Holiday Music – ‘Tis the Season to Secure Music Licenses and Examine Fourth Quarter Royalty Fees

Music and holiday shopping go hand-in-hand. Chances are your final plans for holiday-themed décor, events and websites will all involve music. This wrapping paper is designed to help your creative team design and implement a music protocol that protects intellectual property (“IP”) rights without breaking your holiday budget.

1. How is music protected under IP law?

Music is protected by federal copyright law. Copyright protection extends to all aspects of music, including the melody, lyrics, sheet music, recordings and live performances. Often more than one owner holds rights in a particular piece of music.

2. Are all songs protected by copyright?

No. It’s safe to assume, however, that most commercially available recordings and sheet music are protected by copyright.

3. When is a license needed?

A license is generally required to publicly perform a copyrighted song. A public performance occurs almost any time a song is played or performed in a public location, and there are very limited circumstances when a public performance does not require a license. A public performance can be:

- Recorded songs played in stores, malls, restaurants, bars and other public areas
- Recorded songs played on telephone “hold” lines
- Recorded songs played on the Internet, including posting a recording of a live performance on a website
- Recorded songs incorporated into advertising, such as synchronizing music with a holiday commercial or music-enhanced animations
- A jukebox or other customer-controlled music source
- Transmitting radio or television broadcasts in public (some very specific exceptions apply)
- Live performances, such as carolers, dancers, solo musicians, DJs and bands

4. How can my business prepare to feature holiday music?

Be sure to implement a music protocol for your business. The protocol should require that a license be in place before any new music source (whether recorded or live) is deployed. Since music sources and platforms often change during the holiday season, it may be helpful to audit your holiday music licenses and anticipated costs a few months in advance.

Recorded Music

- If your business subscribes to a commercial music licensing service, your provider will likely be able to provide holiday music options. You might consider contacting your vendor now to determine whether additional licensing fees will apply.
- If you plan to add new music platforms for the holiday season, such as a holiday song on your website or an additional retail location, you may need to obtain separate licenses or negotiate additions to your existing music license.
- Your music license may be tied to your quarterly revenues. If your revenues spike during the holiday shopping
season, it may be financially beneficial to switch to a flat fee license for the fourth quarter of every calendar year.

**Live Performances**

- Almost all live musical performances require a license, particularly when the performance is directly (cover charge) or indirectly (increased sales) commercial in nature.

- Don’t assume that a musician or promoter will obtain the required licenses. You may find that it is easiest to ask performers to provide a complete playlist in advance and ask someone in your organization to assume responsibility for licensing all third-party music directly with a performing rights organization. Third-party music includes “cover songs.”

- Carefully review the license terms to make sure the license you obtain will address your needs. A license for a one-time performance usually does not extend to recording the performance for future use, hosting the recorded performance on your website, or playing a music video in your store.

- Live performances and recordings of live performances can also implicate other IP rights such as trademarks (the band name) and rights of publicity (using a person’s image or voice in commercial advertisements). “Tribute” concerts are particularly complicated because they involve two categories of individuals with independent IP rights: the original artist(s) and the “tribute” artist(s). Additional caution should be exercised when planning any “tribute” events.