Published on *International Bluegrass Music Association* (http://ibma.org)



# Presenting Live Music: A Bluegrass Organization?s Guide to U.S. Public Performance Licenses

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*A top priority for many bluegrass organizations is presenting live bluegrass music in venues ranging from the local pizza restaurant, community centers, schools and churches, to festival sites capable of accommodating thousands. Since much of the music played by bluegrass musicians is protected by copyright, understanding the basics of public performance licenses is critical to the success of these events. This guide (also available from IBMA in brochure format and online atwww.ibma.org[1]), has been prepared by a group of IBMA association members to aid other local bluegrass associations and organizations in understanding and dealing with public performance licenses.*

**What are Public Performance Licenses?**

Simply put, a performance license gives you the right to publicly perform music (or to present a public performance of music.)

When a musical work is protected by copyright, one of the protected rights is the exclusive right to publicly perform the work and to authorize others to perform it. It isn?t practical for a concert presenter to research the ownership of each song and then negotiate a separate performance license for each one. Bands also enjoy the flexibility of being able to deviate from a pre-determined set list. Nor is it economically feasible for individual authors (songwriters) or publishers to police the use of their works in venues throughout the country. So performance rights are administered in the U.S. by three performing rights organizations (PROs): ASCAP, BMI and, with a much smaller market share, SESAC.

Performance rights are generally handled on a blanket license basis, with one license covering all the music in the PRO's repertoire. As a presenter of music you probably need a license from all three PROs, depending on the music to be presented. (PRO websites have databases that allow you to research what songs are in their repertoire, though the databases may not contain their complete repertoire.)

Songwriters and publishers enter into an agreement with one of the PROs, allowing the PRO to issue performance license agreements and collect license fees on their behalf. The money collected by the PROs is distributed to songwriters and publishers according to the particular organization?s formula that may include surveying, sampling and tabulating radio and TV airplay, concert tours, live performance venues, etc.

**When is a license needed?**

Performance licenses are needed, with narrow exceptions, whenever music is publicly performed?whether the venue is the local pizza parlor or your city?s largest concert hall. Generally, it is the venue?s obligation to secure the licenses. So, when your organization

puts on a festival or concert in its own place, it is your obligation.  If you use someone else?s venue, like a restaurant, it is that venue?s responsibility; but as a practical matter, getting and keeping the venue may require you to assist with licensing.

**When is a license not needed?**

There are some exceptions to a public performance licensing requirements; the following are the most significant.  (This list is meant to suggest areas for further research or consultation with a lawyer, since each exception can be legally complex.)

- Public Domain ? Music is in the public domain (and no license is needed to perform it) if no copyright is claimed or if copyright protection has expired.  Generally, a work published pre-1923 is in the public domain (though post-1923 arrangements of public domain works may qualify for copyright protection).  Later works are likely to be under copyright protection, and it?s often difficult to accurately ascertain the copyright status of such works.  For bluegrass associations, the operating assumption is that a license is needed: the core bluegrass repertoire?Bill Monroe, Flatt & Scruggs, etc., is post-1923.
- Certain performances without commercial advantage to anyone ? This means no payment of any fee or other compensation to performers, promoters or organizers, and no direct or indirect admission charge (except admission can be charged if all proceeds are used for educational, religious or charitable purposes?but even so, this exception doesn?t apply if there is any payment to performers, promotes or organizers).  Even if performers aren?t paid, a restaurant, pizza parlor or other commercial venue gets a commercial advantage from live music, so this exemption doesn?t apply in those situations.
- Agricultural fairs ? Music performed by a governmental body or non-profit agricultural or horticultural organization in the course of an annual ag/hort fair is exempt from the license requirements.
- Certain school activities ? Classroom performance by instructors or pupils in face-to-face teaching activities in a non-profit institution, and certain tightly-controlled ?distance learning? transmission.
- Religious services at a place of worship or other religious assembly.

Practical Advice: Some Suggestions for Bluegrass Organizations When you select a new venue for music, consider licensing implications.  Does the cost fit your budget, or would a different type of venue be more cost-effective?  The PROs have local reps who can provide you with information about licensing fees for different types of venues and events.  If the venue is a restaurant or bar, the PRO will require it to get the license?you won?t be allowed to obtain the license in your organization?s name.  Is the venue willing to do so?  If not, you?ll want to know that before you invest resources building a relationship with that venue, since it could come to an abrupt (and organizationally disruptive) end when the PRO rep comes calling.  Also keep in mind that licenses for food service venues are typically more expensive, and a license covering a series of events may be more cost-effective than for a single event.  And, you or the venue may need a license from more than one PRO.

- Ask potential venues if they already have public performance licenses?they might.  In the case of chain restaurants, their headquarters may have taken care of licenses, or may have relevant information useful to the local manager.  Although you won?t be able to get a license for your bluegrass organization that covers events in restaurants or bars,

you can offer to help the owners get necessary licenses, and you can offer to assist with an equitable share of the license fee (see below). Often, this ?helping hand? means the difference between keeping or losing a good venue.

- Be prepared for a negative reaction to license issues from some restaurant owners. Have specific figures on hand to show the owner how increased sales from your events will make licensing worthwhile. In a typical situation, licenses for a small restaurant might run about $600-800/year, an amount more than offset by food sales from your events. Offering to share the cost of the license may be a good approach. For example, if you present a monthly jam in a pizza parlor, offer to reimburse ¼ the cost of a minimum license that allows live music four times per month (or reduce your organization?s share of food sales proceeds to cover an equitable share of license costs). Periodically sample how much money your event generates in food sales, for use in your negotiations with current and potential venues.
- The PROs have staff who visit venues to verify that licenses are in place and current. When they find live music in a restaurant or other venue without a license, usually their first step is to contact the owner informing the owner/operator of the license requirement giving them a chance to voluntarily comply. A common experience for some bluegrass organizations is a call from the venue (e.g., the pizza parlor owner), reporting a PRO visit and calling to cancel the bluegrass event because of the licensing issue. In these cases, assistance form your organization (in helping secure the license and perhaps sharing the cost) may help you keep a good venue.
- ASCAP, BMI and SESAC use different methodologies for computing fees, sometimes based on attendance and sometimes based on entertainment costs, so don?t assume they are the same. Check their websites for rate information, or feel free to call their local reps and ask for information.

Myths: Common misconceptions about licensing issues

- Myth: We don?t get paid when we play in the pizza parlor, so a license isn?t required. WRONG. Pay is irrelevant; a public performance occurs when music is performed at a place open to the public. The recently enacted ?Fairness in Music Licensing Act? that exempts certain business uses of music does not apply to live performances.
- Myth: We are a non-profit organization so we don?t need a license. WRONG. The performance right provided by the 1976 Copyright Act applies whether the performance or organization is for-profit or non-profit, with limited exceptions outlined inside.
- Myth: We present traditional bluegrass so it is ?public domain? and licenses aren?t needed. WRONG. While a concert limited to traditional fiddle tunes and Stephen Foster songs from the 1800s might include only public domain works, most bluegrass music is still under copyright protection.
- Myth: We just make ?fair use? of music so we don?t need a license. WRONG. The test for ?fair use? legally is complex, but the more of a work you use, the less likely it falls within ?fair use??use of the entire work (song) rarely qualifies. An entire program of music isn?t even a close call.
- Myth: We got the permission of the performers for the music they presented, so we don?t need a license. PROBABLY WRONG. Unless the performers are performing exclusively original material to which they have retained all rights, their permission is insufficient. They can not waive the public performance rights of the songwriters and publishers or other rights owners.

To Learn More Visit the websites for ASCAP (www.ascap.com [2]), BMI (www.bmi.com [3]) and SESAC (www.sesac.com [4]). Contact IBMA, which can provide help to IBMA member organizations. There are many good books on copyright and licensing issues, available at your library or bookstore. One that focuses specifically on music is David J. Moser?s Music Copyright for the New Millennium (ProMusic Press 2002).

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