

**Who knocks at the door? ....**  
**Collective management arrived at**  
**the event ... In search of balance**

Susan L. Crane

# 17 U.S. Code § 106 - Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

## 17 U.S. Code §110 **Limitations on exclusive rights:** **Exemption of certain performances and displays**

Notwithstanding the provisions of [section 106](#), the following are not infringements of copyright:

...

- (5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—
- (i) a direct charge is made to see or hear the transmission; or
  - (ii) the transmission thus received is further transmitted to the public;

...

- (B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—
- (i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2,000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—
    - (I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or
    - (II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

...

- (ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—
  - (I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or
  - (II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

## 17 U.S. Code §110 **Limitations on exclusive rights: Exemption of certain performances and displays**

Notwithstanding the provisions of [section 106](#), the following are not infringements of copyright:

...

- (iii) no direct charge is made to see or hear the transmission or retransmission;
  
- (iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and
  
- (v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

# US Collective Licensing Societies

## Music Performance Rights:

- ASCAP (American Society of Composers, Authors, & Publishers)
- BMI (Broadcast Music Inc.)
- SESAC (Society of European Stage Authors and Composers)

## Music Synchronization and Mechanical Rights:

- The Harry Fox Agency

## Motion Picture Performance Rights:

- MPLC (Motion Picture Licensing Corporation)

## ASCAP and BMI Consent Decrees

- Issued by US Department of Justice in 1941
  - Updated for ASCAP in 2001
  - Updated for BMI in 1994
- Require ASCAP and BMI to offer blanket licenses that cover all performance rights. Publishers cannot withdraw particular rights, such as digital
- Provides for fair, direct payment to songwriters and composers
- Require that licenses be offered on equivalent terms



## ASCAP and BMI Consent Decrees

- Dissatisfaction with Consent Decrees
  - Restrict PRO's to licensing of Performance Rights
  - Restrict ability to increase rates
  - Large publishers threatening to remove portfolios
- 2016 Department of Justice decision to maintain Consent Decrees

# Music Licensing in the Hotel Industry

- Corporate Use Umbrella License
  - Fee based solely on number of employees
- Property Performance License
  - Fee based on whether live music, recorded music, or both
  - Cost of live entertainment
  - Type of Use of recorded music

MECHANICAL MUSIC ONLY

ASCAP

**A. No Dancing; No Cover, Minimum or Admission Charge; and No Show or Acts\***

<u>No. of Rooms</u>	<u>2015 Without AV</u>	<u>2015 With AV</u>	<u>2016 Without AV</u>	<u>2016 With AV</u>
1 - 100	\$371	\$557	\$372	\$558
101 - 300	\$440	\$660	\$441	\$662
301 - 500	\$511	\$767	\$512	\$768
501 - 750	\$680	\$1,020	\$681	\$1,022
Over 750	\$905	\$1,358	\$907	\$1,361

**B. One of: 1) Dancing; 2) Cover, Minimum or Admission Charge; or 3) Show or Acts\***

<u>No. of Rooms</u>	<u>2015 Without AV</u>	<u>2015 With AV</u>	<u>2016 Without AV</u>	<u>2016 With AV</u>
1 - 100	\$493	\$740	\$494	\$741
101 - 300	\$679	\$1,019	\$680	\$1,020
301 - 500	\$1,027	\$1,541	\$1,029	\$1,544
501 - 750	\$1,358	\$2,037	\$1,360	\$2,040
Over 750	\$1,806	\$2,709	\$1,809	\$2,714

**C. Two of: 1) Dancing; 2) Cover, Minimum or Admission Charge; or 3) Show or Acts\***

<u>No. of Rooms</u>	<u>2015 Without AV</u>	<u>2015 With AV</u>	<u>2016 Without AV</u>	<u>2016 With AV</u>
1 - 100	\$679	\$1,019	\$680	\$1,020
101 - 300	\$1,027	\$1,541	\$1,029	\$1,544
301 - 500	\$1,522	\$2,283	\$1,525	\$2,288
501 - 750	\$2,034	\$3,051	\$2,037	\$3,056
Over 750	\$2,705	\$4,058	\$2,710	\$4,065

**D. With Dancing, Cover, Minimum or Admission Charge, & Show or Acts\***

<u>No. of Rooms</u>	<u>2015 Without AV</u>	<u>2015 With AV</u>	<u>2016 Without AV</u>	<u>2016 With AV</u>
1 - 100	\$1,129	\$1,694	\$1,131	\$1,697
101 - 300	\$1,745	\$2,618	\$1,748	\$2,622
301 - 500	\$2,339	\$3,509	\$2,343	\$3,515
501 - 750	\$2,916	\$4,374	\$2,921	\$4,382
Over 750	\$3,878	\$5,817	\$3,885	\$5,828

**SCHEDULE B  
RECORDED MUSIC ONLY FEE (NO LIVE MUSIC PERFORMED)\***

**BMI**

<b>1. (a) No Dancing; (b) No Cover, Minimum or Admission Charge; and (c) No Shows or Acts **</b>		
<b>No. of Rooms</b>	<b>2017 (Without AV)</b>	<b>2017 (With AV)</b>
1 – 100	\$377	\$565
101 – 300	\$447	\$670
301 – 500	\$518	\$781
501 – 750	\$691	\$1,039
Over 750	\$921	\$1,380
<b>2. One of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**</b>		
<b>No. of Rooms</b>	<b>2017 (Without AV)</b>	<b>2017 (With AV)</b>
1 – 100	\$501	\$753
101 – 300	\$690	\$1,037
301 – 500	\$1,044	\$1,565
501 – 750	\$1,380	\$2,071
Over 750	\$1,835	\$2,754
<b>3. Two of: (a) Dancing; (b) Cover, Minimum or Admission Charge; or (c) Shows or Acts**</b>		
<b>No. of Rooms</b>	<b>2017 (Without AV)</b>	<b>2017 (With AV)</b>
1 – 100	\$690	\$1,037
101 – 300	\$1,044	\$1,565
301 – 500	\$1,548	\$2,321
501 – 750	\$2,067	\$3,199
Over 750	\$2,750	\$4,128
<b>4. All of: (a) Dancing; (b) Cover, Minimum or Admission Charge; and (c) Shows or Acts**</b>		
<b>No. of Rooms</b>	<b>2017 (Without AV)</b>	<b>2017 (With AV)</b>
1 – 100	\$1,148	\$1,721
101 – 300	\$1,773	\$2,662
301 – 500	\$2,377	\$3,571
501 – 750	\$2,965	\$4,449
Over 750	\$3,945	\$5,916

\* CPI adjustment per subparagraph 14(b)

\*\* See definitions – Paragraph 13

# SESAC

## LICENSE FEE

Number of rooms on the Premises:

Average Daily Rate for the Premises:

Applicable Music Multiplier:

(Select from drop-down: Recorded Only - .0322, Live Only - .0402, Recorded and Live - .0550)

Base License Fee (Line A x Line B x Line C):

General Authorization Fee (if Line D is less than \$234 enter \$234; if Line D is greater than \$7,478, enter \$7,478; otherwise enter value from Line D):

## Industry Concerns

- Too Complicated
- Fairness
- Double Licensing
- Outdated measures

# Industry Changes

- New Types of Lodging
  - Airbnb
  - Vacation Rental
- New Technology for Content Distribution