

Commercial Music Users and Copyright – Frequently Asked Questions (Shops, Hotels, Bars, etc.)

What Is IMRO's Function? IMRO is a national organisation that administers the performing right in copyright music in Ireland on behalf of its members - songwriters, composers and music publishers - and on behalf of the members of the international overseas societies that are affiliated to it. IMRO's function is to collect and distribute royalties arising from the public performance of copyright works. IMRO is a not-for-profit organisation.

Music users such as broadcasters, venues and businesses must pay for their use of copyright music by way of a blanket licence fee. IMRO collects these monies and distributes them to the copyright owners involved. The monies earned by copyright owners in this way are known as public performance royalties.

IMRO is also prominently involved in the sponsorship and promotion of music in Ireland. Every year it sponsors a large number of song contests, music festivals, seminars, workshops, research projects and showcase performances.

How Does Music Become Copyright? The creation of music, as with other creations of the mind, can be regarded as an aspect of a person's personality, or put another way, a property right. Such a property right, however, is not amenable to protection until it is reduced to a material form, that is, for a piece of music or song to become copyright it is not sufficient for it to exist in the mind of the composer but must be in a written form or recorded.

Once in this material form, it attracts the protection of the copyright legislation without any formal procedure. Countries such as the United States use a system of copyright registration known as "copyrighting" songs. However, in England and Ireland, this is not necessary. The only concern some composers might have is that of plagiarism, i.e. somebody else maintaining they had written the music. It is common practice when a composer or songwriter creates a piece of music to record it on a cassette or write it out in manuscript form and lodge it in a safe place such as with a solicitor, bank manager or by posting it by registered mail to himself/herself. In this way if a dispute regarding ownership arises he/she will be in a position to prove that it was in his possession at a particular date.

Why Is An IMRO Licence Necessary? Besides the arguments set out justifying the existence of copyright, which were mentioned above, being the social, economic and cultural arguments, copyright music is protected under the Copyright and Related Rights Act 2000 of Ireland. This Act, amongst other things, sets out the so called "Restricted Acts" which means such acts cannot be done without the permission or authority of the owner of the creation. It is, therefore, illegal to use copyright music in a public place or in a programme broadcast without the authority of the copyright owner or his representative.

What Is Meant By A Public Performance? The courts have accepted that a performance of music which takes place outside the domestic or family circle of the audience be regarded as a performance in public. It does not matter whether the audience has paid, whether they have come for the sole purpose of listening to the music or whether the music is performed by musicians or by mechanical means such as a radio, CD or a tape.

I've Never Heard Of IMRO So How Can I Apply For A Licence? The onus is on those who use music in public to apply for a licence before they use such music. If you are currently using or you intend using music in your business in the near future you can now apply for an IMRO licence online . Alternatively you can contact our Licensing Department directly at 01-6614844 and discuss your music usage with a designated Account Executive for your area.

Who Gets The Royalties? As mentioned previously, in an ideal situation a songwriter or composer would receive a royalty payment each time his song is used in public. We have also seen that it is totally impractical for a songwriter to collect his own royalties. IMRO offers to holders of its licence full and unlimited use of the music it controls on a so called "blanket" basis. This is done to rationalise the system of the collection of royalties. It then seeks out statistical information on which to facilitate the distribution of those royalties to their rightful owners. This information includes statistics from bands, market research by independent market researchers, music reports from broadcasters who are contractually obliged in many cases to provide full details of all music used, and details of record sales. In this way it is possible to reasonably identify the owners of the royalties collected.

What About The Music Dance Licence From The Local Authority? That licence only entitles a venue to be used for entertainment purposes. It has nothing to do with copyright matters.

Is There Another Copyright Licence? Yes. If commercially produced sound recordings (CDs, tapes or records) are being used as a means of entertainment, a licence from the record manufacturers is required. This organisation is known as Phonographic Performance (Ireland) Limited (PPI). Therefore, in the case of, say, discos, a licence is required from IMRO to authorise the public performance of the music and a second licence is required from PPI to authorise the use of the sound recordings. Royalties for the music are paid to composers and royalties from the sound recordings are paid to the record manufacturers.

I Only Rent The Background Music System - Ask The Rental Company For The Money -

Background music rental companies have no rights or responsibilities under copyright legislation in relation to the music that is being used in your premises. That responsibility rests with the owners of premises where music is provided.

But I Bought The Record Myself - Surely I Can Use It Because It Is My Own Property - Printed on the label of all commercially produced CDs, records and tapes is a statement to the effect that the public performance of that record or tape is prohibited and the mere purchase of the CD, record or tape entitles the buyer only to use it privately.

What About The Television Licence? On the reverse side of a television licence there is a paragraph headed "Copyright. This licence does not authorise any recording or public performance of copyright in the matter received". It therefore only authorises television broadcasts to be viewed within the domestic circle. If television sets are placed outside that circle, such as in public bars or shops, any music audible from such sets constitutes a public performance.

Do I Need A Licence When The Television Is Switched On Only For Sport And News? There is, in fact, a great deal of copyright music in television programmes, not only in the introductory and ending theme tunes, but in the commercial breaks. It is obviously impossible to use a television in public without using music.

Do Broadcasters Pay Royalties To IMRO? Among holders of IMRO's licences are, of course, radio and television stations and their licence grants to them the right to broadcast copyright music. Such broadcasts are intended for private domestic use and, therefore, the payment of the royalty by the broadcaster is in respect of this. However, if that broadcasted music is performed in public, a public performance licence from IMRO is necessary as a second use of the music is being made. It is assumed

that any music that has been used in public is there as an amenity for customers or staff and, therefore, is to the benefit of the owner of the premises.

My Radio Is In A Private Room And I Can't Help My Customers Hearing It - Whatever your intention, you are permitting a public performance if it is audible to all your customers, no matter where the source of music is located. In a case that was decided as long ago as 1936, it was decided that music heard by customers of a restaurant was a public performance even though the source of the music, a radio set, was in the proprietor's living room.

The Transistor Radio Belongs To The Staff - It doesn't matter to whom the equipment belongs since the occupier of the premises is responsible by law to ensure that no infringement of copyright occurs.

I've Paid The Musicians Enough Already, Why Should I Pay You As Well? Presumably the musicians were paid for providing an amenity for your customers for the good of your trade. Without the composer's contribution, your musicians would have little or nothing to perform.

But The Band Are Singing All Their Own Music - It is extremely unlikely that a band will sing only its own music night-in, night-out. However, even if it were the case, any singer/songwriter who is reasonably commercially successful will, undoubtedly, have joined a copyright organisation and will, therefore, have given away his copyrights to that organisation. Only by doing so can a composer's performing rights be administered throughout the world on his behalf.

What Happens If I Refuse To Take Out A Licence? If a licence is not obtained, any public performance of our copyright music is unauthorised. IMRO is entitled to apply to the courts for an Injunction and an Order for costs and damages. When granted, the further use of music at the premises is prohibited by law.

Why Does It Cost More Just Because It Is A New Licence? The additional charge for the first year can be compared with a connecting charge and is an attempt to recoup what it costs IMRO to seek out music users who do not apply for licences.

Who Says Such A System Is Fair? As mentioned earlier, it is songwriters, composers and, in later times, music publishers who form themselves into associations in order that royalties could be collected. The control of those associations, in the vast majority of cases, remains with those composers and publishers through their freely elected representatives drawn from their own numbers. It is those elected representatives who oversee the management and set the policies of associations charged with the responsibility of collecting royalties. It is, therefore, the composers and publishers themselves that make the final decisions.

But Doesn't All The Money Leave Ireland? Isn't it a fact that, when a Toyota car is purchased, the money goes to Japan or when a Renault is bought, the money goes to France. In a similar fashion royalties are paid to those songwriters and composers whose works are performed. Traditionally, the vast majority of music used in entertainment in this country has originated in America and England and, consequently, a large portion of the royalties have been paid to those countries. In more recent years, however, the Irish music industry has begun to flourish and not alone do substantial sums collected remain there, but monies earned internationally are now being paid in major proportions to Irish songwriters and composers. All such royalty distribution practices conform with the rules and regulations of the international association of performing right societies known as CISAC which is based in Paris.

High Court Decisions - Although there have been many thousands of High Court decisions given in copyright matters down through the years, all of which were in favour of authors and composers, it is rare to find a written decision. Two such decisions, however, are very important and they are:-

Public Performance

The following dictum was given by Mr. Justice Kenny in a case involving PRS (the predecessor of IMRO in Ireland) and an hotel which was using music controlled by the society without the society's licence (Unreported High Court Case (1966) No. 355p):

"Owners of hotels and licensed premises in this country who intend to place televisions or radio sets in rooms to which the public have access should get licences from the Performing Right Society Limited. If they do not, they will probably find themselves unsuccessful defendants in actions in the High Court".

Constitution

It was stated earlier in this paper that copyright is a property right. Justice Ronan Keane, in a High Court decision of 14th April 1994, stated the following:

"The right of a creator of a literary, dramatic, musical or artistic work, not to have his or her creation stolen or plagiarised is a right of private property within the meaning of Articles 40.3.2 and 43.1 of the Constitution".

Article Source: IMRO website