



You walk into your condominium complex's clubhouse for the annual Valentine's Day dance. As you and your spouse enter, you hear Tony Bennett crooning through the loudspeakers. You smile, grasp her hand and say "Listen! They're playing *our* song."

You're wrong.

As much as you may love it, it isn't *your* song. It's Tony Bennett's *intellectual property*, and like anything else, using someone else's property without permission is stealing and the law forbids it.

a business pays the licensing fee, that license allows them to play any song on the clearinghouses' song list. To have the flexibility to play any song on the radio, businesses are well advised to purchase a license from ASCAP, BMI and SESAC.

THE "HOME-STYLE" EXEMPTION

Not all performances of copyrighted works are necessarily copyright infringement. There is a "common sense" exemption that Congress has written into the copyright laws. A business may turn on the radio

They're playing our song COPYRIGHT AND THE CLUBHOUSE

BUT WE'RE JUST PLAYING THE RADIO!

In a restaurant or bar, open to the public, the proprietor often enhances the dining or drinking experience by entertaining patrons with music. This additional entertainment adds value to the restaurant or bar service, and whether the music comes from a purchased CD or over the airwaves, the owner of the copyright to that music has a property interest in the songs being played and a corresponding legal right to profit from its public performance.

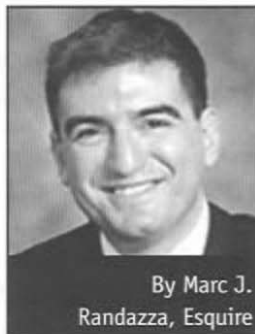
COPYRIGHT GENERALLY

Statute grants copyright owners the exclusive right to perform or to authorize the performance of their copyright works. "Perform" under the copyright law means to either perform "directly or by means of any device or process." "Public performance" includes each step in the process by which the copyrighted work travels to the audience. Therefore, playing a concert is "performance," a radio broadcast of the concert is "performance," and a restaurant playing the radio broadcast of the concert is also a "performance."

Any person or entity who performs, or allows others to perform, copyrighted music in a public place is legally responsible for obtaining prior permission from the copyright owner for this performance. Instead of each musician seeking copyright licensing fees from each potential performer or venue, artists sign up with copyright clearinghouses such as ASCAP, BMI or SESAC. Copyright owners enter into contracts with one of these clearinghouses which permits them to sell licenses for public performance or broadcast of the original copyright owner's musical work. When

for its customers' enjoyment as long as:

1. The radio is of a kind commonly used in private homes;
2. No direct charge is made to hear the transmission; and,
3. The transmission is not further transmitted to the public.



By Marc J. Randazza, Esquire

In 1998, Congress passed the Fairness of Music Licensing Act, which grants a specific exemption for bars and restaurants that are smaller than 3,750 gross sq. feet. This Act supersedes prior case law and gives bright line rules to help businesses determine whether they are exempt from licensing requirements.

1. The exemption applies only to the performance of non-dramatic musical works;
2. The exemption applies only to transmissions intended to be received by the general public;
3. The communicated broadcast must originate from a radio station licensed by the Federal Communication Commission;
4. At least one licensee must be paid to the copyright owner. For example, by the radio station;

Just like the common sense exemption, the business must not directly charge to hear the music; and it must not be further transmitted.

Not all performances of copyrighted works are necessarily copyright infringement. There is a "common sense" exemption that Congress has written into the copyright laws.

If the business is not a foodservice or drinking establishment, then it may still qualify for the exemption if it covers less than 2,000 sq. feet, and its sound system has less than a total of six loudspeakers and less than four loudspeakers in any one room or adjoining outdoor space. This exemption was crafted so that a small business need not fear the act of simply turning on the radio. The exemption is intended to protect the small enterprise when it uses ordinary radios for the incidental entertainment of patrons.

If your association maintains a clubhouse, restaurant, or bar, your board of directors should look carefully at whether the association is exposing itself to liability by violating the copyright laws. One little radio on the counter isn't likely to raise a problem, but if as a whole, the sound system is not of the type commonly used in homes, the exemption is likely lost, and playing the stereo could result in some hefty fines.

AHA! OUR CLUBHOUSE IS NOT A PUBLIC PLACE!

That's what you think.

In *Fermata Int'l Melodies Inc. v. Champions Golf Club Inc.*, a private golf club was found to be a public place both because it harbored a larger group of guests than a single family and its friends, and because there were a number of guests who were not members of the club. While you may think that your clubhouse is a private place, a court will likely decide otherwise. For the purposes of the copyright laws, a performance is public if it happens 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. Therefore, performances in social clubs, fraternal society meetings, summer camps, schools and condominium clubhouses are public performances under the copyright laws.

WHAT'S THE WORST THAT COULD HAPPEN?

ASCAP, BMI and SESAC have been quite successful in prosecuting copyright infringement suits against businesses that do not properly obtain and pay for licenses. If your association is sued and loses a copyright infringement suit, even if the

plaintiff proves no actual damages, the court will award at least minimum damages of \$250 per infringement. However, courts awarding statutory damages well in excess of the minimum damages, and up to \$2,500 per infringement are not unheard of. Additionally, it is the norm that the court will also assess attorney's fees against the infringing party. Truly blatant cases can result in criminal charges.

WHAT SHOULD WE DO?

Copyright law can be quite confusing and its interpretation should not be left to a

board with no legal training. If you believe that your association might be violating the copyright laws, you are strongly urged to contact your legal counsel. The cost of an evaluation of your situation by a professional attorney and paying an annual fee to ASCAP, BMI or SESAC is far less than the possible damages that could be imposed on you by losing a copyright infringement action.

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Water Intrusion

THE DO'S AND DON'TS

Do

- » Remove as much excess water as possible by mopping and blotting.
- » Remove and prop up wet upholstery cushions for even drying and check for possible bleeding.
- » Wipe as much excess water from wood furniture after removal of lamps and tabletop items.

- » Punch small holes in sagging ceilings to relieve trapped water. Don't forget to place pans underneath the holes.

Don't:

- » Leave wet fabrics in place; dry as soon as possible. Hang furs and leather goods to dry separately at room temperature.
- » Leave books, magazines or other colored items on wet carpets or floors.

Mold doesn't need air, food or water to stay alive. It can be dormant for millions of years without moisture, waiting for the right conditions.

- » Place aluminum foil, china saucers or wood blocks between furniture legs and wet carpeting.
- » Turn air conditioning on for maximum drying in summer; open windows to speed drying in winter.
- » Remove Orientals or other colored rugs from wet wall-to-wall carpeting.
- » Open drawers and cabinet doors for complete drying; however, do not force them.
- » Move valuable paintings and art objects to a safe place.
- » Open suitcases and luggage to dry in sunlight, if possible.

- » Use your household vacuum to remove water.
- » Use TV's or other appliances while standing on wet carpets or floors, especially wet concrete floors.

Mold can be anywhere and everywhere, hidden or in plain sight. The best way to find it is to contact a professional right away and have them conduct a mold inspection.

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