

At a Glance:

Music and Copyrights on Campus



September 2013
American Council on Education
One Dupont Circle NW
Washington, DC 20036

ACE and the American Council on Education are registered marks of the American Council on Education.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher.

ACE thanks NACUBO, National Association of College and University Business Officers, for their assistance in producing this publication and gives a perpetual license to NACUBO in appreciation.

At a Glance: Music and Copyrights on Campus

Music is heard on campus in many different situations. Most music is legally protected by copyrights, so navigating copyright law as it impacts the varied uses of music can be a struggle for colleges and universities. Music copyrights are not dealt with on a daily basis on most campuses, various departments or administrators may share responsibilities for this area, and staff turnover may leave a new person in charge with little information about the steps the institution needs to take to comply with copyright requirements.

The National Association of College and University Business Officers (NACUBO) and the American Council on Education (ACE) have issued a joint report, [Use of Copyrighted Music on College and University Campuses](#), on how campuses might handle music copyright issues. The report is intended as an overview and should not be used as a substitute for the advice of informed legal counsel.

Along with the full report, NACUBO and ACE have issued this document, a series of “one-pagers” outlining some potential music copyright scenarios and responses.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Play live music—as a soloist or as part of an ensemble—that fulfills an educational purpose	4
Play music in a lecture, studio, lab, rehearsal, or concert.....	5
Perform a play, musical, opera, or other staged work.....	6
Play music that is not required for degrees or courses in music—live or recorded—in the student union, fitness facility, or during a sporting event, awards ceremony, skit, or student organization event or party.....	7
Use music as part of a commercial or YouTube video.....	8
Sell a CD of a student organization singing popular songs	9
Play music over the college radio station.....	10
Play music using a jukebox	11



What Do You Want To Do?

Play live music—as a soloist or as part of an ensemble—that fulfills an educational purpose

License required: Possibly none, but only if use qualifies as a fair use or fits within another exemption under the law.

Background: Under Section 110 of the Copyright Act, no permission is needed to play (or in legal parlance, “perform”) copyrighted music as part of face-to-face teaching activities of a nonprofit institution in a classroom or similar place devoted to instruction. In some cases, an exemption also applies for performing music (and other copyrighted works) as part of a “transmission” of a live classroom session. That exemption is limited, however, and requires careful analysis of the facts and circumstances involved.

Even where an exemption does not apply under Section 110 of the Copyright Act, it may be possible to proceed under the fair use provisions of the Copyright Act. Found in § 107 of the Act, fair use involves the use of a copyrighted work for such purposes as teaching, research, reporting, or criticism, and outlines four factors that should be used in determining whether a use falls under this doctrine. The § 107 factors are:

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;
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 upon the potential market for or value of the copyrighted work.

Determining whether or not a particular use of music is a fair use can be difficult. As the United States Copyright Office has explained: “The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.”

A number of colleges and universities have established online tools to aid in making a fair use analysis. We have listed some of those sites below:

- Stanford Copyright and Fair Use Center (fairuse.stanford.edu);
- Columbia University Copyright Advisor Office (copyright.columbia.edu/copyright/fair-use/fair-use-checklist); and
- University of Maryland University College Library Guidelines (www.umuc.edu/library/libhow/copyright.cfm).

Action: Consult resources, including university counsel as appropriate, to determine whether performance of a musical work adheres to the fair use provisions or the exemptions offered under Section 110 of the Copyright Act.

Rates: Potentially none.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Play music in a lecture, studio, lab, rehearsal, or concert

License required: Possibly none, but only if use qualifies as a fair use or fits within another exemption under the law.

Background: Under Section 110 of the Copyright Act, no permission is needed to play (or in legal parlance, “perform”) copyrighted music as part of face-to-face teaching activities of a nonprofit institution in a classroom or similar place devoted to instruction. In some cases, an exemption also applies for performing music (and other copyrighted works) as part of a “transmission” of a live classroom session. That exemption is limited, however, and requires careful analysis of the facts and circumstances involved.

Even where an exemption does not apply under Section 110 of the Copyright Act, it may be possible to proceed under the fair use provisions of the Copyright Act. Found in § 107 of the Act, fair use involves the use of a copyrighted work for such purposes as teaching, research, reporting, or criticism, and outlines four factors that should be used in determining whether a use falls under this doctrine. The § 107 factors are:

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;
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 upon the potential market for or value of the copyrighted work.

Determining whether or not a particular use of music is a fair use can be difficult. As the United States Copyright Office has explained: “The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.”

A number of colleges and universities have established online tools to aid in making a fair use analysis. We have listed some of those sites below:

- Stanford Copyright and Fair Use Center (fairuse.stanford.edu);
- Columbia University Copyright Advisor Office (copyright.columbia.edu/copyright/fair-use/fair-use-checklist); and
- University of Maryland University College Library Guidelines (www.umuc.edu/library/libhow/copyright.cfm).

Action: Consult resources, including university counsel as appropriate, to determine whether performance of a musical work adheres to the fair use provisions or the exemptions offered under Section 110 of the Copyright Act.

Rates: Potentially none.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Perform a play, musical, opera, or other staged work

License required: Grand rights.

Background: “Grand rights” provide the right to perform music as part of a dramatic performance. The point at which a piece becomes a dramatic musical work is not always perfectly clear; institutions should seek counsel if a question arises. Grand rights are usually individually negotiated with the copyright owner, probably the publisher or writer.

Action: Contact the copyright owner of the musical work. Among works that are often performed by universities are those controlled by the following publishers: [Tams-Witmark Music Library, Inc.](#), [Rodgers & Hammerstein Organization](#), [Music Theatre International](#), and [Samuel French, Inc.](#)

Rates: Copyright owners set different rates for royalties depending on the work.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Play music that is not required for degrees or courses in music—live or recorded—in the student union, fitness facility, or during a sporting event, awards ceremony, skit, or student organization event or party

License required: Performance rights, when no other exemption applies.

Background: Purchasing music does not necessarily convey the right to publicly perform or display it. These are separate rights of the copyright owner and require his or her permission. It is not generally necessary, however, to obtain individual permissions for each piece of music. For nondramatic uses of music, a system was developed to make obtaining copyright permissions easier. There are three major performing rights organizations—the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC (originally the Society of European Stage Authors & Composers)—that control the performance rights to about 97 percent of the music in the United States.

Action: Acquire performance licenses from all three organizations. Since each organization controls the rights to a discrete repertory of music, to ensure complete copyright compliance, a music user should have licenses with each organization.

All three organizations have been willing to negotiate blanket licenses for use by higher education institutions. These blanket licenses allow an institution to pay an annual fee to cover public performances of music on campus, as well as certain types of off-campus functions, including dances, mixers, and parties hosted by student organizations. For a list of performances, see the complete [Use of Copyrighted Music on College and University Campuses](#), or speak with campus counsel.

Rates (2012–13)

BMI	One-tier: \$0.341 per FTE; minimum payment of \$270.53 Two-tier: \$0.319 per FTE; minimum payment of \$216.20
ASCAP	One-tier: \$0.33 per FTE; minimum payment of \$273.00 Two-tier: \$0.31 per FTE; minimum payment of \$220.00
SESAC	\$0.1274 per FTE; minimum payment of \$253.00

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Use music as part of a commercial or YouTube video

License required: Synchronization (sync) rights, unless fair use applies.

Background: Synchronization (sync) rights are the rights to use music in combination with visual images such as in movies, videos, or television. These rights are not covered under the compulsory licensing provisions for audio recordings and must be individually negotiated between an institution and the copyright holder(s). Keep in mind that there typically are two copyright owners involved in using a recorded piece of music: (1) the music publisher, which owns the musical work itself and (2) the owner of the copyright in the sound recording.

Even where an exemption does not apply under Section 110 of the Copyright Act, it may be possible to proceed under the fair use provisions of the Copyright Act. Found in § 107 of the Act, fair use involves the use of a copyrighted work for such purposes as teaching, research, reporting, or criticism, and outlines four factors that should be used in determining whether a use falls under this doctrine. The § 107 factors are:

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;
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 upon the potential market for or value of the copyrighted work.

Determining whether or not a particular use of music is a fair use can be difficult. As the United States Copyright Office has explained: “The distinction between what is fair use and what is infringement in a particular case will not always be clear or easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.”

A number of colleges and universities have established online tools to aid in making a fair-use analysis. We have listed some of those sites below:

- Stanford Copyright and Fair Use Center (fairuse.stanford.edu);
- Columbia University Copyright Advisor Office (copyright.columbia.edu/copyright/fair-use/fair-use-checklist); and
- University of Maryland University College Library Guidelines (www.umuc.edu/library/libhow/copyright.cfm).

Action: Contact the publisher or copyright holder of the musical work and, if applicable, recorded performance of the musical work. The American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC (originally the Society of European Stage Authors & Composers) contain information on music publishers, and the Copyright Office, at www.copyright.gov, allows users to search registered copyright information for both publishers and record labels.

As an alternative to negotiating with copyright holders and publishers, general music for use in commercials or advertisements may be purchased from stock music companies such as stockmusic.net, GreenLight Music, and The Music Bed, among others.

Rates: Determined through negotiation; can vary greatly depending on use.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Sell a CD of a student organization singing popular songs

License required: Mechanical rights.

Background: The copyright owner has the exclusive right to make copies of, or to reproduce mechanically, nondramatic musical works for distribution. These rights are known as “mechanical rights.” However, under § 115 of the Copyright Act, once a copyright owner has made recordings and distributed them to the public, or authorized someone else to do so, he or she must grant mechanical rights licenses to anyone else who wants to make a new recording and distribute it to the public. This type of license does not confer the right to make recordings of a particular performance or sound recording of a musical composition copyrighted by someone else.

The Harry Fox Agency was established by the National Music Publishers’ Association to serve as an information source, clearinghouse, and monitoring service for the licensing of mechanical rights. The agency represents almost 10,000 music publishers. The agency publishes on its website rates for services providing interactive streaming of compositions, as well as limited downloads.

Action: Contact the Harry Fox Agency to obtain a mechanical license. The following information is required:

- The name and address of the company or person to whom the license is to be issued;
- The title and writer(s) of the composition and the publisher(s), if known;
- The record number and configuration;
- The performing artist;
- The album (product) title;
- The playing time of the composition(s) in minutes and seconds; and
- The release date of the record (month and year).

Rates: License fees are set at a statutory compulsory rate that is adjusted every two years based on the Consumer Price Index. The current rate is 9.10 cents per physical recording or permanent digital download of a song five minutes or less, or 1.75 cents per minute or fraction thereof, per copy for songs over five minutes.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Play music over the college radio station

License required:

- Noncommercial radio and television (for broadcast radio)
- Performance rights **plus** digital statutory license (for online radio)

Background: Section 118 of the Copyright Act contains special provisions for licensing noncommercial radio and television stations to use copyrighted music (and pictorial, graphic, and sculptural works). The Copyright Royalty Board is charged with setting rates for these licenses, except when voluntary agreements between parties are reached. New annual rates may be set every five years.

The American Council on Education (ACE), supported by the National Association of College and University Business Officers (NACUBO), has represented higher education in the Copyright Royalty Board's broadcast rate proceedings. ACE has submitted joint proposals—negotiated with the performing rights organizations—that must be ratified by that board rather than voluntary agreements that would supersede the rule making process. Because ACE does not represent all institutions of higher education operating radio stations and it has no power to bind its members to an agreement, ACE cannot submit a voluntary agreement that would meet the requirements to bypass the board.

The Public Broadcasting Service (PBS) and National Public Radio (NPR) have negotiated voluntary license agreements with the three performing rights organizations. College and university stations affiliated with PBS or NPR are covered by those agreements.

Action:

- For broadcast radio: Contact the American Society of Composers, Authors, and Publishers (ASCAP), SESAC (originally the Society of European Stage Authors & Composers), and Broadcast Music, Inc. (BMI) to obtain a license for a noncommercial radio station.
- For online radio: Contact ASCAP, SESAC, and BMI to obtain performances licenses, and contact SoundExchange to obtain a statutory license for digital music.

Rates: Regulations issued by the Copyright Royalty Board set rates for noncommercial radio stations licensed to colleges and universities and not affiliated with NPR and PBS. The royalty rate for a SESAC license in 2013 is \$140. Rates for future years will adjust according to year-over-year changes in the Consumer Price Index or two percent, whichever is greater. The chart below explains the royalty rates for ASCAP and BMI licenses (each) at non-NPR affiliated college and university radio stations:

Level	FTE Students	2013	2014	2015	2016	2017
1	<1,000	\$319	\$325	\$332	\$339	\$345
2	1,000–4,999	\$369	\$376	\$384	\$392	\$399
3	5,000–9,999	\$505	\$515	\$525	\$535	\$546
4	10,000–19,999	\$655	\$668	\$681	\$695	\$708
5	20,000+	\$882	\$838	\$855	\$872	\$890

For more information, see [Use of Copyrighted Music on College and University Campuses](#).

What Do You Want To Do?

Play music using a jukebox

License required: Jukebox licensing agreement.

Background: Under the 1976 Copyright Act, jukeboxes were subject to a compulsory license issued by the United States Copyright Office under rates set by the Copyright Tribunal. A 1988 amendment to the Copyright Act provided for suspension of the compulsory license if agreement on a negotiated license was reached. In 1990, a jukebox licensing agreement took effect that was negotiated between the performing rights organizations and the Amusement and Music Operations Association.

Under the agreement, a new Jukebox Licensing Office was created to issue licenses and a fee schedule was devised. Jukebox owners pay a single combined fee rather than pay each performing rights organization separately. Licensed jukeboxes should display a sticker on the front indicating that the license fee has been paid. College and universities generally do not own and operate their own jukeboxes, but permit a vendor to use campus space in exchange for a share of the proceeds. In this case, the vendor should be responsible for the license, although institutions should check to be sure that the fee has been paid. The institution will only be liable if it fails to disclose the identity of the vendor upon request.

Action: If the institution owns and operates a jukebox, contact the Jukebox Licensing Office to pay licensing fee. If an outside vendor owns and operates a jukebox on campus, ensure that the fee has been paid by reviewing the sticker on the jukebox.

Rates: Rates are based on the number of jukeboxes owned. A license fee for an organization owning one jukebox is significantly higher than the fee per jukebox of an organization owning multiple jukeboxes. Rates are available on the Jukebox Licensing Office website: www.jukeboxlicense.com.

For more information, see [Use of Copyrighted Music on College and University Campuses](#).