

ASCAP, BMI and Musicians at Your Farmers Market

Everyone loves live music at the farmers market. Indeed, it is a core part of creating an inviting and festive ambiance at your market for shoppers and vendors alike. You have local favorites scheduled to come each week or improvising buskers who just show up. Usually, a market's primary concerns are booking the musicians and making sure the AV equipment is working.

However, starting around 2010, a new challenge emerged for farmers markets. Organizations representing songwriters and performers began contacting markets to collect licensing fees for musicians performing copyrighted music. Some markets have even received letters threatening lawsuits for copyright infringement.



As Stacy Miller says in her letter to Farmers Market Coalition (FMC) members, if musicians play copyrighted music at your market, the farmers markets “or the hosting organization, is legally obligated to pay a licensing fee, just as shopping malls, cafes, and other stores pays licensing fees in order to play recorded music over their loudspeakers, or host performing musicians.”¹ The challenge, of course, is that a farmers market is very different than shopping malls, cafes, and other stores.

The Washington State Farmers Market Association (WSFMA) and the Farmers Market Coalition are at work on this issue and currently working with pro bono attorneys to develop a response. The attorneys have proposed a new “farmers market” category for licensing and are working with each “performance rights organization” to gain approval. The category was developed after a national survey of farmers markets about their size, seasonality, music practices, and non-profit features and is based on what the attorneys learned. Right now these “performance rights organizations” treat farmers markets the same way they do retail stores.

¹ <https://farmersmarketcoalition.org/a-letter-to-members-re-copyright-liability/>

There are three main performance rights organizations that represent songwriters and composers “to collect and distribute royalties for public performances of their music” (www.ascap.com, accessed 6/2012). Each organization has a portfolio, or “repertoire,” of specific music that they represent. A song is only represented by one of the three organizations.

The one most people have heard of is the **American Society of Composers, Authors, and Publishers** or “ASCAP” (pronounced “as cap”).

There is also a second a performance rights organization called **Broadcast Music Incorporated** or “BMI.”

And the third is a smaller one is called “SESAC” which stands for the **Society of European Stage Authors and Composers**.

© Copyrighted Music

Federal copyright law is designed to protect “original works of authorship” and other forms of intellectual property. This includes literature, dramatic works, choreography, movies, painting, sculpture, architecture, and, of course, music. The bottom line is that if music is copyrighted then its creators are legally entitled to royalties.

The US Copyright Office has a good overview called “Copyright Basics” which you can download from www.copyright.gov/circs/circ01.pdf

WSU also has an overview on “Music and Copyright” at <http://publishing.wsu.edu/copyright/music.html>

Public Domain

Here is the good news: if music is in the “public domain” then it can be performed by anyone anytime. No license is needed.

“Music and lyrics published in 1922 or earlier are in the Public Domain in the United States...Public Domain music and songs may be used by anyone . . . without permission, without royalties, and without any limitations whatsoever.”

Source: Public Domain Information Project: www.pdinfo.com

Please see the Public Domain Information Project’s website for details and a list of all songs in the public domain. There is also something called “royalty free music.” The PDIP website explains the technicalities. The main idea is that the royalties for the music are included in the “music license” -- which assumes you have purchased a music license of some sort.



Musicians at the Vashon Farmers Market

Frequently Asked Questions

What does this have to do with my farmers market?²

ASCAP and BMI have started contacting farmers markets demanding payment for playing licensed music. This has created some confusion about what it means and how to respond.

What if our market doesn't pay musicians?

Even if your farmers market doesn't pay a musician and they perform for free or donations from shoppers, ASCAP and BMI have taken the position that their clients' copyrighted works add to the environment of farmers markets and so licensing fees are owed.

What if musicians just show up at the market uninvited?

While it might seem unfair, ASCAP's and BMI's position on the need of farmers markets to pay licensing fees extends to the situation where buskers play uninvited at markets for tips. So even if your market does nothing to promote or organize music at your event, these licensing organizations have insisted that markets pay for the music being played.

What if we just play recorded music?

Unfortunately, it doesn't matter. The music is for the general enjoyment of the people at the farmers market and permits are needed.

What if musicians play original music?

ASCAP and BMI have taken the position that all musicians will at some point perform copyrighted music and disregard any attempts to control this through agreements or oral promises.

How much does an ASCAP or BMI license cost?

In 2015, rates for ASCAP were based on "seating capacity" per event; anywhere from \$10 to \$344. Their "minimal annual fee" was \$241. Source: ASCAP "Blanket Concert and Recital (BCON)" 2015 Rate Schedule. Some farmers markets in WA reported that they were charged \$2,000 because ASCAP classified them as "shopping malls."

How many licenses do I need for the market?

Technically, a market needs a license from each authorizing body (ASCAP, BMI, SESAC) because different musicians are covered by each organization.

² Kathleen Richards' March 14, 2012 article "ASCAP Targets Farmers' Markets and House Venues" in the East Bay Express. <http://www.eastbayexpress.com/ebx/ascap-targets-farmers-markets-and-house-venues/Content?oid=3151285>

Why are they approaching farmers markets?

While we don't know why ASCAP and BMI are approaching farmers markets, we suspect this is due to the dramatic decline in record sales during the past decade and their attempts to make up for their clients' falling income by more strongly enforcing copyrights.

What are my options?

First, if your market is on a City-owned street, parking lot or other site, check to see if your City already has an ASCAP and/or BMI license. One market was faced with threatening letters from ASCAP and came up with a win-win solution. The market operated on a City-owned street and the City already had an ASCAP license. Incredibly, their annual rate was substantially less than the fees ASCAP was demanding that the market pay. By formally acknowledging in the market lease that the City was in charge of the market's music program, the market could be covered by the City's license. However, at another market, a friend of a board member with considerable experience in copyright law looked at their situation "from every angle." The lawyer concluded that the market simply had to pay for the license which they did.

The FMC recommends incorporating the below language into a signed agreement with any musicians at your market:

"I am aware of U.S. Copyright Law and fully respect its authority with regard to the playing of live music. I hereby certify that any music played at ___ Farmers Market is of my own authorship or in the public domain."

If you receive a bill from ASCAP, BMI, or SESAC, you can choose to not pay. The attorneys have suggested the following wording that farmers markets that are members of the FMC can use in a response to receiving a bill. Currently, farmers markets that join the WSFMA also receive a FMC membership. There are a number of farmers markets in Washington that have chosen this option.

"I am a member of the national Farmers Market Coalition and understand they are working with an attorney to develop a new form permit for farmers markets. Please contact the FMC for further information."

What's Next?

ASCAP and BMI have proposed licenses that are under review by FMC's pro bono attorney, but SESAC has not opted to participate yet. As this process is finalized, FMC and WSFMA will make sure farmers markets are notified of the changes and what to do.

If you have any examples of issues, questions or bills from these organizations, the attorneys have been very interested in these as it helps them understand how the laws actually come into practice and what they need to research.