



Performing Rights Organizations and the Casino Industry

by Bob Galombeck

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ASCAP, BMI, SESAC – What are these organizations and why do they get paid licensing fees? These are common questions to a somewhat vague and confusing subject. The public performance of any copyrighted music is subject to licensing. This is the law under the U.S. copyright act which has been around for decades. The proprietor of any establishment and any public event that incorporates music, whether it is live or recorded, must obtain authorization to do so. This includes all types of venues including radio, television, corporate events, public festivals, concert venues, hotels, airplanes, circuses, bars, restaurants, and casinos. In the early years it was mostly just radio and television that were covered, but then the law was updated in 1976. This added many more types of entities subject to this licensing and reduced the square footage requirement for already existing venues so more were included. The Performing Rights Organization's (PRO) job is to license and collect fees from all these venue types and then pay royalties out to writer and publisher members from those fees.

How do music licensing fees work?

Writers of original music are generally signed with a publisher and grant the rights of their music to them. These publishers then shop and license the music to record companies who in turn have their artists record and then release and distribute the music to retail outlets, etc. The music then begins to spread through concert tours in showrooms and amphitheatres, cover bands in lounges, re-recordings for piped music in restaurants and hotels, karaoke in the cabaret, satellite in the gaming or lounge area, and so on. A fee covers all these performances to pay the writers and publishers, but how that is all figured is not directly related. The information is actually gathered through surveys, random samplings, radio stations being taped and playlists logged, and other general means. It is not specific with each venue.

Why pay a licensing fee to all of the PROs? Why not just pay one of them?

It is hard to know which song is licensed to which PRO for all the music performed at a venue, so the general rule is to have a license with all of them, and it is usually a blanket license with each that covers their entire catalogue whether a property plays 1%, 50%, or 100% of the catalogue. It's a 'just in case' rule of thumb. If there is any music at a casino, it is probably playing music from writers from all three PROs. Concert acts

repertoires may be a combination of their own writers on stage with one or two PROs, a collaboration on a song with an outside writer from another PRO, etc. In other words, the material they use is not necessarily with one PRO.

How does a casino know they are paying the right fee for their venue? How is it figured out?

There are many different types of formulas used and the process is not well understood. Some of the considerations are whether the music is live or recorded, how often it is played each week, the capacity of the showroom, whether there is a hotel or restaurant with music playing, etc. Some venues pay exorbitant licensing fees because they have regular concerts, lounge acts, piped music in the hotel and restaurant, streaming satellite, and more. The more the property offers, the more expensive it gets.

If a property is using local bar bands that only play original music, is there still a payment due?

Lounge bands often 'cover' a song by a major artist and is technically subject to licensing. This type of use is an example of when the 'just in case' rule of thumb comes into play. Some clubs may be under the radar and not licensed, but if a rep from one of the PROs sees the website with bands listed (which they surf for regularly) and comes in and hears a cover, the property would be hit up to get licensed.

Is there a way around these payments?

One way around these fees is to have absolutely no music at a venue whatsoever, which is not very appealing to customers. Or a property could play pre-recorded royalty free music – music owned outright which payment was made for the exclusive rights. Neither of these options are very feasible. However, it isn't impossible to negotiate with the PROs if they do come knocking, since it is a vague system.

Overall, music rights are complex. Until the system is revised, easier to understand and fair, it is what a property has to deal with. To get more information, visit the three main PROs, ASCAP, BMI and SESAC at the following websites: ascap.com, bmi.com, sesac.com. ♣

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