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Music Licensing Basics for Apartments

By: Cydney A. Tune
Pillsbury Winthrop Shaw Pittman LLP

- The use of music by an apartment community may require a license to avoid violating copyright law, depending on whether a particular use of music is a “public performance.”
- The copyrights involved in music are complex and must be clearly understood in order to determine when a license may be required, and what type of license is appropriate, based on specific facts.
- The appropriate approach to potential music licensing obligations depends on the particular facts and circumstances of each apartment community as well as a company’s individual business objectives and risk management strategy.
- On a case by case basis, potential factors to consider include: the locations where music is being played; the source of the music (band, radio, music service, CDs/MP3s, television, live streaming from the Internet, video games, etc.); the device being used; the size, number and locations of screens; and the number and location of speakers.
- This paper provides general information about copyright and music licensing principles and a basic framework to help apartment companies consider how those principles may apply to a particular community. It also includes a Frequently Asked Questions section to assist apartment firms’ analysis in consultation with a knowledgeable attorney. This paper should not be considered advice.

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The information discussed in this white paper is general in nature and is not intended to be legal advice. It is intended to assist owners and managers in understanding this issue area, and it may not apply to the specific fact circumstances or business situations of all owners and managers. For specific legal advice, consult your attorney.

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About NMHC

Based in Washington, DC, Based in Washington, DC, the National Multifamily Housing Council (NMHC) is the leadership of the trillion-dollar apartment industry. We bring together the prominent owners, managers and developers who help create thriving communities by providing apartment homes for 35 million Americans. NMHC provides a forum for insight, advocacy and action that enables both members and the communities they help build to thrive. For more information, contact NMHC at 202/974-2300, e-mail the Council at info@nmhc.org, or visit NMHC's Web site at www.nmhc.org.

About the Author

Cydney A. Tune is Senior Counsel at Pillsbury Winthrop Shaw Pittman LLP where she leads the firm's Copyrights practice and Media & Entertainment industry teams. She represents and advises clients in a variety of intellectual property issues, including copyrights and trademarks, as well as in a broad array of entertainment, licensing and e-commerce matters. She represents clients in connection with music, video, multi-media, publishing and other entertainment projects.

Her practice also includes the full range of copyright and trademark protection, including counseling, strategic planning, clearances, prosecution, and extensive policing and enforcement, both in the U.S. and abroad. Ms. Tune has extensive experience in complex litigation including cases involving unfair competition, unfair business practices, product liability, franchise terminations, breach of contract, antitrust, a variety of business torts, securities, class actions and multi-district litigation. Ms. Tune represents a variety of clients, including virtual worlds service providers, social networking websites, Internet companies and other companies that conduct business online, broadcasters, associations and gaming companies, among others.

Ms. Tune is a frequent lecturer and publisher on a variety of copyright and IP topics. She sits on the editorial board of the International Entertainment Law Journal, and is on the Advisory Board of Copyright World and Internet Law & Strategy, among others. Ms. Tune is also a member of the IP Section Executive Committee and Chair of the Copyright Committee for the State Bar of California. Additionally, she sits on the Governing Board and is Chair of the Merchandising and Licensing division of the ABA Forum on the Entertainment and Sport.

Summary

Copyright law for music licensing is complex. The appropriate approach to potential music licensing obligations depends on the particular facts and circumstances of each apartment community's practices as well as a company's individual business objectives and risk management strategy. There are some straightforward rules and factors for firms to consider as they assess their potential liability and develop solutions for compliance. However, some issues have not been fully addressed by courts, and some cases may be distinguishable because they do not involve apartment communities. This white paper offers background information and some hypothetical Questions & Answers. In addition, the following list of factors may assist firms in their analysis, which should be conducted in consultation with a knowledgeable attorney.

Public and Semi-public Spaces

Is music played or used in areas of your property that are accessible to community residents and/or their guests, prospective residents, company staff, service providers and other non-resident members of the public—excluding individual apartment homes? These areas, which could be considered public or semi-public spaces under U.S. copyright law, may include:

- Pool areas, playgrounds, clubhouses, fitness rooms, lobbies, lounges,, etc.
- Leasing offices, staff-only offices, maintenance/utility rooms.
- Theaters, game rooms, etc.
- Business centers and other.

Sources of Music

Different sources of music being used or played may have different compliance obligations. Common sources include:

- Music saved or stored on an MP3 player, smartphone, computer, tablet, DVD, CD, tape, record, etc.
- Music played by a band, DJ or other performer.
- Broadcast or satellite radio service, such as SiriusXM.
- Background music from a service provider, such as Muzak or DMX.
- Streaming from the Internet such as Spotify or Netflix and webcasts.
- Television and video content.
- Video games through a dedicated system like Nintendo or PlayStation, a software program, or downloaded via Internet.

Equipment and Devices for Audio-only and Audio Visual Use

Licensing requirements may also depend on the number and sizes of devices being used, and where they are located. Possible devices include radios, televisions, monitors, computers and other screens, as well as speakers. Factors to consider include:

- Number of radios and televisions/monitors/screens located in each common area and the total number for all of the community's common areas combined.

- Screen size of television/monitor/screen in common areas/public spaces.
- Number of speakers located in each common area and the total number for all of the community's common area spaces combined.

Overview

Music has become pervasive in our lives, and most (if not all) of the music we hear has been licensed by the copyright owner. There are the obvious and expected sources of music, such as music on the radio, on movie and television soundtracks, in video games and in advertising. In addition, we often hear music when we shop, when we are on hold on the phone, when we ride an elevator, when we eat in restaurants and on our smartphones.

In a rental apartment community, background music may be the most common use of music; this can include background music playing in reception areas, lobbies and foyers, elevators, pool facilities and on walking paths. Music may also be used in on-site fitness centers and in clubhouses or similar social rooms, in video games located in shared spaces and in an on-site lounge or performance space. Live music may be played at community events put on by the property owner or by residents. Residents may also use music in shared spaces in many ways, such as during parties or other gatherings.

The copyrights involved in music are complex and must be clearly understood to determine when a license is required, who has the right to grant the desired license and what type of license is appropriate. Moreover, the answers to some questions are unsettled. This paper provides basic information about key copyright and music licensing principles for apartment companies and a framework to help apartment companies consider how those principles may apply to a particular community.

This paper provides general information for educational purposes only, not legal advice. This paper covers some typical situations, but it should not be used as a substitute for consulting with an attorney with respect to any particular facts, issue or problem.

Basic Copyright Principles

Simply speaking, the unauthorized use of a song is copyright infringement. Whether such usage is unauthorized depends on where and by whom songs are used as well as how and for whom they are performed or played. Under copyright law, any use of a copyrighted work that comes within the exclusive rights of the copyright owner and which is done without a license from the copyright owner is considered infringement subject to certain exemptions and limitations. That is true whether or not the user of the work intended to infringe the copyright or even knew that the work was protected by copyright.

A “song” is a musical composition, including music and lyrics, rather than a particular recorded version of the song. If you wish to use a song or the lyrics to a song, a number of factors determine whether a license is needed from the copyright owner of the song. Song copyrights are usually owned by the music publisher and cover both the music and lyrics of a musical composition. A “sound recording” is a specific recorded version of a song with distinct—and different—copyrights and licensing rules. Sound recordings are briefly addressed later in this paper.

- Under current U.S. copyright law, songs and other copyrighted works that were first published as long ago as 1923 could still be protected by copyrights. The Copyright Act¹ gives the owner of a copyrighted song a number of exclusive—and distinct—rights with respect to that song: the right to copy or reproduce it;
- the right to distribute it;
- the right to prepare derivative works based on it (such as a new arrangement of a song, a translation or conversion to a different medium); and
- the right to publicly perform the song and publicly display the music notation and/or lyrics of the song.

All of these rights arise automatically in the U.S., as soon as an “original work of authorship” is “fixed in any tangible medium of expression.” In other words, a copyright registration is not required to create exclusive rights, although there are advantages of registration for copyright owners. A copyright owner can also authorize others to exercise these exclusive rights by granting a license.

Thus a license from the copyright owner is generally needed when a copyrighted song is used.² The specific requirements for a license primarily depend on *how* those songs will be used. Permission to copy or reproduce, distribute, create derivative works or publicly perform a song may be granted by distinct entities representing different copyright owners with rights. An apartment firm may use music in a variety of ways involving different types of rights; however, the focus of this paper is the public performance right.

For many uses of songs, performance rights organizations (“PROs”) grant, administer and help enforce licenses on behalf of the copyright owners. It would be very difficult for individual songwriters to police and enforce public performance rights. Similarly, it would also be difficult and expensive for an apartment community to obtain a license for each song that is used there. For these and other reasons, performance rights societies were formed by songwriters and music publishers early in the 20th century. Professional songwriters and music copyright owners select and join a PRO to grant and administer performance licenses and to help enforce copyrights on their behalf.

In the U.S., the performance rights societies are ASCAP, BMI and SESAC. By law, for standard uses of music in public performances, the PROs must offer licenses to anyone who seeks them, and the rates must be uniform for all similarly situated users, including businesses in the same industry. Information about the standard li-

FOOTNOTES

¹ 17 U.S.C. § 101 et seq.

² Permission from or on behalf of a copyright owner is a “license” and is usually provided in a written contract.

censes, including fees, for different categories of businesses that use music is available on the PROs' websites.³

Public Performance

The copyright owner has the exclusive right to publicly perform copyrighted music and may grant non-exclusive performance licenses through a PRO. "Public performance" is not limited to a live musical performance in a shared public space like an auditorium. Rather, under copyright law, music is "performed" if a song is played, either live or on a device such as an MP3 or CD player, radio or computer. A performance is "public" if:

- it takes place in an area that is open or accessible to the public or to a group that is larger than one family⁴ and its small circle of friends; or
- it is transmitted or otherwise made available to many people, whether they receive it at the same time or at different times, and in one place or many.⁵

Performances in semi-public places, such as businesses, clubs, schools, camps and other similar shared spaces are usually considered to be public performances under copyright law even when they are accessible only to certain individuals, if they otherwise meet the definition of a public performance.

Apartment communities may use music in a number of ways, such as having background music playing in their lobbies and elevators, on-hold music on the phones, music in on-site gyms, or in party rooms and the like. These types of uses require the same type of analysis and treatment as any other type of intended use of the music.

When music is played in a shared space or common area of an apartment community, it may be a "public performance." When residents use music in their own apartments, on the other hand, those uses are likely considered to be private performances. There may also be a difference between residents providing their own music in shared spaces and when the music is provided, controlled or encouraged by the apartment community in shared spaces.

There is no requirement that a use of music be for profit in order to be a public performance. Rather, current copyright law gives the copyright owner the exclusive right to license public performance of music, whether it is for profit or otherwise.

An additional license may also be required if apartment firms use music for other organizational purposes. For example, an apartment firm may use music in em-

FOOTNOTES

³ The PRO websites can be accessed at www.ascap.com, www.bmi.com and www.sesac.com.

⁴ The term "family" includes an individual living alone.

⁵ Under copyright law, "[t]o transmit a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent." 17 U.S.C. § 101.

ployee training videos and presentations, play a song on its website or quote lyrics in materials that are distributed within the company. Even if the firm has a public performance license, that license may not give the company the right to reproduce, create derivative works, distribute a song or publicly display its lyrics. In other words, that license agreement may not cover the use of the music in a different scenario.

Performance Licenses

A performance license allows the licensee to use copyrighted music for public performances. Performance licenses are always non-exclusive, which means that multiple licensees may publicly perform the same music, as well as the copyright owner. Apartment firms should note that depending on the facts of a particular circumstance, the legal responsibility for an unlicensed public performance may involve more than one entity or individual, but the owner and/or operator of the business is typically responsible rather than a provider or performer of music.

A “blanket license” would give the licensee the right to an unlimited number of public performances, of any and all of the songs in a PRO’s repertory, instead of obtaining a license for each individual song or performance. A blanket license covers various types of public performance including live, recorded and broadcast music. A blanket license from one PRO does not protect a business from potential licensing obligations for songs in the repertoires of the other PROs.

Each PRO has an established schedule of license fees, which are paid as royalties to copyright owners, less administrative costs incurred by the PRO. Although a copyright owner may negotiate non-exclusive licenses directly, as a practical matter, the vast majority are granted and administered by PROs on behalf of copyright owners.

Exceptions to the Performance License Requirement

Generally speaking, while in most instances a business or individual that wants to publicly perform music will need to obtain one or more licenses, there are some exemptions and limitations to those licensing requirements. Some businesses are treated differently, provided they meet certain criteria for the size of the establishment, method of transmitting or playing music and type of equipment used.

Businesses with music only from television, radio, cable and satellite sources, which do not re-transmit beyond their premises or charge admission, qualify for the “home-style” exemption if the premises are smaller than 2,000 gross square feet.

If a business exceeds that size, it may, nevertheless, qualify for an exemption if:

- it uses a radio transmission and has no more than six (6) speakers in the establishment, with no more than four (4) speakers in any single room or space; or

- in the case of a television transmission, it has no more than four (4) TVs in the establishment, with no more than one (1) TV in each room and no TV having a diagonal screen size greater than 55 inches.⁶

The limitation on the total number of permissible speakers and their arrangement for music from a radio transmission also applies to music from a television. Importantly, even if a business may qualify for an exemption under the standards described above, *the exemption would be limited to music from radio and/or TV licensed by the Federal Communications Commission (FCC)*. It would not apply to other public performance scenarios, such as a live band or music from a CD or stored on an MP3 player.

Public Domain

Another exception to licensing requirements applies to music in the “public domain.” Music and other types of original works that are normally freely available for anyone to use are in the “public domain” and are not protected by copyright law.

The fact that music can be obtained without paying a fee, is found online or is otherwise publicly available does not mean that it is in the “public domain,” however. A song may be in the public domain because it was not entitled to copyright protection for some reason; it was published before copyright law existed; copyright protection for the work has expired; or because copyrights that once protected the work were lost. Sometimes the creator decides to give his or her music to the public domain. As a practical matter, the concept of public domain would probably not limit the licensing needed by an apartment community.

Fair Use

Another exemption from public performance licensing requirements may apply if the way that the music is used is a “fair use.” This includes the use of music that is otherwise protected under copyright law, unlike music that is in the public domain.

Use of limited portions of copyrighted works for purposes such as teaching, research, criticism, news reporting or parody is sometimes allowed without permission from the copyright owner. Unfortunately, the law is not clear as to which uses are fair uses and which are not. Instead, it provides factors that are interpreted by courts in the context of the facts in each case.⁷

Generally, courts will not find fair use in a commercial context, particularly if there is an established licensing market—as is the case with music. That is particularly true

FOOTNOTES

⁶ There are different requirements for establishments that offer food service, and for drinking establishments, which are beyond the scope of this paper.

⁷ When determining whether unlicensed uses of music are fair use, courts must consider four factors: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work (with purely creative works weighing more strongly in favor of fair use than purely factual works); (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use on the potential market for or value of the copyrighted work.

if your intended commercial use of the music will compete with authorized commercial use of the copyrighted work and, thus, affect its sales or its ability to earn revenue by means other than sales, or its value. For example, if songs played without a license in a retail store are considered to be a public performance, the song copyright owners could argue that they are being deprived of the licensing revenue they would have earned if the license had been obtained, and this weighs heavily against fair use.

Fair use is a defense to copyright infringement. The factors are weighed in each case, based on its own unique facts, so it is difficult to predict whether a particular use will be found to be a “fair use.” Relying on fair use in advance presents risk and should not be done without a very careful analysis. For this reason, a business may obtain a license for music they believe would be considered fair use to avoid potential liability.

There are other exemptions to public performance licensing requirements for certain nonprofit, educational, religious and charitable uses, but they are beyond the scope of this paper because they are unlikely to apply to apartment communities.

Music Services

Apartment firms that use “background music” on their properties may choose to engage a service to provide music for that purpose instead of using other sources of music and, if needed, secure licenses through the PROs.

These music services (e.g., Muzak and DMX) provide “background music” played in the background (rather than being featured) in shared spaces such as elevators, lobbies, pools, lounge areas and other common areas. Background music services may also be used in a leasing office. In contrast, live music or music played by a DJ during an event, would not be background music.

One key advantage of obtaining a music service is that the service usually handles public performance licenses for the music it provides. Moreover, it is usually easier and less expensive to use a music service than for a business to create its own playlists, and the like, and obtain any necessary licenses. Note, though, that the music service license only covers public performances of background music it provides and does not apply to other uses of the music.

Music services offer a large variety of recorded music, typically with a choice of two delivery methods. “On-premises delivery” means that the service will periodically send hard disks with the programmed music to the client’s location(s). “Broadcast delivery” means that the music is transmitted to the client via satellite or other broadcast method.

Both Muzak and DMX, for example, charge a flat monthly subscription fee based on the number of locations to which the music is delivered. An apartment firm with a number of properties may obtain background music services for all of its communities in one services contract and then select the delivery method most convenient for each specific property.

Digital Audio Performances of Songs and Sound Recordings

There may be multiple copyrights, and distinct licensing rules, for a single musical work. A “sound recording” is a particular recorded version of a “song.” Copyrights to a sound recording protect the musical performance and audio sound of a recorded song, while copyrights to a song protect the musical composition embodied in a sound recording.⁸ Copyrights in sound recordings are completely separate from the copyrights in songs, and the sound recording copyright owners are also different from the song copyright owners. Sound recording copyrights are usually owned by the music labels that recorded and distributed the records containing them.

A performance license may be needed to play music from the Internet or publicly transmit songs over the Internet. Unlike songs, a license to play a sound recording is not required unless the music is publicly performed as a digital audio transmission.⁹ A business may play music when a user arrives on its website, or it may send music from one device to another. Digital audio transmissions of music in an apartment community could include a transmission via webcast provided to the pool area or digital music on an MP3 player transmitted from the office to a lounge area or other shared space. As a practical matter, however, the owners of copyrights in sound recordings have not and would be unlikely to require a performance license for digital audio transmissions within an apartment community.

Q&A

This section is intended to provide general information about frequently asked questions. It is not legal advice or a substitute for specific factual and legal analysis by your attorney.

Q. What is a Performance Rights Organization?

A. A PRO is an organization that grants, administers and enforces public perfor-

FOOTNOTES

⁸ Sound recordings that were made before 1972 are not separately protected by federal copyright law although they may be under a state’s common law. Licenses for non-interactive public performances of sound recordings that meet certain requirements are handled by SoundExchange, a performing rights organization created to grant performance licenses for digital audio transmissions of sound recordings and to collect and distribute the royalties to sound recording copyright owners.

⁹ The public performance right for sound recordings created by the Digital Rights in Sound Recordings Act of 1995 and further addressed in the Digital Millennium Copyright Act of 1999, is limited to digital audio transmissions. It does not extend to other types of public performances such as on-air TV and radio broadcasts or live performances.

mance licenses on behalf of its member copyright owners. In the U.S., there are three PROs for songs: ASCAP, BMI and SESAC. Each songwriter and other song copyright owners join a PRO, but they can only be a member of one PRO at a time.

Q. What is a blanket license and what does it do?

A. A blanket license for ASCAP, BMI or SESAC gives you, as a licensee, the right to play music within a PRO's repertory wherever your residents, employees and guests may gather. Whether your use of music is live, broadcast, transmitted or played via MP3 player, CD or video, or PRO license would cover all of the songs in that PRO's repertory.

Q. We have a license with on PRO. Do we still need a license from the other two PROs?

A. Most businesses that use music in ways that should be licensed have agreements with all three PROs because each songwriter or composer is represented by only one PRO at any given time, and a music license with one PRO allows you to perform only songs represented by that organization.

Q. Our apartment community's pool parties, movie nights, fitness centers and the like are not open to the public. Are we exempt from music licensing requirements?

A. U.S. copyright law defines a public place as any place that allows people outside of "a normal circle of family and friends" to gather, including "semi-public" places such as schools, clubs or business offices that are open to only certain people but not to the general public.

An argument could be made that common areas for the exclusive use of residents, such as your community's fitness center, are distinguishable from spaces that are accessible to others because these areas are extensions of residents' homes and there is no additional fee charged or revenue generated by these areas, unlike a club or restaurant. Also, in fitness areas, oftentimes headphones or closed captioning must be used, which restrict the audio portions of programming, and the size and location of the screens limit viewing to one individual at a time and, therefore, should not be considered a public broadcast or performance.

There have not been any court decisions to this effect, so at present we do not know whether these arguments would be successful in a legal case or with a PRO. A PRO may take the position that even though an event or area of the property is open only to residents of your community, a performance license would be needed if the use of music would otherwise be considered a public performance. According to that point of view, even though an event or area of the property is closed to the general public, your residents may form a "public" under copyright law.

Q. Our apartment community has a music service. Does that cover our music licensing responsibilities?

A. You are probably covered for playing background music provided by the service, but you should check your apartment community's contract with the music service to be sure. Music services, such as Muzak and DMX, are licensed with the PROs to cover performance rights for background use only—in your elevators, leasing office

or lobby area, for example. You are not covered by the agreement if you use music from another source or if you use music from your music service provider for a purpose outside of the scope of that agreement.

Q. Do we have to pay for music licenses when we have already paid for a DJ or band?

A. The payment you make to a performer, such as a DJ or band, does not cover a license for them to publicly perform copyrighted music in your apartment community. Copyright law provides that the owner of a business establishment where the music is being played is usually responsible for obtaining any required performance licenses.

Q. Our apartment community bought our own iPod, CDs, DVDs and gaming software. Isn't this our property to use and play anywhere we choose?

A. The law distinguishes between owning a copy of music, like a CD or a song saved on an iPod, and owning the rights to those songs, including the right to publicly perform them. When you purchase a CD or DVD or download an audio file, software, game or other product containing music, even those specifically marketed for business purposes, you are only buying a copy of the music and the right to play it "privately." An apartment community will generally need a license if its use of copyrighted music is considered a public performance under copyright law.

Q. Does it matter whether the music we play in our community's common areas is from a CD, stored on an MP3 player or streaming from an Internet site online?

A. The PROs have licenses covering public performances of all of these different ways to deliver songs. If your use of music amounts to a public performance under copyright law, and does not qualify for an exemption, a license would be needed regardless of whether you use a CD or MP3 player. When music is streamed over the Internet, however, there is a distinct performance right with respect to the "sound recordings" of songs publicly performed via digital audio transmission. So, theoretically, streaming online music into shared spaces could also require a performance license from the sound recording copyright owners. As a practical matter, however, sound recording copyright owners have not been seeking licenses from apartment communities.

Q. What if an apartment community uses television or radio?

A. Audio-only music channels on many satellite and cable television systems may authorize public performance rights to your property, but the licensed rights are limited to the background use of those stations. The public performance of audio-only content beyond background use is not generally covered by service agreements and may require a license. Songs featured in audio-visual programming during sports, news, movies and entertainment programs, as well as in advertisements on TV and radio, may trigger licensing requirements for your apartment community.

Your apartment community may be exempt if it has a limited number of speakers and TVs in each room and throughout the property, the broadcast is not retransmit-

ted from one room or area of the property to another and there is no admission charge.

Specifically, if your community plays radio, it is exempt if the property has no more than six speakers, with no more than four speakers in any one room. If your community also uses TVs, it is exempt if it has no more than four TVs on the property, with no more than one in a room, and no screen exceeding 55 inches. Note that the analysis for this exemption applies to public performances of music that originate from a radio or television broadcast station licensed by the FCC or, for television content, by a cable system or satellite carrier.

Q. Aren't TV, cable and radio stations already licensed with the PROs?

A. They are, but those agreements do not generally authorize the public performance of such TV, cable and radio except by the broadcaster itself. (Audio-only music channels on many satellite and cable television systems may authorize public performance rights to your property, but the licensed rights would be limited to background use as discussed above.)

Q. Our apartment community has TVs in our clubhouse and lounge area, but we do not organize movie nights or other similar gatherings. Could we need a license?

A. Subject to the exemptions discussed above, you may need a license if your apartment community provides TVs for residents in common areas or if you provide DVDs or a WiFi service for residents to watch in shared spaces, if the apartment community is considered to be facilitating public performances.

Q. We have TVs for resident use in some of our fitness centers. In other fitness rooms, we don't have televisions, but some of the exercise machines have attached screens. We do not play music from CDs, MP3 players or any other device using either stored or streaming music in our fitness rooms. Do we need a license?

A. When you provide televisions in fitness centers for resident use, you may need a license if the property management is considered to be facilitating residents to hear a public performance of the audio portion of video programming, subject to the analysis discussed in this paper. A PRO may also argue the same is true of machines with attached screens because although only one resident is using each attached screen at a time, the audio portion of the broadcast may be heard by multiple residents at the same place, even if they hear it at different times. However, as discussed previously, common areas for the exclusive use of residents, such as your community's fitness center, may be legally distinguishable from areas that are accessible to others. Moreover, a community's rules requiring headphones or closed captioning, and the size and location of the screens, limit viewing to one individual at a time and may preclude a need for a license.

Q. Who is responsible for performance licenses when a resident reserves our club room, theater or other space for a party or event?

A. Copyright law and subsequent cases make the property or business owner responsible for obtaining a license if the particular situation would require a license and if the owner is aware such public performances are taking place.

Q. We have music playing in our staff-only office. On occasion, we extend that music to the lobby area adjacent to the office. Do we need a license for the music we play in our staff-only office?

A. When music plays in a staff-only office, it is typically considered to be a public performance because it is a business usage of the music and is used outside of a small circle of one family and its friends. If you turn up the volume or use a speaker in the lobby, a license could also be needed because you are using music in a shared space for people outside of a small circle of family and friends.

Q. I want to use music-on-hold in my business. Do I need a license?

A. Yes. It is a public performance of music when music is transmitted via your telephone lines to a caller on hold. Usually, however, the public performance license is covered by the service providing your on-hold music. You can check your service contract to be sure.

Q. Can I be held liable for copyright infringement if I do not know whether a public performance license is needed?

A. Usually, yes. You are probably responsible, as the owner or manager of the premises, to obtain any required licenses for the public performance of songs performed on your premises, regardless of your knowledge of the law or whether a particular song or use of music is protected by copyright.

Q. What happens if an apartment community doesn't have a public performance license and copyrighted music is used, played or performed live and is not subject to an exemption?

A. If copyrighted music is publicly performed without a performance license, in circumstances in which a performance license is legally required, you could be considered by a court to be a copyright infringer liable for damages and the copyright owner's costs and attorney fees. Statutory damages range from \$700 up to \$30,000 per song performed without a license. Under certain circumstances, there is also a risk that you may be considered to be a "willful" infringer, which could subject you to damages of up to \$150,000 for each song performed without a license.

Conclusion

Copyright law and music licensing are complicated topics. The issues discussed here include only some of the many issues that can arise in connection with using music in apartment communities, but they are the most important ones for the property owner or manager to understand. Using music unlawfully can sometimes result in large monetary penalties, so it is important to be careful. Also, please be aware that this discussion is general and is not intended to be a substitute for getting specific legal advice regarding particular situations.

You can provide music for your residents to enjoy in common areas, but do it wisely.