

# MUSIC AT THE VINEYARD

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# AGENDA

What is Music Licensing?

Do I Really Need it?

Licensing Guidelines for  
Presenting Music Legally

What Can I do for Free

Cost of Music Licensing



# WHAT IS MUSIC LICENSING? TOPIC ONE



Music is created, copyrighted, and licensed. When it's performed, the songwriter and recording artist are owed a royalty.

Once you decide to play any copyrighted music publicly, that is beyond “a normal circle of friends and family,” you need permission from the copyright owners.

Music license provides you with the legal authorization you need to play music. A license protects your business

## *What is a Performance Rights Organization (PRO)?*

A music Performing Rights Organization (PRO) represents songwriters, composers and music publishers, collects royalties from licenses, and pays the royalties back to the artists. There are three major PROs: BMI, ASCAP and SESAC.

### *Do I need to pay all three PROs?*

That depends. PRO's offer "blanket licenses" that allows you to perform all the copyrighted music in their repertory. If you play music contained in a PRO's repertory, they have grounds to peruse legal action. One artist – Frank Sinatra has songs licensed by all three of the PROs. How do I know who owns what?

The PROs maintain their repertories differently.

- ASCAP: [www.ascap.com/repertory](http://www.ascap.com/repertory)
- BMI: [www.bmi.com/search](http://www.bmi.com/search)
- SESAC: <https://www.sesac.com/Repertory/RepertorySearch.aspx>



## *What happens if a PRO says I am playing copyrighted music?*

Ask for request proof of infringement and be responsive from the onset. Opening a true dialogue upfront will almost certainly lead to better licensing rates and minimal fines, if any. They will make repeated attempts to collect fees over a prolonged period of time. At some point they may consider legal action based on copyright infringement. The penalties range in price and are steep. “Damages can start at \$750 and can go up to \$35,000 per song—or even \$150,000 if the violation is considered willful. In the past 4 or so years, ACSAP, BMI and SESAC have been doing a general crack down.

## Music Licensing Guidelines for presenting music legally:

### Live Music

#### These types require a Music License

- **Cover Bands:** Any cover music performed that is written by a member of a PRO requires a license to be legally played in a public venue.
- **Karaoke:** If the event is open to the public, it requires a license.

#### These do not require a Music License

- **Original Music:** If you hire a musician not affiliated with any PRO that licenses their works and ensure they only play their own music and *don't take requests*. If the musician is playing their own music BUT they are with a PRO, have them sign a licensing waiver.
- **Public Domain:** If you play music written by a songwriter who has died more than 70 years ago and whose music is no longer covered by copyright.
- **Traditional Music:** Traditional or folk music that has no songwriter.
- **Private Events:** Weddings, birthday parties, anniversary parties, or other events that are invitation only and not open to the public.

## Recorded Music

### These forms require a Music License

- Personal Music: CDs, Tapes, Vinyl Records, DJ's, Free-Play Jukebox, iPod's, MP3's, or other digital music.
- Enhanced Recorded Music: Karaoke, DVDs, VJs, Video Tapes
- TV: 3750 square feet or larger, and 1) more than four TVs; or 2) more than one TV in any one room; or 3) if any TV has a diagonal screen size greater than 55 inches; or 4) if any audio portion of the audiovisual performance is communicated by more than six loudspeakers, or four loudspeakers in any one room or adjoining outdoor space; or if there is any cover charge.
- For radio: 1) more than six loudspeakers; or 2) more than four loudspeakers in any one room or adjoining outdoor space; or 3) if there is any cover charge; or 4) music on hold.



## These do not not require a Music License

- Streaming Services for Business: Use pay-in-advance services, such as XM4biz or Pandora Business
- Royalty-Free Music: Only plays royalty-free music.
- **Homestyle Exemption:** Less than 3,750 gross square feet and-plays radio or television, where copyrights are covered by the broadcasters.
- Or – Over 3,750 gross square feet of space, no more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.

## Other Suggestions

- Play music by songwriters from one PRO only: If the PRO has a repertory search function on their website, search and see if the music you are performing is affiliated with them. Ensure that your musicians understand why they must limit their play list.
- Talk with your lawyer: If you are being pursued by a PRO for reasons that you consider unnecessary, discuss with your lawyer.
- Make the business decision that is right for you: Consider all options available to you.
- Reach out to your locally affiliated beverage alcohol trade organization—such organizations are often in closer contact with the PROs and up to speed on any changes in broadcasting law.
- Lobby your legislators for more transparency on behalf of the music industry through organizations like WineAmerica.

### **The new winery license:**

- Lowers the square footage basis for determining license fees for smaller wineries. Wineries up to 3,750 square feet will pay the lowest fees.
- Removes the requirement to purchase separate licenses for different venues on a winery's property (e.g., tasting room versus restaurant);
- Separates the live music and recorded music options, allowing the winery to choose just one or both;
- Offers a seasonal discount range;
- Provides a special reduced price for wineries under 5,000 gallons a year that host 6 or fewer performances per year.

## **The Cost of licensing. Options**

In simple terms: For areas open to the public, or dedicated to entertainment food service, fees are \$375 per year for recorded music; \$642 per year for live. Live concerts are different: Those with ‘hard tickets’ charging admission that produce gross revenues greater than \$100,000 are assessed 0.8% after the fact.

Pandora for business – mood media and media player - \$26.95 per month and media player - \$99 no contract. Affordable and easy to use – tailor your music to enhance customer experience. unlimited hours.

### **Are licensing costs deductible business expenses?**

Be sure to ask your accountant but, I’d say that the licensing fees are ordinary and necessary expenses in the operation of the business and should be deductible. An ordinary expense is one that is common and accepted in your trade or business. A necessary expense is one that is helpful and appropriate for your trade or business. An expense does not have to be indispensable to be considered necessary.”



# THANK YOU

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