



MUSIC LICENSING AGREEMENTS

COMMUNITY COLLEGE LEAGUE OF CALIFORNIA

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Question: “Should our college pay the licensing fees to BMI, ASCAP and SESAC?”

Summary

California community colleges receive letters from the major U.S. music licensing organizations—BMI, ASCAP and SESAC—asking that colleges sign up for coverage under their licensing agreements for higher education.

The licensing agreements, in effect, allow the colleges to pay blanket royalty fees for copyrighted music that is publicly performed at their institutions. The agreements cover the performance of copyrighted music, either live or recorded, on college campuses, including:

- Concerts by live bands, including college marching bands and choral groups
- Recorded music at dances or parties, coffee houses, pubs and student unions
- Recorded music piped into bookstores and cafeterias
- Telephone “on hold” music
- Music at athletic events
- Student radio stations, and
- Music played at off-campus locations engaged by the college for its use.

Should your campus pay the licensing fees for coverage by BMI, ASCAP and SESAC?

Under the Copyright Revision Act of 1976, owners of copyrighted music have extensive control over the use of their music. Copyright holders choose one of these organizations - BMI, ASCAP or SESAC - to represent them to ensure that composers, artists and publishers are properly compensated for public use of their work. The American Council on Education (ACE) and the National Association of College and University Business Officers (NACUBO) have negotiated model five-year licensing agreements with BMI, ASCAP and SESAC for the performance of copyrighted music by colleges and universities.

Colleges that provide the above listed musical services and events should probably be covered, especially if these musical services and events are on-going.

Colleges that do very little in terms of musical services and events may not need to be covered or may seek a minimal user’s license at a reduced cost.

It is important to note that licensing is not required for music that is played or performed inside a classroom as part of the learning process.

Community Colleges and American Copyright Law

Under the Copyright Revision Act of 1976, owners of copyrighted music have extensive control over the use of their music. Most music that is recorded and/or published and performed is copyrighted.

Copyright holders, in turn, choose one of the major licensing organizations—the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc.—to represent them to ensure that they, the composers, artists and publishers, are properly compensated for public use of their work. The organizations, in turn, issue licenses to users of music, collect royalty fees, and distribute the fees to copyright holders. The three licensing organizations license hundreds of thousands of music users throughout the U.S., including hotels, restaurants, nightclubs, television and cable networks, concert promoters and many others.

For community colleges, this means that ASCAP, BMI and SESAC represent the artists that hold copyrights to music that is played in a variety of campus settings, including:

- Concerts by live bands, including college marching bands and choral groups
- Recorded music at dances or parties, coffee houses, pubs and student unions
- Recorded music piped into bookstores and cafeterias
- Telephone “on hold” music
- Music at athletic events
- Student radio stations, and
- Music played at off-campus locations engaged by the college for its use.

By law, if a community college uses copyrighted music in these settings, they must be covered by the licensing agreements. However, there are certain circumstances in which a college is not required to pay for using copyrighted music. The most common example would be music that is played or performed inside a classroom, “or similar place,” as part of the learning process.

Any public performance of music that does not meet the above exceptions requires the prior approval of the copyright holder. This approval is most easily received by paying the licensing fees through ASCAP, BMI and SESAC.

National Model Licensing Agreements for Higher Education

For more than 20 years, the American Council on Education (ACE) and the National Association of College and University Business Officers (NACUBO) have worked to develop national model licensing agreements for the public performance of copyrighted music by American colleges and universities.

These model licensing agreements have been written in cooperation with the three major music licensing organizations - the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC, Inc.

Each of these organizations control the rights to a discrete repertory of music, so the licenses are not duplicative. ASCAP and BMI each control approximately 45% of the copyrighted music in the U.S. and SESAC approximately 10%. This includes all forms of music, rock, country, show tunes, symphony, gospel, Christian, etc.

As a practical matter, to ensure complete copyright compliance, a music user should have licenses with each of the three performing rights organizations.

The negotiated music licensing agreements cover only one type of use of music: nondramatic performances.

The model licenses, which are good through June 30, 2002, allow community colleges to pay an annual fee to cover public performances of music on their campuses, as well as certain types of off-campus functions and functions organized by affiliated groups. Fees are based on the institution's full-time equivalent (FTE) enrollment and will be indexed annually according to increases in the Consumer Price Index (CPI). Fees range from less than 5-cents an FTE to 20-cents an FTE . ASCAP also offers a minimal user's license for institutions that use very little music for public performances.

Campus radio stations must pay separate noncommercial licensure fees if they exceed a specified revenue ceiling.

The licensing agreements from ASCAP, BMI and SESAC do not cover "grand rights," the right to perform music as part of dramatic performances. Grand rights are typically negotiated with the copyright owner. The largest agency handling grand rights is Samuel French, Inc.

The licenses with ASCAP, BMI and SESAC are not intended to cover campus events or functions sponsored by organizations not affiliated with the college simply because they may be held on campus. For instance, a community symphony orchestra that rents, or is allowed to use, a college facility for a performance would not be covered under the college's license but would be required to secure their own license. The same would apply to music promoters that bring concert performers on campus as part of a commercial venture. They would be required to seek their own license agreement.

On the other hand, if the college invites or hires an orchestra to perform in a campus facility as part of a program sponsored by the college, the performance probably would be covered. Similarly, the licenses do not cover performances by college groups performing at off-campus locations not engaged by the college. For example, a college band invited to perform off-campus would not be covered by the college's license . (The organizers of the event would need to supply coverage).

The three sets of negotiated licenses have slightly varying provisions, so the contract license should be reviewed if questions arise concerning coverage.

Should My College Sign Up for Coverage?

Some smaller community colleges probably use so little music outside the classroom that licensing agreements are not required. Colleges that do very little in terms of musical services and events may decide not to be covered or seek a minimal user's license at a reduced cost. In the case of a college that uses music in a single public setting (such as telephone "on hold" music), it might be advisable to terminate the use of that music rather than go to the expense of paying the fee.

Colleges that provide the musical services and events listed on pages one and two of this report should probably be covered, especially if these musical services and events are on-going. Most medium to large higher education institutions in the U.S. are licensed through one or more of these organizations.

It is important to remember that licensing is not required for music that is played or performed inside a classroom as part of the learning process.

If your college is not covered by a licensing agreement and is infringing on copyright law, there are provisions in the law for substantial monetary fines. However, according to those familiar with past practice, the more common response from the licensing firms is to require the errant college to pay the licensing fee.

This report was prepared by Ray Giles of the Community College League of California.

For further information, call (916) 444-8641.

To contact the three licensing organizations, call the following numbers:

ASCAP: (800) 652-7227 or (212) 621-6407

BMI: (800) 925-8451

SESAC: (800) 826-9996 or (615) 963-3489

