

# Public Performance Fees For Songwriters

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Songwriting income usually comes from mechanical license fees and public performance fees.

**Mechanical License Fees** - Mechanical license fees are paid by a record company to the publisher for using the musical composition in recordings sold to the public.

**Public Performance Fees** – fees paid to the songwriter and the publisher by performance societies for “public performance for a profit.”



Regarding music, you can consider “public performances” to be such things as playing the music on the radio or TV, live performances in a club or at a concert, music played during breaks at a sport in event, or even music played in stores.

Except for a few exceptions, the copyright holder controls whether the music gets played. The publisher has the right to grant grand performance rights and small performance rights.

Grand performance rights are for performances such as performing the music in an opera or a musical. Small performance rights are basically anything that is not grand performance rights, such as the right to play a song on the radio.

Users of copyrighted music need to obtain a license to publicly perform the music. Without the proper license, there is the possibility of being sued for violating a copyright owner’s performance rights. Section §504 of the 1976 Copyright Act gives the copyright owner or author a choice of recovering:

- (1) actual damages and any additional profits of the defendant; or
- (2) “statutory damages.”

If one is found to be an “innocent infringer” it can run from \$200 to \$30,000 per tune. If one is found to be a “willful infringer,” then the statutory damages can run up to \$150,000 per tune.

Officially, a publisher may individually contact every radio station, bar, nightclub, hotel, concert venue, and coffee shop to police its copyrights and demand payment of royalties. To address the impracticality involved in directly controlling the public performances of each song, public performing rights societies exist to do the leg work. The performing rights societies in the U.S. are BMI, ASCAP, and SESAC.

Performing Rights Societies (PROs) police copyright violations by litigating against alleged copyright violators. In the U.S., PROs can also assert copyright claims before the Library of Congress's Copyright Royalty Board.

A songwriter signs up with one of the three performing rights societies that the songwriter chooses for collection of performance fees. Like many aspects of the music business, none used to flow more freely than today. Songwriters used to get advances from performing rights societies to induce them to sign on the dotted line. However, advances are not offered anymore.

Usually, the performing right society first deducts its cut of the proceeds and then sends one check to the publisher and another check to the songwriter for the performance fees collected.

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