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Music Licensing & Your Local Government

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I. Introduction

Local governments use music in many ways. From popular summer tunes playing at a community swimming pool, to patriotic music setting the mood for a city fireworks display, to bands providing concerts in public parks -- copyrighted music is almost omnipresent. Music makes events more memorable, but sometimes municipalities do not have the necessary permission from copyright owners to play their music.

Musical compositions, like other copyrighted material, are the legal property of their creators. The U.S. Copyright Law (Title 17, United States Code, Sec 101 et seq.) grants copyright owners the exclusive right to perform their own musical works in public. Others must obtain permission from the copyright owners or enter into a licensing agreement with an organization representing those copyright owners to legally perform the music.

The BMI Local Governmental Entities Agreement provides a blanket license to cover non-dramatic performances of BMI licensed music at both government owned properties and local government hosted events. This paper will address copyright, performing rights, and public performance basics, as well as the ways local governments use music, what uses the BMI license covers, the history of BMI, our award winning repertoire, and local government resources.

II. What is a Copyright?

A copyright is a form of protection for intellectual property provided by the laws of the United States (Title 17, *U. S. Code*) for the creators of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. A musical work created after January 1, 1978 is protected by copyright for seventy (70) years after the death of the owner (author, composer, etc). After that time period, the original work may become "public domain" and use of that work no longer requires permission from the original owner(s) or his/her heirs.

This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;

• To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
• In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

BMI is a performing right organization that licenses the public performance of non-dramatic musical works on behalf of copyright owners of such works.

III. What is a Performing Right?

This section of U.S. Copyright Law, which recognizes the "Performing Right" of songwriters, composers, and publishers, is similar to trademark and patent protection. It was designed to enable and encourage artists to continue to create by protecting the integrity of the work; and entitling the creator to be compensated for using their work in public by the business or organization benefiting from playing the music. These principles are similar to those which have enabled businesses who use trademarks to protect their product. Trademarks enable companies to serve the public with quality without having to "give away" what makes their product unique.

IV. What constitutes a Public Performance?

According to Section 101 of the 1976 Copyright Act, “to perform or display a work publicly” means, “(1) to perform or display it 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; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process…”.

V. How do Local Governments use music?

Music is used in many ways throughout communities. From athletic events, concerts, festivals, arts & craft fairs, parades, parks, carnivals, New Year’s Eve Celebrations, swimming pools, dances, aerobic classes, and the many other ways your local government utilizes music.

VI. What locations does the BMI Local Governmental Entities Agreement cover?

A BMI Local Governmental Entities Agreement covers locations such as buildings, hospitals, airports, zoos, museums, athletic facilities, and recreational facilities (like community centers, parks, swimming pools, and skating rinks)

owned and/or operated by the local government entity. It also includes any other location that the local government has arranged to use.

VII. What events and functions are covered under the BMI Local Governmental Entities Agreement?

Events and functions covered under this agreement include aerobics and exercise classes, athletic events, dances and other social events, concerts, festivals, arts and crafts fairs, and parades held under the auspices of, or sponsored or promoted by, the local government at one of its locations. Fees for these types of events are based on the community's population.

VIII. On the BMI Local Governmental Entities Agreement, there is a section for Special Events. What constitutes a Special Event?

A Special Event includes musical events, concerts, shows, pageants, sporting events, festivals, competitions, and other events of limited duration that are presented by the local government where the gross revenues for the event exceed $25,000. For purposes of the BMI Local Governmental Entities Agreement, gross revenue includes all monies received by the local government or on its behalf from the sale of tickets. If there are no monies from the sale of tickets, gross revenue shall include contributions from the sponsors or other payments received by the local government for the Special Event.

IX. Are trade shows and similar events covered under the BMI Local Governmental Entities Agreement?

Trade shows, expositions, conventions, conferences, industrial shows or similar activities are covered provided that the event is presented or sponsored solely by and under the auspices of the local government. The event must *also* be presented entirely at one of its locations and it must *no*t be open to the general public.

X. What events are not covered?

The BMI Local Governmental Entities Agreement does not authorize performances of BMI music at colleges or universities, professional sports events or games played on the premises, permanently situated theme or amusement parks owned or operated by the local government, symphony or community orchestras, or by means of a coin-operated jukebox.

It is important to note that licensing for performances of BMI music which are not covered under this agreement can be obtained from BMI under agreements specifically designed for these other purposes.

XI. How do we license if we are legally organized as a State Municipal, County League, or a State Association of Attorneys?

If your organization qualifies under any of these descriptions, you would license under the BMI Local Governmental Entities Agreement using the fees identified in Schedule C.

XII. Is our licensing fee adjusted each year?

For each calendar year commencing 2009, all dollar figures (except the $500 add-on for populations of 500,001 or more) will be adjusted in accordance with the increase in the Consumer Price Index (CPI). For specific information, please review Paragraph 14 of the Agreement.

XIII. How do we provide documentation of our population and report our music use to BMI?

Upon execution of your Agreement, you will need to report your population based on the most recent published U.S. Census data. This figure will be used to calculate your Base License Fee. You may also need to report information regarding Special Events upon execution of the Agreement. For a detailed explanation of the reporting requirements during the term of the Agreement, please review Paragraph 13 of the BMI Local Governmental Entities Agreement.

XIV. Do we need a BMI Local Governmental Entities Agreement if our local government is not a multiple music user?

BMI also gives you the option to license on any of BMI's single use agreements that are specific to your type of music use. For example, if your local government uses music at a festival and a skating rink you could cover this type of music use with BMI's Festivals\Special Events Agreement and BMI's Skating Rinks Agreement.

XV. What happens to the fees we pay and how much profit does BMI make?

BMI operates on a non-profit-making basis. All fees, less BMI's operating expenses, are paid to our affiliated songwriters, composers, and music publishers in the form of royalties. Currently, more than eighty-seven cents of every dollar of your organization's licensing fee goes to our affiliated copyright owners.

XVI. Why was BMI created?

In 1940, the musical landscape was very different from the one we know today. There was only one major licensing organization during that time controlling a

marketplace that was certainly less than competitive. Their ranks were limited to some 1,100 writers and 140 publishers, almost all of whom worked in the “Tin Pan Alley” tradition.

Licensing rates were more than 5% of all advertising revenues for the radio industry, and fees were escalating at an alarming rate for broadcasters, who had only one source of music licensing.

Creators of other forms of popular music like country, jazz and rhythm & blues were denied access to the airwaves due to this stranglehold on radio – until a group of forward-thinking broadcasters, unhappy with the existing licensing monopoly, decided to create an alternative, competitive source of music licensing.

On February 15, 1940, BMI opened its doors, giving a voice to, and welcoming thousands of songwriters who previously had no, or at best, limited exposure to radio. BMI brought the sounds of R&B, country, folk and jazz to countless listeners across the country through radio airplay and performing right representation. BMI has embraced an "open door" policy since its inception, allowing any songwriter or publisher to join. Still today, there is no charge to join BMI as a songwriter.

XVII. Whom does BMI represent?

BMI is proud of our award winning repertoire. About one out of every two songs played on radio today is a BMI-licensed song. The BMI repertoire also includes the music of songwriters and composers in more than 60 other countries. The BMI repertoire has won numerous Grammy’s, Country Music Association Awards, and American Music Awards. BMI writers also represent the largest percentage of inductees into the Rock & Roll Hall of Fame, account for one-half of all of the winners of the coveted Pulitzer Prize in the field of classical music, and have received the most Rhythm & Blues Foundation Pioneer Awards and Downbeat Jazz Poll Awards.

For a list of the more than 375,000 songwriters, composers, and music publishers who are affiliated with BMI, as well as their more than 6.5 million musical works, please visit the BMI repertoire at http://www.bmi.com/search/. You can also call the BMI repertoire information line at 1-800-800-9313 where you can request information on specific song titles.

XVIII. Additional Resources for your Local Government

In 1994, BMI became the first Performing Right Organization with its own website, which now contains a more than 6.5 million item song title database. The BMI website also contains the latest licensing information for municipalities. Music licensing questions and answers can be found, as well as downloadable

licenses and reporting forms on http://www.bmi.com/lge . Customers can e-mail licensing staff directly from our website to receive information quickly and personally.

Over the past year, BMI has successfully initiated online business functionality by restructuring our website to better serve the needs of our customers. BMI's eCommerce initiative provides a sophisticated yet intuitive business tool allowing our customers to utilize online licensing and account management.

These enhancements make licensing music simpler and save our customers valuable time in the licensing process. The site continues to evolve and change how we do business with our customers.