RESOLUTION NO. CR-31-05

A RESOLUTION TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO A LOCAL GOVERNMENTAL ENTITIES LICENSE AGREEMENT WITH THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS FOR CITY EVENTS

WHEREAS, it has been determined that the promotion of various musical performers and other uses of music by the City is subject to licensing by the American Society of Composers, Authors and Publishers (ASCAP); and

WHEREAS, ASCAP has provided an annually renewable licensing program for municipalities to maintain its legal compliance.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GROVE CITY, COUNTY OF FRANKLIN, STATE OF OHIO, THAT:

SECTION 1. The City Administrator is hereby authorized to enter into the attached License Agreement with ASCAP for this express purpose.

SECION 2. This resolution shall take effect at the earliest opportunity allowed by law.

William E. Saxton, President of Council

Cheryl L. Grossman, Mayor

Passed: 05-02-05
Effective: 05-02-05

Attest: Tami K. Kelly, MMC, Clerk of Council

I Certify that this resolution is correct as to form. Thomas R. Clark, Director of Law

An ASCAP License
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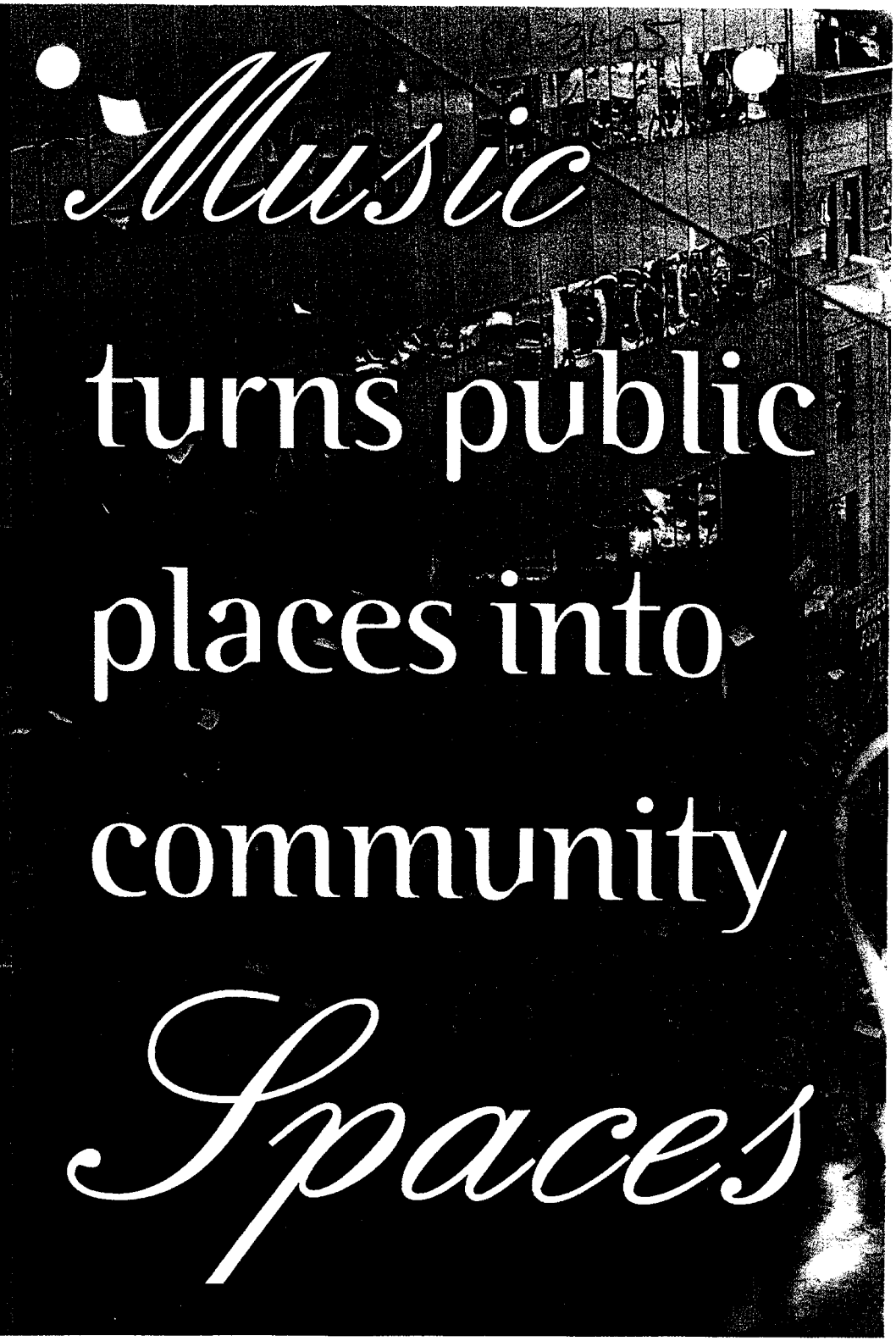
SOUND POLICY

HE ASCAP
ICENSE AGREEMENT
OR LOCAL GOVERNMENTS
Developed with the International
Municipal Lawyers Association

A COMPREHENSIVE SOLUTION TO
MUSIC PERFORMANCE LICENSING

ASCAP



The ASCAP License Agreement

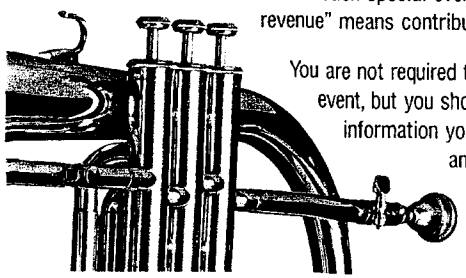
What Is Covered? The license agreement covers almost all non-dramatic performances you present both on government property and at functions and events at other locations. These include live performances, recorded performances (CDs, tapes, radio and television over loudspeakers), and music on hold (ASCAP's licenses with radio stations do not cover your music on hold transmissions).

Does the License Cover All Uses of Music By Our Government? The license provides broad coverage for just about any public performance. But copyright owners enjoy a number of separate rights, including performing rights, recording rights and the right to reproduce (print) and distribute copies of their works, so rental or purchase of music does not authorize its public performance. Also, ASCAP members only grant ASCAP the right to license non-dramatic public performances of copyrighted music in the ASCAP repertory, so "dramatic" or "grand rights" performances are not covered.

As it did with IMLA, ASCAP has negotiated comprehensive licenses with representatives of other industries. Those licenses should cover your performances in those areas – so to avoid duplicative coverage, the Local Government license excludes those performances. For example, ASCAP and the American Council On Education and the National Association of College & University Business Officers negotiated a model agreement which almost all U.S. colleges & universities have obtained. Similarly, radio and television broadcasts, cable, satellite and Internet transmissions are also separately licensed (although some of your closed circuit or intranet transmissions are covered by the new license). Finally, performances at theme and amusement parks, by professional sports teams or at professional sports events, and by symphony orchestras, are licensed separately.

When and How Are Fees Paid? A base annual fee based on population covers almost all government sponsored or presented performances. In addition, a separate Special Event fee is paid 90 days after major events that have very high ticket revenue. ASCAP and IMLA agreed on this dual fee to keep the base license fee low and reasonable for all government entities. Only those local governments that present major events pay additional fees for those events.

How does the Special Event fee work? You pay license fees, based on "gross revenue" for all "special events" you present. Special events are those with "gross revenue" in excess of $25,000. "Gross revenue" means all monies you receive or is received on your behalf from the sale of tickets for each special event. If there are no monies from the sale of tickets, "gross revenue" means contributions from sponsors or other payments received.



You are not required to keep track of the music performed at each special event, but you should send copies of any available programs. The program information you furnish helps us properly pay royalties to the composers and publishers whose works you have presented.

Where Do the License Fees Go? Over 84 cents of each dollar we collect goes right back to our members and to the members of affiliated foreign societies whose works are represented by ASCAP in the U.S.

Who Reports and Pays For Co-Promoted Special Events? If you present, sponsor or promote a special event with someone who is licensed under an ASCAP License Agreement, you will still need to report that event and provide the name, address, phone number and ASCAP account number of the other party. You must also let us know who will be responsible for payment. If the other presenter is not licensed by ASCAP, then you will be responsible for paying the license fee due – even if you have an agreement to the contrary with the other party.

Must You sign an ASCAP local government license agreement? No, but you must obtain authorization to perform our members' music. You can also obtain permission directly from the copyright owner. But ASCAP provides a valuable service to governments, businesses and organizations that use copyrighted music—by helping you easily meet your obligations under the Copyright Law. In short, the ASCAP license is music to everyone's ears.

Are Changes to the Model License Agreement Permitted? The provisions of ASCAP's license agreements are uniform and do not vary for licensees making similar use of ASCAP's members' music. The reason for this is that ASCAP's licensing activities are largely governed by a consent decree entered in a federal antitrust action, United States v. ASCAP, and one provision of that decree prohibits ASCAP from "[e]ntering into, recognizing, enforcing or claiming any rights under any license . . . which discriminates in license fee, or other terms and conditions between licensees similarly situated . . ."

Simply put, modification of the license agreement may well expose ASCAP to a claim of discrimination asserted by other licensees with whom we have executed the same form of license agreement. However, we recognize the special legal requirements of municipalities and other governmental entities, therefore, the agreement permits modifications such as the inclusion of equal employment opportunity statements and other provisions that are required by local or state law.

What If You Believe ASCAP's Fees Are Unreasonable? Any music user who thinks the fee for an ASCAP license is unreasonable may ask the U.S. District Court for the Southern District of New York to determine a reasonable fee by instituting a proceeding in that court. For more information on this process, your attorney should contact ASCAP's Legal Department in New York.

Why A Local Government Needs A License to Play Music

Some Copyright Law Basics: The Constitution authorizes Congress "to Promote the Progress of Science and the Useful Arts" by granting exclusive rights to authors. This insures that creators can earn a living from their work and provides incentive for the creation of more works. The Copyright Law of the United States, Title 17 USC, establishes property rights in musical works and grants creators and owners of copyrighted musical works the exclusive right to perform or authorize the performance of their works publicly (17 U.S.C. 106(4)). This means that, generally, other parties cannot publicly perform or authorize others to perform copyrighted works without the permission of the copyright owner. Also, as the case with other property rights, the owner has the right to be paid for the use of his property.

What is a public performance? The Copyright Law defines a public performance as one "in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." Performances transmitted or otherwise communicated by means of any device or process (for example via broadcast, telephone wire, or other means) to the public are also public performances (17 U.S.C. 101). The law requires users to obtain authorization not only for performances by live musicians, but also for performances by mechanical means including videotapes, CD's, tapes, music on hold, karaoke, jukeboxes and radio and TV reception.

What Happens If You Play Copyrighted Music Without Permission? If you choose to use someone's musical property without permission, the law provides that a court can assess damages from a minimum of $750 for each work infringed, require you to pay the copyright owners' attorney's fees and court costs, and enter an injunction against you.

Why Are You Responsible for Obtaining a License? Under the law, owners or operators of facilities or presenters of concerts and other events are responsible for performances on their premises. Technically, everyone who participates in an infringing performance is liable and copyright owners can sue the event presenter or owner of an establishment as well as the members of the band or the disc jockey who actually gave the unauthorized performance. In practice, the owners and presenters obtain licenses as a cost of doing business.

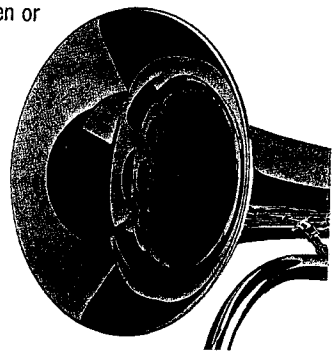
ASCAP and the International Municipal Lawyers Association

How do you obtain a license? It is impossible for copyright owners to know of every conceivable use or performance of their works, and it would also be difficult for users of music to locate all the copyright owners and negotiate licenses for all of the works that might be used. So, composers and publishers of musical works authorize collective licensing organizations like ASCAP to locate and license public performances of their works. ASCAP, the American Society of Composers, Authors and Publishers, makes giving and obtaining permission to perform music simple, providing a valuable service to businesses and creators alike. ASCAP is the largest performing rights organization in the world, made up entirely of composers, songwriters and publishers.

Why Should You Obtain the ASCAP License Agreement for Local Governments? Local governments have obtained many different licenses from ASCAP for decades, but IMLA and ASCAP found the current licensing system was burdensome and left local governments vulnerable. Under the old system, each potential use of music (and you can see from this brochure there are many!) needed to be identified and separately licensed. One local government might have many different licenses each with different reporting and payment requirements, fee structures, levels and types of coverage, and effective dates. And there may be significant gaps in coverage raising the potential for copyright infringement liability.

What Are the Benefits of the Agreement? The ASCAP License Agreement for Municipalities and Governmental Entities – the product of negotiation between IMLA and ASCAP – provides simple, fast, comprehensive and affordable access to every variety of music you need to attract, entertain, enlighten and educate your citizens and visitors.

- Access to, and the right to perform, any or all of the more than 8 million works of the more than 110,000 ASCAP composer, lyricist, songwriter and publisher members and the repertories of nearly 60 affiliated societies worldwide.
- Immediate access to contemporary music as soon as it is written or published...At no additional cost!
- Saves the time, expense, paperwork and trouble of contacting and negotiating separate permission for each musical work that may be performed during the year.
- Helps prevent even inadvertent infringements on the rights of ASCAP members and foreign affiliates.



Festivals • Concerts • Arts & Crafts Fairs • Parades

First Night and New Year's Celebrations • Fireworks

Carnivals • Swimming Pools • Community Centers

Dances • Aerobics classes • Golf and Tennis Centers

Snack Bars • Parks & Recreation Facilities • Music

on Hold • Background Music in Municipal Buildings

Employee Functions and Parties • Municipally Owned

Shops • Hospitals • Non-Exempt School Performances

City Hosted Conventions • Employee Training Sessions

Ice Skating Rinks • Roller Skating Rinks • In Line

Skate Parks • Amateur Athletic Leagues and Events

Buses, Trains and Subways • Carnivals • Airports

Museums • Laser Shows • Aquariums • Zoos

ASCAP represents every kind of music. ASCAP's repertory includes pop, rock, alternative, country, R&B, rap, hip-hop, Latin, film music, television music, folk, roots, blues, jazz, reggae, gospel, contemporary Christian, new age, theater, cabaret, dance, electronic, symphonic, chamber, choral, band, concert, educational and children's music — the entire musical spectrum.

ASCAP is home to the greatest names in American music, past and present, as well as thousands of writers in the earlier stages of their careers. ASCAP members include Irving Berlin, Stevie Wonder, Bruce Springsteen, Leonard Bernstein, Madonna, Wynton Marsalis, Stephen Sondheim, Dr. Dre, Erykah Badu, Michael W. Smith, Duke Ellington, Rodgers and Hammerstein, Garth Brooks, Tito Puente, the Dixie Chicks, Dave Matthews, Destiny's Child, Henry Mancini — just to name a few.

Among the works in the ASCAP repertory are: "Appalachian Spring," "Purple Haze," "I Get A Kick Out of You," "Ain't No Mountain High Enough," "How Do I Live," "Oh Happy Day," "Bills, Bills, Bills," "I Swear," "A Night in Tunisia," "Moon River," "Doo Wop (That Thing)," "Just the Way You Are," "I Shot the Sheriff," "My Girl," "Hello Dolly," "When Doves Cry," "Jailhouse Rock," "Chattahoochie," "Like A Rock," "Like A Virgin," and "Born in the U.S.A."

Information about specific works and ASCAP repertory can be obtained in a variety of ways. Separate data bases of works in the ASCAP repertory that have been registered with ASCAP since January 1, 1978 and information in ASCAP's surveys of performed works since January 1, 1978 are available online at the ASCAP Web Site (www.ascap.com, click on "ACE Database of Musical Titles"). The ACE Database can also be used to determine whether a particular songwriter or composer is a member of ASCAP. More comprehensive records of the titles, dates of U.S. Copyright registration (if any), writers and current publishers or other copyright owners of all known works in the ASCAP repertory are available for public inspection at ASCAP's offices in New York City during regular business hours. You can also call or write ASCAP for information as to specific works: (800) 450-4223 or ASCAP, 2690 Cumberland Parkway, Suite 490, Atlanta, GA (Attn: Bonnie King).

Founded in 1935, the International Municipal Lawyers Association (IMLA) is a nonprofit organization consisting of over 1,400 local governments and their attorneys throughout the United States and around the world. For more information on IMLA and the ASCAP Local Government License Agreement, please visit our website at: www.imla.org.

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