil Code section 3344 limits the right of privacy in this area to exploitation for advertising purposes only.[8] The act is almost directly adopted from the New York statute,[9]

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7. "The law of privacy comprises four distinct kinds of invasion of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff, in the phrase coined by Judge Cooley, 'to be let alone'. Without any attempt to exact definition, these four torts may be described as follows:

1. Intrusion upon the plaintiff's seclusion or solitude or into his private affairs.
2. Public disclosure of embarrassing private facts about the plaintiff.
3. Publicity which places the plaintiff in a false light in the public eye.
4. Appropriation for the defendant's advantage, of the plaintiff's name or likeness."

Prosser, *Privacy*, 48 CALIF. L. REV. 383 (1960).

8. Cal. Civ. Code § 3344 (Deering 1972). [Use of name or photograph without consent for advertising] (a) Any person who knowingly uses another's name, photograph, or likeness, in any manner, for purposes of advertising products, merchandise, goods or services, or for purposes of solicitation of purchases of products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount no less than three hundred dollars ($300).

(b) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

(1) A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

(2) If the photograph includes more than one person so identifiable, then the person or

but California has a history of broadly protecting the commercial right of privacy[10] while New York does not. Furthermore, subsection (g) of the statute seems to permit the application of prior case law, and newly devised glosses thereon, so that tapes (which do not fall within the news and sports event exception described in subsection (d)) which contain recognizable and prominently displayed audiences might be vulnerable to legal attack.

The safest way to deal with this problem is simply to abstain from utilizing audience shots at all, except in a manner which fails to reveal any recognizable person. Additionally, signs can be prominently displayed at entrances into the venue which advise members of the audience that the performance is being taped, that their appearance in the videotape could occur, and that their voluntary attendance constitutes a release or waiver.

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persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group excludes, but is not limited to, the following examples; a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

(3) A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

(c) Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

(d) For purposes of this section, a use of a name, photograph or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for purposes of advertising or solicitation.

(e) The use of a name, photograph or likeness in a commercial medium shall not constitute a use for purposes of advertising or solicitation solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the complainant's name, photograph or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for purposes of advertising or solicitation.

(f) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television stations, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, photograph, or likeness as prohibited by this section.

(g) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

9. N.Y. CIV. RIGHTS LAW § 50-51 (McKinney 1976).

10. Fairfield v. American Photocopy Etc. Co., 138 Cal. App. 2d 82, 85, 291 P.2d 194 (1955).

Since California Civil Code section 3344, unlike its New York counterpart, does not require written consent from members of the audience,[11] it is arguable that an implied consent is permissible.[12]

The bane of any musical video producer's existence is music licensing. Because of the sheer volume of publishers and compositions in an extended program or series of programs, the administrative costs of negotiating and obtaining the appropriate licenses can become a producer's nightmare. Videotaping an act which controls its own compositions is far easier because of the centralized nature of the negotiation and licensing process.

In order to understand the nature of publishing licenses and to ensure that they are appropriate and adequate, one must have a working knowledge of the new Federal Copyright Act as it applies to musical video.[13] Basic to an understanding of the musical video is the Act's definitions of "audio visual works", "motion pictures", "phono records" and "sound recordings".

Section 101 of the Act, containing all of the definitions utilized by the Act, describes an "audio visual work" as a work that "consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers or electronic equipment, together with accompanying sounds if any, regardless of the nature of the material objects such as films or tapes, in which the works are embodied."

One specific type of audio visual work is a "motion picture" which is an audio visual work "consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any."

A sound recording, on the other hand, is a work "that results from the fixation of series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audio visual work . . . ." Therefore, a videotape of a live concert is an audio visual work, and more specifically, a motion picture. It is not a sound recording.

Section 102 categorizes works of authorship in which a copyright subsists. In doing so, it lists motion pictures and other audio visual works separately from sound recordings. Thus, since the audio visual

11. *See* AB 826, 1971, Regular session, as amended June 16, 1971.

12. In New York, an oral or implied consent is considered only in mitigation of damages, but not as a defense. Hammod v. Crowell Pub., 253 A.D. 205, 1 N.Y.2d 728 (1938).

13. All references herein are to the 1976 Copyright Act commencing with 17 U.S.C. § 101.

or motion picture "work" includes "accompanying sounds", the copyright of a motion picture must also include that sound. A motion picture sound track is an integral part of the motion picture. The sound track is not merely part of an instrument that mechanically reproduces a work—the traditional attitude towards phonograph records—but is rather a part of the motion picture itself.[14] Therefore, by videotaping a concert, not only is a copyrighted work (the music) reproduced, but a new copyrighted work—the motion picture—is created in which a separate copyright subsists.

Thus, fundamental to the process of recording a videotape of a live musical event, manufacturing videograms therefrom, and distributing them to the public for sale, is the licensing of the underlying musical work or works themselves.

Section 106 of the Act provides that the owner of a copyright, and anyone he authorizes, has exclusive rights to do certain acts including reproducing the copyrighted work in copies, preparing derivative works, distributing copies to the public by sale, and, in the case of musical works and motion pictures, publicly performing and displaying the copyrighted work.

Each of these rights is conceptually separate, and each requires a separate license or permission from the copyright owner before it may be exploited. Thus, for example, the reproduction right can be violated even if it is not an infringement of the right of distribution. The infringement occurs even if reproduction was used solely for private purposes, "or even if other uses are licensed."[15]

The videotaping of live music involves at least two essential Section 106 rights which must be licensed before the tape can be released to the public.

The first of these is the reproduction right. It should be understood that reproduction is not the same as copying. The performance of a musical work, for example, may be copying but it is not reproduction. Under the Act, material is reproduced when it is put into "copies", i.e., material objects (other than phonograph records) in which a work is fixed and from which the work can be perceived, reproduced or

14. *See* 1 NIMMER, COPYRIGHT 2-138 (1981).

15. *See* 2 NIMMER, COPYRIGHT 8-25 to 108-26; *See also* Flick-Reedy Corp. v. Hydroline Manufacturing Co., 241 F. Supp. 127 (M.D. Ill. 1964), *rev'd on other grounds* 351 F.2d 546 (7th Cir. 1965), (the court seemed to indicate to the contrary when it held that there was no infringement of a sales bulletin validly copyrighted where it was not shown that defendant's publication and distribution of a free bulletin "will in any way diminish or detract from the value of the plaintiff's bulletin . . . ." *Id.* at 141. Nimmer contends that this is an erroneous statement and the Copyright Act would seem to support that position.)

otherwise communicated.[16] Therefore, reproduction entails recording music and fixing it into a videotape or film. Unless licensed, it is an infringing act.

Historically, the act of filming music involved the act of synchronizing that sound with the visual elements of the film, before publicly displaying or broadcasting it. The industry still refers to the right to reproduce a sound track as a "synchronization license" in licensing video music.[17] Most publishing companies will issue a license which permits the public display or broadcast of the music as well as the right to fix it into the videotape and synchronize it with the visual elements, even if the producer has no intention of utilizing the videotape in television or other public performances. The producer may also find himself paying for the right to broadcast on television or otherwise, even though he has no intention of doing so, simply because the industry has not yet adjusted to the possibility of limiting videotaped live music to videogram sales.

On the other hand, pay or free television in the United States, and public or government operated television in foreign countries, may be potential ancillary markets for videotaped music. Thus, public broadcasting and theatrical display rights may be important added features of the license obtained by the producer.

As we have seen, the mere act of reproduction onto videotape is itself licensable. However, unless the product is either displayed publicly, or is otherwise utilized for commercial purposes, obtaining a license to synchronize the music and visuals is an idle act.

The second critical section 106 right which must be licensed is the right to manufacture and distribute copies of the copyrighted work under section 106(3). After the 1909 Copyright Act, phonograph records containing copyrighted musical works could be distributed pursuant to a compulsory license which was automatically granted by statute. However, the musical work had to be initially distributed in the United States on a phonograph record.[18] Until 1972, phonograph records were not regarded as works of authorship to be copyrighted, but merely as instruments that mechanically reproduced the work by means of an additional device such as a phonograph player or juke-

16. 17 U.S.C. § 101, *supra* note 13.

17. For an interesting discussion of the early methods by which sound was synchronized with films and the history of synchronization licenses *see* SHAFFER, MUSICAL COPYRIGHT, 349 (2d ed. 1939).

18. *See* 17 U.S.C. §§ 1(e), 25(e) (1909).

box.[19] The compulsory license which grew out of such distributions was, therefore, often referred to as a "mechanical license" and was calculated on the basis of a "pennies per record" or elapsed time value.

The new act also provides for a compulsory license for the manufacture and distribution of phonograph records[20] and for the public performance of music by means of a coin operated record player (a jukebox).[21]

Since a videotape of a live musical performance is an audio visual work and not a phonograph record, the compulsory license contained in section 115 does not apply.[22] Accordingly, as a separate right of distribution exists in the copyright holder, an equivalent license must be voluntarily obtained. Again, industry jargon changes slowly and the license is still often referred to as a "mechanical" license even though it neither refers to mechanical reproduction nor falls within the aegis of the so called compulsory "mechanical" license.[23]

Of the two necessary licenses described above,[24] the mechanical license is by far the most expensive and difficult to negotiate. It did not take long for copyright owners, wishing to license their video works, to convert from a system of royalties based on pennies to one based on a

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19. Prior to the 1909 Act, the U.S. Supreme Court held piano rolls and phonograph records to be merely mechanical instruments of reproduction, not works in and of themselves. White-Smith Music Pub. Co. v. Apollo Co., 139 Fed. 427 (1905) *aff'd* 147 Fed. 226 (1906) *aff'd* 209 U.S. 1 (1908). The 1909 Act failed to extend copyright ownership to phonograph records, but added the compulsory licensing system still used today. *See* SHAFFER, MUSICAL COPYRIGHT, 331-32 (2d ed. 1939) and BOORSTYN, COPYRIGHT LAW, 18, 54-5 (1981). In 1972, the Sound Recording Amendment (Pub. L. No. 92-140, 85 Stat. 391 (1971) extended copyright ownership to sound recordings themselves if fixed after February 15, 1972.

20. 17 U.S.C. § 115 (1976).

21. *Id.* at § 116.

22. The compulsory license of § 115 uses the term "make and distribute" while § 106 simply grants the right to "distribute". Since the manufacture of copies is in itself an act of reproduction which must be separately licensed, it could be argued that a license merely to distribute copies is insufficient to permit the manufacture of those copies. Therefore, care in drafting the licensing agreement must be taken.

23. A separate distribution of the sound track alone will constitute a sale and distribution of a phonograph record, not an audio visual work. This will trigger § 115 of the act—the compulsory mechanical license for making and distributing phono records—if the music has already been published.

24. Technically, there should also be a license to permit the preparation of a "derivative work" based upon the copyright since its recasts, transforms or adapts the preexisting work (*see* 17 U.S.C. § 101 (1976)). However, as a practical matter this right is implicit in the rights to reproduce the work in a video and to distribute copies thereof. It certainly would not create additional legal problems if the derivative rights were included in the license although practical problems of speed and efficiency will have to be faced when one attempts to break the mold of conventionality with the publishing companies.

percentage of selling price. For the most part, one can assume a mechanical royalty of 5 or 6 percent of retail, although again, wide variations in this price are not uncommon.

While the primary publisher may have the right (and the power) to issue synchronization licenses for the territory in which the video taping occurs, it is left to the territorial subpublisher to determine the price and terms of the mechanical license in foreign countries. Thus, the establishment of territorial sublicensees by major publishing companies causes great difficulties.

Foreign subpublishers have been the traditional method by which publishing companies have kept track of and enforced foreign sales of phonograph records, folios and other sheet music containing compositions in their libraries. Mechanical licenses of phonograph records, based on unit sales, were the exclusive bailiwick of the subpublisher in whose territory they were sold. And the subpublishers, whose life blood has been their share of the royalties collected, have, for the most part, jealously guarded their licensed powers.

Thus, where foreign distribution is contemplated, a separate mechanical license may have to be obtained for each territory, a problem which is best left in the hands of foreign distributors whose experience and personal contacts can solve a myriad of problems. However, the problem of foreign mechanical licenses is an impediment to foreign distribution because it may entail unanticipated costs and uncertainty in procedures.[25]

CONCLUSION

In general, the obstacles to the videotaping of live music are no greater than for other forms of artistic display. While certain practical problems are solved only by marketing or distribution strength, legal considerations are usually resolvable by the exercise of care in the context of a working knowledge of the Copyright Act and the technical requirements of the medium. It is hoped that this article will assist lawyers less experienced in this area to become more conversant and thus better able to deal with their clients' problems.

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25. In some territories performance rights organizations have assumed the responsibilities of collecting videogram mechanical licenses. For example, in Japan, Jasrac has undertaken to collect, among its subscribing publishers and sub-publishers, a blanket mechanical license for all videograms sold in that territory. Unfortunately, the cost is high—9% of retail—a figure which substantially impairs the desirability of Japanese distribution. In this sense the economic certainty of a compulsory license under § 115 of the Federal Copyright Act is a distinct advantage.