

Music Licensing Guidelines

Live Music

Requires a Music License

Cover Bands: Any cover music performed that is written by a member of a PRO requires a license to be legally played in a public venue.

Karaoke: If the event is open to the public, it requires a license.

May not Require a Music License

Original Music: If you hire a musician not affiliated with any PRO that licenses their works and ensure they only play their own music and don't take requests.

Public Domain: If you play music written by a songwriter who has died more than 70 years ago and whose music is no longer covered by copyright.

Traditional Music: Traditional or folk music that has no songwriter.

It is the venue's responsibility to ensure that all music played on premises is not under copyright.

Private Events: Weddings, birthday parties, anniversary parties, or other events that are invitation only and not open to the public.

Recorded Music

Requires a Music License

Personal Music: CDs, Tapes, Vinyl Records, DJ's, Free-Play Jukebox, iPod's, MP3's, or other digital music.

Enhanced Recorded Music: Karaoke, DVDs, VJs, Video Tapes

TV: 3750 square feet or larger, and 1) more than four TVs; or 2) more than one TV in any one room; or 3) if any TV has a diagonal screen size greater than 55 inches; or 4) if any audio portion of the audiovisual performance is communicated by more than six loudspeakers, or four loudspeakers in any one room or adjoining outdoor space; or if there is any cover charge.

For radio: 1) more than six loudspeakers; or 2) more than four loudspeakers in any one room or adjoining outdoor space; or 3) if there is any cover charge; or 4) music on hold.

May not Require a Music License

Streaming Services for Business: Use pay-in-advance services, such as XM4biz or Pandora Business

Royalty-Free Music: Only plays royalty-free music.

Homestyle Exemption: Less than 3,750 gross square feet and plays radio or television, where copyrights are covered by the broadcasters.

- or - Over 3,750 gross square feet of space, no more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.

What to Do When Contacted by a PRO

Determine if you are compliant with copyright law: Take the time to sit down and speak with the PRO representative about your music use so you can ensure 1) that you need a license and 2) that the license accurately reflects the music that is being played.

If you are playing copyrighted music: Ask for a fee calculation sheet. If you are only playing music occasionally (4 or less times a year) then you may qualify for an occasional license. If your winery is seasonal, meaning you are closed for a certain amount of time each year then you may qualify for a seasonal license.

Other Suggestions

Play music by songwriters from one PRO only: If the PRO has a repertory search function on their website, search and see if the music you are performing is affiliated with them.

Record your musician's set: If you occasionally play music that you think is not under copyright, record the set to ensure that no laws were broken.

Talk with your lawyer: If you are being pursued by a PRO for reasons that you consider unnecessary, discuss with your lawyer.

Make the business decision that is right for you: Consider all options available to you.

Questions & Answers

What is a Performance Rights Organization (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.

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.

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.

Do I need to pay all three PROs?

That depends. PRO's offer "blanket licenses" that allows you to perform all the copyrighted music in their repertory. If you play music contained in a PRO's repertory, they have grounds to peruse legal action.

How do I know what music is owned by which PRO?

The PROs maintain their repertories differently. Discuss with the PRO directly how they make their repertory available.

What happens if a PRO finds out that I am playing copyrighted music?

They will make repeated attempts to collect fees over a prolonged period of time. At some point they may consider legal action based on copyright infringement. The penalties range in price and are steep.

I am playing non-copyrighted music but the PROs continue to contact me.

If you are compliant with copyright law and continue to be perused by a PRO, consider contacting your Better Business Bureau.

Resources

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

- [Music in the Marketplace](#): Better Business Bureau
- [Restaurant Music Licensing – Food Service Warehouse](#)
- [Copyright Law's "Small Business Exception": Public Performance Exemptions for Certain Establishments](#)
- [Music Licensing 101: The Basics for Hotel & Restaurant Operators](#)

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