

Syncing Workout Music with Licensing Requirements

January 10, 2020 – The TMCA
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2019 brought many changes for fitness companies compiling the perfect playlist for group workout classes, especially for at-home virtual classes.

Peloton's most popular product is an indoor bicycle with live streaming and on-demand classes. Music is a key aspect of Peloton's business because, unsurprisingly, users want inspiring tunes while they ride. These workouts, while similar to an in-person fitness class, require a different music license. The distinction lies in the right to **perform** the music publicly during an in-person fitness class as opposed to the right to **reproduce** the music during a recorded class. Recorded classes require a music synchronization license ("sync license") because the music is accompanied by video. The Copyright Act does not explicitly label synchronization rights. However, 17 U.S.C.S. § 106(1) does give the copyright holder the exclusive right to reproduce the copyrighted work, and synchronization constitutes a reproduction of the music because it is incorporated into another work. Therefore, a sync license gives the licensee the right to reproduce the music into a different format such as a video, commercial, movie, or video game.

In March 2019, Peloton was hit with a \$150 million original complaint filed by music publishers for streaming over 1,000 songs without approval, including tracks by Taylor Swift, the Beatles, Lizzo, Adele, and more. The original complaint alleged that Peloton

had entered into sync licenses with other copyright holders, demonstrating knowledge of the licensing requirements, but used the plaintiffs' musical works without a license. In September, plaintiffs doubled their damages request in their second amended complaint. Peloton's answer and counterclaim admits that it does not currently have in place licensing agreements with any of the plaintiffs granting catalog-wide synchronization rights to Peloton, but argues that it has "worked proactively and collaboratively with the music publishing industry to develop a licensing structure . . . to address its unique use case." Its counterclaim against the plaintiffs and the National Music Publishers' Association alleges that NMPA engaged in anticompetitive and tortious conduct by coordinating with the plaintiff music publishers to fix prices and generally refuse to deal with Peloton.

Peloton has stopped playing unlicensed songs and removed classes with unlicensed music from the database. It is not clear whether this removal has had any effect on the lawsuit, as Peloton continues to battle the claims against it and pursue its counterclaim. Motions to dismiss were briefed in November 2019 and are currently pending. However, since the removal, Peloton subscribers have taken to Reddit and other platforms to complain that Peloton's music has become repetitive and outdated, explaining that they pay top dollar to work out from home while listening to the latest top hits.

As fitness companies transition into quasi-media publishers by creating and posting video workouts, they must keep in mind that music played during video classes must be in sync with licensing requirements.