



North Carolina Law Life

A Man Walks into a Bar...And Sues for Copyright Infringement

By: Donna Ray Berkelhammer. Tuesday, March 6th, 2012

Based on recent questions from our clients, many business owners are unclear that they can't necessarily play commercial radio stations, broadcast their personal Ipod® playlist or show sports events from live TV at work.

Many people understand "copyright" to prohibit the copying of original works of art. Perhaps they know not to "lift" website copy or articles, or not to copy whole chapters of books. Some even realize that photographs and other artwork appearing on websites are not always free for the taking.

But many don't realize that "**copyright**" is actually a bundle of rights that gives the owner (artist) the exclusive rights to:

1. Copy the work;
2. Distribute the work;
3. Display the work;
4. Modify or create derivative works of the work;
5. Perform the work; and
6. In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Many bars, restaurants and other retail shops are approached by **ASCAP** and **BMI** – which are the licensing clearinghouses for almost every songwriter, composer or musical publisher — to pay for a blanket license to play music in the establishment. Commercial cable and satellite TV accounts are more expensive than residential accounts because they include the cost of performance licenses. Just owning a copy of a song, movie, game, etc. does not give you the right to play or perform the work publicly. There are similar restrictions on commercial uses of radio and TV broadcasts, although there are **exemptions** for qualifying small businesses based on the type of business, size of the establishment and AV equipment used.

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A public performance occurs when music or other copyrighted material is broadcast in any place where people gather, or where copyrighted material is transmitted to the public: radio or television broadcasts, music-on-hold, cable television, satellite television, and by the internet. Live music performances must also be licensed (unless the band doesn't "cover" anyone else's song, plays only original works, and has not affiliated itself with ASCAP or BMI). Music licenses start at several hundred dollars a year and go up from there, depending on the size of the establishment and the type of use.

A recent **case** shows the harm of not being properly licensed. The owners of a California restaurant that allowed a jazz combo to play covers of copyrighted **John Coltrane** songs, and also played the CD of another jazz group, were liable for \$36,000 in **statutory damages** and almost \$170,000 in attorney's fees. The court found the restaurant corporation and its sole officer liable, even though a band it hired actually violated copyright law by performing without a license. The restaurant owner repeatedly refused to buy a license from ASCAP, and ASCAP sent a private investigator on site to determine whether violations occurred.

Now more than ever, it is important to set up your business right from the start.

Tags: **American Society of Composers Authors and Publishers, ASCAP, BMI, business, copyright, copyright infringement, derivative works, East Coast Foods, right to copy, right to display, right to perform, Road Range Music**

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