

# WHAT FARMERS MARKETS NEED TO KNOW ABOUT MUSIC LICENSING

Music has the ability to bring communities closer together, provide pleasant background noise, and liven up any market. However, music licensing can be very difficult to navigate as a market manager.

Music is protected by copyright law, which provides exclusive rights to owners to perform or play their songs.



Every recorded song has two copyrights: one for the melody and lyrics and another for the recorded rendition of the song<sup>1</sup>. Performance Rights Organizations (PROs), such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and Society of European Stage Authors and Composers (SESAC), own these copyrights and administer blanket licenses to venues, allowing them to play music from their library for customers.

The Fairness in Music Licensing Act of 1998 further governs where and when copyrighted music can be performed. Generally speaking, public performances are broadly interpreted under the law and are defined as performing in 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<sup>2</sup>.”

## Frequently Asked Questions

### WHEN DO YOU NOT NEED A LICENSE?

- ♫ If you are playing a song published before 1922. Songs published before 1922 are public domain.
- ♫ If the music is being played in a classroom, during tutoring, for government officials, by nonprofit veteran organizations, or at annual agricultural or horticultural fair or exhibition.
- ♫ If you are playing from a AM or FM broadcast station licensed by the Federal Communications Commission (FCC)<sup>3</sup>. All legally-operated AM and FM radio stations are licensed by the FCC.
- ♫ If the artist is performing all original works, in an in-person concert.

### CAN A MARKET PLAY A PLAYLIST WITH A SPEAKER?

Any music played for the public to listen to should be properly licensed.

### IF OTHERS PERFORM MUSIC IN MY MARKET, CAN THE MARKET OPERATOR(S) STILL BE HELD LIABLE FOR COPYRIGHT INFRINGEMENT?

Yes. It is the responsibility of the venue/place of business to obtain licenses for all music played within the premises, whether live or recorded.

## DO YOU NEED A LICENSE IF YOU PAY FOR PANDORA BUSINESS ACCOUNT OR A SPOTIFY PREMIUM ACCOUNT?

**No. Internet radio is not required to be licensed by the FCC.** Paid internet radio subscriptions targeted towards businesses, like Pandora for Business, may be a viable alternative if they cover the licensing costs for you<sup>4</sup>. Check with your provider about music licensing rights before you subscribe.

**Another alternative is satellite radio, such as SiriusXM for Business.** This is a paid subscription which handles the copyright royalties for businesses to allow them to play music without having to pay licensing fees, just the subscription fee. It should be noted, however, that the licensing fees for most performing rights organizations amount to an annual sum not substantially different than that charged by satellite radio<sup>5</sup>.

♪ If you pay for one PRO's library, you only receive access to the music owned by that PRO, rather than purchasing a subscription to something like satellite radio you will only receive the library that that specific PRO copyrights rather than an endless variety of music supplied by a provider like Sirius XM for Business.

## WHO REGULATES MUSIC LICENSING? WHO IS CHECKING THAT BUSINESSES/ORGANIZATIONS HAVE THOSE LICENSES?

**There are three national Performing Rights Organization (PROs): ASCAP, BMI, and SESAC.** Each PRO oversees the music in their respective catalog and uses the court system to enforce copyright infringement – the result of playing music in a public setting without the proper licensure.

**Rates vary for each PRO and licensing with one only allows you to play music from their catalog alone.** As an example, in 2020, rates for ASCAP were based on “seating capacity” per event and ranged from \$10 to \$370. Their “minimal annual fee” was \$261. There is no specific license type for a farmers market.

## WHAT AGREEMENT SHOULD YOU HAVE IN PLACE WITH LIVE PERFORMERS AT YOUR MARKET?

**The Farmers Market Coalition recommends the following language in a signed agreement with performers:**

*“I am aware of U.S. Copyright Law and fully respect its authority with regard to the playing of live music. I hereby certify that any music played at \_\_\_ Farmers Market is of my own authorship or in the public domain”<sup>7</sup>.*

<sup>1</sup>Miller, S. (2011, February 18). A Letter to Members RE: Copyright Liability. Retrieved September 09, 2020 from <https://farmersmarketcoalition.org/a-letter-to-members-re-copyright-liability/>

<sup>2</sup>Hadjipetrova, G., Esq. (2011, October 13). When Should a Small Business Pay ASCAP or BMI? Retrieved September 08, 2020 from <https://www.paaba.org/2011/10/when-should-small-business-pay-ascap-or-bmi/comment-page-2/>

<sup>3</sup>Miller, S. (2011, February 18). A Letter to Members RE: Copyright Liability. Retrieved September 09, 2020 from <https://farmersmarketcoalition.org/a-letter-to-members-re-copyright-liability/>

<sup>4</sup>Pandora for Business. Music Licensing? We've Got You Covered. Retrieved September 9, 2020 from <https://pandora.moodmedia.com/licensing>.

<sup>5</sup>Hadjipetrova, G., Esq. (2011, October 13). When Should a Small Business Pay ASCAP or BMI? Retrieved September 08, 2020 from <https://www.paaba.org/2011/10/when-should-small-business-pay-ascap-or-bmi/comment-page-2/>

<sup>6</sup>American Society of Composers, Authors and Publishers (ASCAP). (2020, January). BLANKET CONCERT AND RECITAL (BCON) 2020 Rate Schedule. Retrieved September 09, 2020 from <https://www.ascap.com/~media/files/pdf/licensing/classes/2020-licensing-rates/concert-rate.pdf>

<sup>7</sup>Miller, S. (2011, February 18). A Letter to Members RE: Copyright Liability. Retrieved September 09, 2020 from <https://farmersmarketcoalition.org/a-letter-to-members-re-copyright-liability/>

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