

What every business owner needs to know about playing music in their store!

Why Do I Have to Pay Royalties?

The short answer to the question above is: Because the law says you do. But, clearly, some further explanation is needed as to why, for example, a merchant has to pay to play radio music in his or her store, when playing the radio or listening to tapes at home or in one's car is "free."

The long answer starts with the United States Constitution, which gives Congress the power to grant patents and copyrights. The Copyright Law of the U.S. today gives copyright owners the exclusive right to publicly perform or authorize performance of their works.

Given the broad scope of the protection given copyright holders and those assigned their rights, anyone whose business in one way or another performs music for its customers or members should be aware that they may be called upon by one or more of the major performing rights organizations to license the performance of copyrighted works in their respective repertoires. Buying a license from one performing rights organization, say BMI, does not protect a business from liability for unauthorized performance of songs in ASCAP's or SESAC's repertoires.

A list of places and events at which licensing could be required includes, but is not necessarily limited to: restaurants, bars, clubs and hotels where live or recorded music is played; shopping malls; stores that play broadcast or recorded music; spas, gyms or other sites that offer exercise to music; trade shows; conventions; dance studios; skating rinks; private clubs or fraternal organizations; offices and stores that use "music on hold" for telephone customers; sports teams; colleges and universities; amusement parks; bowling centers; and the Internet.

A business person should consult with an attorney about any questions as to whether the music he or she plans to play publicly is exempt from liability for royalty payments.

Who Is Responsible for the License?

The proprietor of the business in which the copyrighted music is performed is liable for any infringement of copyrighted music in his or her place of business. Technically, everyone responsible for an infringing performance can be sued as an infringer, including musicians and independent contractors. However, when copyright owners sue, they often go after the owner of the establishment rather than anyone who actually gave the unauthorized performance.

If a business contracts for a service that "pipes in" background music, either by providing tapes or transmitting to subscribers' premises through radio or satellite special equipment, the service, which collects its fees from subscribers, is responsible for obtaining the appropriate licenses; unless the establishment itself charges for admission, in which case the owner must obtain the licenses.

How Are License Fees Determined?

ASCAP and BMI operate under federal consent decrees that prevent them from charging discriminatory fees for licenses. While an organization's fee schedules and methods of fee computation may differ, each treat like entities alike. BMI, SESAC, and ASCAP maintain standard fee schedules for different classes of businesses and organizations that set out the basis for fees and from which businesses can determine their cost of an annual license. These organizations have different rate schedules for various industries. For specific information, contact them at the addresses listed.

What Happens If I Don't Get a License?

Failure to obtain a license to perform copyrighted music publicly is copyright infringement under the copyright law. The infringer is subject to a civil suit in federal court. Sanctions against an infringer can include an injunction and the copyright owner's actual damages, as well as the infringer's profits, or "**statutory damages**" of up to **\$30,000** for each copyrighted song performed without a license (up to **\$150,000** if the infringement is willful). The infringer can also be required to pay the copyright owners' legal fees. The law further provides for criminal sanctions against those who willfully infringe on a copyright for commercial advantage or private gain.

Will BMI, ASCAP, or SESAC Contact Me If I'm Playing Music?

New technologies, pastimes, and merchandising techniques have been accompanied by the performance of music in nontraditional places such as malls, aerobic studios, restaurants and all types of retail establishments. Performance rights organizations have responded to this development by contacting more and more businesses that regularly use music in an effort to educate them to the rights of copyright holders and to assure that their members are paid for the playing of their copyrighted works.

It is true that, because of the difficulty of monitoring the millions of performances of copyrighted music taking place every day, royalties are not paid by every small and large business. But, given the changes in the commercial use of music, business owners should not be surprised if they are contacted and offered music licensing agreements by ASCAP, BMI, and SESAC representatives—either by mail, phone or in person.

Why Businesses "Pay to Play"

Whether played as background or used to impart a special ambiance, music has become an essential part of many modern retail and service businesses. But the use of such music programming is almost never free. Below are important points regarding why businesses buy a license from a performing rights organization:

- 1.** The majority of music a business plays is protected by copyright law;
- 2.** Music copyright holders have the constitutionally created and federally protected right to demand royalties for public performances of their music, whether by live musicians, recordings, or broadcasts;
- 3.** The legal rights given to music copyright holders under the copyright law are substantially the same as those given to authors or creators of literary works, dramas, choreographic works, films, pictures, graphics, and sculptures;
- 4.** More than 85% of all fees collected by the two largest performing rights organizations are paid to composers and publishers as royalties for the performance of their copyrighted works.

For More information

Anyone with questions about performing rights organizations, their license agreements, or rights and responsibilities under the United States Copyright Law should contact their attorney or the following organizations of the offices below:

BMI

10 Music Square East
Nashville, TN 37203
800.925.8451
www.bmi.com

SESAC

55 Music Square East
Nashville, TN 37203
800.826.9996
www.sesac.com

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

2675 Paces Ferry Road, SE, Suite 350
Atlanta, GA 30339
800.505.4052
www.ascap.com

U.S. COPYRIGHT OFFICE

202.707.3000
www.lcweb.loc.gov/copyright

Music is so common and widespread in our culture that frequently many of us take for granted the right we have (or think we have) to play it. Most people fail to realize that a legal license is required by law to play any copyrighted music.

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