




MUSIC
Licensing &



YOU

*How Changes to the Law
Will Impact YOUR Business*

Copyright Law

What kind of music do you play in your restaurant?

- | | |
|--------------------|-----------------|
| ♪ Tapes | ♪ Music on hold |
| ♪ Compact discs | ♪ Radio |
| ♪ Live performance | ♪ Television |
| ♪ Juke boxes | ♪ Karaoke |
| ♪ DVDs | ♪ DJs/Dancing |

Most restaurant operators play music in their establishments for the enjoyment of their customers. In the case of recorded music, the performance rights are generally owned by one of the performance-rights societies, such as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc. These societies offer license agreements to commercial establishments for the privilege of playing music composed or performed by those copyright owners whose performing rights these societies hold. The fees charged generally depend upon such factors as whether the music is recorded or live, room occupancy, and whether dancing is permitted.

Restaurateurs can avoid entering into license agreements with the performing rights societies by instead entering into an agreement with a background music provider, such as MUZAK. Such providers enter into agreements with the performing rights societies so that the restaurant operator does not have to pay a fee to the societies. The operator can expect, however, to pay substantial fees to the background music provider. Another way to avoid entering into license agreements with the music licensing societies is by installing a coin-operated jukebox. The restaurant operator, however, cannot charge an admission fee to his or her establishment and the jukebox must be licensed by a licensed operator, such as the Jukebox License Office in New York City (800/955-JUKE or 212/581-0190), which involves a fee.

Restaurant operators have often asked if it is possible to be licensed by only one of the societies. The answer is theoretically "yes," but this may be difficult in practice since it would require that the operator play only the music of one of the societies. Since ASCAP and BMI each have a repertoire of over a million songs, it would be very difficult to play the music of only one society, whether the music played is live or recorded.

If you are playing copyrighted music in your restaurant, you need to pay up—the penalties for not doing so are severe. Under new copyright law (effective Jan. 25, 1999), however, some restaurants are exempt from paying royalties on radio and television music only.

Read on for more details . . .

Playing by the Rules

You play music in your restaurant. Now what do you do?

♪ Determine what kind(s) of music you play (see list on previous panel of this brochure).

♪ Determine how often you play music. Do you have a singer perform at your establishment once a week? Do you allow dancing on holidays, such as St. Patrick's Day? Do you set up for Karaoke on Sundays or any other day? These are just a few examples of questions you must consider when determining the frequency you play music.

♪ Contact ASCAP, BMI and SESAC to determine if you need to sign a music licensing agreement. Make sure you cover your bases by calling all three music licensing societies:

ASCAP: 1-800-505-4052

BMI: 1-800-925-8451

SESAC: 1-800-826-9996

♪ Copyright law says that an infringer of a copyright may be liable for: the copyright owner's actual damages as a result of the violation and any profits of the infringer attributable to the infringement; statutory damages of \$500 to \$20,000 per copyrighted work (if the infringement was willful, the court may increase the damages to \$100,000). The new law adds a possible new penalty: two times the amount of the license fee if the proprietor did not have reasonable grounds to believe that he/she was exempt.

♪ In addition to these damages, the court may award reasonable attorneys' fees to the prevailing party.



Music Licensing Reform

How does the new law affect you and your business?

Exemption

Restaurants **under** 3,750 gross square feet (not counting the parking lot) will be exempt from paying royalties on radio and television music **only**.

Restaurants **over** 3,750 gross square feet (not counting the parking lot) may also be exempt: 1. if they play no more than four televisions, each measuring up to 55" diagonally (no more than one per room), with no more than six speakers total, and with no more than four speakers per room, or 2. if they play radios that have no more than six speakers total, with no more than four speakers per room.

For restaurants to be eligible for the exemption, they must not charge a cover fee to see the television or listen to the radio.

Related Exemption

Retailers also receive an exemption under the new law. Retailers **under** 2,000 gross square feet (not counting the parking lot) are exempt; retailers **over** 2,000 gross square feet (not counting the parking lot) will receive the same equipment exemption as restaurant owners (see above).

Rate Dispute Mechanism

The law in effect prior to Jan. 25, 1999, provides for rate disputes with ASCAP and BMI to be heard in one New York City location. (The new law does not affect disputes with SESAC.)

The new law (effective Jan. 25, 1999) will allow for disputes to be heard in 12 circuits throughout the United States:

District of Columbia Circuit. Based in Washington, D.C.

1st Circuit: Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico. Based in Boston, Mass.

2nd Circuit: Connecticut, New York, Vermont. Based in New York, N.Y.

3rd Circuit: Delaware, New Jersey, Pennsylvania, and Virgin Islands. Based in Philadelphia, Pa.

4th Circuit: Maryland, North Carolina, South Carolina, Virginia, and West Virginia. Based in Richmond, Va.

5th Circuit: Louisiana, Mississippi, Texas. Based in New Orleans, La.

6th Circuit: Kentucky, Michigan, Ohio, Tennessee. Based in Cincinnati, Ohio.

7th Circuit: Illinois, Indiana, Wisconsin. Based in Chicago, Ill.

8th Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. Based in St. Louis, Mo.

9th Circuit: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam. Based in San Francisco, Calif.

10th Circuit: Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. Based in Denver, Colo.

11th Circuit: Alabama, Florida, Georgia. Based in Atlanta, Ga.

I play live music just one night a year, but I am under 3,500 gross square feet and play only televisions and radios the rest of the year. Am I exempt from music licensing fees?

No. The exemption covers restaurants that play radio and television music **only**.

I use the patio of my restaurant, but only in the summer. Does this count toward my gross square footage?

Yes. If you use the patio area of your restaurant to serve customers even once a year it likely will be counted toward your total gross square footage.

I own a small hotel. In the restaurant portion of this hotel I play only radios and I am under 2,000 gross square feet. Am I exempt?

While the new law does not specifically answer this question, you may be exempt under the definition of "establishment." Call (800) 424-5156 for more details.

I have a current signed contract with ASCAP to play my televisions and radios, but I meet the square footage exemption under the new law. Can I just stop paying my fees?

Most likely not. If you have signed a contract you must wait until the contract has expired. Once the contract has expired, contact the music licensing societies and let them know that your circumstances have changed.

My restaurant is under 3,750 gross square feet. I currently play compact discs in my establishment. Can I continue to play the compact discs and still claim the exemption?

No. Just because you paid for the discs does not entitle you to play them publicly. The new exemption just covers restaurants that play radio or television music **only**. You must stop playing the compact discs to meet the exemption requirements. Or, if you wish to continue to play the discs, you must contact the music licensing societies to determine your licensing requirements.

How do I count the speakers I have at my restaurant? Do I have to take my television apart to count the speakers?

That's unclear. However, the National Restaurant Association believes it was Congress' intent that restaurateurs only count external speakers.

Do I have to include all my restaurant space (storage, etc.) when determining if I qualify for the exemption?

Yes. All space must be included, with one exception: parking space (as long as that space is not used for playing music).

Is there anything I can do if I don't like the licensing fee amounts that ASCAP or BMI demand?

Yes. You can challenge the fee in the federal district court in the circuit where you are located (see previous panel for a list of circuit courts). For example, if you live in North Carolina, the circuit court is located in Richmond, Va. That way, you don't have to travel to New York City to dispute the rate, which was the only available option under the previous law.

If I have a dispute with SESAC, can I challenge the fee in my circuit court?

No. The new law only applies to ASCAP and BMI in terms of the rate challenge. The law has not been resolved regarding SESAC.

I employ a band to perform in my restaurant. Doesn't the band have to pay a licensing fee? Why should I have to pay a fee?

The band may be required to pay a fee, but whether or not a licensing society seeks a license from a band does not change your legal obligation to pay a fee. The law imposes an obligation to pay on both the performer and the restaurateur who allows the performance in the restaurant.

**For more information,
call (800) 424-5156.**



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