Title: Music Licensing for Videogames: How Popular Music & Artists Can Make Games Pop

Keith D'Arcy, Moderator
Contact: kdarcy@nyc.rr.com

Presentation Format: 60-minute panel

Audience Level: Beginner

Talk Type: Educational

Presentation Abstract:

In this panel discussion, executives from a music publishing company, a record label, a game development company and an independent game music supervision company discuss how to get the best popular music into your game. We'll begin by presenting the basics: How to find the right person to contact to clear your music, what goes into music licenses for videogame projects, how to prepare & market a soundtrack release and how to contract a popular artist to compose original music for your game.

Intended Audience & Prerequisites:

The information presented in this panel is beneficial to game audio supervisors, game developers and publishing professionals; anyone whose job it is to enhance the gaming experience by acquiring external copyrighted music elements while operating under time, budget and administrative constraints. General understanding of licensing contracts is helpful but not essential. The Business Track and the Audio Track are the most directly related to this topic.

Idea Takeaway:

Participants learn music licensing basics: What's the difference between a synchronization license and a master use license? Who do I contact to clear synchronization rights? Who do I contact to clear master use rights? What are the commonly requested terms of a music license? We discuss the basic principals of music supervision, how to budget for the various types of licenses a project requires, and how much time to allow for the licensing process. We examine the structure and strategy of licensing for music-based games vs. music-enhanced games. What are the benefits of negotiating royalty rates vs. set fees for licensing? Do I need a music supervision service or can I do my own supervision, administration & clearance? All your questions about how to acquire the right popular music for a game project are explored.

Presentation Syllabus:

Getting Started

Introduction of Panel Members and Overview of Presentation

Keith D'Arcy – Director, Music Resources, EMI Music Publishing
Victor Rodriguez – Music Supervisor, Sony Computer Entertainment of America
Seth Berg – Consultant/Supervisor, EMI Labels Group
Nelson Bae – Founder & President, SonicFusion Inc.

Distribution of Essentials Outline with Q&A for review (Printed handout describing the basics, outlining major points discussed and Frequently Asked Questions)

Basics of Supervision

Creative:

Usually the first step in the creative process is to discuss with a game's producer the specifics of the game, the ideal goal for any licensed music in terms of impact, mood, pace & appropriateness to the game's scenarios. Producers usually have a "wish list" of tracks or artists that would be under consideration if there were no ceiling on the budget, and this can help as a starting point. Most large record labels and publishers have internal creative divisions that can help get new releases together or compilations of back catalog selections if the game calls for them. They can usually work within specific budgetary parameters as well.

It's often a good idea to consider an independent music supervisor for the overall project. They'll know within reason how feasible it is to achieve your ideal soundtrack, and they're not bound to one particular catalog of music. They often have very carefully established relationships within the world of popular music and may be able to get you the best overall deal for your game. There is a handy directory of supervisors at www.music4games.net or if there's a game soundtrack you particularly admire, you might try asking that game developer how they went about the task of supervision. They will likely direct you to a good independent supervisor. Labels and publishers are often more comfortable working through a music supervisor because they know that the clearance requests they receive will be accurate and contain all the necessary information to get clearances underway.

Research:

One of the more difficult tasks facing the music supervisor is that of tracking down rights holders for the music they intend for their games. A lot of contemporary songs have multiple publishers (especially for genres like hip hop,

where a song may have three or four main lyric writers, a producer credited as co-writer and one or more samples of pre-existing songs, each with multiple writers).

There are several on-line resources that can help you sort through the clutter and figure out whom to call to start the clearance & licensing process. You'll have two sets of rights to clear, those of the songwriters (known as synchronization rights) and those of the artist or their record label (known as master rights). For publishing, the databases at www.ascap.com and www.bmi.com should help you find your publishers. Usually there'll be a phone number for the licensing department, but if there isn't you can do a web search on the name of the publishing company, as most will have web pages of their own and corresponding departmental directories.

For finding master holders where you don't have the commercial CD release by an artist you'd like to license in hand, www.allmusic.com is a handy place to start. They list extensive discographies for artists, and they should point you to the record label or label group who currently holds the rights to their recordings. This isn't a foolproof method, because over the last 60 years, master catalogs have changed hands quite a bit. Lots of popular artists have masters that are owned by different sources. For example, R.E.M.'s early masters are owned by IRS Records, and their later masters are owned by Warner Records. If you have a reliable contact at one of the major labels, you can ask them to help you hunt down master holders.

It often helps to try to align a game licensing project with a particular record label, as they will be more likely to grant favorable terms if they have multiple tracks in the game. They may also be able to assist with cross-promotional efforts, including the marketing of a game soundtrack. They may also be able to help you plan your game soundtrack to coincide with a specific new release, so that your game release could be tied into the release schedule of a new CD.

Elements:

If you're working with a specific record label on licensed audio for a game, you may be able to obtain splits of tracks for developing adaptive audio, but the actual process may prove quite difficult. Artists may refuse this request because of the potential piracy issue it presents. Another approach to this may be to obtain the publishing rights to a track and have a game composer do arrangements for the game. That way you've got synergy between the licensed tracks and the score and much more flexibility with the end result. This tends to work quite well for games that are based on pre-existing intellectual property (Star Wars, the James Bond series, Lord of the Rings), but can be used for just about any game that may contain both licensed tracks and a score.

Samples:

Beware of tracks with samples of existing master recordings. You may find that they need to be cleared separately from their respective new masters. For example, if your Snoop Dogg track contains a master sample of a song by Earth Wind & Fire, you will likely have to negotiate a fee with both Snoop's label AND EWF's label as well. They may deem it appropriate to charge you equivalent fees for the clearance of both artists' input, and this can do a number on your budget. You can ask any master holder to check for samples in the tracks you're clearing, and they may well be able to help you clear both the old and new properties.

The Licensing Process

Basics:

Once you've done your research and located the Synchronization Licensing Department at the publishing company or record label in question, you should present a formal clearance request. If you'd like a game to contain multiple pre-existing songs, you should create a one-sheet "terms document" for each song you'd like to clear for your game. Here's what a publishing company is going to want to know about your game and your song selection:

Initial Use:

The most common use of licensed music is described as "in-rotation" (songs play in a random rotation during game play). You can also request the right to use the track in a featured place, like during menu/character selection screens, in the opening in-game trailer, during a between levels in-game movie, etc. Depending on the record label or publisher you're dealing with, they may put more weight on featured uses of a song, like as the bed for an intro movie, and that can affect your budget.

Requested Media:

You'll need to provide a list of the platforms for which your game will be designed: Playstation 2 or 3 (or both), X-Box, Game Cube, PC, handheld, etc. You can clear for one platform and ask for options to expand to additional platforms if your game may be picked up by more than just your initial target platform. Some record labels or publishers may charge more for the use of a track in a game destined for Playstation platforms than for PCs, for example.

Length of License:

Most console & PC games have a limited shelf life, so a rights holder will likely offer you a chronologically limited license. 5 years is the current standard (if after

all of your units are manufactured, you need extra time to be allowed to sell overstock, you can request a "Sell-Off" period beyond the Initial term).

Territory:

If you would like your game to be available for sale worldwide, you can request worldwide rights to your songs. The rights holders may differ by territory (EMI may control the publishing of a song in the United States and Universal may control rights to that same song in Europe). If you know that your game will only be available for sale in the US, you can request a territory-limited license. It is usually more cost effective to limit your request of rights to what you actually need and ask for options in case your game project has the potential to expand its territory of sale.

Additional Rights:

You should think about what additional uses of the licensed music you may require. If you'd like to be able to use the song on demo discs to be distributed at E3, GDC or other trade-related functions, you'll need to request that right along with your in-game use. If you'd like to use the track in demo discs to be duplicated and distributed by gaming magazines, you'll need to negotiate based on the number of copies to be distributed. Most rights holders will ask for a penny rate for each disc manufactured, payable in advance. You can also request various levels of web use of the track. The most common request is for "in-context" web rights. This allows you to show game play as it exists in the game, with the licensed music in place. "Out-of-context" or "Trailer" rights allow you to use the track in synchronization with a specially created web trailer for the game.

Special Rights:

There may be some rights you require that cannot be covered in a single long-form synchronization license. If you'd like to use a track on a television commercial for the game, it will likely have to be cleared separately. It's likely that the same person who is handling your in-game clearance request can handle a commercial use request, but a commercial use has some specific requirements that may force it to be licensed separately. Game soundtrack releases are not considered part of the Synchronization license either, and both your publisher and your master holder will have an internal department responsible for this aspect of your project. Soundtrack releases are discussed below.

Music-Enhanced Games vs. Music-Based Games:

Labels and publishers may well ask for information like "Is your game "music enhanced" or "music based?" A sports or action title with several licensed tracks

that play in rotation would be considered "music enhanced," whereas a karaoke game or a dance competition game would be considered "music based." The rule of thumb is: No music=no game, you've got a music-based title on your hands. This is important because very few publishing companies will offer titles for "music based" games without asking for a royalty rate. For an audio release, both the songwriters and artists can usually expect to make 8.2 cents per song per release sold. For a game in which the music is the essential element in game play, you can expect to be asked for more than the above "statutory rate" per song, for both the master use and the publishing. With these types of games, it is very important to try and align the licensed music with a single publisher or label, depending on the nature of the audio in the game.

Step Deals:

If you're working with a limited budget and you don't think you can afford to clear the songs you want, consider a Step Deal. This allows you to clear songs for a modest rate up front with a potentially reduced initial advance, in exchange for compensation based on the game's success. Usually, unit caps are set for each step in the deal: For the first 300,000 units manufactured, you pay a per unit rate of X as an advance. Each additional block of 300,000 units manufactured will carry a per-unit rate of Y (at this point you've made some money from the game, and can better afford to compensate the rights holders). You can also set steps based on the per unit retail cost of the game: If the game is selling at full retail, you'd pay a per unit rate of X. When it goes into its discounted retail shelf period, you could drop to a pre-negotiated rate of >X. Remember that step deals require regular accounting intervals to be set and adhered to.

Soundtrack Releases/Audio Samplers:

If you're interested in releasing an audio soundtrack to your game, the main record label you're involving for the licensed audio may well want to enter into negotiations with you for this. It is almost always done separately from your synchronization agreement for the tracks in the game, and is handled by a different division of a record label usually referred to as the Strategic Marketing Division or the Special Markets Division. In order for the soundtrack to work well for both parties, a great deal of co-planning and co-promotion must go into it. A label will want to be sure that the tracks you've selected for your game will make a marketable soundtrack as an audio only release. They'll usually try to make it coincide with the marketing plans for the artists in question, by making sure it contains the proper mix of "big name" acts and "baby bands" (as yet unknown artists). They will also likely try to link a prominent placement in the game (menu screens or opening movie) with a song that is intended for release as a single. If they're successful, it'll elevate the sales of the game, and vice versa. A great song prominently placed in a great game may fuel CD sales. They'll likely ask for some form of "provable" promotion (EA has been offering on-screen credits similar to those employed by MTV and referred to as "chyrons").

You can ask for what is known as a "reduced rates" deal on your soundtrack, but you may or may not get the label to agree. It largely depends on what you've paid for the songs in-game. "Reduced Rates" refers to how much each track on the soundtrack gets paid per sale. The "full" or "statutory" rate is around 16.4 cents per song (8.2 cents go to the publishers & 8.2 cents go to the label). There will also need to be some sort of promotional marketing plan in place that maps out what the game company is responsible for and what the label is responsible for in terms of manufacturing, distributing & marketing the audio soundtrack. Labels will also ask for an advance against a certain number of CDs (or other formats) to cover the cost of the manufacturing, distribution & marketing, and this may or may not count as a recoupable expense. Both the game company and the record label should discuss their marketing plans and distribution opportunities in conjunction with the soundtrack release.

You can also do an audio sampler or a full audio soundtrack that is distributed in-box with your game. This is usually negotiated in a similar way, but the distribution would be handled by the game company. The price of the soundtrack would therefore be factored into the overall retail price of the game. You may be able to get a record label to agree to a "reduced rates" structure for this type of soundtrack release.

Getting a Popular Artist to Compose New Material for a Game

Basic Approach:

In most cases, it's best to start with the record label or publisher in charge of the artist you'd like to write for your game. They can set up the creative relationship you'll need to establish in order to get what you want. They're also in charge of the types of publicity issues you'll need to deal with in order to publicize your game as containing exclusive material by that artist. You'll need to obtain image & likeness rights from them (to use a band's photo, name, logo or any other aspect needed to promote their participation in your game). The new material created for the game will most likely be licensed in just like a pre-existing track would. Usually the game company is expected to supply the production budget for the creation of the track, plus a licensing fee for master & publishing (which would of course vary based on the stature of the artist in question). Usually an artist's record label or management would head this negotiation.