

NEWS & INSIGHTS

Does your business have a music license?

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You've infringed someone's copyright. You probably didn't mean to, but you have.

If you've ever listened to the radio with your windows down or walked around with a boom box like Radio Raheem in "Do the Right Thing," you've infringed a copyright. You've taken food out of the mouths of some musician's children. You monster.

The smooth 70's yacht rock you hear at the dentist's office over the hum of fluorescent lights, the swinging sounds of bebop at your favorite overpriced downtown restaurant, and the ass-kicking southern rock you hear at that bar

where you throw axes at the wall are all licensed from the musicians, or at least they should be. If you play music so more than a small social group can hear, that's a "public performance" and is copyright infringement if you don't have a license. Even if you just have a radio playing in the background, that could be infringement.

In a parallel universe, if you wanted a license to play "Dancing Queen" from ABBA at your event – because, of course you do – you would first have to learn Swedish, then track down Björn, Benny, Agnetha, & Frida, negotiate a deal, sign a contract, grab some pickled herring (when in Stockholm...), and return to press play on your copy of the "Mamma Mia" soundtrack.

Here, though, we have a better system. At least a somewhat better system.

Getting a music license

If your business wants to play music you can get a license from one or more of the large performing rights organizations (PROs). The most well-known of these are probably Broadcast Music Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP). If you're a professional musician, you know these names and are probably nodding your head. There are also Society European Stage Authors and Composers (SESAC) and Global Music Rights (GMR), as well as others representing artists from around the world. Artists will sign with one of these organizations to collect licensing fees on their behalf.

The way this works is businesses pay a PRO to be able to play music, the PRO tracks the public plays of each song as well as it can and pays the artist a pro-rata cut of the collected licensing fees.

To complicate things a bit, artists are usually only signed with one PRO, so a business should either limit their music based on what organization they've contracted with or sign up with multiple organizations.

So, what does all this mean to business owners who want to play music at their establishment?

Well, other than the fascinating and scintillating background: get a license.

My business doesn't need a license. Wait, does it?

For whatever reason, there are a lot of businesses that don't realize they're supposed to have these licenses. This is especially prevalent at smaller places, maybe to cut costs, but often because the owners just didn't realize this was even an issue. If it wasn't for law school, I'd probably think I should be able to play my own CDs at my bar or food truck (where I would sell several kinds of hot dogs...chili/cheese, peanut butter, jalapeño jam, mango salsa, four-cheese, etc. ... I've thought this through).

PROs, however, aren't about to leave money on the table and will send "secret shoppers" into businesses to listen to music and record what they hear. Later, the business may get a letter explaining how music licensing works and a bill.

This can be a shock, especially if you – like parallel-universe me – are just bumping your 8-track of Foreigner 4 while

selling hot dogs downtown.

The PROs recognize this, and will try to bring errant businesses into the fold rather than filing a lawsuit. I've seen businesses receive dozens of warning letters offering licenses before being sued. Usually, a business will forward a letter from a PRO to me asking if this is real and something they need to address. Depending on the size of the business and how many letters from a PRO it took before they contacted me, the cost to resolve the issue can be a little or a lot. Sometimes, the dulcet tone of a lawyer explaining the business's deep regret for their oversight can lead to a better retroactive licensing deal.

Of course, it's best to get the license of your own volition and avoid any future hassle. If it's past that, deal with the demand letters instead of hoping they'll just go away – because they won't.

The Waterfront Wyandotte in Detroit recently learned this.

Can you really be sued?

BMI filed suit against them on Feb. 13, alleging it's been playing the songs "You Should Be Dancing" by the Bee Gees, "Turn The Beat Around" by Vicki Sue Robinson, and "That's The Way (I Like It)" by KC and the Sunshine Band without a proper license. I'm assuming Waterfront Wyandotte played more than those three songs, but maybe those are the only three serviced by BMI or were the only three heard when the "secret shopper" was there. According to the complaint filed in the Eastern District of Michigan, BMI tried contacting the Waterfront Wyandotte more than 50 times to educate them and offer a license.

Now, the defendant could be on the hook for copyright infringement damages of between \$750 and \$30,000 per song. If the court finds the infringement was willful, that amount could be increased up to \$150,000 per song, plus costs and fees. BMI doesn't post their licensing costs, but most single-location businesses could expect to pay around \$200 to \$400 a year.

The takeaway here is if you have a business and are playing music, get a license. You'll probably want one from at least ASCAP and BMI. Some services will work as an intermediary between the PROs and businesses to ensure everything is covered, but even then, not every artist in the world will be covered. The safest thing is to subscribe to a service that provides licensed music. If that doesn't work, you'll need to look at getting a license from one or more of the PROs.

If you are using unlicensed music in your business or have received a letter from one of the performance rights organizations or if you're a musician looking at a contract, please contact me or any of the attorneys in the Saxton & Stump [Intellectual Property Group](#).

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