

Music Public Performance Licenses and Copyright Infringement Claims

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As we noted in an [earlier Client Alert](#) in February 2018, several clients have been contacted recently by one or more of the four Performing Rights Organizations (“PROs”) that administer the public performance of copyrighted music in the United States. Generally, PROs assert that a business is required to purchase a license from them or be in violation of federal copyright law and liable for significant damages. We have been seeing a significant increase in the activity and aggressiveness of the PROs with regards to the sale of public performance licenses.

Who is Liable for Copyright Infringement?

If you play music, for any reason, on your premises or in your place of business, you may or may not be in violation of the Federal Copyright Act. The definition of the public performance of music under federal law is very broad and includes music that is played through radios, televisions, PA systems or by live musicians. The types of public performances requiring a license from a PRO is also very broad and includes, but is not limited to, music played through televisions, radios and PA systems in common areas, break rooms, waiting rooms, exam rooms, poolside, group therapy sessions and gyms. It does not matter that playing music is not central to your core business activities and even if you do not specifically play music, you still may be required to purchase a license if there are televisions on your premises. The determination of whether or not a business or facility requires a license, or if a statutory exemption applies, is a detailed fact-specific inquiry.

What Should You Do if You Are Contacted by a Performing Rights Organization?

If BMI, ASCAP, SESAC, or Global Music Rights contacts your business or facility, sends you a notice or makes a demand for a license, DO NOT IGNORE IT and please contact us immediately. Please be sure

to contact us before you say anything to these organizations so that we can analyze the situation and determine whether you need to purchase a license from any of these PROs or if a statutory exemption applies. Failure to properly respond to a PRO may result in a viable claim of copyright infringement and significant damages. *Federal law provides for up to \$150,000.00 in statutory damages for each song played without a license!*

Please tell your employees that they should not speak to anyone concerning music performance licenses, other than directing them to contact your attorney.

For more information on public performance licenses, license exemptions or playing music on your premises in general, please contact [Seth L. Berman, Esq.](#), [Patrick Formato, Esq.](#), [Barbara Stegun Phair, Esq.](#), or any Abrams Fensterman, LLP attorneys at (516) 328-2300.