

Music Licensing Laws

May, 2016

IREM® Legislative White Paper



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Music licensing laws are often overlooked, but doing so can be risky. [The Copyright Act of 1976](#) gives the creator of copyrighted material exclusive rights to:

1. Reproduce the work
2. Prepare derivative works
3. Distribute copies of the work
4. Publicly perform the works
5. Publically display the work
6. Digitally transmit the work

Any violation of those six rights is considered copyright infringement unless the “fair use” exception can be applied. Fair use is a limited exception to copyright protections that often applies when an excerpt of copyrighted material is used in news reporting, teaching, research, or for criticism. To avoid putting your business at risk of paying costly fines it is important to know about music licensing laws, what needs to be licensed, and under what circumstances.

Legal disclaimer: *It is important to note this information is accurate as of May 26, 2016 and is subject to change. The information in this white paper does not constitute legal advice. This report is intended to provide general information and should not be relied upon as legal or regulatory guidance. Contact your attorney to confirm current information or obtain specific legal advice.*

When do I need to obtain licensing?

Licensing fees must be paid any time copyrighted material is used for a “public performance.” A public performance is defined as any music played outside a normal circle of friends and family. The writers, composers, and publishers have the exclusive right to play their music publicly and to authorize others to do so. This applies to music you have purchased. When you purchase music, either sheet music or a recording, you only have the right to play that music privately. These protections go beyond music, they extend to television programs, movies, and even live performances. Every business must obtain permission from the copyright owners in order to play their media in a public forum.

These restrictions typically do not apply to businesses using a streaming service such as Pandora or SiriusXM. As long as the business has registered for and is in compliance with a paid business account, the service provider should be paying any associated licensing fees. This is only true so long as the music is for background noise or ambiance. If the business allows dancing (a nightclub) or charges a cover, additional licensing fees may apply.

Common situations where a music license is **required**:

- Music played in common areas in a shopping center
- Music played in the fitness room of an apartment complex
- Phone hold music
- When music for employee entertainment can also be heard by customers, or the general public
- When music is used for an instructional video or presentation

Section 110 of the Copyright Act lists several **exceptions** that may apply in certain circumstances. Some of those exceptions for using unlicensed music are:

- When being used for academic purposes by a non-profit institution
- The performance of a non-dramatic literary or musical work of a religious nature when used during religious services at a place of worship
- When used without any direct or indirect commercial advantage and without payment of any kind for the performance to anyone involved
- When used by a governmental body or nonprofit agricultural or horticultural organization for a fair or exhibition that they are hosting
- When used by a vendor that is open to the public at large without charging admission and the sole purpose of the performance is to promote the sale of work being performed
- When being primarily directed to blind or otherwise handicapped people who are unable to read printed material as a result of their handicap
- When being used for a social function organized and promoted by a veterans' organization or nonprofit fraternal organization to which the general public is not invited, so long as the proceeds are used exclusively for charitable purposes

There are many conditions within each exception. If you believe one may apply to you, please read section [110 of the Copy Right Act](#) or consult a copyright attorney.

There are some exceptions under Section 110(5) that apply only to television and radio usage. These exceptions **ONLY** apply to radio and television. These exceptions generally do not apply to other uses of music. First, any business under 2,000 square feet is exempt. That limit is raised for food service and drinking establishments to 3,750. If the space exceeds those limits, they must obtain public performance rights if any of the following circumstances apply:

Television Programing:

- More than four TVs
- More than one TV in any one room
- If any of the TVs used has a diagonal screen size greater than 55 inches
- If any audio portion of the audiovisual performance is communicated by means of more than six loudspeakers, or four loudspeakers in any one room or adjoining outdoor space
- If there is any cover charge

Radio:

- More than six loudspeakers
- More than four loudspeakers in any one room or adjoining outdoor space
- If there is any cover charge
- Music being playing on hold during a phone call

It is important to remember these restrictions only apply if the music is “intended to be received by the general public.” If the music is only heard by your employees, no licensing is required. On the other hand, if the source of the music is located in an employee only area, but the music can be heard outside of that area by the general public, arguments could be made that licensing is required.

How is This Licensing Monitored?

Many people liken music licensing laws to speeding tickets. With so many businesses playing music, they believe the odds of getting caught are slim to none. While that may be true to an extent, the chances of being caught are higher than you probably think. PROs call businesses regularly to ensure they are licensing music properly. To ensure compliance, they also have a system similar to secret shoppers. With representatives all over the country, they visit random businesses checking that all appropriate licensing has been paid for.

Not only do you risk paying hundreds of thousands of dollars in fines, but you also hurt your ability to negotiate. Licensing fees can be negotiable, but PROs are much less likely to negotiate after a violation has occurred.

What can happen if I do not obtain proper licensing?

If you are found to be not in compliance with licensing laws, you could be at risk of paying very severe fines. While the fine is ultimately decided by the federal judge presiding over the case, fines can range between \$750 and \$30,000 **for each song** that was played improperly. If the court finds the violation was “willful,” or not accidental, the fine could be as high as \$150,000 **per song**.

How can I ensure compliance with licensing requirements?

In order to be in compliance, you must obtain licensing from the appropriate Performing Rights Organization (PRO). PROs are non-profit organizations that collect payment for licensing different types of media and distribute them to the artists. There are several PROs, so it is imperative you obtain licensing accordingly. Broadcast Music, Inc. (BMI), The American Society of Composers, Authors and Publishers (ASCAP), and SESAC (formally known as the Society of European Stage Authors and Composers) are the three largest PROs in America, though there are many more here in the U.S. and internationally.

Typically, when obtaining a license, the business would purchase a blanket license that covers the PRO’s entire catalog. The price varies, but starts around \$200. You may need to purchase licenses from several PROs as a license from BMI, will only cover music in the BMI catalog. To further complicate things, a single song may require multiple licenses, for example, the singer may be represented by BMI while the songwriter is represented by ASCAP. This would require you to obtain licensing from both BMI and ASCAP.

Licensing Bodies and Other Resources:

Performing Rights Organizations

- <http://www.bmi.com/>
- <http://www.ascap.com/>
- <https://www.sesac.com/>

Copyright Law

- <http://copyright.gov/title17/>

General Information:

- <https://www.entrepreneur.com/article/226049>
- <http://warestaurant.org/wise-buy/music-licensing/>