

WHO ARE THESE GUYS AND WHY DO WE HAVE TO PAY THEM?

Almost all communities are playing music for resident listening, and/or TVs for resident viewing. However, most communities aren't aware that if music, or TVs are being played for residents, a license may be required, and if a license is required and the community doesn't have one it is in violation of copyright law. Many communities are discovering that copyright licenses are required, because more communities are being notified by performance right organizations (PROs) that the community's current music and TV practices are in violation of copyright law. Specifically, performance rights organizations are notifying apartment communities that they are infringing on copyrights, and demanding that the communities start paying licensing fees.

Does your community need a license to play music or TVs? The short answer is probably yes. However, evaluation of licensing requirements can be complicated. Copyright licensing issues are further complicated by the fact that licensing rules are different for music and TV. Licensing requirements depend on the facts and circumstance of each case, what is being played, where it is being played, and how it is being played.

A multifamily community can be involved with copyrighted material requiring a license in variety of ways. Music from a host of sources may be being played at the community. Locations where music is played may include the leasing office, models, lounges, pools, fitness centers, business centers, game rooms, theatre rooms, and clubhouses. The community may be playing TVs in the fitness center and elsewhere. The community may be using social media and posting music videos or music to the Internet.

If you are playing music anywhere in public at your community, or have any TVs in public at your community, you may be required to pay copyright licensing fees to avoid infringing the artists' copyright. Copyright infringement is the unauthorized use of another's creative work. If you play music without a license, when one is required, it is copyright infringement. Lack of knowledge of license requirements or intent is irrelevant. You can't defend copyright infringement based on ignorance or lack of intent. You should not ignore this issue and hope that it goes away because the penalties for copyright infringement are severe. Statutory damages range from \$700 up to \$30,000 per song performed without a license. Willful infringement, could subject you to damages of up to \$150,000 for each song performed without a license.

If music or television broadcasts are copyright protected, licenses are almost always required if publicly performed. Public performance is not limited to a live performance by the artist. If a song is played in public, then it is publicly performed. Under copyright law, publicly performed is much narrower than you would think. A public performance occurs where people gather. It doesn't have to be a large gathering. If a gathering is more than a small circle of family or social acquaintances, then it is a public gathering. Similarly, any space that is open to more than a small circle of family or social acquaintances is a public space. For example, even though your fitness center is not open to the general public, your fitness room is a public space under copyright law, and any music played there would be considered to be publicly performed. Public

performances also include any transmissions to the public, for example, radio or TV broadcasts, as well as content delivered over the Internet. Copyright owners have the exclusive right to publicly perform copyrighted music, and the legal right to compensation when anyone else publicly performs copyrighted material.

PROs grant and administer licenses on behalf of copyright owners. Artists and copyright holders join PROs so that the PRO can enforce their copyrights. The three major PROs, that enforce copyrights in the United States, are ASCAP, BMI, and SESAC. ASCAP is the American Society of Composers, Author & Publishers; BMI is Broadcast Music, Inc.; and SESAC is the Society of European State Authors & Composers.

Under the law, PROs must offer licenses to anyone, and the PROs must charge all license seekers the same rates for the same or similar uses. Information, regarding PRO licensing rates, is available from individual PROs. One way PROs are executing their mission to enforce copyrights is by contacting businesses and demanding that they pay required licensing fees. PROs have been targeting the multifamily industry. Depending on what you're playing, you may need multiple licenses, e.g. a music license with all three PROs. A music license with one PRO allows you to perform only copyrighted music represented by that PRO. Each songwriter or composer may belong to only one performing right organization at any given time, so each PRO licenses a unique repertoire of music. Thus, a BMI license doesn't cover songs in SESAC's catalog.

Wait a minute we only play music from satellite, TV, cable, or radio stations at our community. Aren't they already paying the PROs licensing fees, so we don't need another license? Various content providers may already be licensed with PROs. However, broadcast licenses don't authorize the performance of such TV, cable, and radio to the public by businesses and other organizations. Generally, businesses must secure public performance rights for TVs or radios under certain circumstances. With respect to TVs, licenses must be secured if the business is playing more than four TVs; has more than one TV in any one room; if any of the TVs has a diagonal screen size greater than 55 inches; if any audio portion of the audiovisual performance is communicated by means of more than six loudspeakers, or four loudspeakers in any one room, or there are any speakers in an adjoining outdoor space. With respect to radio, licenses must be secured if the business is playing more than six loudspeakers; more than four loudspeakers in any one room or adjoining outdoor space; or playing music on hold.

To evaluate licensing requirements, you must answer where, what, and how music or other copyrighted material is being played at your community. If music is not being publicly performed (played in public) at your community, then you don't need a license. Keep in mind that the concept of public performance is broad. If the content of your music is not subject to copyright protection, then you don't need a license. While there is a fairly extensive catalog of music that is not copyright protected, the reality is that any music your residents would want to hear is likely to be subject to copyright protection. In other words, your residents probably don't want to hear 1928 elevator music. However, your music list or TV content may be limited to a particular PRO's catalog. Thus, if you're only playing BMI music, you don't need to pay SESAC licensing fees as well. As discussed previously, the size of TVs, the number of TVs, and the

number of speakers (both for TV and radio) can also factor into the analysis of licensing fees and rights.

Licensing options and pricing varies widely depending on content and delivery. Music and TV licenses from the major PROs will run \$200 per year and up, per community per PRO. Some alternatives to the PROs exist. Under the alternatives, the licensing passes through so that you can play them without requiring an additional license from a PRO. Such services include SiriusXM Business or Pandora Business, which run from \$25 to \$30 per month. Other alternatives include MoodMedia (previously Muzak) at about \$200 per year (MoodMedia touts itself as the world leader in background music). Royalty free music collections are offered by stockmusic.com and streamlicensing.com (\$130 to \$200 per year). While these services offer an alternative to the PROs, they may be subject to limitations on content and delivery, and do not cover TV. If you're going to go with an alternative to a PRO, you should carefully read the fine print for limitations.