community
ASSOCIATIONS INSTITUTE

A Guidance Document for Community Associations

April 2025

This document is for informational purposes only and not for the purpose of providing legal advice. For a clear understanding of your community association's rights and obligations under the law, consult with a licensed attorney.

Music & Movie Licensing Guidance Document Contents

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Overview

Many community association board members and community managers are unaware of copyright infringement. Some copyright issues, particularly as they pertain to community associations, are unsettled or have yet to be addressed by the courts. A basic understanding of copyright law may help community associations assess their potential liability and develop appropriate compliance strategies and best practices.

Generally, most music and movies are protected by copyright. The copyright owner has the exclusive rights to reproduce and copy, prepare derivative works, distribute, and perform them. If a community association publicly plays music or a movie, they must first obtain a license, unless an exception applies. Licenses are commonly obtained from performance rights organizations that also enforce licenses for copyright owners. Use of copyrighted work without a license constitutes infringement, regardless of whether the user has knowledge that the work is protected by copyright and regardless of whether the user intended to infringe on the work.

To establish liability for a copyright infringement, a plaintiff must prove (1) originality and authorship of the work (2) comply with securing a copyright under Title 17 of the United States Code (3) prove that the plaintiff is the proprietor of the copyright (4) prove compositions were performed publicly by the defendant and (5) prove that the defendant did not receive permission from the plaintiff for the performance.[1] The first three elements can be satisfied by submitting copies of copyright registration certificates.[2] Statutory damages for copyright infringement can be costly, ranging from $750 to $30,000. Additionally, the court may award damages up to $150,000 if willful infringement is found.

License Requirement for Public Performance

The Copyright Act[3] requires a license for any public performance of music and motion pictures, unless an exception applies. According to the act, "To perform or display a work 'publicly' means—

> (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
>
> (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

Legislative history of the act indicates "performances in 'semipublic' places, such as clubs, lodges, factories, summer camps, and schools are 'public performances' subject to copyright control. The term 'family' in this context would include an individual living alone, so that a gathering confined to the individual's social acquaintances would normally be regarded as private."[4]

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[1] *U.S Songs, Inc. v. Downside Lenox*, Inc., 771 F. Supp. 1220, 1224 (N.D. Ga. 1991); *Van Halen Music v. Palmer*, 626 F. Supp. 1163, 1165 (W.D. Ark. 1986); *Boz Scaggs Music*, 491 F. Supp. at 912.

[2] *Major Bob Music v. Stubbs*, 851 F. Supp. 475, 31 USPQ 2d 1113 (S.D. Ga. 1994).

[3] 17 U.S.C. §101, et seq.

[4] Senate Report No. 94-473, p. 60.

Exceptions to License Requirement

No general exception appears to exempt community associations from the requirements of the act. There are limited exceptions that may apply in some cases. For instance, musical pieces or parts of a movie that are used in a valid educational program are not required to have a license to use a copyrighted piece. Similarly, in those situations where an association may operate a food establishment within its property, there is an exception subject to specific conditions that may be available. Because the conditions of these exceptions are very specific and critical to their legitimacy, it is recommended that an association that believes it can take advantage of one of these exceptions should consult with an attorney familiar with the requirements of the act.

A narrow exception that *may* apply to a community association is known as the "homestyle exemption."[5] For this exception or the exception in the next paragraph to apply to a community association, the association would have to meet the statutorily defined term "establishment." An "establishment" is defined in the act as "a store, shop, or any similar place of business open to the public for the primary purpose of selling goods or services in which most of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly." This provision of the statute allows music to be played without a license only from radio and television from cable and satellite sources, if specific criteria is met. The establishment must be under 2,000 square feet, no food or beverages may be served, and there may not be a direct charge for seeing or hearing the transmission. Additionally, the broadcast played from the radio or television must be licensed by the Federal Communications Commission and cannot be retransmitted beyond the premises.

An establishment, as defined above, may still qualify for the homestyle exemption if it is over 2,000 square feet, meets the other criteria in the previous paragraph, and complies with the following criteria: A radio broadcast can be played by no more than six speakers, with no more than four speakers in any single room of the facility. For television transmission, the copyrighted broadcast may be shown on up to four televisions, with no more than one television in a single room. Lastly, the television may not exceed a measurement of 55 diagonal inches.

Disclaimer: It is unclear whether this exemption applies to community associations. A community association should not rely on this exemption to transmit copyrighted material without a proper license. Instead, this exemption may be a possible defense in an action brought by a Performance Rights Organization.

Frequently Asked Questions and Answers

1. Is a license required if an association wants to play Spotify in the clubhouse or fitness center, and they have paid a fee to Spotify for use?

Yes. Spotify requires users intending to use an account on behalf of an organization to create a "brand" account, which "may follow users and create and share playlists, provided the brand does not take any action that implies an endorsement or commercial relationship between the brand and the followed user, artist, songwriter, or any other person, unless the brand has independently obtained the rights to imply such an endorsement." This, though, does not excuse the need for a license if the playlist is shared

[5] 17 U.S.C. § 110(5)(B)

publicly. More information can be found in Spotify's end user agreement: https://www.spotify.com/us/legal/end-user-agreement/. Apple Music currently does not offer a similar account option. Please check the user agreement for other services.

2. If a resident is renting the clubhouse and hires a DJ and/or band, or broadcasts a 'Spotify' or 'iTunes/Apple Music' playlist, does the community association need a license?

Yes. The community association is ultimately responsible for ensuring copyright licenses are obtained. This is true regardless of whether the DJ, band or playlist is provided by the community association or by a third party, such as a renter.

The best practice may be to enter a contract with the DJ or band and require a material representation that they have all necessary licenses to play the music and agree to indemnify and hold the community association harmless from any copyright infringement claims. Best practices may also include prohibiting bands and DJs altogether and instead providing properly licensed music playlists as part of a rental fee.

3. If a community association books a band/performer and uses a contract directly with the band/performer, does the association need a license to host an open community concert (no fees paid by attendees)? Should the contract note that the band/performer is responsible for this? Do bands need their own license to perform cover band songs at events?

If the performance constitutes a "public performance," then the community association – as the entity responsible for the area where the performance takes place – is generally the entity required to ensure the necessary performance licenses. This is true regardless of the contractual arrangement with the band/performer. Bands or performers generally cannot be members of or pay fees to PROs, except in rare circumstances, so contracting with the band/performer to require them to obtain the license will not protect the association from potential liability. Indemnification provisions in contractual agreements with performers may help to mitigate liability but will not likely insulate the association from being named as a defendant in the case of clear copyright violations.

4. If a community association books a DJ and uses a contract with the band/performer, does the association need a license to host an open community concert (no fees paid by attendees)? Is the DJ responsible for licensing, or is a community association?

As with a band or other performer, to the extent that the performance constitutes a "public performance," it is the association – not the DJ – who is responsible for ensuring any necessary licenses. An association may attempt to shift the cost of any license fee to the DJ by contractual arrangement, but this would not free the association from potential liability if any necessary licenses were not in place.

5. If a community association has a contract with a day camp provider to use their clubhouse for camps and they show movies to the campers, does the community association procure a license or the camp provider?

To avoid potential vicarious or contributory liability, the association should obtain a license from one of the licensing entities mentioned in the response to question seven below to show movies on the property. Senate Report No. 94-473, p. 60, provides that "performances in 'semipublic' places such as clubs, lodges, factories, summer camps, and schools are 'public performances' subject to copyright control." As with the band, performer, or DJ above, the association could attempt to contractually shift the costs associated with the license by agreement with the camp. However, the community association is ultimately responsible for ensuring compliance.

6. Does a community association need a license if it provides free outdoor movies on a large (community association owned) screen and rents the movies from SWANK? What if movies and television shows are shown regularly in common areas?

SWANK claims that when you rent movies from them, they are licensed to be shown publicly to groups, see https://www.swank.com/movie-events/faq/ for a comprehensive list of FAQs. Additionally, the Motion Picture Licensing Corporation (MPLC) offers the Umbrella License, which allows movies and television shows to be shown in common areas, including fitness centers and clubhouses. More information can be found at https://communities.mplc.org/.

While CAI cannot endorse SWANK or the MPLC, or assure an association that it has satisfied its legal obligations by using SWANK, other independent entities, such as libraries, schools, etc., use SWANK and appear to endorse its services.

To show a copyrighted film in a public setting, you will need to obtain a license from one of the licensing service companies listed in Appendix A.

7. Do you have to obtain a license from every licensing company or only certain ones? How do you know which ones you need and what are the differences?

Music songwriters, composers, and publishers generally join one of three PROs that license their work to the public: the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and Society of European Stage Authors and Composers (SESAC). There are no clear-cut differences between the three so that an association would be safe if, for instance, playing only classical music on its clubhouse speakers and obtaining a license with only one. If the association is playing music on a regular basis, the likelihood is that each of the foregoing will hold the licensing rights to some of the music. In fact, for any one musical piece, the composer of a song may be represented by one of the PROs, while the lyricist is with another.

See Appendix A for contact information for music and movie licensing organizations.

8. What are the range of fees for licenses with each company? Do the licenses need to be renewed?

The fees depend on the size of the community, size of the facility/venue, and the amount of copyrighted material typically used. For instance, does the community use music that is piped through much of the clubhouse or other common spaces? Does the community have regular performances by live musical

performers? In general, the fees for an annual license range from several hundred dollars to several thousand dollars. Licenses must be renewed annually.

Note: Many community association managers have reported that fees are negotiable.

9. Does a community association need a license to play local radio broadcast music with a few speakers?

A radio broadcast is a performance. Unless an exception as noted in this guidance applies, a license is needed to play the radio in a public place.

As noted above, "publicly" is defined and includes the performance at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered. Limited case law suggests that a clubhouse or pool qualifies as a public place, regardless of whether a fee is charged for their use.

Real World Perspectives

In 2024, CAI reached out to large-scale managers to see what perspectives they could bring regarding the real-world use of music and movie licenses. The broad consensus is that, while associations are willing to pay for licenses recommended by their managers to facilitate movie events and music during events and in common amenities, there are concerns about the cost of such licenses. Some licenses can reach upwards of $1200 annually, which associations are often more hesitant to pay than other annual charges. Community managers have had to remind their clients of the consequences of attempting to move forward with certain events without the proper license, including hefty fines and lawsuits.

Applicable Case Law

Hinton v. Mainlands of Tarmac (Florida): In this case, the court found that a condominium association violated copyright law. The condominium association hosted a dance with an orchestra performance in the association's clubhouse with a $3.00 admission charge. There was no security gate or gatekeeper to enter the clubhouse and no signage to indicate that the event was only for residents or residents' guests. The association argued that the $3.00 admission cost was merely a suggested contribution, and that the clubhouse was an extension of homeowners' living rooms because all owners have a fee simple interest in common areas. The court disagreed and held there was a public performance and no exception applied.

> The court stated, "The court does not have trouble accepting Defendant's contention that the clubhouse in a condominium association is an 'extension of the owner's living room'… The court can take judicial notice that the clubhouse seems to be ubiquitous with condominiums in South Florida, unless there are a small number of residential units in the condominium. Defendant's condominium comprises 225 owner-residents. However, the court does not have to decide in this case whether a social function of the entire condominium or a major unit of it, is entitled to be treated as an extension of one owner's living room, or several owners' living rooms.
>
> The court has considerably more trouble with defendant's contention that this 'donation' was not an admission price and, further, that this was not a public performance at which admission was charged. There was not the slightest impediment to the public in attending the dance and the musical performance inherent at the dance—other than the payment of $3.00, defendant's assertion that it was only a suggested and voluntary donation is untenable under these circumstances. 'Donations' are often merely euphemisms for ticket prices, apparently in an effort to defeat admission taxes or sales taxes in many areas—or simply to avoid the paperwork involved. Although it does not appear to be another version of the old custom of passing the hat to pay the fiddler, that question also is a matter the court does not have to decide because the money exacted by the condominium from plaintiff's witnesses in this case was purely and simply the price of admission.
>
> Therefore, under these particular circumstances, the court holds that this was a public performance, open to the general public…and not one within the 'family exception' of § 101. The fact that the 1976 amendment deleted the 'for profit' requirement of the statute supports plaintiff's contention, not defendant's."

The following cases do not involve community associations, however, they demonstrate how community associations might infringe on copyrights and be held liable for the actions of a third party.

Fermata Int'l Melodies, Inc. v. Champions Golf Club, Inc. (Texas): The court in this case found that a music performance for 21 people at a private golf club was held at a public place and subject to the license requirement under the Copyright Act. The court, pointing to the legislative history, stated, "…It is clear that a performance in a semipublic place, such as a club, constitutes a "public" performance." Further, the court noted that "21 people is a substantial amount of people outside of a normal circle of a family."

Major Bob Music v. Stubbs (Georgia): The defendant was the owner of a local bar and was found vicariously liable for copyright infringement when an independently contracted band performed without a license. This case is significant because the court noted that vicarious liability may be imposed even when the controlling individual has no knowledge of the infringement.

Polygram Int'l Publ'g, Inc. v. Nevada/TIG, Inc. (Massachusetts): The defendant in this case had organized a tradeshow and sponsored an award ceremony. Although no copyright infringement was found, the court does state that a third party can be held liable for copyright infringement. The court notes, "If a copyright infringement is proved, the copyright holder may ask a court to impose liability for the infringement on third parties rather than on the direct infringer."

Berry v. Deutsche Bank Trust Co. Ams. (New York): The court echoed the accepted standard that in order to establish vicarious liability, "the plaintiff must show that the defendant had the [1] right and ability to supervise [that] coalesced with [2] an obvious and direct financial interest in [3] the exploitation of copyrighted materials." The court noted the importance of control and supervision and stated that "[t]he mere fact that the [defendants] could have policed [the infringer] . . . is insufficient to impose vicarious liability." (quoting Artists Music Inc. v. Reed Publ'g USA, Inc., No. 93 Civ. 3428 (JFK), 1994 U.S. Dist. LEXIS 6395, 1994 WL 191643, at *5 (S.D.N.Y. May 17, 1994)).

Resource

Copyright and the Music Marketplace, A Report of the Register of Copyrights

APPENDIX A:

Music Licensing Performance Rights Organizations

The American Society of Composers, Authors and Publishers (ASCAP)
1-800-505-4052
www.ascap.com

Broadcast Music, Inc. (BMI)
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030

newyork@bmi.com
www.bmi.com

Society of European Stage Authors and Composers (SESAC)
35 Music Square East
Nashville, TN 37203
615-320-0055
www.sesac.com

Movie Licensing Performance Rights Organizations

Criterion Pictures USA, Inc.
1050 Oak Creek Drive
Lombard, IL 60148
1-800-890-9494 or 1-847-470-8164
Fax: 1-847-470-8194
Email Form:
https://www.criterionpicusa.com/contact-us
http://www.criterionpicusa.com/

Kino International Corp.
333 W. 39th Street, Ste. 503
New York, N.Y. 10018
1-800-562-3330 or 1-212-629-6880
Fax: 1-212-714-0871
Email: edu@kinolorber.com
https://kinolorberedu.com/

Milestone Film & Video
P.O. Box 128
Harrington Park, NJ 07640-0128
1-800-603-1104 or 1-201-767-3117
Fax: 1-201-767-3035
Email: amy@milestonefilms.com,
dennis@milestonefilms.com
http://www.milestonefilms.com/

Motion Picture Licensing Corporation (MPLC)
5455 Centinela Avenue
Los Angeles, CA 90066-6970
1-800-462-8855 or 1-310-822-8855
Fax 1-310-822-4440
Email: info@mplc.com
http://www.mplc.org/

Movie Licensing USA
(A division of Swank Motion Pictures, Inc.)
10795 Watson Rd.
St. Louis, MO 63127-1012
1-800-876-5577
Email: mail@movlic.com
http://www.movlic.com/

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About Community Associations Institute

Community Associations Institute is a national nonprofit 501(c)(6) organization founded in 1973 to foster competent, responsive community associations through research, training and education. CAI is an international membership organization dedicated to building better communities. With more than 50,000 members, CAI works in partnership with 64 chapters, including a chapter in South Africa, as well as with housing leaders in a number of other countries, including Australia, Canada, the United Arab Emirates, and the United Kingdom. We work to identify and meet the evolving needs of the professionals and volunteers who serve associations by being a trusted forum for the collaborative exchange of knowledge and information and by helping our members learn, achieve, and excel. Our mission is to inspire professionalism, effective leadership, and responsible citizenship—ideals reflected in associations that are preferred places to call home. Visit www.caionline.org or call 888-224-4321.