

Beyoncé, Coldplay and Ed Sheeran Skating Debuts – Solid Gold at the Olympics

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by Charlene Krogh



With the lifting of the International Skating Union ban on the use of music with lyrics, the Olympics in Pyeongchang is the first in which singles and pairs ice skaters can compete to music with lyrics (Ice

Dancers have been able to skate to vocals since the 1990s). While this adjustment may be the catalyst to inspired and energetic performances, it has also led to an interesting question regarding the types of licenses needed to use such music in live and re-broadcast skating performances.

The answer to this question can be as complicated as a triple Axel and requires a bit of background regarding the copyrights present in music. There are two distinct copyrights in music: (1) the copyright in the sound recording, which results from the fixation of a series of musical, spoken or other sounds (e.g. on CD, digital file, etc.); and (2) the copyright in the composition, encompassing the words and music embodied in the sheet music, sound recording, etc. Each usually has a different owner and require distinct licenses for their use. Typically, the sound recording (or “master”) copyright is owned by the record label. The copyright in the composition is typically owned by the songwriter(s) or music publisher.

Under the U.S. Copyright Act, the exclusive rights of the owner of copyright in a sound recording are limited to specific rights and do not include any right of performance (unlike the exclusive rights in compositions, which do include the right of performance). Rather, in the case of sound recordings, there exists the exclusive right to perform the copyrighted work publicly by means of a digital audio transmission. Thus, for a live skating event there is no license required to use the sound recording. However, if the performance is reproduced in the future, such as a best of the Olympics feature or

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compilation of highlighted performances, the situation changes. In this case, NBC would be required to obtain a master use license for the reproduction of the sound recording.

On the other hand, the public performance of the composition requires a license. The type of license and where it is obtained depends on whether the performance is dramatic (also called “grand rights”) or nondramatic. The answer is further complicated by the fact that the Copyright Act does not define the terms “dramatic” or “nondramatic.” In the U.S., three organizations negotiate license arrangements for non-dramatic performances and distribute fees back to the writers and publishers whose music and lyrics are being performed – ASCAP, BMI and SESAC. License rights for dramatic performances, where a work is performed, for example, as part of a musical, opera, ballet, etc., are obtained directly from the copyright owner. In the case of ice skating, the performance is non-dramatic and likely considered underscore (by ASCAP standards) and background (by BMI standards). That is, the performance of the work used as a dramatic underscore to a scene where the music is not the focus of audience attention yet nonetheless is used to set the mood of the scene. NBC likely has a blanket license through one or more of the performance rights organizations, ASCAP, BMI or SESAC, which covers the use of the songs in the performances.

In the end, NBC certainly trained for this event and had its gold medal team working to ensure the right licenses are in place for the broadcast of the Olympics. With the proper licenses in hand, the rest of us get to sit back and judge whether a song choice rocks a performance or flops.