

HOSPITALITY NEWS

THE COLORADO RESTAURANT ASSOCIATION



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What You Need to Know about Music Licensing

Music licensing can be very difficult to navigate for a restaurant operator and at times it might seem like the music licensing companies have all the power leaving you with no rights of your own. This is simply not true. Restaurant operators in Colorado have rights that can protect them from music licensing companies in certain situations.

FIRST, DO YOU NEED TO PAY?

The Fairness in Music Licensing Act of 1998 exempted certain uses of music from copyright fees, specifically foodservice establishments that play radios, television, cable and satellite sources and do not charge guests admission to hear or see the music. If the establishment is less than 3,750 sq. ft. (this includes the entire establishment including the kitchen, bathrooms, closets, storage, and adjoining outdoor spaces) the establishment can play music on radios or through TV without having to pay royalties, no matter how many radios or TVs are played or what size the equipment is.

If the establishment is over 3,750 sq. ft. and is only playing music on radio or TV, qualifying for an exemption is a bit more complicated and requires following these restrictions:

- No more than 4 TVs (TVs can be no larger than 55 inches diagonally)
- No more than 1 TV per room
- No more than 6 speakers
- No more than 4 speakers in one room

If all of those conditions are met, these establishments can also play music on radios or through TV without having to pay royalties.

KNOW YOUR RIGHTS

If you don't qualify for the exemptions outlined through the federal law, you may need to restaurant operators still have rights when dealing with music licensing companies. If an establishment uses any other means beyond radios, television, cable and satellite sources to transmit music – for example, live bands, tapes or CDs – a licensing obligation with ASCAP, BMI or SESAC (or perhaps all three) likely exists.

Before a music licensing company can enter into a contract with an establishment they must provide the following at least 72-hours before the execution of the contract:

- A description of the rules and terms of royalties required to be paid under the contract;
- A schedule of the rates of royalties required to be paid under agreements executed by the copyright owner or music licensing company;
- Information concerning how to obtain a current list of the copyright owners represented by that company and the works licensed under the contract. Such list shall be made available within fourteen days by electronic means;
- A notice that the proprietor is entitled to the information contained above.

Furthermore, establishments have the ability to rescind a contract for payment of royalties up to 72-hours after the execution of a contract without penalty. One way to avoid entering into license agreements with music licensing

companies is to sign an agreement with a background music provider. These providers enter into agreements with music licensing companies directly.

WHAT TO WATCH FOR

There are certain things the music licensing company or an agent of one cannot do:

- Enter onto the premises of a business for the purpose of discussing with the proprietor or the employees of the proprietor a contract without first identifying himself or herself and making known the purpose of the visit;
- Collect or attempt to collect a royalty payment or other fee pursuant to a contract that does not meet the requirements of Colorado law;
- Engage in any coercive conduct or unfair or deceptive act or practice that is substantially disruptive of the proprietor's business;
- Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor.

This information is taken from the National Restaurant Association Legal Problem Solver, and from the Colorado Revised Statutes, C.R.S. 6-13-101 (2014). If you have any questions about music licensing, please contact Nick Hoover at nhoover@corestaurant.org or 303-830-2972 x119.