We will be getting started in just a couple of minutes here. Hi to everyone that's just joined. This is Andy for springboard for the arts, we are going to get started in just a moment, just to make sure that everybody that registered has a chance to get in here. At that time, I will go over a quick couple housekeeping things, just for folks to know about in terms of the format and how we are going to spend the hour. And then we'll just jump into it. There's lot to cover in an hour, everyone. I want to make sure we get as much as possible. Another hello to those who just joined. We're going to get started in just a minute or two here. Just giving everybody a chance to get in and get settled.

All right. What we're going to do is get started. It looks like a large number of people have come in. Which is great. Hello to everybody. Thank you for continuing our webinar today on streaming and legal considerations. These are the kinds of questions we've been getting a lot of in the last six weeks. So we have some folks here that are able to speak to those. In terms of some house keeping for everyone. I'm sure many of you have been on Zoom webinars for the last couple weirs, those who haven't. This meeting is being captioned live. If you hit the closed caption button on the bottom of your screen, you will see captions. If you submitted a question, prior to last night or so, we got all of those together, and we will be addressing those as well. And if you have questions as we go, my colleague, John Munson will be moderating. So what I would ask everybody to do is to use the Q and A function. If you hit Q and A at bottom of your screen, it gives you an opportunity to put a question in there. You're welcome to use the chat if you have links to share or notes or anything else. But we also ask that you try to keep the questions focused on the Q and A section so we can find them all. From here, I am going to
vanish behind a screen of privacy, and just run
the technical stuff behind the scenes.
>> WALT LEHMAN: Before you go, thank you for
the opportunity to do this. But will have be
recorded?
>> Yes. That's a great point.
So yes, this will be recorded. And it will
be available on the springboard website, and we
will also have a transcript and some follow-up Q
and A for anything that we couldn't get to.
Yeah. I'll still be here. I'll just be
invisible so you don't have to look at me. For
now, I will turn it over to Alex, Walt, and John
and have you introduce yourselves and we'll jump
'into the program. If you have questions, feel
free to contact me via chat or use the Q and A
function. Thanks.
>> JOHN MUNSON: Thanks, Andy. And thanks
everybody for joining us today to find out more
about this topic of the legality of streaming.
It's interesting, because we've had so many of
these tools available to us for a long time. I
think Facebook live has been out there for us to
use for quite a while, and there's been live
functions on other services also. And I think
that they never really gained the attention that
they have garnered now in this moment when we are
all social distancing. And I think that's
because, given the option of actually going to a
performance versus viewing a streamed performance
on your computer, by and large, you're probably
going to try and get to a performance.
But here we are. And now we have to figure
out what this means for us as performers and
presenters legally with these streaming
performances.
Walt Lehmann is a good old friend of mine.
We've known each other for probably close to 30
years or more.
(laughter).
And Alex Mueller is a new friend introduced
to me by Walter, an these guys are both lawyers,
and entertainment lawyers andic ports in the
topics that we're going to address here, and I
think, given how much material we have to cover,
I should turn it over directly to you guys to
talk about the legality of streaming
13:07:59 performances.
13:08:00 >> WALT LEHMAN: Sounds good. Thanks, John, for being our moderator. And thanks, Alex for being available as well. I thought I would start out maybe by just giving some real basic copyright information so that we're all kind of on the same page, because I don't know how many of you are new to this and how many of you are probably professionals and very aware of it. Real quickly I'm going to give you a little overview about the copyright issues involved with streaming and then I want to touch briefly on theatrical performances, not only are my sessions screaming online, but so are our theater groups too.
13:08:48 So first of all, the key here is unless a work is in the public domain or there's some kind of prescriptive license, like a copyright commons license, or there's some exception to and right, such as fair use, you're going to need permission from the copyright owner to use a work in your recording. Copyrights arise on creation when an original idea is put in a tangible form. So when you record a performance or livestream a performance, you're putting it into a tangible form, and the person who made that recording is the one who owns the copyright in the recording. But the recording may also contain a number of other layers of copyrights. For example, you have a recording of a play or a musical composition, or a visual work of an all of the above, so the elements in a recording are the recording itself, the underlying work, the script, play, musical composition, whatever, and then the elements of the background. So the set dressing, the things that are also included in the recording itself. And each of those may have a separate copyright or no copyright at all. But the key is that you need permission from a copyright owner when you include copyrighted materials in your recording. And it doesn't matter whether you charge admission or whether the performance is for charity. The basic black letter law is you need permission. So streaming a performance of a copyrighted work is really generally not going to be...
considered fair use unless you're doing some kind of comment or criticism and using small amounts of material, that McCall fee for the exception of fair use, otherwise streaming a performance, a whole work, very unlikely that you'll be able to rely on fair use as an exception to getting that permission from the copyright owner. We'll probably have a conversation about this. But the idea of asking forgiveness in my opinion as a lawyer generally not a good idea. We are in unprecedented times, I understand that, but using someone's copyrighted work without their permission, it's unfair to the copyright owner. It seems to me it's unprofessional. It may harm your reputation if people find out that that's what you're doing. It may violate the streaming service terms of use if you're using material that's not cleared and the streaming service finds out about it. And then also, given the nature of the Internet, you're exposing yourself to a cease and desist level for a demand for some kind of retroactive licensing from the copyright owner. In this day and age, it's hard to hide, I have seen many situations where someone will come off the blue and tell you you're using their work and you wonder how they found out about it, but they did. So with that, Alex, do you want to add anything on that sort of copyright basics?

>> ALEX MUELLER: No. Just highlight again that with music, there's a lot of angles to it, because we're always dealing with two works, eventually. There's the underlying composition or what would be on a sheet music, even if there's no sheet music that exists, that still has a copyright, and that work goes along with any recording. But it's also possible foreign composition to go places without a specific recording. So just keep that in mind as we're going through discussions, we'll try and clarify whether you're using someone else's recording or making your own recording, but with someone else's work.

>> JOHN MUNSON: I just might add, if I could, if you find what is being suggested by Walt and Alex to be far-fetched, the other day I
13:13:17 was on my YouTube studio account, and I found
13:13:21 that video that I had put out of the new
13:13:25 standards had been blocked and was not accessible
13:13:31 by anybody. And one of the consequences of that
13:13:33 is that I was digging around trying to figure out
13:13:37 what exactly had happened or what copyright I had
13:13:42 violated, and I couldn't find out anything. Just
13:13:45 I had violated their terming, and that video that
13:13:48 I had spent a fair amount of time actually
13:13:51 putting together, that was inaccessible and that
13:13:55 work was wasted, because I had violated the
13:13:59 >> WALT LEHMAN: We're going to get back much
13:14:03 more into the weeds with the music side of this.
13:14:07 I thought there's a lot more going on on the
13:14:09 theatrical, on the stage as well. I haven't seen
13:14:14 it yet, but a complaint a theater is broadcasting
13:14:18 the diary of Ann Frank, they are doing a Zoom
13:14:22 presentation of the diary of Ann Frank, which is
13:14:29 apparently pretty amazing. So stage production
13:14:31 asks I think fairly straight forward compared to
13:14:36 the music world. And if you were preparing a
13:14:38 live stage presentation and you had gotten a
13:14:42 license to do a live stage production, the only
13:14:45 point I want to make here is if you decide now
13:14:47 you're going to record it, or you're going to
13:14:52 livestream it, very likely that live stage
13:14:55 license that you had isn't going to apply.
13:14:58 You're going to need to go back to the publisher
13:15:05 or to the author or the author's agent and
13:15:07 negotiate for a livestreaming or a recording
13:15:10 license.
13:15:16 Obviously, that's a hurtal to get over, but I
13:15:20 think most play writes or publishing companies
13:15:23 are receptive to that idea right now. I was
13:15:26 looking at Samuel French's website and they are
13:15:28 saying they will help facilitate that
13:15:29 conversation with the author. There are other
13:15:33 publishing companies, dramatic publishing, for
13:15:36 example, which has quite a few works that already
13:15:39 have a livestream license available for them.
13:15:43 So really, that's all I want to say about
13:15:48 theatrical or stage performances. And so from
13:15:51 that, maybe we should turn it over to Alex and
13:15:55 you can give us an overview on music licenses and
13:15:58 then webinar we can get to the questions.
13:15:59 >> ALEX MUELLER: So generally with music
licenses in a live performance setting, the venue is responsible for those licenses. So the band just shows up and they can play whatever they want to. That could be original pieces, that could be cover songs. The venue plays a bang Chet license, and ideally the venue is paying a license fee to each one of those performance rights organizations so they have the broadest selection of music possible. And then the performers don't have to do anything. You just show up at the restaurant or the bar or the concert hall, play your set and that's it.

When you're going online, you no longer have the same benefit of a middleman that's done the licensing for you. And we won't have time today to get into the nuances of every single digital platform, but basically, the license situation is different, and we'll talk particularly about YouTube and about Facebook, because those are two -- and Zoom, those are some of the ones that are coming to the fore. So YouTube, if you do a performance, it doesn't seem to matter if it's live or you create the video and upload it, they have created a blanket license with the performing rights organizations, and what's unique about that is because usually when you're in a video context, you need what's called a synchronization license, that's different than a public performance license, that's the right to be able to combine music with video. And normally you can't get those licenses from the performing rights organizations. Have you to go directly to the publisher, and get those directly from them. Because they are all negotiated rates.

Well, YouTube, pushing the boundaries of technology as it did in creating a video user up loaded video experience, they were able to negotiate with the PROs that they had a specific situation where artists are up loading what would otherwise be covers, it's just a video of them performing, you just see the performers playing their instrument, singing or whatever, so it's a special situation with YouTube specifically where you're allowed to do that and you don't have to
get a separate sync license usually.
The problem is that not all the publishers opted into that agreement. So you really don't know for sure whether you're going to be covered by that unless you upload it and you find out what happens. If it is in the blanket agreement, you'll get a copyright claim, so you upload the video, the bot will flag it and say this contains material, and whatever the publisher is.

Sometimes it says, we think this is s and we're not sure what song it is, this is who we think it belongs to. Even if your channel is not main tied, you can still get copyright claims, they don't hurt your channel. It's the strike that do hurt your channel. Usually if the publisher is not in the blanket agreement, they'll take the video down, it's kind of like oops, but nothing else is going to happen from that.

Facebook is more of a problem, because they don't have a music licensing agreement with the PROs, so anything you put on Facebook could get caught by their -- they call it the rights manager, and what that is is a library where and right owners have uploaded things and told Facebook's bots to watch, basically it's a system that looks for a waveform that is identical to the waveform of your recording. It's especially good at catch things if you're streaming live on Facebook from a café and there's radio or something playing in the background, it will almost certainly catch that, because it's a customer you shully released recording and it has that copy in its archive. It's looking for. If you're playing a cover song, depending on your instrumentation and how good your performance is, you might trigger that system to catch it and flag it. But what does happen on Facebook in particular, because of how that system works and it's all automated, is it's catching things that are actually original content, but it sounds like your chore progression, your rhythm or beat is a little too close to one of the things it has in its system, it's close enough of a match, and so your video gets muted. The main thing about Facebook that's very frustrating is that you really can't dispute it. On YouTube, there's a built-in process to
dispute it, reinstate it and go this is my
original work, I'm performing it, not using
someone else's recording or composition, and you
should put the video back up. Facebook, it's
basically impossible to reach a real person, even
for lawyers that try to reach I say, this is --
we own it, and Facebook also doesn't have a huge
incentive to fix the problem, because there's an
area of copyright law called the digital
millennium copyright act. Under this act, the
Internet service providers, like Facebook, like
YouTube, have a loophole, called a safe harbor in
the law, where they are not responsible for
copyright infringement that happens on their
platform so long as they are quick and efficient
about taking stuff down when they find it.
So they have every incentive to err on the
side of the big publishers with the big money and
the lawyers that have the clout to pursue things
rather than for the little artist that up loads
something that is their original work, and the
bot wrongly caught it and took it down, so they
err on the side of everything we find as
infringement and it's hard to dispute otherwise,
particularly with Facebook.

>> JOHN MUNSON: I have question.
>> ALEX MUELLER: I see questions coming in.
>> JOHN MUNSON: Yeah. There's few questions
coming in. I had a question about Instagram live
and Facebook live, are they effectively the same
thing, Alex.
>> ALEX MUELLER: I believe that Facebook
owns Instagram, so I think Instagram is using
that exact same algorithm to hunt for wave forms
using the same manager. I'm not positive about
that, but that's my suspicion.
>> JOHN MUNSON: I have a question here from
somebody that sent one in prior to our meeting
and I think it does bear on a couple of the other
questions that we're getting too. It is this:
The writer writes, I'm interested to know about
the legality of recording a cover song and
posting it on Facebook or YouTube, and also the
legality of livestreaming cover songs on Facebook
or YouTube. I have a friend who's been doing
this every week in kind of a piano bar
formatment. Normally he would be doing it down
13:23:19 at a place they've gate down in northeast
13:23:23 Minneapolis, and now he's doing it from his
13:23:26 living room. It's a livestreaming performance of
13:23:29 >> ALEX MUELLER: Yeah. There is kind of
13:23:32 going off on a tangent, I think, but that is an
13:23:35 interesting question about, you know, if you're a
13:23:38 venue and you're streaming something live, does
13:23:43 your license cover it? And they can provide
13:23:46 licenses for that situation, but when you're
13:23:48 streaming through your living room you're
13:23:51 probably not going through the process to get one
13:23:54 of those, I tried to look into it. I think can
13:23:58 you get one from your own website. It's only a
13:23:59 couple hundred bucks, assuming you're not making
13:24:04 a lot of money on your website and not having
13:24:06 500,000 people watching it. They are not
13:24:10 terribly expensive, but it is a process.
13:24:17 As far as YouTube live, so YouTube for sure
13:24:20 has a blanket license for the content once it's
13:24:23 recorded and up loaded. I don't know how
13:24:26 aggressive they are being right now about
13:24:29 policing live streams or what's happening while
13:24:35 Facebook has been notorious lately for
13:24:38 interrupting live streams, and even muting them.
13:24:42 Plus they mute them after the fact, when it's
13:24:44 just archived on your time line.
13:24:46 >> ALEX MUELLER: As far as cover songs on
13:24:49 YouTube, it's a little bit of a gamble. You
13:24:52 don't know for sure whether it's in that blanket
13:24:55 license or not. Assuming it is, you should be
13:24:58 fine on YouTube. On Facebook, no one's fine no
13:25:00 matter what you do, it's not an ideal platform
13:25:06 because much. You have the risk of getting into
13:25:08 you said or not have be your performance saved
13:25:09 for later.
13:25:10 >> JOHN MUNSON: So YouTube is a little bit
13:25:14 of a safer platform it sounds like for doing
13:25:18 What I'm gathering.
13:25:19 >> ALEX MUELLER: Yeah. It could be a
13:25:23 better -- it's a better option than Facebook
13:25:24 Facebook for a lot of people, because we've been
13:25:31 seeing more issue with Facebook's bots.
13:25:32 >> JOHN MUNSON: Very cool. Should we
continue with questions or alter is there more
material you wanted to cover in terms of getting
those clearances? I guess I find myself, you
know, as a performing artist thinking like Jesus
Christ, if I have to get permission for every
single thing I do, I'll never do anything, I
might sit in my closet for the rest of my life.
>> WALT LEHMAN: Right. All I would say, I
approach this stuff from a film and television
production point of view. Think about this as a
production. When you're setting up your camera
and thinking about what your background is, do
you want that poster in there? Is that going to
raise concerns? When you actually place things
specifically behind you, are you creating set
dressing in which case that may raise some
issues? So neutral backgrounds, eliminating
material that is not really necessary helps a
lot. Removing logos from your hat, John.
>> JOHN MUNSON: I happen -- Munson feeds is
no longer an ongoing operation, I think I'm all
right.
>> WALT LEHMAN: If you're bringing people
on, technically in the film production standpoint
of view, you get an appearance release from
somebody if you were performing in a location,
and recording it, would you get a location
release.
So these are just things to sort of be
keeping mindful of as you set up your cameras and
you set up how you're going to do this. Yeah.
Let's get back to the questions, because we're
sort of halfway through already.
>> ALEX MUELLER: I'm answering some in the
side bar here. So there's a question from Jesse,
if we're streaming from our venue, then we have
ASCAT VMIC license, is Facebook still going to
mute us? The answer is maybe, they don't know
that you have a license. Right now, we're really
hoping for some more guidance from the performing
rights organizations on this and sorting out the
licensing details, but yeah, Facebook controls
Facebook. So they can do whatever they want in
their platform. In fact, under their terms of
service, they could just arbitrarily delete your
content because they decide they don't like it.
They don't have to let it be there at all. Is there -- is it possible, as you mentioned that you could get some kind of blanket right to perform a collection of songs that were controlled by any of the performing rights organizations, like you mentioned, you know, if you're doing it through your website, can you pay a couple hundred dollars, it grants you license to use this material and perform it freely, as if you were a bar or club or something like that. I mean, do you think there might be an opportunity to do that with some of these streaming services like Facebook or YouTube? Hopefully. Hopefully. Or using other platforms that are more tailored to these purposes. I know there's services that like you pay the subscription fee to them. I don't know how the licensing arrangement works, but you pay a subscription fee to them, and they blast it out to YouTube, Twitter, Facebook, all at the same time.

What is that service? One is called stream yard. I'm totally not familiar with it. That sounds like an interesting service definitely, in the kind of current environment pretty cool. Stream yard.

Another thing I know artists are using is Zoom, because there's nothing built into Zoom right now to track what's happening in real time. So it's kind of more like you have a closed room and you're inviting people into it. So there's not a bot sitting there watching what's going on.

As far as livestreaming. Yeah.

Yeah. Okay.

So you're less likely muted than you are on Facebook.

A question was -- came in relative to streaming -- people streaming their own work. Are there any precautions people should take either to protect their rights to their work or, you know, is there anything that you need to look after in that regard?

Yeah. So as far as protecting your rights, you should always register your copyright in your work. I know
Walt talked earlier about copyright is automatic, but the trouble is that you don't have ability to access the court system until you have the registration in your hand, and so from a litigation standpoint, even if you can't feasibly afford to go to court because it's hundreds and hundreds of thousands of dollars to pursue, particularly a music case, the copyright cases are very expensive and very prolonged, but anyway, if you don't have the registration, you can't even really threaten litigation against other party, because they know you can't get into the court system. We don't have -- there's discussion about a copyright small claims court, and we don't have like a determination on when that would be available, but that's something being talked about right now. So it would be an avenue that doesn't cost hundreds of thousands of dollars, but to access those systems, you're going to have the registration, first and foremost, file the register station, you can do 10 works at a time if they are not published. The sound recording and together in one application, check the it out from the copyright office. They have a walk through video to walk you through the form. Really great A lot of artists are doing that right before they release their album, they will register the whole set of 10 at a time.

As far as protecting your works on the platforms, I think for contend ID, have you to be a YouTube partner, which means you have to have a certain number of subscribers before they'll let you access that system and register it there. It's hard to use YouTube's built in tools. You still have the options under the DMCA, if you find something that's infringing you can use that process and say that's mine, take it down, that requires you to be looking constantly. I found music of mine on websites available for download, but they are based in Singapore or someplace, it's not like I would have just found them casually. You have to be looking constantly and see what's being infringed. Another aspect to that, so like on Facebook, there's no way you're going to get into that rights manager system as a registrant, because they are really only talking
to the large publishers right now, they haven't
gotten around to making it feasible to deal with
music licensing for everyone else. You might get
muted on your own songs that are original, that
you're play, and you're going to have a very hard
time getting them to reinstate that video,
because it's very hard to reach a real person.
There's also no royalties for you to have to
you do it on Facebook, you won't generate any
money.

>> JOHN MUNSON: And in most cases that's one
of the big frustrations is you know that you're
not going to realize anything from the things
posting, and so the idea of paying
permission to post those things feels like,
well, what the hell? What's the point? Do you
know what I mean?

>> ALEX MUELLER: Yeah. Personally, I don't
know if we said this, I'm a compositioner and
musician as well. Personal froes stations with
Facebook really took off probably four years ago.
They removed the embedded player feature for both
you took and sound cloud. If you went through
the trouble to have a license and is it on
YouTube or sound cloud, you can no long embed it.
It just links back out. So you don't get traffic
on Facebook for your recordings, because no one
wants to get linked out to another site.

>> JOHN MUNSON: Right.
They are busy making the Internet worse and
worse, right?

(laughter).

>> JOHN MUNSON: There's some more questions
coming in here that are pretty interesting.
One, Joshua asked, does Vimeo have similar
sync licenses as YouTube?

>> ALEX MUELLER: So Vimeo is primarily like
private uploads of films. I'm not aware if they
have a livestream function at all.
But you would still need to have a sync
license for any music that's in a video that's
posted to Vimeo.
To my knowledge, they don't have a blanket
agreement with the PROs. I don't know that for
sure. Like we get into areas I don't know every
detail about every platform that exists, but one
thing that Vimeo does, and also you can do this
13:35:23 on YouTube, if you have a private video that's
13:35:26 password protected or unlisted so that you're
13:35:29 limiting who can see it, that might be a way to
13:35:33 not get it flagged for copyright reasons, but
13:35:35 that's not -- to say that you're in the clear
13:35:37 that you didn't do anything infringe being, it's
13:35:41 just that you're trying to limit the audience
13:35:43 +SOE that it doesn't get you into trouble. I
13:35:47 know artists will do that with portfolio pieces,
13:35:50 like film score composers, we don't have the
13:35:52 rights to the film, but we want to be able to
13:35:56 show it to clients, so you'll have a private
13:35:59 video on Vimeo and send the client the password
13:36:02 and go look at the movie I made that I can't show
13:36:05 you on YouTube.
13:36:05 >> JOHN MUNSON: Right right.
13:36:09 There's another question here that I think is
13:36:14 interesting. Do we need to buy rights to video
13:36:16 perform any covers that we stream ourselves in I
13:36:21 think that really gets down into the crux of
13:36:21 this.
13:36:25 I mean, what alternatives are there? I play
13:36:30 in a group that the large body of our work is all
13:36:37 covers. And to put out a record, we always
13:36:41 purchase rights. But if it's existing in this
13:36:44 other sphere, do we need to buy separate rights
13:36:51 in order to stream it? Or if we were going to do
13:36:54 a -- stream a performance, we need to rebuy the
13:36:56 rights to use those songs.
13:36:57 >> ALEX MUELLER: In a live performance
13:37:00 context, again usually the artists are shifting
13:37:02 that responsibility to the venue.
13:37:04 Because the venue is more able to handle the
13:37:08 licensing process. Right now, we're in a time of
13:37:12 uncertainty with whether those venue licenses can
13:37:16 be effectuated of their premises, if they are
13:37:19 streaming, but they are not in their building at
13:37:22 the time, does that license cover that activity?
13:37:25 We don't really know.
13:37:27 Possibly, you can go get these licenses
13:37:30 yourself. You're basically just acting like a
13:37:32 venue now. The trouble is, depending on volume
13:37:38 of your streaming and what platforms you're use,
13:37:41 it might not be worth the cost to you to do that.
13:37:43 >> WALT LEHMAN: The other issue this raises
13:37:48 is with synchronization licenses, right, Alex.
13:37:49 >> ALEX MUELLER: Yeah.
WALT LEHMAN: When you put music in sync with a visual image, with a video, there's a different licensing issue there that isn't covered by the public performance license.

ALEX MUELLER: Usually it's an add-on. So, like, say you're hosting a festival, and you know you're going to stream it too, you'll have a performance license that would be for everyone sitting in the hall during the festival, but then you have an add-on an additional cost to be able to simultaneously stream that performance, that still didn't give you the rights to archive that video and do anything else with the finished product that you record and broadcast, it's gets very complicated very quickly depending on what you're doing. That's why YouTube's blanket license is really great, because they are able to figure out how to deal with what is essentially a cover, it would have been licensed under mechanicals if it was audio only, now it exists in video form and we can see the performance while they are playing. I wouldn't use that as an add-on to do a story format music video, that could get you in trouble. If it's a video of you and the band playing your instrument, that's considered a cover as far as YouTube is concerned, even if you change the instruments like if you make it right for bagpipes instead of the actual caw, then it's a cover as far as YouTube is concerned.

JOHN MUNSON: One of the things that's kind of interesting here is the number of streams. A lot of these cases you're talking about are in the hundreds of viewers. Maybe in some cases the 10s or, you know, hundreds of or thousands of viewers as opposed to millions or thousands of viewers.

Now, for example, licensing music for the purposes of putting out a record, there's specific parameters around what you anticipate the license being used for. Now, is it going to be for a thousand records? Is it going to be for 10,000 records? And the fee is different.
13:40:08 according to what your projections are for how 
13:40:10 many copies you're going to sell. You think that 
13:40:13 they could create some kind of parameters in 
13:40:15 terms of streaming too where it's like if you're 
13:40:19 going to be streaming to under 100 people, give 
13:40:25 >> ALEX MUELLER: Yep. That is how the ASCAP 
13:40:28 license works if it's on your own website, they 
13:40:31 have you estimate how views you're going to have 
13:40:33 visitors to that site, they ask you how much 
13:40:36 money you're generating through that activity on 
13:40:39 that website. It is a little peculiar that they 
13:40:42 ask you to estimate what your traffic is going to 
13:40:44 be before they give you a license, but it made 
13:40:47 much more sense when we were talking about 
13:40:50 pressing vinyl, because the record company knew, 
13:40:54 like, we're pressing however many thousand disks, 
13:40:57 and that's how many there are. So they were able 
13:41:00 to estimate more accurately than now, where you 
13:41:04 can get a license, and then exceed the usage that 
13:41:07 was permitted under that license and they are 
13:41:09 going to come back and be like, we need to get 
13:41:11 more money from you because you exceeded what 
13:41:13 your license allowed. 
13:41:19 >> JOHN MUNSON: Sudden Levy recallty of your 
13:41:21 post becomes toxic to your bank account, you 
13:41:21 know. 
13:41:22 >> ALEX MUELLER: It could, yeah, depending 
13:41:26 on -- that's another thing, you can't get just 
13:41:29 one license from 1PRO unless you know for sure 
13:41:32 that you're only doing music that's in that PRO's 
13:41:35 catalog, and that's a whole other issue 
13:41:37 researching who owns what and who controls which 
13:41:41 parts of those rights. So most venues have 
13:41:44 licenses from all three. Just to be safe. So 
13:41:46 then they don't have to worry about anything when 
13:41:50 someone comes in and plays a set of covers that 
13:41:55 are -- they are just like, yep. We know those 
13:41:58 are controlled by some entity we paid a license 
13:42:01 to and we're fine, but for an independent artist 
13:42:04 to research all much or limit their set list or 
13:42:06 get a separate license from each performing 
13:42:09 rights organization, that's when you start 
13:42:12 talking about a lot of fees up front, and you're 
13:42:14 maybe doing these for free. 
13:42:19 >> WALT LEHMAN: To talk a little about stage
13:42:22 rights for livestreaming sort of have some of the
13:42:25 same questions, again it's going to be negotiated
13:42:27 on a case-by-case basis usually the questions
13:42:31 they ask are the estimated number of
13:42:34 participants, how are people going to
13:42:38 participate? Are you going to sell tickets or is
13:42:40 this going to be for free? So a number of sort
13:42:46 of the same considerations about how the design
13:42:48 the livestream license.
13:42:53 >> JOHN MUNSON: Here is a question relative
13:42:58 to what if these streams are being used to raise
13:43:05 money for a charitable organizations, is there
13:43:07 any special arrangements that can be reached in
13:43:10 order to do that?
13:43:12 >> ALEX MUELLER: There's nothing like as
13:43:15 blanket rule. There's nothing that exists in
13:43:18 those circumstances. But charitable
13:43:21 organizations are going to have a lot of success
13:43:24 right now reaching out to rights holders,
13:43:27 assuming you can get in touch with someone at the
13:43:29 company, they are probably going to be willing to
13:43:33 work with you, and even wave license fees.
13:43:36 There's been a number of situations that have
13:43:40 come up in my work, where just reaching out to
13:43:46 the publisher and educational space is coming to
13:43:48 mind teachers got -- music teachers got locked
13:43:50 out of their their building and they are
13:43:54 basically go home, leave the stuffs, leave the
13:43:57 sheet music stay home, don't come back. How are
13:44:00 we supposed to teach our classes when all the
13:44:02 sheet music we purchased is locked up in the
13:44:04 building. They reached out to some of the that
13:44:10 publisher and they are like, have this stuff, use
13:44:14 it, we don't mind at all. JW pepper went back
13:44:17 and everybody that purchased physical copies of
13:44:19 sheet music and not digital, they gave them
13:44:22 digital copies, they are like, here you go, use
13:44:25 that. It's an exception right now. We know it's
13:44:27 a weird time. We're not going to come after you
13:44:33 >> WALT LEHMAN: The basic bottom line is
13:44:36 whether you charge or not doesn't matter for
13:44:38 copyright purposes, but you can work with the
13:44:41 rights holder probably and come up with some way
13:44:44 to do it. I'm not involved with park square
13:44:48 theater. But I know with this diary of Ann
13:44:49 Frank, they are offering it free to the public,
they had intended to do it as an educational
program for the school, so that's kind of the
donation edge in on that, but I can tell you their
donations apparently have skyrocketed. So it's
been very valuable for them to do that, and I'm
sure they are compensating the rights holder for
the play as part of that process as well. So it
would be fun, and I know we've talked about it,
the three of us at some point doing another
program where we talk more about business, the
business model that we are talking about here.
Because I think this is a whole new world for how
do you monetize this? How do you make a living
at it?
>> JOHN MUNSON: Let's hope we don't have to
go too far down that road.

I mean, I think it's very interest being,
because I think for -- there are people who have
really made the most of it, and it's really
working for them. I think that's very cool,
because it feels so uncertain in terms of how
this situation resolves itself, you know, it's
difficult to say.

So boater to kind of figure out ways to make
it work for you. I think that goes to some
extent for venues too, I think there are people
who are figuring out how to present music in this
context too. Not always something that artists
themselves are the best at. So it's nice to have
some help in terms of how to do an effective
streaming performance, you know, where it feels
like something is special and not shabby in your
living room.

Not that your living rooms are shabby. I'm
sure your living rooms are very nice.

Another question here asks if the music
modernization act is going to change how licenses
work. I'm not aware of this, but I'm sure you
guys are.

>> ALEX MUELLER: So the music modernization
act was legislation that was passed in late 2018.
There's a couple prongs to it, but it's mainly
concerned with digital audio performance on the
Internet, which is not what we would be talking
about here with livestreaming. Digital audio
performance only covers it if it's some service
like spot afire or Pandora, things like that. One thing that it did affect Spotify in particular, because they are required to pay mechanicals, because they are considered an interactive streaming service, can you call up a specific song you want to listen to and hear it, whereas a service like Pandora is more like radio where someone else is cure rating what is going to be played and what comes up next and so you don't -- you can't type in a specific song on Pandora and get it to come up. Interactive are required to play mechanicals, which are associated with downloads, and that came to pass because of a court do you vision. The music modernization act is dealing with mechanical licensing and the myriad of issues that arose keeping track of where those are supposed to go, what amounts are owed and who is supposed to pay. That doesn't affect end users like us, that affects platforms like Spotify.

>> JOHN MUNSON: Okay.

>> WALT LEHMAN: Other thing that the music modernization act, and Alex correct me because this is out of my area, doesn't it clarify too the copyright ownership of older music of pre-1972 --

>> ALEX MUELLER: Yeah.

>> WALT LEHMAN: Brings it into the federal copyright act.

>> ALEX MUELLER: Kind of.

>> WALT LEHMAN: There's a process now by which very old music will go into the public domain. So anything before 1923 will be available is it next year or something?

>> ALEX MUELLER: It's created some issues because of the -- there was a gap period, which has to do with international treaties and a lot of complex things, but so it's more relevant for like film makers to know, if you're trying to use a recording that you previously would have been able to use because it wasn't pro tected, now have you a potential claim on your hands, it doesn't affect those of us that are wanting to perform a song, but it would affect people who
are trying to use a particular recording.

WALT LEHMAN: Right right. Yeah.

JOHN MUNSON: One person asks -- that we address dance, choreography and movement in terms of streaming performances. I'm not exactly sure about how rights around those work. So maybe you guys can address that.

ALEX MUELLER: Can ocular I fie? Who is that? Can you clarify the question? Are you creating choreography or is the question about using someone else's choreography?

JOHN MUNSON: We'll look for a clarification there.

Natalie asks about performing folk music, traditional music where maybe the rights are not clear. Is it most likely that that stuff is in the public domain? I'm always surprised with like since I do this big holiday show every year, how much of the holiday music is actually -- there are rights holders, and you have to deal with those rights holders if you're going to put out a holiday record or do a performance.

ALEX MUELLER: A lot of holiday music isn't actually that old, like a bulk of it was written from 1950 onward, so folk music is tricky, because even if it's the composition is in the public domain for sure, like it's from the 1800s or earlier, there may be a recording that was made of it before you come a long, and that recording is what is in that copyright library that I was talking about, like Facebook has one, YouTube has one.

So when you're performing, it's matching up wave forms of the audio files, remember, so it might flag your performance even though there's no basis for it to flag that at all, because the composition is public domain and you're not using someone else's recording. You're making your own. So that's the main issue with stuff that's actually in the public domain.

I always think that's a compliment, like my quartet has gotten flagged for Mozart stuff. We played this so well they tall we were the London fill hermania.

WALT LEHMAN: There's lesion public domain stuff out there too that's ripe for using, it does eliminate the concern about getting
permission from the copyright owner.

ALEX MUELLER: If you get flagged for something, because this was happening a lot with Bach pieces. I think it was recordings owned by Sony were causing every Bach piece to get flagged on YouTube. If that happens, use the counter claim system and dispute it. It does take a little bit of time to get it sorted out, but if you're right, they'll put it back.

JOHN MUNSON: I have a creating from Chris here relative to theater performance. As I understand the question, he's talking about a performance which is an original work, but has prerecorded material in it. Chris, maybe I'm getting that wrong, but alter, how would you deal with the kind of layered copyright issues that you mentioned earlier in terms of performance?

WALT LEHMAN: Right. So the parts that are original to you, you don't need anyone else's permission, because you're the copyright owner. It's your original screen play or original script. But if you are adding material that is under copyright, whether it's adding sound recording or doing set pieces, things like that, back drops and stuff, though potentially would need to be addressed. And getting permission from the and right owner.

Again to get back to fair use, I don't know. In a certain context, I can see, say, you need to use short pieces of music or something as part of the commentary that you're making in your play. And to that extent, perhaps. I would be very careful with it, but perhaps you could find some basis for claiming fair use, but fair use is very limited. It depends on the context and how the material somebodying used, the amount that's being used, and whether that has an impact on the copyright owner's market for the use.

So there are contexts where you might be able to do a snip, like a tiny little background music of something because it has some relation with the subject that you're talking about, but you have to be pretty care awful with how you do that. -- careful about how you do that.

JOHN MUNSON: Okay. Hopefully that addresses your question, Chris. Kai asked the
question that is kind of interesting, kind of a multi layered question. What if you upload material to YouTube and then link that material to Facebook? Are you basically just doubling your chances of being in violations of someone's terms of use? How does that work exactly? Could there be a violation?

>> ALEX MUELLER: Yeah. I think that I saw that question come up a couple times over here in the Q and A. So if you start in YouTube, then you are in YouTube's jurisdiction, so to speak for their license. So it's okay on YouTube. As far as Facebook is concerned, that could be a violation on Facebook, in Facebook, you know, because you don't have a license there. But it's kind of a gray area whether that is a link or whether that's a new post, you know. So if you're just linking something to a place where it is licensed, that's probably not infringement. But if you're doing that simultaneous stream thing, it's like you do have a license here and you don't have a license here, so this one's a violation and this one's okay.

>> JOHN MUNSON: Interesting. It looks like there's a clarification here as far as the dance choreography and movement and licenses relative to that. That they would be using other people's choreography.

Can I take George Balin scene's choreography and present that or is he a copyright holder.

>> WALT LEHMAN: I believe you'd have to get permission from the choreographer to do a performance of their piece. The choreography will be copyrighted, and you need permission to use it. If they notated it or recorded it, they have copyrighted it. I'm not super familiar with choreography, but I do remember there was a case a couple years ago. I'm forgetting the name. The Carlton dance from fresh prince of bell air, the court determined that that was thattant original enough to warrant copyright in choreography.

>> WALT LEHMAN: Right. Alex mentioned
another important twist much, it has to be done in a tangible form. The choreography, if you just do a dance and don't actually put it into a tangible form, it's actually not pro detective by copyright, but the minute it is put in a tangible form, somebody writes down the moves and everything, then it is copyrightable, and of course the recording of it might be copyrightable as well. So...

>> JOHN MUNSON: Jesse has a question here about an archival license. I guess I don't know exactly what that is. The whole question is do you know if a venue that carries licenses, do those still cover live streams? Are those current licenses just for live performances.

>> ALEX MUELLER: Yeah. So I'm not a licensing specialist in that I don't work for one of the PROs. I can't tell you every possible option they have. You'd have to contact them and ask one of their agents what you can get. But you can definitely get licenses that cover what's happening in your room at the time, and there's some type of add-on to that that let's you broadcast separately. Most of the time, people are not doing archival recordings because then have you to deal with sync and you can't get that from ASCAP or BMI or the PROs. Sometimes they are putting it on YouTube to get around it and use that exception. If it's a concert stream, you can maybe put it there. But not all publishers have agreed to that. There's even festivals that did live streams, they are not archiving it because they can't get the rights from the public domain to have that recording permanently on their website.

>> JOHN MUNSON: Right. That sync license, that's a big negotiation. That's a lot of money tied up in that. You guys, I think we're kind of at the end of our hour here. I really want to thank you both for having so much information to share around these issues. I didn't realize how much there was to all this. And I want to really thank springboard for the arts for hosing us today. Thank you, Andy and thank Laura and everybody over at springboard for helping us to clarify some of these issues.
13:59:46 around copyrights.
13:59:49 >> Yeah. Thanks everybody. I want to do a
13:59:52 couple of final sort of pieces here. I know
13:59:54 there were a couple questions we couldn't get to.
13:59:56 Here is what we are going to do. This will be
13:59:59 recorded. This entire session. We will
14:00:02 structure the questions into kind of an FAQ
14:00:05 format that will be available on the website for
14:00:08 you to take a look at. If you do have kind of
14:00:10 pressing questions that are very specific in
14:00:14 nature, please e-mail me at legal@Springboard for
14:00:20 the Arts.org, which is in the chat, and we will
14:00:23 get those answered to the best of our ability.
14:00:25 I'm not an attorney, but I work with a lot of
14:00:28 attorneys, we will find somebody.
14:00:29 >> ALEX MUELLER: We know there's too much to
14:00:31 cover here in a short amount of time, when we
14:00:35 were prepping for this, we were like,
14:00:37 unfortunately there is a lot more questions than
14:00:41 we have answers, as attorneys, this is new
14:00:45 territory and there's no rules yet in some cases.
14:00:47 >> Springboard's program something driven by
14:00:49 what we're hearing directly from artists as they
14:00:53 are experiencing it. So if you find yourself in
14:00:57 situations, find your peers in situations that
14:00:58 seem to be kind of same sorts of challenges,
14:01:01 please let us know, and we will put something
14:01:03 together that addresses those.
14:01:07 Yeah. Otherwise, be in touch. Thanks to
14:01:10 Alex, thanks to John, thanks to Walt. Thanks to
14:01:15 our live captioner, who always ACS, they do great
14:01:19 work. Be in touch, let us know if we can help
14:01:22 with anything, one last thing, I will put in a
14:01:24 link to the part of the website where this will
14:01:26 appear so you can keep an eye on that.
14:01:29 I will do that right now.
14:01:34 There's a link there.
14:01:39 >> JOHN MUNSON: Cool, guys, take care.
14:01:42 >> WALT LEHMAN: Thanks, John, thanks, Alex,
14:01:44 thanks springboard.
14:01:46 >> There's everyone.
14:01:52 Thanks everyone.