



COPYRIGHT –
LICENSING MUSIC PERFORMANCE RIGHTS FOR WEBCASTS

- **For Internet broadcasting or “webcasting” that includes music, is it necessary to obtain separate licenses from SoundExchange, ASCAP, BMI, and SESAC, or is the SoundExchange license sufficient?**

Separate licenses most likely are necessary, because each of these organizations represents different groups of copyright owners with separate rights to the musical compositions, or in the sound recordings of music. Webcasting that includes music is considered a public performance that requires the music copyright owners' permission unless there is an applicable exemption or defense such as fair use. Music copyright is particularly complicated, since the public performance of a single song often involves the rights of multiple copyright owners; for example, the composer, music publisher and record label.

SoundExchange. Internet webcasts involve the public performance of music via digital audio transmission. SoundExchange represents the owners of the music performing rights in the **digital audio performance of sound recordings** (*e.g.*, record labels; artists). This is a relatively new category of rights added to the Copyright Act in the late '90s; it does not include the performing rights to the musical compositions (as contrasted with the recording) (see next paragraph). SoundExchange licenses vary, depending on the nature of the organization seeking the license (*e.g.*, a small, non-commercial webcaster will have a different license fee structure than a commercial webcaster). There has been controversy over the past couple of years over the reasonableness of SoundExchange's rates, especially for small, non-commercial broadcasters. More information is available on the Copyright Office website, <http://www.copyright.gov>.

ASCAP, BMI and SESAC. These organizations represent their member composers and music publishers. They license non-dramatic music performing rights, both live and transmitted over all types of media including the Internet, for their members' **musical compositions**. (as opposed to licensing the digital audio performance of sound recordings - see preceding paragraph). Membership in one or more of these organizations is up to the individual composer and publisher. Sometimes a single composition is represented by more than one of these organizations; for example, the publisher and the composer may each be a member of a different music performing rights organization. So, you can't determine which is the applicable performing rights organization by reference to the artist who performs the work or the type of music involved. Generally speaking,

ASCAP and BMI represent the lion's share of music performed in the US; SESAC has a significantly smaller membership.

ASCAP, BMI and SESAC offer several types of licenses. The "blanket license" includes the non-dramatic music performing rights to all their respective composers' and publishers' works, for unlimited use during the license term, in defined media of exhibition and/or for live performances. These organizations also make available a more limited "per program" license. It is also possible to license the music performing rights directly from the composers and publishers, since the ASCAP, BMI and SESAC membership agreements with composers and publishers are non-exclusive.

ASCAP, BMI and SESAC licenses typically will cover the music performing rights for the live or recorded (other than digital audio performances of sound recordings - see SoundExchange) performance of copyrighted works in a concert on the university's premises or under the university's auspices (the scope will be defined in the license). With respect to music performed in a play, an issue would be whether the music is incidental to the dramatic performance, or alternatively, whether the music is an intrinsic part of the dramatic action. The latter, called "grand" performing rights (*e.g.*, the musical score for an opera) are not licensed by ASCAP, BMI or SESAC; these organizations license only the non-dramatic performing rights.

Guide to the Acronyms:

ASCAP - the American Society of Composers, Authors and Publishers, a nonprofit association - is the oldest and by most measures the largest of the performing rights organizations in the United States.

B.M.I. - Broadcast Music Inc., also a nonprofit and the longtime chief competitor to ASCAP.

SESAC - Society of European Stage Authors and Composers, the smallest of the three and the only for-profit organization of the group.