

# Music Performing Rights

Philadelphia Volunteer Lawyers for the Arts  
A program of the Arts & Business Council of Greater Philadelphia



200 S. Broad Street, Suite 700  
Philadelphia, PA 19102

Phone: 215.790.3836, ext. 1  
Fax: 215.790.3888

PVLALegal@artsandbusinessphila.org  
www.artsandbusinessphila.org/pvla

## Music Performing Rights Organizations

### *Why do I need a license?*

Performing Rights Organizations (PROs) monitor the usage of a composer's and publisher's catalog of compositions by issuing licenses for the public performance of these works. They exist because performing rights are necessary to obtain for public performances of copyrighted music for things like concerts and radio and television broadcasts. These licenses generally give permission to use the underlying composition in a song (Multiple licenses exist to use music. For more information, see PVLA's music licensing pamphlet). PROs also monitor unauthorized use, or copyright infringement, of their catalog. They collect and distribute royalties, or payment, for public performances of songs to their members. If you own a radio station, it would be highly difficult to approach every composer and publisher of every song you play to obtain permission to use the work. To facilitate this process, a radio station will approach ASCAP, BMI, and SESAC — the three major performing rights organizations. For a fee to each organization, your station obtains licenses to play the music in each PRO's repertoire. Usually, radio stations and other broadcasters who require large amounts of music obtain blanket licenses, granting the right to play any of the music in a given PRO's catalog. Radio stations often seek blanket licenses due to their "one size fits all" nature. They negate the need to apply for source, synch, and mechanical licenses. After obtaining your license, PROs monitor your use of their catalog and use this information to distribute royalties to the composers and publishers of the compositions you used.

PROs police the use of musical compositions through two primary means: census and sample. Through a census, a PRO obtains a complete list of every composition played on a particular medium (TV or radio) during a particular time period. A sample uses a mathematical formula to estimate how many times a particular song is played in, for example, every bar or restaurant in the U.S. based on how many times it was played in a sample selection of these businesses.

Choosing a PRO depends on personal preference. While membership in certain PROs does seem to correlate with a given artist's record label, the choice is ultimately a personal one. Each PRO offers its members a unique experience.

### **ASCAP**

The American Society of Composers, Authors, and Publishers ("ASCAP") was founded on February 13, 1914. Today, ASCAP has more than 175,000 members, including some of today's most successful songwriters, such as Aerosmith, Prince, Madonna, and Garth Brooks. ASCAP is 100% member-owned. ASCAP has the oldest and largest repertoire in the United States. It includes pop, rock, alternative, country, R&B, rap, hip hop, latin, film and television, folk, roots and blues, jazz, gospel, contemporary Christian, new age, theater and cabaret, dance, electronic, symphonic, and concert music.

### **ASCAP Services**

ASCAP offices are located in New York, Los Angeles, Nashville, Miami, and Chicago to provide prompt and efficient services to its members nationwide. ASCAP offers its members workshops, showcases, publications, an interactive website, and benefits packages that can include health and instrument insurance, a credit union, discounts on musical accessories and travel, and various other services.

Composers and publishers can obtain the necessary materials to apply for membership online (see the "ASCAP Membership Checklist" below). Once a composer or publisher obtains membership with ASCAP, his rights will pass onto his heirs, who will continue to receive royalties, in accordance with federal copyright law until the copyrights expire. For songs written after January 1, 1978, royalties will be received until 70 years after the death of the composer. Survivors of a deceased songwriter or publisher who was not a member of ASCAP may also apply for membership. Members may resign from ASCAP at the end of any calendar year by giving three months' advance notice.

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### ASCAP Membership Checklist

In order to apply for membership in ASCAP as a composer:

- You must be the composer or co-composer of a musical composition that has been:
  - Commercially recorded OR
  - Publicly performed in any venue licensable by ASCAP OR
  - Performed in any audiovisual or electronic medium (e.g., film, TV, the Internet) OR
  - Published and available for sale or rental
- You can apply for membership online at <http://www.ascap.com/about/howjoin.asp>
- If you choose to print and mail your application, you can download the necessary materials at [http://www.ascap.com/about/howjoin\\_print\\_choice.html](http://www.ascap.com/about/howjoin_print_choice.html) and mail them to:

### ASCAP Membership Department

Membership Enclosed

One Lincoln Plaza | New York, NY 10023

ASCAP uses surveying and sampling to ensure that the proper authorization and licenses accompany usage of its members' music. ASCAP surveys a television network using program logs and music cue sheets to provide the appropriate payment credits to members. Television networks and program producers log all the music used in a particular episode of a particular television program and then provide the information to ASCAP. ASCAP also tapes television performances to verify the accuracy of the supplied logs and cue sheets. After review, ASCAP then issues the appropriate licenses and royalties according to these surveys.

ASCAP also uses sampling to monitor performances on radio and television stations. This process eliminates the extremely expensive process of counting each individual local radio and television station throughout the United States. ASCAP supplements its sampling procedures by taping local networks (approximately one-third of its sample), with cue sheets from the networks, and from TV Guide listings.

Royalty payment and distribution is another important service provided to members. ASCAP uses a "follow the dollar" payment principle. In other words, the money collected from television stations is paid out to members for performances of their works on television; the money collected from radio stations is paid out for radio performances, and so on. There are two different types of payment plans: the current performance plan and the averaged performance plan. Under both plans, payments are calculated with an ASCAP formula that is based on a dollar value of the ASCAP credit. An ASCAP credit is determined based on the following factors:

$$\begin{array}{r} \text{Use Weight} \times \text{Licensee Weight} \times \text{"Follow the Dollar" Factor} \times \\ \text{Time of Day} \times \text{Weight} \times \text{General Licensing Allocation} \\ + \\ \text{Radio Feature Premium Credits (for radio performances only where applicable)} \\ + \\ \text{TV Premium Credits (for performances in highly rated series, where applicable)} \\ = \\ \text{Credits} \end{array}$$

- **Use Weight** — the factor or value attached to each type of performance such as theme, underscoring, or promotional.
- **Licensee Weight** — the license fee paid by a station and the number of hours included in the survey. This is also known as the "hook up" factor.
- **The "Follow the Dollar" Factor** — license fees received from a particular medium are paid to composers and publishers for that medium. Money received from radio is paid out for radio performances.
- **The Time of Day Weight** — the value of a performance can vary depending on the time. Performances during the day may be more valuable than performances taking place at 4am.
- **General Licensing Allocation** — fees collected from sampling licensees like bars, hotels, and restaurants.
- **Radio Feature Premium Credits** — a bonus given to songs that earn a certain number of radio credits.
- **TV Premium Credits** — a bonus given for theme, underscore and feature performances in high rated TV series earn additional credits.

Royalties are distributed quarterly. Under the current performance plan, royalties are determined by multiplying the number of credits earned during the quarter by the current dollar value of the credit. Under the averaged performance plan, royalties are determined by credits as well, although they are split up as follows: 20% of current performance dollars, 60% on a five-year average, and 20% on a ten-year average. This plan provides a steadier flow of income than previous systems. The dollar value of credits varies according to the total number of ASCAP receipts and performance credits. The payment process can be complex so feel free to contact ASCAP member services at 1-800-95ASCAP or PVLA at 215-790-3836 for any questions you may have.

### BMI

Broadcast Music Inc. ("BMI"), which operates as a non-profit organization, was founded in 1940 and has more than 300,000 members, including Eric Clapton, Janet Jackson, The Who, and Snoop Dogg. Their roster of members includes composers from all genres of music — pop, rock, classical, country, jazz, commercial jingles, classical, soul, reggae, and many more. BMI has a repertoire of 4.5 million compositions which it licenses.

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BMI operates in three different regions: Nashville, which covers the Southeast to Texas; Los Angeles, which handles everything west of the Rocky Mountains; and New York, which covers the rest of the nation. The organization offers a wealth of resources including a digital catalog and discounts for various professional tools to aid its members and licensees.

### BMI Membership Checklist

In order to apply for membership in BMI as a composer:

- You must have been the composer or co-composer of a piece of music that is or will be commercially released or recorded or will be played or performed on radio, television, or the Internet.
- You must not belong to ASCAP, SESAC, or a foreign PRO.
- Review BMI's standard contract here: <http://bmi.com/forms/songwriter/bmi-writer-kit-2005.pdf>
- You can complete the online application process in about twenty minutes at <http://bmi.com/join/>
- If joining by mail, send your paperwork to: BMI | 320 West 57th Street | New York, NY 10019
- If you have any questions, call (212) 586-8986 or email [newyork@bmi.com](mailto:newyork@bmi.com)

### BMI Services

BMI issues licenses to various music users including TV and radio stations, networks, new media, satellite, hotels, bars, and live concerts. Like ASCAP, BMI then tracks the public performances of its members' music using sampling and surveying to monitor usage and distributes royalties to its members. Royalty payments are calculated on a 200% basis. The rates are then split in half, with 100% going to the composer and 100% going to the publisher. Royalties are determined based on category of performance. This means that no standard royalty determination exists — royalties are calculated based on the type of performance. Royalty payment rates are based upon the licensing fee and will vary from quarter to quarter. Below are two charts demonstrating how BMI calculates royalties for local television and network television performances as of August 2008.

For more information, visit <http://bmi.com/brochures/royalty.pdf> for a detailed manual on BMI's royalty payment schedule.

For any additional questions, contact PVLA.

ABC, CBS AND NBC NETWORK TELEVISION RATES @ 200% (Through September 30, 2007)					LOCAL TELEVISION RATES @ 200%	
PERFORMANCE TYPE	Primetime (6:00 – 10:59 pm)	Latenight (11:00 – 1:59 am)	Overnight (2:00 – 5:59 am)	Morning/Daytime (6:00 am – 5:59 pm)	Daypart A (4:00 – 10:59 pm)	Daypart B (All Other Times)
<b>Full Feature</b> (45 seconds or more)*	\$11.50	\$9.00	\$5.00	\$6.00	\$5.00	\$1.50
<b>Theme</b> (per show)	\$7.00	\$4.64	\$0.80	\$1.40	\$2.00	\$1.00
<b>Background</b> (per minute)	\$1.42	\$0.94	\$0.68	\$0.78	\$0.76	\$0.42
<b>Logo</b> (per show) *performances of less than 45 seconds are paid on a prorated basis.	\$0.30	\$0.24	\$0.22	\$0.28	\$0.18	\$0.16

### SESAC

SESAC is the second oldest performing rights organization in the US and was founded in 1930. At that time, SESAC — the Society of European Stage Authors and Composers — limited its catalog to European and gospel music. Currently, SESAC has diversified its repertoire and includes all genres of music: folk, big band, new age, easy listening, adult contemporary, urban, R&B, pop, hip hop, rock, rap, blues, country, bluegrass, gospel, contemporary Christian, Latin, Tejano, salsa, polka, choral, classical, and many more. Some SESAC artists include Pink, Justin Timberlake, Beyonce, Coheed and Cambria, Mercy Me, Christina Aguilera, Alan Jackson, and Jimi Hendrix.

### SESAC Services

In addition to its Nashville headquarters, SESAC operates in New York, Los Angeles, and London. Like ASCAP and BMI, SESAC monitors the copyright of a composer or publisher's work and distributes royalties accordingly. However, SESAC uses a different approach to calculating royalty payments. Royalties are distributed differently for each medium — TV performances, radio, live performances, and new media. Below are sample formulas used by SEAC to determine royalty payments.

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### Radio

Performances  $\times$  Affiliate Share  $\times$  Bonus Factor (where applicable) = Credits

Radio License Fees Available for Distribution / Total Credit = Value Factor

Credits  $\times$  Value Factor = Royalty Payment

### TV and Film

Station Count  $\times$  Use Type Weight  $\times$  Duration  $\times$  Time of Day  $\times$  Weight  $\times$  Affiliate Share = Credits

Television License Fees Available for Distribution / Total Credits = Value Factor

Credits  $\times$  Value Factor = Royalty Payment

### New Media

Performances  $\times$  Affiliate Share  $\times$  Bonus Factor (where applicable) = Credits

License Fees Available for Distribution / Total Credits = Value Factor

Credits  $\times$  Value Factor = Royalty Payment

One of the biggest differences between SESAC and the other PROs is that SESAC uses a selective process to affiliate its composers and publishers. The organization prides itself on the quality of its repertoire, rather than its quantity. The SESAC writing/publishing staff reviews solicited submissions. For more information on the affiliation process, visit <http://www.sesac.com/writerpublisher/howtoaffiliate.aspx>.

### The Harry Fox Agency

The Harry Fox Agency represents music publishers, not songwriters, for their mechanical and digital licensing needs. Although HFA also issues licenses, it should not be confused with the performing rights societies. Performing rights are separate and distinct from mechanical rights. Mechanical licenses are necessary to use musical compositions in audio-only formats — CDs, tapes, records, and so on. Contact the Harry Fox Agency if you are interested in licensing recordings, ringtones, and internet downloads. Interested parties can access Harry Fox's licensing library to determine if they have the song you desire. The website, [www.harryfox.com](http://www.harryfox.com), also guides you through the mechanical licensing application process which can be completed online.

### Contact Information:

#### ASCAP

One Lincoln Plaza  
New York, NY 10023  
(212) 621-6000  
<http://www.ascap.com>

#### SESAC

55 Music Square East  
Nashville, TN 37203  
(615) 320-0055  
<http://www.sesac.com>

#### BMI

320 West 57th Street  
New York, NY 10019  
(212) 586-2000  
<http://www.bmi.com>

#### The Harry Fox Agency, Inc.

601 W. 26th Street, Suite 500  
New York, NY 10001  
(212) 824-0100  
<http://www.harryfox.com>

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Fax: (215) 790-3888  
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### Other titles in this series:

- Fair Use Guide
- An Artist's Guide to Wills and Estates
- Finding a Live/Work Space for Artists
- Censorship, Obscenity, and Indecency
- Guide to Licensing Stock Photography
- Documentaries — A Sample Release Form
- Intellectual Property — An Artist's Primer
- Transformative Works and Copyright for Visual Artists
- Music Licensing
- Nonprofit Incorporation
- Music Performing Rights Organizations
- Music Publishing — A Sample Contract between Composer and Publisher
- The Right to Publicity
- Parody and Satire
- A User-Friendly Guide to Copyright
- Financing your Film Project
- "The Naked Cowboy v. M&M" – An Explanation of Trademark Infringement
- The Visual Artists Rights Act of 1990
- Privacy and Photography
- Invasion of Privacy