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WHAT IS A PUBLIC PERFORMANCE OF MUSIC AND WHAT IS THE PERFORMING RIGHT?

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. Songwriters, composers, and music publishers have the exclusive right to play their music publicly and to authorize others to do so under the copyright law. This is known as the “Performing Right”. This right was designed to enable and encourage music creators to continue to create music, much the same way that patents encourage inventors to invent.

When you see the words “All Rights Reserved” on a movie that you’ve rented or purchased, you know that playing that movie before a public audience is prohibited. The same restrictions apply to music that is purchased, or live musicians that are hired to play in a public setting. Every business or organization must receive permission from the copyright owners of the music they are playing before playing it publicly.

WHAT IS BMI?

BMI is a non-profit-making performing right organization that has been in operation for 75 years. Our purpose is to license the music use of businesses and other entities in a cost-effective and convenient manner while protecting the performing right of BMI’s songwriters and composers. BMI, which is recognized in U.S. copyright law as a licensor of music, currently represents more than 650,000 copyright owners and their more than 8.5 million musical works.

WE HAVE A LICENSE WITH ANOTHER PERFORMING RIGHT ORGANIZATION. DO WE STILL NEED TO LICENSE WITH BMI?

A music license with another performing right organization allows you to perform only copyrighted music represented by that organization. It does not cover public performances of the award-winning music licensed by BMI. This is because each songwriter or composer may belong to only one performing right organization at any given time, so each PRO licenses a unique repertoire of music.

WE PURCHASED OUR OWN IPOD, CDS, AND GAMING SOFTWARE TO PLAY. ISN’T THIS OUR PROPERTY TO PLAY ANYWHERE?

Although most people buy digital audio files, CDs, or games like Guitar Hero 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. When you buy an audio file, software, or CD, even those specifically marketed for business purposes, the purchase price covers only your private listening use, regardless of how they are labeled. Once you decide to play any copyrighted music publicly, you need permission from the copyright owners.

DO WE NEED A BMI LICENSE IF WE ONLY PLAY ORIGINAL MUSIC?

The term “original music” generally means musical works written by the performing musicians. That doesn’t mean, however, that the musicians are not affiliated with BMI. This is because licensing organizations like BMI are the vehicles through which songwriters and composers are compensated

for the public performances of their music. In addition, one of the purposes of BMI is to help foster the development of up-and-coming songwriters, many of whom perform in public areas such as yours. Many times, these performers are asked to play a song known by the general public that was written by someone else to add to the entertainment. This performance also requires permission.

IF MUSICIANS ARE PLAYING LIVE MUSIC, AREN’T THEY RESPONSIBLE FOR PUBLIC PERFORMANCE FEES?

Since it’s the organization that’s benefiting by the performance of music, management is responsible for ensuring it is properly licensed. This responsibility cannot be passed on to anyone else even if musicians hired are independent contractors.

DO WE NEED A LICENSE TO USE RADIOS AND/OR TVS?

Public performances of radio and TV are specifically addressed in Title 17, Section 110(5)(B) of the U.S. copyright law which states that any food service or drinking establishment that is 3750 square feet or larger, or any other establishment, other than a food service or drinking establishment, that is 2000 square feet or larger, must secure public performance rights for TVs or radios if any of the following conditions apply:

FOR TV, IF THE BUSINESS IS USING ANY OF THE FOLLOWING:

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

FOR RADIO, IF THE BUSINESS IS USING ANY OF THE FOLLOWING:

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.



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