
UPDATE
February 26, 2019

Music Licensing and Copyright Infringement – What You Need to Know

Many cable operators have recently received letters from the American Society of Composers, Authors and Publishers (“ASCAP”). These letters announce a new licensing agreement between ASCAP and the National Cable Television Association (“NCTA”), and include a copy of the new NCTA/ASCAP agreement for the operator to review and potentially sign.

Below, we provide some background on music licensing, what it means to you as a cable operator and what you may consider doing to protect your company from potential copyright infringement claims.

Background. Under United States copyright law, copyright owners (here, songwriters or other music publishers) have the exclusive right to authorize public performances. This means that, in general, no one can publicly perform musical works without the permission of the copyright owner.

It can be difficult, however, for songwriters to monitor all public performances of their songs. Therefore, songwriters will join a performance rights organization (“PRO”) that protects their interests and handles the collection of royalties for them. There are two main PROs – ASCAP and Broadcast Music, Inc. (“BMI”). Both ASCAP and BMI receive payment for public performance of songs and compositions by negotiating license fees with music users (for example, radio, cable, bars, clubs, restaurants, hospitals and even airlines who play music) and distribute the royalties received to members whose musical works were performed.

This can affect a cable operator in a number of ways, mainly if copyrighted music is played on a cable operator’s system for which a copyright fee has not been previously paid. For example, if a cable system carried some local advertising or leased access programming where the copyright royalties had not been paid or covered, the operator could be liable for them. This often can include the following:

- Local origination programming
- Public, education or government programming
- Local advertising and cross-promotional advertising
- Regional news programming
- Leased access programming
- Public service announcements

Note: A PRO music license does not cover broadcast or satellite programming. Cable systems pay royalties for the retransmission of broadcast programming every six months through the copyright office. Satellite programmers also typically indemnify cable operators against copyright infringement claims that result from carriage of their programming.

As a Cable Operator, What are My Options? If a cable operator enters into a license agreement with a PRO and pays the fees, the operator is safe from potential copyright

infringement for (i) the period that the license covers and (ii) the music the PRO represents. If an operator does not enter into a license with a PRO, the operator remains potentially liable for copyright infringement, but the PRO would have to file suit against the operator and *prove* that the operator violated copyright laws.

This matter should not be taken lightly. The Copyright Act provides stiff penalties for certain acts of copyright infringement. Copyright infringement can result in heavy penalties of \$750 to \$150,000 per infringement, plus attorneys' fees and injunctive relief.

Further Considerations for Operators. Before signing up for a copyright license, cable operators should consider a few important points:

- Only those cable systems that carried music licensed by a PRO have any exposure for liability.
- To prevail in court, a PRO would have to prove specific acts of infringement with evidence of specific songs playing on specific times on a system.
- There is a three-year statute of limitations on civil copyright claims.
- Liability for infringement going forward will likely be easier to establish than past infringement.

What Should Operators Do Now? With this background in mind, here are some next steps that cable operators can take:

1. Try to determine as best as you can whether you carried music on the types of channels that could lead to copyright infringement exposure. Both ASCAP and BMI websites contain information on the types of local programming and music covered under their license agreements.
 - If you don't carry any of the covered music and can show that, then you cannot be liable for the copyright fees.
 - If you desire to carry any of the covered music, you may want to explore obtaining a license.
 - If you do carry covered music, you may want to discuss other ways to ensure that the burden of obtaining copyright clearance is shifted to other parties.
2. Going forward, you should review the local programming you provide on your systems to fully understand the types of music you may carry.

If you have any further questions about music licensing or copyright in general, please contact Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

Please visit our website at www.cinnamonmueller.com to learn more about our lawyers and practice. You can reach Cinnamon Mueller at (314) 462-9000. *This update is provided by the law firm of Cinnamon Mueller. The document is intended for informational purposes only as a service to clients of Cinnamon Mueller. It is not intended to provide specific legal advice or to substitute obtaining appropriate legal counsel. We encourage you to consult with counsel to address special compliance issues and for assistance in negotiating or handling any such matter referred to in the update.*