

Protecting Wisconsin Consumers for 75 Years

Music licensing

The information contained herein is furnished solely to assist you in exercising your own judgment. This report should not be considered as an endorsement or a recommendation of any licensing agency.

The copyright law establishes the principle that copyrighted material is property and no one can use someone else's property without the permission of the owner. To protect this property right, the law gives copyright owners the right to license any performance of their work, with only a few exceptions.

Businesses which feature performances of copyrighted music—whether performed by live musicians, record, tape player, radio, video or other media—must obtain permission to use the music. Usually, this involves paying a fee.

Permission may be obtained directly from the composer, author or publisher. Permission or licensing might also be obtained from independent licensing agencies or other authorized representatives. The two largest licensing agencies are American Society of Composers, Authors & Publishers

(ASCAP) and Broadcast Music Incorporated (BMI).

Businesses that feature background music on radios, tapes or other systems, as well as those that offer live band performances and stage shows may be approached by representatives of individual licensing agencies and asked to pay a licensing fee in order to use the music. Since not all works or performances are handled by the same licensing agency, it may be necessary to pay fees to different agencies to cover all of the material used in the place of business.

While some businesses object to this expense, the collection of licensing fees is legal, and paying fees to licensing agencies may be the most practical way to fulfill the copyright obligation. Licensing fees vary widely among different kinds of users. They are often based on the size of the facility, as well as the number and kind of performances offered.

Violations of the copyright law may be expensive. The law provides for civil remedies including an injunction against further infringements and damages. The court may also

award court costs and attorney's fees. In addition, criminal penalties may also be assessed against persons who infringe a copyright willfully and for purposes of commercial advantage or private financial gain.

When approached to pay licensing fees, owners of businesses may consider consulting with a private attorney to establish that they are actually using copyrighted material and that they are legally required to pay for its use.

For more information, or to file a complaint, contact the Bureau of Consumer Protection at:

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100.206 MARKETING; TRADE PRACTICES

Updated 07–08 Wis. Stats. Database

Not certified under s. 35.18 (2), stats.

100.206 Music royalty collections; fair practices. (1)

DEFINITIONS. In this section:

(a) “Copyright owner” means the owner of a copyright that is of a musical work and that is recognized and enforceable under 17 USC 101, et seq. “Copyright owner” does not include the owner of a copyright that is of a motion picture or audiovisual work or that is of part of a motion picture or audiovisual work.

(c) “Musical work” means a nondramatic musical work or a work of a similar nature.

(d) “Performing rights society” means an association or corporation that licenses the public performance of musical works on behalf of one or more copyright owners.

(e) “Proprietor” means the owner of a retail establishment or a restaurant.

(f) “Restaurant” includes an inn, bar, tavern or sports or entertainment facility in which the public may assemble and in which musical works may be performed or otherwise transmitted for the enjoyment of the public.

(g) “Royalties” means the fees payable to a copyright owner or performing rights society for the public performance of a musical work.

(2) DUTIES. A performing rights society shall do all of the following:

(a) File annually for public inspection with the department all of the following:

1. A certified copy of each document that is used at the time of filing by the performing rights society to enter into a contract with a proprietor who operates a retail establishment or restaurant in this state.

2. A list, that is the most current list available at the time of the filing, of the copyright owners who are represented by the performing rights society and of the musical works licensed by the performing rights society.

(b) Make available, upon request of a proprietor, information as to whether a specific musical work is licensed under a contract entered into by the performing rights society and a copyright owner. A proprietor may request this information by telephone or other electronic means.

(c) Make available, upon written request of a proprietor and at the sole expense of a proprietor, any of the information required to be on file under par. (a).

(3) DISCLOSURE REQUIREMENTS. (a) No performing rights society may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless the performing rights society, at the time of the offer or between the time of the offer and 72 hours before the execution of the contract, provides to the proprietor a written notice of all of the obligations of the performing rights society as specified under sub. (2). The written notice shall also contain a statement as to whether the performing rights society is in

compliance with any applicable federal law or court order that relates to the rates and terms of royalties to be paid by the proprietor or that relates to the circumstances or methods under which contracts subject to this section are offered to the proprietor.

(b) No performing rights society may make an incomplete or false disclosure in the written notice required under par. (a).

(4) CONTRACT REQUIREMENTS. (a) A contract entered into or renewed in this state by a proprietor and a performing rights society for the payment of royalties shall be in writing and signed by the parties.

(b) The information in the contract shall include all of the following:

1. The proprietor’s name and commercial address and the name and location of each retail establishment and restaurant to which the contract applies.

2. The name of the performing rights society.

3. The length of the contract.

4. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates during the term of the contract.

(5) PROHIBITED PRACTICES. No employee or agent of a performing rights society may do any of the following:

(a) Enter the commercial premises of a proprietor to discuss a contract under this section with the proprietor or his or her employees, without identifying himself or herself and making known the purpose of the visit before commencing any further communication with the proprietor or the proprietor’s employees.

(b) Engage in any coercive conduct, act or practice that disrupts the commercial premises of a proprietor in a substantial manner.

(c) Use or attempt to use any deceptive act or practice in negotiating a contract with a proprietor or in collecting royalties from a proprietor.

(d) Fail to comply with the requirements imposed under subs. (2), (3) and (4).

(6) CIVIL REMEDY. Any person damaged as a result of a violation of this section may bring a civil action to recover damages, court costs and, notwithstanding s. 814.04 (1), reasonable attorney fees. The person may also request in the action any other legal or equitable relief.

(7) OTHER RIGHTS AND REMEDIES. This section does not limit any other right or remedy provided by law.

History: 1995 a. 284; 1997 a. 35; 1997 a. 111 ss. 9, 11 to 16; Stats. 1997 s. 100.206.

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