

## Music Licensing Fees and Downtown Districts

### What is Music Licensing?

Music licensing concerns copyrighted music and the royalties paid to copyright holders — songwriters, composers and publishers — for the use of their intellectual property (music) as defined in the Copyright Law of the United States.

Three performing rights organizations (PROs) hold the public performance rights to nearly all of the music played in the United States. They are American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC. These organizations each collect licensing fees for the public performance of copyrighted music on behalf of their members, who receive a portion of the fees (royalties). These organizations basically act as middlemen between the copyright holders and the public.

PROs are not a new thing; they have been in existence in the United States since 1914.

### What does this have to do with your downtown?

Quite a bit. It applies to any venue where live or recorded music is played, including downtown festivals and events as well as downtown business establishments.

### What Constitutes a Public Performance?

The legal definition of a public performance, as stated by the Copyright Law of the United States, is “music played in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.”

This includes, but is not limited to, background or “on hold” music played on CDs or MP3s, live band performances, karaoke, and, to some extent, radio and television broadcasts. For example, a restaurant owner, who uses a radio to provide background music for his establishment is using the songwriters’ creativity (intellectual property) to provide ambience for his establishment and make money for himself.

### How do these organizations know which businesses are using copyrighted music?

PROs employ agents to monitor everything from festivals to fitness centers to restaurants to for the use of live or recorded music. If a determination is made that licensing fees should have been paid for the playing of live music or broadcast of recorded music, an agent will begin the process of assessing and collecting those fees. If the fees are not remitted once the PRO has contacted the responsible party, non-payment can result in a substantial fine or legal action.

Don’t think that your community, its events or businesses are so small they will probably escape notice. That may have been true at one time; however, in this digital world, the agents have many tools at their disposal, all available with just a few mouse clicks. It has gotten progressively harder to ignore the issue and just hope not to get caught.

### Music Performance Licensing FAQs

#### Live music

Any entity, be it a municipality, nonprofit or business, that has live music provided by a band, DJ or karaoke at a festival or business establishment (including event halls and other meeting venues) is responsible for obtaining the appropriate licensing from the PROs. This is in accordance with The Copyright Law of the United States which says “all who participate in, or are responsible for performances of music, are legally responsible. Since it is the business owner (or other responsible entity) who obtains the ultimate benefit from the performance, it is the business owner who obtains the license.”

#### Recorded music

Recorded music from legally purchased CDs, MP3s or downloaded music also requires a separate license for public performance use, even when intended just for use as background ambience. The agreement made with the publisher upon purchase only covers instances of non-public performance such as at home or in the car.

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## Background Music Providers

Ascertain if a background music provider has the appropriate licenses with the PROs. An entity should be covered provided that this is the sole source of music throughout the business or organization; it does not charge any type of entrance or admission fee; and it does not use the music as an accompaniment for dancing or physical fitness instruction.

## Satellite/Cable Providers

The license agreements that the PROs have with satellite or cable providers do not extend to their business subscribers. Copyrighted music is featured regularly in all manner of television programming and advertising and as such constitutes what is considered by the PROs to be a public performance.

## Small Business Exceptions

Since the “Fairness in Music Licensing Act of 1998” was enacted, the PROs offer standard licensing exceptions for small businesses that utilize radio or television transmissions and DO NOT charge an admission or membership fee. They must meet certain criteria based in part on, but not limited to, the business size, number and size of the TVs on the premises and number of speakers.

## Business Types

The PROs provide music performance licenses for more than 100 different types of businesses and activities. Check at their individual websites for more information and to determine the appropriate license for your particular situation.

## Festivals, Street Fairs, etc.

If live or recorded music is part of an event, the event organizers are responsible for obtaining music performance licenses from the PROs.

## Multiple Music Performance Licenses

Each PRO represents different copyright holders (songwriters, composers, publishers). In order to be fully covered, purchase of the appropriate music performance license from each of the three PROs is advised.

## License Renewal

Licensing agreements must be renewed annually, in part because each PRO adds new copyright holders each year.

## More Information

This is a general overview of the most common questions surrounding music licensing requirements. It should not be construed as legal advice. To learn more, or to contact the PROs directly, visit their websites:

- ◆ American Society of Composers, Authors and Publishers (ASCAP) - [www.ascap.com/licensing](http://www.ascap.com/licensing)
- ◆ Broadcast Music, Inc. (BMI) - [www.bmi.com/licensing](http://www.bmi.com/licensing)
- ◆ SESAC - [www.sesac.com/licensing](http://www.sesac.com/licensing)