



This is a WineAmerica and State and Regional Association Advisory Council (SRAAC) document. It is intended only for WineAmerica members and the membership of the individual SRAAC members (full list at the end of the document). If you have any questions, please reach out to Tara Good, Director of Operations at WineAmerica at tgood@wineamerica.org, or contact your local association. To join WineAmerica visit www.wineamerica.org.

Music Licensing Guidelines

Music licensing fees is an issue affecting wineries across the country. WineAmerica has consulted with its membership, regional associations, and experts in the field to create this document.

This document does not constitute legal advice. If you have been contacted by a Performance Rights Organizations, please consult with your lawyer.

Currently there is discussion on Capitol Hill regarding music licensing modernization and reform. WineAmerica is closely monitoring these developments. We expect at some point legislation will be proposed to alleviate the problems in this area, at which time we will encourage our members to contact their Senators and Representatives. Until a bill is passed, wineries are encouraged to seek the exemptions outlined in the current law or pay the licensing fees.

What is music licensing?

Music is created, copyrighted, and licensed. When it's performed, the songwriter and recording artist are owed a royalty.

Although most people buy digital audio files, CDs, thinking they are now their property, there is a distinction in the law between owning a copy of the music and owning the actual songs that are played. The purchase price covers only **your private listening use**. Once you decide to play any copyrighted music publicly, that is beyond **"a normal circle of friends and family,"** you need permission from the copyright owners.

What is a PRO?

A music Performing Rights Organization (PRO) represents songwriters, composers and music publishers, collects royalties from licenses, and pays the royalties back to the artists. There are three major PROs: BMI, ASCAP and SESAC.

Why do I need music licensing?

A music license provides you with the legal authorization you need to play music. A licensing agreement protects your business from the penalties involved in copyright infringement.

How to Calculate Fees Owed

Any time music is performed (broadcast or played live), the end broadcaster is responsible for paying royalties to the PRO for the public performance of a song.

A "**public performance**" of music is defined in the U.S. copyright law to include any music played outside a normal circle of friends and family.

A PRO represents songwriters, composers and music publishers. PROs collect license fees from businesses that use music. These license fees are then distributed as royalties to the songwriters, composers & music publishers the PROs represent.

A winery **is** liable for royalties if it:

- The winery hosts live music
- Plays CDs, Internet/satellite (consumer) radio inside or outside of your winery

A concert license is also required for ticketed events, and is separate from the bar/restaurant license commonly assigned to tasting rooms. These licenses may start with an annual fee of \$225.

Legally, it is not sufficient to pay only one PRO. The three major groups (BMI, ASCAP, SESAC) have legal ground to collect fees for licenses separate from each other.

Damages can start at \$750, and can go up to \$35,000 per song or even \$150,000 if the violation is considered willful. In addition, the rights holders can recover their attorney's fees.

Are there exemptions?

YES! It is called the "Homestyle Exemption." A winery is not liable for royalties if you:

- Use pay-in-advance services, such as XM4biz or Pandora Business
- Only plays royalty-free music (you can purchase CDs)
- Ensure any bands play only original or non-copyrighted material. (Educate your performers!)
- Your tasting room has less than 3,750 gross square feet of space. *This includes areas that are not accessible to the public, such as kitchen space, preparation and storage rooms, as well as back offices. Parking lots are excluded.*
 - - and- plays radio or television, where copyrights are covered by the broadcasters. Does not apply to music intended for personal use, i.e. CDs or downloads.
- - or - Your tasting room has 3,750 gross square feet of space or more
 - - and - uses no more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space
 - - and - if television sets are used, there are no more than 4 televisions, of which not more than 1 is located in any 1 room and none has a diagonal screen size greater than 55 inches.

On October 13, 2011, the Palo Alto Area Bar Association (PAABA) issued a document entitled "When Should a Small Business Pay ASCAP or BMI?" This article has been shared with many TWGGA members. The link to the article is

<http://www.paaba.org/2011/10/when-should-small-business-pay-ascap-or-bmi/>

The conclusions reached by the PAABA offer wineries excellent advice:

- Switch to broadcast radio only. These would be a pay for music service like SiriusXM Radio.
- Play music at a reduced volume. Music can play in the staff work area at a low volume not to be heard by customers.
- Pay the annual licensing fee to the PRO.
- For live music, require the performers to play original music exclusively.

What to do when contacted by a PRO?

Doing nothing is not a viable option. Once you receive a letter and you do not respond, you are on their radar and will more than likely prompt a visit your business.

Get educated! Know the exemptions. Be specific about your usage. Try to work with them.

Resources

WineAmerica highly recommends wineries to educate themselves about music licensing. To do so, we have provided the following additional resources:

1. Better Business Bureau on music licensing: [Music in the Marketplace](#)
2. [Restaurant Music Licensing – Food Service Warehouse](#)
3. [ASCAP brochure \[PDF\] outlining music licensing](#)
4. [Copyright Law’s “Small Business Exception”: Public Performance Exemptions for Certain Establishments](#)
5. [Music Licensing 101: The Basics for Hotel & Restaurant Operators](#)
6. Winery licensing
 - [ASCAP / FAQs](#)
 - [BMI / FAQs](#)
 - [SESAC / FAQs](#)

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