

They Are Playing Our Song —And You're Paying for It

September 2008
By Charles Y. Hoff, Esq.



Did you know copying sound recordings for commercial use – and the use of the copies in a public setting – is illegal and can result in serious consequences? Where the infringing activity is for commercial advantage or private financial gain, infringements can be punishable by up to five years in prison and \$250,000 in fines. Repeat offenders can be imprisoned for up to 10 years, and violators can also be held civilly liable for actual damages, lost profits or statutory damages up to \$150,000 per song! What does that mean? It means that playing CDs or digital files like MP3s in your place of business is illegal if you haven't obtained the proper licensing.

As songwriters and publishers cannot possibly monitor the use of their songs on their own, they sign up with one of the three performing rights organizations (PRO): ASCAP (American Society of Composers, Authors & Publishers), BMI (Broadcast Music, Inc.) and SESAC (Society of European Stage Authors & Composers). Annual PRO fees are typically a few hundred dollars a year with the exact amount based on factors such as the size of the venue and whether you are playing recorded or live music. If any of the music is licensed by the PRO, the business is obligated to pay licensing fees to the PRO. Another option is to contract with a commercial music provider to design custom music. Typically, their monthly rates include music licensing fees.

Small restaurants may take advantage of the exception made for "a single receiving apparatus of a kind commonly used in private homes." This exemption will apply if no direct charge is made to see or hear the transmission and the transmission is not retransmitted to the public. This exception would not apply to most of the state's restaurants as it is increasingly rare to find eating establishments broadcasting music via radio airwaves from a home sound system. However, in 1988, the Fairness in Music Licensing Agreement Act did broaden the exception to provide for restaurants of less than 3,750 square feet if the audio performance (radio or TV only) is communicated by means of a total of not more than six loudspeakers, of which not more than four loudspeakers are located in any one room or adjoining outdoor space. An "audiovisual" performance exception also applies where "any visual portion of the performance or display is communicated by means of a total of not more than four audiovisual devices, of which not more than one audiovisual device is located in any one room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than six loudspeakers, of which not more than four loudspeakers are located in any one room or adjoining outdoor space." It is recognized that these limited exceptions will not exactly be music to your ears, and that blanket royalty licenses will be in order.