

New Music USA Online Library Terms of Service

General

Welcome to the New Music USA Online Library website (the "Site"), having a principal address of <http://library.newmusicusa.org>. The Site is operated by New Music USA, a New York not-for-profit corporation. These Terms of Service shall govern and apply to your use of the Site, and by using the Site, you signify your agreement to all of these Terms of Service.

If you do not agree to these Terms of Service, please do not use the Site.

New Music USA reserves the right to change, modify, replace, update and/or revise these Terms of Service without giving advance notice to you. Such changes will be immediately reflected in the most current version of the Terms of Service, located at <http://library.newmusicusa.org>. You shall review these Terms of Service periodically to be aware of such changes and/or revisions, and by continuing to use the Site following such changes, you will be deemed to have accepted and agreed to such changes. New Music USA will use reasonable efforts to provide notice of any changes to these Terms of Service on the Site. However, such changes shall be effective upon those changes being incorporated in the Terms of Service displayed on the Site whether or not New Music USA gives notice of such changes.

This Site is provided for your personal informational and educational use only and no representation or warranty is given as to its accuracy or completeness. Any redistribution or other use of the Site, or any portion thereof, by you for any purposes other than those permitted under these Terms of Service, without the express prior written consent of New Music USA, is strictly prohibited.

Use of Materials Contained on this Site

Ownership of Materials on the Site

The Site contains copyright-protected material, trademarks, service marks, logos and other proprietary materials, including, but not limited to, images, software, photographs, artwork, designs, video, audio, graphic and other materials (the "Material"). New Music USA is, unless otherwise stated, the owner of all copyright, trademark, patent, database and other proprietary rights in the Site and the Material, it being acknowledged, however, that all proprietary rights, including without limitation any copyright, in any graphic version of any musical composition ("Music Score File(s)"), sound recording ("Sound File(s)") or other intellectual property ("Other File(s)") uploaded to the Site (Music Score Files, Sound Files and Other Files shall collectively be referred to herein as "User File(s)") by a Posting User (as defined herein) shall at all times remain, as between the owner of those rights and New Music USA, the property of that rights owner or the owner's duly authorized representative (each a "Rights Holder"). Without limiting the scope of the foregoing, New Music USA holds a copyright in the Site as a collective work and/or compilation and in the selection, co-ordination and arrangement of the information and content on the Site. The Site and all Materials may not, unless expressly permitted by New Music USA and any applicable Rights Holder(s), be copied, reproduced, published,

republished, sold, licensed, rented, distributed, uploaded, posted, transmitted, performed, displayed, edited, modified, adapted, used in a derivative work, used to create a collection, compilation, database or directory, decompiled, reverse engineered, disassembled, broadcast, circulated and/or otherwise exploited by any third party except for purposes expressly permitted in these Terms of Service.

Posting User Name and Password

If you wish to become a "Posting User" and be able to post User Files in accordance with the Special Terms and Conditions Governing the Posting of User Files set out below, you can do so by sending an e-mail to library@newmusicusa.org. You will be assigned a randomly selected password, which will be sent to you by e-mail. You will subsequently be given the opportunity to select a different password.

You are entirely responsible for maintaining the confidentiality of your password.

If you wish to cancel a Posting User name and/or password, or if you have any reason to believe the integrity of your confidential Posting User name and/or password has been compromised, please notify New Music USA immediately at library@newmusicusa.org.

All information provided by the Posting User registration process, as well as all e-mail and message content provided by such User, shall be collectively referred to herein as "Posting User Information." While it is New Music USA's policy to respect the privacy of its Posting Users, you grant New Music USA the right to disclose the Posting User Information to third parties solely for the purposes of (i) statistical analysis based on aggregate use numbers, (ii) administering and maintaining the services offered on the Site, (iii) conforming to legal requirements or complying with legal process, (iv) acting to protect and defend the rights of New Music USA, and/or (v) acting to protect the interests of Posting Users or others or the goals of New Music USA.

Use of the Site

Each user's use of the Site shall be subject to local, state, national and international laws and regulations and you shall not intentionally or unintentionally violate any such law or regulation. New Music USA controls and operates this Site from our offices in the United States of America and does not represent that any materials on this Site are appropriate and/or available for use in other locations. Accessing any Materials from territories where such Materials are illegal is prohibited.

Persons who choose to access this Site from other locations do so at their own risk, are fully responsible for compliance with local laws, and acknowledge that New Music USA shall not have any liability with respect to such use.

Further, and without limiting the generality of the foregoing and in compliance with these Terms of Service, you agree not to:

1. make available any Material that is unlawful, harmful, threatening, tortious, defamatory, libelous, abusive, disparaging, harassing, deceptive, fraudulent, pedophilic,

pornographic, obscene, invasive of another's privacy, hateful, malicious, impersonates any person or entity, including any employee or representative of New Music USA, or otherwise violates these Terms of Service;

2. make available any Material that contains hate propaganda, or victimizes, harasses, degrades, intimidates, or promotes discrimination or violence against any person or group of persons on account of their race, ethnicity, national origin, religion, age, gender, disability or sexual orientation;

3. make available any Material that infringes any copyright, trademark, service mark, patent, trade secret, or other proprietary right of any other party;

4. make available any Material that contains a software virus or any other code files or programs that are designed to or have the ability to interrupt, destroy, compromise or otherwise limit the functionality of any computer software or hardware or telecommunications equipment whether owned by New Music USA or any other party, or otherwise violates any local, state, national or other applicable laws and regulations;

5. redistribute or make other use of the Site, or any portion thereof (including any User File), for any purposes other than those expressly permitted under these Terms of Service, without the express prior written consent of New Music USA or the applicable Rights Holder(s);

6. use the Site for purposes of disseminating unauthorized or unsolicited advertising, chain letters, any other form of unsolicited solicitation, junk bulk e-mail (also known as "spamming"), or any form of lottery or gambling;

7. collect information about the users or members of this Site or use such information for the purpose of transmitting or facilitating transmission of unsolicited bulk e-mail or other communications;

8. knowingly solicit or collect personal information (including but not limited to name, address, telephone number or name of school attended) from any person under the age of 18 years;

9. retain or attempt to retain one or more copies of any audio or video file that is "streamed" from the Site; or

10. use or attempt to use a downloadable file other than in accordance with the rules set by the person posting that file.

New Music USA may, at any time, temporarily limit or suspend, in whole or in part, any user's access to the Site if New Music USA, in its sole discretion, has reason to believe that such user has engaged in conduct or activities prohibited by these Terms of Service.

Use of User Submissions and Third-Party Sites

To the extent that User Files or other content submitted by users or external hyperlinks appear on the Site, please be advised that New Music USA does not endorse, verify or take responsibility for the accuracy, currency, completeness or quality of such content and will not be liable in any way for any loss or damage which you may suffer from your use of such posted content or by using such third-party sites. If you decide to access such posted content or third-party sites, you do so at your own risk.

Interactive Services

New Music USA provides or may in the future provide various interactive services (e.g., communication services, chat rooms, message boards, newsgroups, e-mail exchanges between users, ways to disseminate content to other users) on the Site. Each such service is or may be provided by New Music USA in its sole discretion, and may be modified or discontinued at any time. New Music USA generally does not pre-screen, monitor, or edit the content posted by users of such interactive services. However, New Music USA and its agents have the right at their sole discretion to remove any content that, in New Music USA's judgment, does not comply with these Terms of Service or is otherwise harmful, objectionable or inaccurate. New Music USA shall not be responsible for any failure to remove, or delay in removing, such content. Each user is solely responsible for any and all use that user chooses to make of any such interactive service, and New Music USA shall not be responsible for any loss or damage suffered by any user arising from or connected with the user's use of any such interactive service.

General Disclaimer of Warranties and Limitation of Liability

This Site and all Materials contained on it are distributed and transmitted on an "as is" and "as available" basis. Your use of the Site and all Materials on it is at your sole risk and you will be solely responsible for any damage to your computer system or loss of data that may result from your use of the Site or any Materials thereon. New Music USA expressly disclaims all warranties of any kind, including, without limitation, warranties of merchantability, fitness for a particular purpose and non-infringement, and you agree that your sole remedy is to cease using the Site.

New Music USA does *not* represent or warrant that: (i) the Site will be uninterrupted or error-free, (ii) defects, if any, will be corrected, (iii) the Site is free of viruses or other harmful components, or (iv) any Material or other information, products or services will be accurate, reliable, or of a quality or performance that will meet your expectations. No advice or information, whether oral or written, obtained by you from New Music USA (or its directors, employees, agents, or affiliates) shall create any warranty.

You expressly understand and agree that New Music USA shall not be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages, including, but not limited to, damages for lost profits, goodwill, use, data or other intangible losses (even if New Music USA has been advised of the possibility of such damages), resulting from or in connection with the Site or any Material made available or listed thereon, whether under a theory of breach of contract, negligence, strict liability or otherwise.

Some states and/or jurisdictions do not allow exclusions or limitation of incidental or consequential damages, so the above exclusion may not apply to you. In the event that the foregoing limitation of liability is held to be unenforceable for any reason, then our maximum liability for any of the foregoing types of damages shall be limited to the amount that we received, if any, for the specific transaction that gave rise to any such claim.

Additional General Terms and Conditions

Indemnification

Upon request by New Music USA, you shall indemnify, defend and hold harmless New Music USA, its directors, employees, agents and affiliates from and against any and all damages, liabilities, costs, losses, judgments and expenses (including attorneys' fees and disbursements) arising out of or in connection with any claim, demand or action by a third party which is inconsistent with any of the warranties, representations or covenants made by you herein. New Music USA reserves the right, at the user's sole expense, to assume the exclusive defense and control of any matter subject to indemnification by you, in which event you shall fully cooperate with New Music USA in asserting any defenses put forth by New Music USA.

Applicable Law

These Terms of Service are governed by and shall be construed in accordance with the internal laws of the State of New York, United States and any dispute arising under or in connection with these Terms of Service shall be subject to the exclusive jurisdiction of the courts located within the State of New York, County of New York, United States.

Copyright Act Agent

New Music USA respects the copyright and other intellectual property rights of others, and requires that those who use this Site do the same. If you believe that your work (or a work owned and/or controlled by you) has been used in a way that constitutes copyright infringement, please forward the following information to the Copyright Agent listed below (note: in order to be effective, the Notice must contain all six pieces of information):

1. A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest(s);
2. A description of the copyrighted work that you claim has been infringed;
3. A description of where the alleged infringing material is located;
4. Your address, telephone number and email address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by you, the copyright owner, its agent, or the law; and
6. A statement made by you, under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

Copyright Agent

Our agent for notice of claims of copyright infringement on the Site can be reached as follows:

By mail:

Attn: Copyright Agent

New Music USA

90 John Street, Suite 312

New York, NY 10038

By phone: (212) 645-6949

By e-mail: library@newmusicusa.org

Special Terms and Conditions Governing the Posting of User Files

A Posting User may post User Files in accordance with the following special terms and conditions (the "Posting Terms"). *Please note that the Posting Terms are in addition to the general Terms of Service governing the use of the Site, and that, to the extent not inconsistent with the Posting Terms, those general Terms of Service shall also apply to the posting of User Files.*

1. Grant of Rights

1.1 Sound File. By posting a Sound File, the Posting User grants New Music USA a non-exclusive, world-wide license to perform, display, distribute, alter and reproduce that Sound File as an interactive (i.e., on-demand) digital streams transmitted over the internet only on the existing websites of New Music USA, including www.newmusicusa.org, library.newmusicusa.org, www.counterstreamradio.org, and www.newmusicbox.org. It is understood that New Music USA will not receive any direct compensation for any such use of the Sound File. The Posting User further grants New Music USA the right to use and publish and permit others to use and publish the name(s) and/or biographical information of any individual artist(s) performing on the Sound File and/or composer(s) whose composition(s) are embodied on the Sound File, as well as the name, postal and internet addresses of the Posting User, in connection with use of the Sound File as permitted hereunder. The term of this license shall begin on the date of posting and shall continue unless and until the Posting User removes the file or, if there is Sound File Posting Agreement for the file(s), unless and until the Licensor notifies New Music USA in writing of its desire to terminate the license. Such termination shall be effective not later than 14 days following receipt.

1.2 Music Score File. By posting a Music Score File, the Posting User grants New Music USA a non-exclusive, world-wide, perpetual, royalty-free license to display, distribute, alter and reproduce that Music Score File as digital graphic files via the internet only on the existing websites of New Music USA, including www.newmusicusa.org, library.newmusicusa.org, www.counterstreamradio.org, and www.newmusicbox.org. All postings are subject to the Terms of Service, including the

Special Terms and Conditions Governing the Posting of User Files. It is understood that New Music USA will not receive any direct compensation for any such use of the Music Score File. The Posting User further grants New Music USA the right to use and publish and permit others to use and publish the name(s) and/or biographical information of any individual composer(s) and publisher(s) (where applicable) whose composition(s) are embodied in the Music Score File as well as the name, postal and internet addresses of the Posting User, in connection with use of the Music Score File as permitted hereunder.

1.3 Other File(s) or Other Data. By posting an Other File or Other Data (“Other files”), the Posting User grants New Music USA a non-exclusive, world-wide, perpetual, royalty-free license to perform, display, distribute, alter and reproduce that Other File(s) via the internet on any websites of New Music USA including, but not limited to www.newmusicusa.org, library.newmusicusa.org, www.counterstreamradio.org, and www.newmusicbox.org. It is understood that New Music USA will not receive any direct compensation for any such use of the Other File(s). The Posting User further grants New Music USA the right to use and publish and permit others to use and publish the name(s) and/or biographical information of any party, including without limitation, any individual author, creator, performer, composer, publisher and/or copyright holder, whose works are embodied in or has otherwise contributed to the Other File(s) as well as the name, postal and internet addresses of the Posting User, in connection with use of the Other File(s) as permitted hereunder.

2. Warranties and Representations

2.1 SOUND FILES: WITH RESPECT TO EACH SOUND FILE POSTED, THE POSTING USER EXPRESSLY REPRESENTS AND WARRANTS TO NEW MUSIC USA THAT: (A) THE POSTING USER HAS ALL RIGHTS NECESSARY TO POST THAT SOUND FILE AND TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (B) THE POSTING USER HAS, AND WILL FURNISH PROMPTLY FOLLOWING A REQUEST BY NEW MUSIC USA (WHICH REQUEST MAY BE MADE AT ANY TIME), WRITTEN DOCUMENTATION CONFIRMING THAT THE POSTING USER HAS ALL NECESSARY RIGHTS FROM ANY AND ALL THIRD PARTIES TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (C) THE POSTING USER HAS OBTAINED THE CONSENT OF THE MUSIC PUBLISHER(S) OF THE COMPOSITION(S) INCLUDED ON THE SOUND FILE TO THE POSTING OF THE COMPOSITION; (D) THAT ALL INFORMATION PROVIDED TO NEW MUSIC USA BY THE POSTING USER IS, TO THE BEST OF THE POSTING USER’S KNOWLEDGE, TRUE, ACCURATE AND COMPLETE; AND (E) ANY USE OF THAT SOUND FILE BY NEW MUSIC USA OR ANY USER OF THE SITE, AS CONTEMPLATED HEREIN, SHALL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

2.2 MUSIC SCORE FILES: WITH RESPECT TO EACH MUSIC SCORE FILE POSTED, THE POSTING USER EXPRESSLY REPRESENTS AND WARRANTS TO NEW MUSIC USA THAT: (A) THE POSTING USER HAS

ALL RIGHTS NECESSARY TO POST THE MUSIC SCORE FILE(S) AND TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (B) THE POSTING USER HAS, AND WILL FURNISH PROMPTLY UPON A REQUEST BY NEW MUSIC USA (WHICH REQUEST MAY BE MADE AT ANY TIME), WRITTEN DOCUMENTATION CONFIRMING THAT THE POSTING USER HAS ALL NECESSARY RIGHTS FROM ANY AND ALL THIRD PARTIES TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (C) THAT ALL INFORMATION PROVIDED TO NEW MUSIC USA BY THE POSTING USER IS, TO THE BEST OF THE POSTING USER'S KNOWLEDGE, TRUE, ACCURATE AND COMPLETE; AND (D) ANY USE OF THAT MUSIC SCORE FILE BY NEW MUSIC USA OR ANY USER OF THE SITE, AS CONTEMPLATED HEREIN, SHALL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

2.3 OTHER FILES: WITH RESPECT TO EACH OTHER FILE POSTED, THE POSTING USER EXPRESSLY REPRESENTS AND WARRANTS TO NEW MUSIC USA THAT: (A) THE POSTING USER HAS ALL RIGHTS NECESSARY TO POST THE OTHER FILE(S) AND TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (B) THE POSTING USER HAS, AND WILL FURNISH PROMPTLY FOLLOWING A REQUEST BY NEW MUSIC USA (WHICH REQUEST MAY BE MADE AT ANY TIME), WRITTEN DOCUMENTATION CONFIRMING THAT THE POSTING USER HAS ALL NECESSARY RIGHTS FROM ANY AND ALL THIRD PARTIES TO GRANT NEW MUSIC USA THE LICENSE CONTEMPLATED HEREIN; (C) THAT ALL INFORMATION PROVIDED TO NEW MUSIC USA BY THE POSTING USER IS, TO THE BEST OF THE POSTING USER'S KNOWLEDGE, TRUE, ACCURATE AND COMPLETE; AND (D) ANY USE OF THAT OTHER FILE BY NEW MUSIC USA OR ANY USER OF THE SITE, AS CONTEMPLATED HEREIN, SHALL NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

IF NEW MUSIC USA RECEIVES ANY INFORMATION THAT ANY PARTY BELIEVES ITS RIGHTS TO BE INFRINGED BY THE POSTING OF A USER FILE, OR IF NEW MUSIC USA BELIEVES, IN ITS SOLE JUDGMENT, THAT THE POSTING OF A USER FILE MAY INFRINGE UPON THE RIGHTS OF A THIRD PARTY, THEN, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO NEW MUSIC USA UNDER THESE POSTING TERMS, THE SITE TERMS OF SERVICE OR APPLICABLE LAW, NEW MUSIC USA SHALL HAVE THE RIGHT TO DISABLE ACCESS TO AND/OR REMOVE THAT USER FILE UNLESS AND UNTIL THE POSTING USER SHALL HAVE PROVIDED EVIDENCE SATISFACTORY TO NEW MUSIC USA, IN ITS SOLE DISCRETION, THAT THE POSTING OF THAT USER FILE DOES NOT INFRINGE THE RIGHTS OF ANY THIRD PARTY.

3. **Indemnification:** Upon request by New Music USA, each Posting User shall indemnify, defend and hold harmless New Music USA, its directors, employees, agents and affiliates from and against any and all damages, liabilities, costs, losses, judgments and expenses (including

attorneys' fees and disbursements) arising out of or in connection with any claim, demand or action by a third party which is inconsistent with any of the warranties, representations or covenants made by that Posting User herein. New Music USA reserves the right, at the Posting User's sole expense, to assume the exclusive defense and control of any matter subject to indemnification by the Posting User, in which event the Posting User shall fully cooperate with New Music USA in asserting any defenses put forth by New Music USA. New Music USA shall hold harmless and indemnify the Posting User from any and all damages, liabilities, costs, losses, judgments and expenses (including attorneys' fees and disbursements) arising out of any act or omission of New Music USA that is inconsistent with these Terms of Service.

4. Changes and Alterations to and Removal of User Files: In an effort to ensure the quality, style, conformity, accuracy, and/or functionality of the Site, New Music USA may, from time to time, in its sole discretion, make certain changes and alterations to and/or remove User Files from the Site. Without limiting the generality of the foregoing, New Music USA may remove corrupt User Files, delete duplicate User Files, remove poor quality User Files, remove inoperative hyperlinks to third-party websites or e-mail addresses, correct typographical errors, re-classify ensemble types and subtypes, crop and/or touch-up photographs, add commonly-used keywords to existing text, and/or provide data that a Posting User has failed to provide. However, New Music USA shall not make any changes to program notes, instrumentation notes or Posting User biographical materials.

5. Transmission Policy:

(a) New Music USA shall not be responsible for any loss or damage to any Posting User or Rights Holder resulting from the unauthorized capture of any streamed transmission of a User File by any third party and any subsequent reproduction or distribution of the captured transmission by that or any other third party.

(b) If the computer software used by the Posting User permits the Posting User to select a level of access by third parties to a downloadable User File after posting (e.g., read-only, print, manipulate), New Music USA shall not take any steps to alter that level of access. However, New Music USA shall not be responsible for any inadvertent alteration due to the technical characteristics of the Site, nor for any alteration performed by a third party, whether inadvertent or deliberate, and in no event shall New Music USA be responsible for any resulting damage or loss from such alteration, however caused.

6. Special Disclaimer of Warranties and Limitation of Liability Applicable to User Files: New Music USA is providing a facility for posting User Files on an "as is" and "as available" basis. By posting a User File, the Posting User acknowledges that such posting is at the sole risk of the Posting User, and that New Music USA shall not be responsible for any direct, indirect, incidental, special, consequential or exemplary damages, including, but not limited to, damages for lost profits, goodwill, use, data or other intangible losses (even if New Music USA has been advised of the possibility of such damages), resulting from or in connection with the posting and/or use of a User File, whether under a theory of direct, contributory or vicarious copyright infringement, breach of contract, negligence, strict liability or otherwise.