



POLICY

Contracts With Music Licensing Organization Concerning Licensing & Royalties for Music On Campus

Policy Administrator: Office of the President

Authority: P.L. 94-553, 90 Statute 2541 (October 19, 1976); The Copyright Revision Act

Effective Date: May 4, 1978

Index Cross-References: Procedure 6617: Licensing and Payment of Royalties for Nondramatic Musical Attractions

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Approved By: Board of Trustees

POLICY:

- A. **General Background.** The Copyright Revision Act of 1976 became effective on January 1, 1978. Under the old copyright law, public performances of musical compositions were subject to control by the copyright owner of the music only in cases where the performance was "for profit." The new statute has removed this general "not-for-profit" exception and has substituted in its stead certain very specific exemptions.
- B. **Exemption Applicable to University.**
1. Of the seven legal exemptions in Section 110 of the 1976 Act, three pertain directly to public performances of music at the university. Briefly, the exemptions applicable to the performances of non-dramatic musical works are:
 - a. a general exemption covered in paragraph 4 below,
 - b. in face-to-face teaching activities, and
 - c. during instructional broadcasting.
 2. The face-to-face teaching exemption requires the following elements:
 - a. instructors or pupils,
 - b. face-to-face teaching activities,
 - c. a non-profit educational institution, and
 - d. a classroom or similar place devoted to instruction.

The language of Section 110 (1) does not cover performances by musicians brought into the classroom from outside. The word "instructors" is not broad enough to cover such musicians. (Source: House Report No. 94-1476, 94th Congress, 2nd Session - 1976)

3. The combining of the two exemptions (face-to-face teaching and instructional broadcasting) is intended to cover the various methods by which performances of music are used in the course of "systematic instructions." Systematic instructions (House Report No. 94) means teaching of material which is integral to the curriculum; it does, not include performances, whatever their cultural or intellectual value that merely entertain.
4. The generally worded exemption (clause 4 of Section 110) is a catch-all clause of particular application to colleges and universities. This clause exempts from the copyright laws:
 - a. direct performances before an audience, (whether by live performance, the playing of records or operation of a receiving apparatus) of a non-dramatic literary and musical work;
 - b. without any direct or indirect commercial advantage;
 - c. without the payment of any fee or other compensation for the performance to any of its performers, promoters; or organizers.

In explanation, the term "non-dramatic" is used to contrast with performances- of an opera, musical, comedy, oratorio and the like. The dramatic or non-dramatic use of a single musical composition must be determined on a case-by-case basis by evaluating the several elements of the performance, including whether the performance aids in telling a story.

C. The Effect of the New Law

1. The effect of Section 110 of the 1976 Copyright Act to expand the rights of authors. The basic rule is that performances must be paid for with free enjoyment of music limited to private use (private defined very narrowly), and conforming to the limited exemptions of Section 110.

2. The consent of the copyright owner is required if:
 - a. the performance is given or sponsored by a profit-making enterprise (even if the public is not charged for seeing or hearing the performance), or
 - b. an admission charge is made either directly or indirectly (see note below) , or
 - c. if the performers/musicians are paid.

Note: Regarding admissions charges, a possible exemption may be obtained under these conditions. If the net admissions proceeds are used for educational purposes and not for financial gain, the copyright fees may be waived by the copyright owner after an opportunity is given for the owner to object. If the objection is made the fee is to be paid. The principle is that the owner should not be compelled to donate to a cause which he as author may object.

D. Where Are Fees Paid

1. The 1976 Act legitimized performing rights organizations by defining them (Section 116 (c) (3), 1976 Act). They are associations or corporations that license the public performance of non-dramatic musical works on behalf of the copyright owners, such as ASCAP, BMI, and SESAC.
2. Each of the three licensing associations listed above has developed provisions for collecting fees. Each has included the option of having users pay on a performance basis or for a "blanket license." Considering the number, the range of usage, and the administrative detail, it appears the university would be best served by blanket licensing, at least with the current pricing structure:
3. The blanket license provisions would cover the following range of non-dramatic musical activities or attractions, form, and style, unless the performer costs or fees exceed \$1,000:

Concerts; Symphonic presentations; Stage shows; Coffee houses; Dances; Discos; Sporting events; Radio stations; Piped music; Rock; Pop, Country; Broadway; Film, Jazz; Soul; Music in Stadiums, Theaters; Auditoriums; and like.
4. Consideration of the number and type of musical activities will dictate whether blanket licenses will be obtained from the three licensees.

E. Major Concerts

1. In addition to the annual fees-paid for blanket licenses, there are to be paid fees to two of the three licensing groups for each concert where admission is charged and where the performers are paid a total of \$1,000 or more. These performances are termed as "major" concerts and the fees are generally based on two factors: the seating capacity (or audience present) and the highest price of admission, exclusive of tax.
2. The specific rates for licensing major concerts are provided in the contracts furnished by ASCAP, BMI, and SESAC.

Approval History:

	Date
Board of Trustees	5/04/78