

The Consumers Are Coming - Part 2: Demos and NFRs

By [Peter Lawrence Alexander](#) / August 15, 2012

Demos are a critical element in music sales because they give consumers the reference point as to whether to buy or not.

Part 2 in a series.

For accuracy, before writing this article I conferred with the California Labor Board office in Van Nuys, California, composers outside the USA for international PRO insights, an experienced litigation attorney, and individuals who had done marketing for developers.

Please note this is a marketing article and is not legal advice. For legal advice, please consult a qualified IP attorney registered with the local BAR in your area.

In this marketing article, we're looking at two sets of issues behind demos and NFRs. The first set has to do with creation. The second has to do with what consumers want and need from the demos to make a buying decision.

Audio and audio/video demos are a critical element in music sales because in one form or another they demonstrate the product in order to encourage a sales purchase. There are three broad aspects.

1. The artist and their music which involves copyrights and Intellectual Property Rights issues;
2. Keyboard workstation sales where the demo shows the customer in the showroom the keyboard's capabilities;
3. Music tech virtual instrument sales where audio and/or audio/video demonstrate in the "showroom of their home" what customers are capable of producing with the library.

Let's briefly consider each.

The Artist and Their Music – The biggest and most recognizable sampling point in the USA is radio where the record companies provide radio stations with "free" music. In the USA, artists derive broadcast royalty income based on complicated formulas deployed when an artist's work is picked up in ASCAP and BMI sweeps. The money to pay those broadcast royalties comes from radio station fees paid based on a percentage of gross sales to the performance rights organizations.

In the USA, many types of music either do not derive airplay or derive minimal airplay, meaning artists do not derive any broadcast royalty income from their recordings, although some can apply to ASCAP and BMI for grants. Four music genres falling into this situation are Christian music, concert works on classical radio, film scores, and jazz.

When an artist produces a song in a non-radio favored format (or as some are finding, even with a radio favored format), they must create their own "customer radio" experience as part of their marketing. This

can be on their own web site, other web sites including those offering the music for sale, YouTube / Vimeo, blogs, or the “new radio” (as some call it), piracy.

IP issues include song ownership, copyright, licensing, and depending upon how various court cases are decided, broadcast royalty payments from Internet radio.

Keyboard Workstation Sales – These involve a dense learning curve and genuinely require an expert to compose, program and mix the demo. Nearly all the compositions found here are original works. Here, the workstation functions like a radio station, but no performance royalties are paid out for any reason including the number of times the demo(s) is performed.

Music Tech Virtual Instruments and Audio Plug-ins – Music tech virtual instruments (and audio plug-ins) have similar marketing issues as songwriters in that they are creating or having music created that utilizes a type of Internet radio on the developer’s web site to be used to play MP3s or .wav files that demonstrate the VI. If the developer is selling through retail distribution, there is also rebroadcast on a retailer’s site which could also be considered a type of Internet radio, again, depending on how various cases still in the system are decided.

Audio/Video demos can be uploaded to YouTube, Vimeo and similar sites which contribute, usually positively, to VI sales and product branding.

Once posted on YouTube, some may download the track, remix it with different video, and post it without giving either the developer or the music creator credit for the original work. Without credit, this is a non-exposure event for both developer and music creator.

Take note that everything I’ve listed so far are elements of the marketing mix.

Creating Demos For Devs – Until recently, audio demos have been traditionally handled on a Gentlemen’s Agreement basis between the developer and the music creator.

Very simply, the music creator produces an original work with the VI to be promoted. The developer is then permitted to use (license) the music work to promote the VI via MP3 broadcast (most often) on the developer’s site and potentially on other sites within a distribution network.

For creative fees, unless other arrangements in writing are made, the music creator typically is given a copy of the VI demonstrated with a full license to use the VI software commercially. See [this article](#) by Todd and Jeff Brabec on "Record Company/Traditional Vs. Internet".

Some developers go an extra step and both pay the music creator plus include the licensed VI for commercial use as part of the payment.

What shouldn’t be missed is that this negotiated relationship involves an exchange of licenses *for commercial use*.

The *music creator* is licensing the original work to the developer to promote sales of a specific virtual instrument product while the *developer* licenses to the music creator the license and the VI software demoed for commercial use.

Insight From the California Labor Board

Work and pay issues are involved when creating a demo. Who then governs the work/pay aspect of the relationship between the music creator and the developer?

Per the CLB, a composer is viewed as a contract laborer (read entrepreneur) and therefore, depending on the terms negotiated between the composer and the developer and memorialized in writing, pay issues are civil issues. When there are disagreements then this aspect of the agreement must be resolved in either civil court or through arbitration (depending upon how the written agreement is worded).

I emphasize the phrase *written agreement* because not all state courts recognize verbal or handshake deals.

Contract Laborer As Entrepreneur

Three of the issues to be discussed, agreed upon, and memorialized in writing include:

1. Music ownership – Is the original work now owned by the developer in exchange for commercial use of the library, or is ownership retained by the music creator?

2. Licensing the Work – If ownership is retained by the music creator, what are the licensing terms for the developer and potentially their retail distribution? Is the work licensed non-exclusively to the developer for library promotion while the music creator retains all other licensing rights for any form of broadcast, MP3 download sales on iTunes/Amazon/Walmart, video game licensing, et al?

3. Per Play Royalty Income of The Work – If a music creator is a member of ASCAP, BMI, or other PRO, will they receive broadcast royalty income payments based on the number of “plays” accumulated on the developer’s web site, or will the music creator contractually attempt to waive this income despite a current court case with Amazon and iTunes over paying broadcast royalties for 10-30 second demo snippets?

See the following articles:

TechDirt.com - [ASCAP, BMI Demanding Payment For 30 Second Previews At Web Stores](#)

Cnet.com - [Music Publishers: iTunes Not Paying Fair Share](#)

Avvo.com - [What Was the Outcome of ASCAP's Battle With Apple](#)

To protect USA music creators, Congress has entrusted [Sound Exchange](#), an independent non-profit PRO to collect, “statutory royalties from satellite radio (such as SIRIUS XM), internet radio, cable TV music channels and similar platforms for streaming sound recordings.” The licensing question to be determined is whether MP3s on a developer’s web site count as a type of Internet radio thus requiring payments to music creators.

As one British composer pointed out, in the UK, if music written by a PRS member appears on a developer’s web site, the developer is obligated to pay royalties.

But so far, not yet in the USA.

Licensing: The “Forgotten” Issue

According to the [World Intellectual Property Organization](#), “A licensing agreement is a partnership between an intellectual property rights owner (licensor) and another who is authorized to use such rights (licensee) in exchange for an agreed payment (fee or royalty). A variety of such licensing agreements are available, which may be broadly categorized as follows: Technology License Agreement; Trademark Licensing and Franchising Agreement; and Copyright License Agreement.”

Depending upon wording, one aspect of a licensing agreement could be a civil court issue for pay while another could be a Federal Court issue because of Intellectual Property Rights issues involved in the agreement.

NOTE: For inexpensive examples of starting licensing agreements see Inc.com and Legalzoom.com.

Tax Considerations

Written agreements between developer and music creator need to take into account potential tax consequences.

When a work, a music creation, is traded for software, the software, depending on the state and local government, could be counted as income and therefore subject to taxation at a variety of government levels including Federal.

The IRS looks at this as bartering. For more information, see the IRS Bartering Tax Center.

In some USA cities (or counties), software used in the course of business must be listed as being subject for business property taxes. This must be taken into account by both the developer and the music creator if software is bartered for pay since both have to show this as a line on their taxes.

So besides needing a good IP attorney, an experienced CPA is also needed to review financial consequences of licensing agreements.

Consumers and Demos

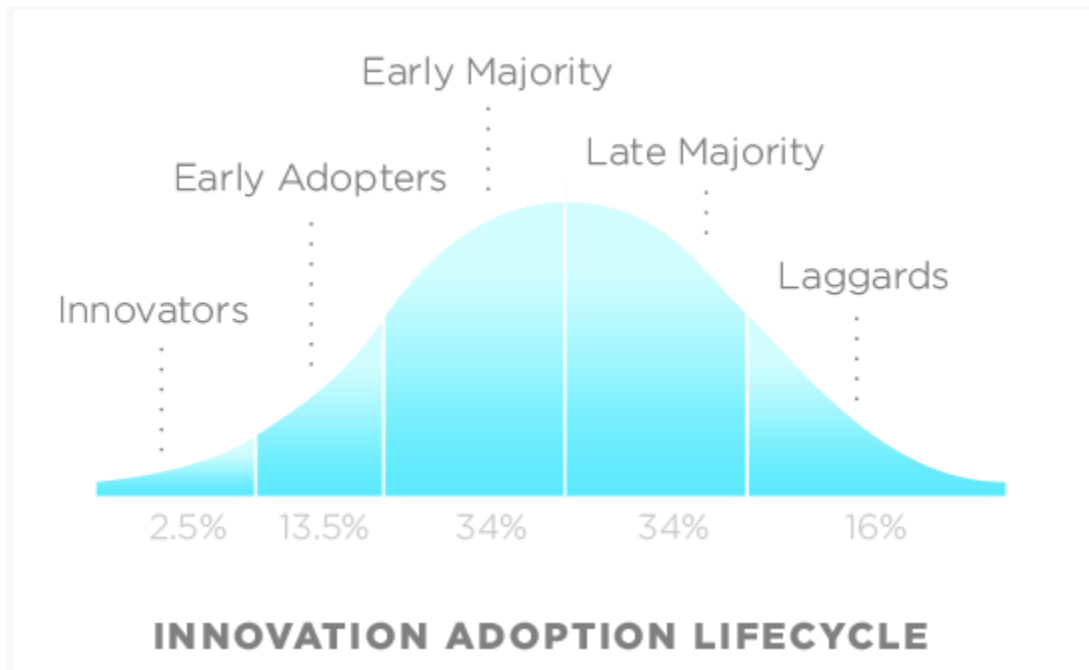
This brings us to the importance that demos have for consumer purchasers.

A consumer can walk into a music store and play a keyboard to hear the sounds and check out the keyboard action. A consumer can walk into a music store and play one or more guitars and check out the amps. And, the same can be said of a consumer checking out a new set of drums or other musical instrument.

But that cannot be said about most VI libraries, especially with those devs selling direct to customer where there is no “try before you buy” available. Consequently, demos are critical to sales success. I see four demo types to be considered.

The Walk Through – This is the demo type being more and favored by consumers. It usually requires no full musical works to demo the library’s potential. Here the developer demonstrates the library as-is on video so customers can watch the software in action. The more of these types of demos a developer produces, the more secure potential customers feel about making an online purchase.

The Secondary Walk Through – Produced by an independent composer not affiliated with the developer, this is becoming the next most popular demo type being more and more favored by consumers. That’s because this type of demo is the music tech equivalent of Julia Child, Emeril Legasse, and virtually every program on the Food Network. Here the composer creates a work then demonstrates (teaches) how it was created and how the customer can create it too, if they own the VI or audio plug-in.



This type of demo is more important than most developers recognize. According to the Rogers Curve of Technology Adoption, the first new buyers of a VI are Innovators worth 2.5% of all sales. This group is often self-taught. But the other 97.5% either want the training (Early Adopters) or send people to get the training (Laggards). This type of demo has one teaching goal: Yes, you *can* do it! Once a person sees they can do it, and they're talked to in a way that doesn't make them feel stupid, the next step is to save up to make the purchase.

Because either an original work or arrangement of a PD piece is being created, all the rights issues, and potentially more, must be worked out in writing before production begins.

A similar non-music tech example of this type of review comes from Canadian Rodney Reynolds, often known as [3DGameMan](http://3DGameMan.com).

YOUTUBE VIDEO: <https://youtu.be/yTIE0DCOQ6A>



The “Straight” Audio Demo – The “straight” audio demo is just what it implies, an MP3 or wave file of a work created with the VI being promoted, broadcasting off the developer’s web site, and potentially others including YouTube and Vimeo. All the rights issues previously discussed apply here.

The “subparagraph” of this type of demo is when the composer explains precisely how the demo was produced including naming all the instruments used, how they were spatially placed, how it was eq’ed and effected, e.g., mixed. Consider this like the old radio cooking show called [The Mystery Chef](#) where an entire recipe was produced using audio and the listener’s imagination.

The Approved User Audio Demo – These type demos change the rights game provided the developer has memorialized their posting position in writing. Here, the user (a paying customer) produces either an original work or MIDI mock-up of a PD work, submits it to the developer for approval and potential posting. This type of posting often helps customers develop their showreel and promote their careers. If well done, such demos can be a win/win for both developer and customer. The Vienna Symphonic Library does this probably better than most.

The screenshot shows the Vienna Symphonic Library website. At the top, there is a navigation bar with the logo and the text 'VIENNA SYMPHONIC LIBRARY'. Below this is a secondary navigation bar with links for 'COMPANY', 'PRODUCTS', 'DEMO ZONE', 'USER AREA', 'COMMUNITY', and 'VIENNA ACADEMY'. The 'DEMO ZONE' link is highlighted. Underneath, there are sub-links for 'Special Selections', 'Vienna Instruments', 'Classical', and 'User Demos'. The 'User Demos' link is also highlighted. The main content area features a large graphic of a waveform and the text 'User Demos'. To the left of the main content is a vertical navigation menu with categories: Lyric, Melancholy, Suspense, Dramatic, Heroic, Modern & Lounge, Classic, and Humoresque. Below these categories is a 'German' button. The main content area contains the following text: 'Our users' compositions reveal an overwhelming spectrum of creativity. Whether lyric or melancholy, modern or classic, humoresque or dramatic – make your choice using the left navigation panel and explore the colorful musical variety. We want to express our heartfelt thanks to all the talented musicians, composers, and producers for their enthusiasm and enormous talents that make this section so very special. The results of your creativity and your feedback give us the impetus to develop and improve the tools you use to realize your musical dreams.' At the bottom of the page, there is a footer with the text '2002 - 2012 Vienna Symphonic Library GmbH. All Rights Reserved. Terms of Service | Terms of License'.

Replacing the Music Store Experience

For developers selling direct, this block of demo types attempts to replace the music store experience through a series of well rounded demos. And this is important since there are only a handful of developers left with significant retail distribution selling products in boxes. All other developers now use download or hard drive sales for direct distribution. The general word of consensus, based on current trends, is that within the next 24 months there will be virtually no VIs sold at retail.

What Cannot Be Avoided

The days of the Gentlemen's Agreement between developer and music creator are coming to an end. Given the significant rights issues involved, both parties will have to learn how to negotiate with the other for a win/win result. With secondary VI distribution potentially ending in the coming 24 months, developers will have to learn how to create demos that build solid high trust levels with customers that encourage, not discourage, direct purchasing via the Internet. And both artists, the developers and the music creators, will have to keep an eye on the performance rights broadcast income cases still to be decided to know how this will work for the future.

Said an experienced litigation attorney who asked not to be identified, "From a lawyer's perspective: these observations about IP rights issues and tax implications are correct, and could fill a book. Artist demos have value that far exceeds the NFR software. This is especially true the higher you go in the artist food chain."



Roses, Thorns & Demos

Roses are stunningly beautiful flowers which have thorns on the stems. It seems to be a good word picture to describe what's really involved for creating and licensing original works to sell sample libraries.

Before the rose buds and breaks into bloom, the stem has thorns – to protect it so the bloom can come to fruition. The thorn depicts the business side of the negotiation. Then there's the rose in bloom. The beauty. That's the art that goes into creating the work that best represents the library. But the thorns remain to continue protecting the rose, even after the rose bush has been pruned back so that more blossoms can emerge.

Thus, the purpose of business is to protect the art.

Prior to coming back to music full time, Peter Alexander spent his early career on the “other side” of the music industry in advertising. His radio station profiling work with RAM Research laid the foundation for what became Arbitron Information on Demand. His studies on how listeners use radio found that both artists and music genre have a geodemographic profile. In media research, he demonstrated how media vehicle selection affected the physical distribution of Coca-Cola vs Pepsi Cola. He has produced and written ads for radio and television.

This article was previously published at SonicControl.tv