

INSPIRATION FOR TRANSFORMING THE BUSINESS OF FOOD

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THE MAGAZINE OF THE ARIZONA RESTAURANT ASSOCIATION

TUNE INTO THE LEGALITIES OF USING *music in your restaurant*

Restaurants use music to create a vibe—a vibe that comes at a cost. Music licenses run hundreds or even thousands of dollars per year. But failure to obtain a license can leave a restaurant owner susceptible to a much greater expense in the form of high dollar lawsuits.

Under federal copyright law, a copyright owner must be compensated when his or her music is used in a business context, including as background music in restaurants. The law applies to any music, whether it comes from radio, television, an iPod, CDs, or streaming audio. Many restaurants are not familiar with these requirements. As a result, copyright infringement lawsuits against restaurants are increasingly common, with hundreds of lawsuits filed each year. Penalties for playing music without the appropriate license are severe, ranging from \$750 to \$150,000 per song.

Licenses Offered by Performing Rights Organizations

Performing rights organizations (also called “PROs”) are responsible for collecting royalties on behalf of copyright owners. They offer businesses a license to use the music in their repertoires in exchange for an annual license fee. The annual fee is based on a number of factors, including size, seating capacity and type of venue.

The three largest PROs are **BMI**, **ASCAP** and **SESAC**.

But importantly, each of these controls a distinct collection of songs. Therefore, a license from a PRO covers only music

in that PRO's repertory. To obtain clearance to use the majority of commercially released music, a business would have to obtain a license from all three. For this and many other reasons, the music licensing landscape can be difficult to navigate.

A Limited Radio and Television Exception for Small Establishments

There is a narrow exception that allows certain small businesses to play the radio or television without a license. This exception applies to restaurants that meet the following requirements:

- Less than 3,750 square feet (including restaurant and any exterior service space); or
- If more than 3,750 square feet:
 - No more than six speakers in the establishment, and no more than four speakers in any one room;
 - No more than four televisions in the establishment, and no more than one television in any one room; and
 - No television has a diagonal screen size greater than 55 inches.



The exception does not apply when customers are charged a fee to watch the television or hear the radio, and it does not apply to music played from an iPod, CDs, or streaming audio. In these circumstances, a license is required.

Alternatives to Licenses from Performing Rights Organizations

Commercial music services, such as **DMX**, **MOOD**, **Music Choice** and **PlayNetwork** offer an alternative to licenses from one or more PROs. They provide background music solutions with the necessary licenses already in place.

Over the past several months, PROs have focused their attention on the restaurant industry. Restaurants all over the country have received letters accusing them of copyright infringement and demanding license fees. If music is on your menu, be sure you have the appropriate license or that the music service you use has obtained that license on your behalf. An experienced intellectual property attorney can help you navigate the requirements imposed by copyright law and identify optimal solutions.

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