

Introduction

This article briefly explains the following:

- Why you may need a licence to play music to staff and/or the general public in your business
- PPL and PRS for Music – who they are and what they do
- Live Music Act 2012 and Legislative Reform (Entertainment Licensing) Order 2014
- When and how are PPL and PRS for Music licence fees payable
- How PPL and PRS for Music calculate their licence fees
- Dealing with approaches from PPL or PRS for Music

Why You May Need a Licence to Play Music in Your Business

Copyright is a long-established legal right which protects certain types of works from unauthorised commercial exploitation. Copyright protects in particular each of the following:

- lyrics of songs
- music
- recordings of songs or music
- radio or TV broadcasts

The owner of the copyright in any of the above works can control their commercial exploitation by either (i) stopping or (ii) charging third parties for the privilege of playing or performing them in public.

It is important to realise that the copyright in music, lyrics and sound recordings lasts a very long time. The copyright in music and lyrics lasts for 70 years from the end of the year in which the composer or writer dies or, if more than one, the year in which the last one to die, dies. The copyright in a sound recording lasts 70 years from the later of the end of the year in which the recording was made or first published. Together the net effect of these provisions is that almost all sound recordings of music played in public will be protected by at least one and more likely at least two copyrights.

In Public

For the purposes of copyright licences the lyrics of a song, the notes of music, a recording of a song or a piece of music, or a radio or TV broadcast, will be played in public where they are played other than for private and domestic purposes and can be heard by at least one person, in addition to the person who caused them to be played. This will include staff as well as members of the general public.

Examples of what would amount to playing or performing such works in public include:

- playing a radio, TV, CD player or jukebox in a restaurant, bar, nightclub, shop, supermarket or office
- having a karaoke competition in your office canteen or in a bar
- playing a radio, CDs, an iPod or an MP3 player via a loudspeaker system to factory or office workers including music from any online music streaming or download service
- playing background music in a gym including any workplace gym
- having the radio on in a private room forming part of a shop, bar or other premises, which can nonetheless be heard by more than one member of staff or by the public coming into the shop or bar
- putting on live music in any premises
- playing music videos in the workplace
- playing music in nightclubs, discos, dances and by DJs
- playing background music in casinos, amusement arcades, leisure centres and other premises
- playing music in exhibition venues and on individual stands
- playing music or songs to telephone callers whilst they are kept on hold

Examples of what would not amount to playing or performing such works in public include:

- an office worker listening to an iPod via headphones at work or in a pub
- listening to or performing music at home with friends or family
- watching TV or listening to TV, radio or a CD at home with family or friends
- an artist playing music whilst working alone in his studio

Isn't it a Defence that I Have Bought and Paid for the Music that I Play?

No. When you buy a CD or pay for a music streaming or subscription service, in effect you are buying a licence to play that music for your private and domestic purposes. Playing music in public will ordinarily be outside that licence.

PPL and PRS For Music – Who They Are and What They Do

PPL and PRS for Music (PRS) are collecting societies which collect and distribute licence fees to their members. This centralised function means that businesses which play or perform music in public only have to deal with these two organisations instead of having to deal with hundreds of recording companies, individual musicians and song writers (because the owners of the copyright assign those rights to the collecting societies in return for royalties).

PPL collects and distributes licence fees in relation to **sound recordings** on behalf of record companies and performers. Most sound recordings are made at recording studios or live at concerts. Sound recordings are protected by a separate copyright from the music or lyrics which have actually been recorded.

PRS, by contrast, collects and distributes licence fees relating to the performance in public of **the underlying song lyrics and music**. Thus a sound recording of music and lyrics may well be protected by two separate copyrights.

Most businesses that require a PPL Licence will also need a PRS Licence and vice versa. For example, if your business plays recorded music via the radio, TV, CDs, DVDs or via computers then you will need both a licence from PRS (for the underlying music and/or lyrics) and from PPL for the underlying sound recording. However, if your business only hosts the performance of live music and plays no recorded music at all then you will only need a licence from PRS and not from PPL.

In our experience, this is a significant source of confusion for small businesses playing music as they do not understand why two separate licences may be required for playing the same piece of music, nor why the means of calculation is different (for example, in relation to background music played in factories, the calculation for PPL is based on audible area and for PRS on the number of persons who may listen and the length of time they listen).

PPL and PRS now offer joint licensing for a very limited number of organisations including some small workplaces with four or fewer employees, community buildings such as village halls and amateur sports clubs. However, there are various conditions of eligibility for the joint licence scheme. For example, in respect of small workplaces, the music must not be audible by customers, visitors, or guests. There have historically been rumours reported in the trade press of a merger between PPL and PRS, but both organisations refused to comment on this and they remain separate organisations, with separate licence schemes in the vast majority of cases.

Live Music Act 2012 and Legislative Reform (Entertainment Licensing) Order 2014

The Live Music Act came into force on 1 October 2012. The Act removed the requirement for premises to be licensed by local authorities for live music under the Licensing Act 2003 (the “2003 Act”) in certain circumstances including for live amplified music between 8 a.m. and 11 p.m. in alcohol-licensed premises and workplaces for audiences of up to 200 people; and for unamplified music without any audience limit.

From 6 April 2015, entertainment was deregulated further, under the Legislative Reform (Entertainment Licensing) Order 2014, and the following exemptions from the 2003 Act now also apply:

- live unamplified music between 8 a.m. and 11 p.m. on any premises (i.e. not just alcohol-licensed premises/ workplaces)
- live amplified music between 8 a.m. and 11 p.m. for up to 500 persons (i.e. an increase from the previous 200 person limit)
- recorded music between 8 a.m. and 11 p.m. in alcohol-licensed premises (but not workplaces) provided the audience does not exceed 500
- subject to certain conditions, entertainment provided on local authority premises, at schools, hospitals, community premises, at circuses

Existing conditions on premises licences issued under the 2003 Act which related specifically to relevant entertainment no longer apply between the hours of 8 a.m. and 11 p.m. (provided the audience limits are not exceeded), unless or until conditions are ‘re-activated’ or imposed at a review hearing, for example following noise complaints.

However, despite the various relaxations of premises licensing under the Licensing Act, the playing of live and/ or recorded music in public still require a PPL and/ or a PRS licence as appropriate, regardless of whether a premises licence is required under the Licensing Act.

In the run-up to deregulation of live and recorded music, there was much debate around the likelihood of red tape and cost barriers preventing the growth of grass-roots music in the UK because, for example, venues could simply not afford the cost of a licence to host small scale music-led events under the Licensing Act 2003. Is the cost of PPL and PRS licences another barrier? It may be that time will tell, now that the requirement for authorisation under the 2003 Act has largely disappeared.

When and How Are PPL and PRS Fees Payable?

Both PPL and PRS Fees are payable annually in advance. You can apply for your licence either online or by telephone. If you operate more than one site, it is possible to obtain a “corporate licence” to cover all of them under one application.

Some fees are calculated by reference to an estimate in advance, for example as to the number of times music will be played or the average number of people that will attend (for more details see below). For existing premises, licence fees are calculated by reference to the actual audited figures from the previous year.

How PPL and PRS Calculate Licence Fees

PPL and PRS calculate the licence fees payable to them in different ways.

PPL

PPL has a number of different tariffs depending on where sound recordings are played:

- tariff 210 relates to background music in public houses, bars, restaurants and cafes
- tariff 211 relates to background music in shops and stores
- tariff 212 relates to background music in factories and offices
- tariff 001 relates to specially featured entertainment

The levels of PPL tariffs 210, 211 and 212 were set in 2009 by the Copyright Tribunal (a public body which oversees the charges set by PPL) and are calculated by reference to the size of the area in which the music can be heard. The bigger the audible area the more you pay. For example, for the year 1 January 2015 to 31 December 2015, for a public house, bar, restaurant or café, with an audible area of 1 to 400 square metres, the licence fee payable to PPL is £129.47. For such premises, with an audible area of less than 50 square metres, who only play traditional radio and television broadcasts (such as BBC national and local radio stations and independent radio stations licensed by Ofcom), there is a discounted fee, which for 2015 is £64.74 (50% of the full fee).

PPL has a range of other tariffs, which apply to other situations. For example the PPL tariff 001 covers Specially Featured Entertainment (e.g. music played in nightclubs, discos, dances and by DJs) and is based on the number of events per year, their duration and the average number of people who attend them.

A multi-faceted business, such as a hotel, may need to pay fees under a number of different tariffs. For example, for telephone music played to callers; for background music played in hotel restaurants; for music played to staff in kitchens and for specially featured entertainment, such as DJs or bands, which are played during functions such as Christmas parties or wedding receptions.

The fees, which are payable annually in advance, increase each year by an amount linked to the increase in the retail price index.

PPL charges a 50% uplift on its standard licence fee rates for those who have played music without having a licence in place and are paying retrospectively. For example someone with a pub with an audible area of 380 square metres would pay not £129.47 but £194.21.

PRS

PRS also has a number of different tariffs, for example:

- tariff HR relates to hotels, restaurants and cafes
- tariff P relates to public houses
- tariff D relates to nightclubs
- tariff I relates to music played in the workplace

These PRS tariffs are not related to the size of the area in which the music can be heard but instead they are generally calculated by reference to the number of people who can hear the music and the number of days/occasions on which it is played. For example, in relation to music played in work canteens, the annual licence fee applicable from 1 March 2015 is 17.22 pence per day for each unit of 25 employees, or part thereof, which can hear the music. The fee applicable from 1 July 2014 for a hotel putting on a karaoke night the charge is £10.04 per night for the first 100 people and then £2.54 for each additional unit of 25 people.

For commercial discotheques and dance halls, special rules apply:

- (i) Fees are payable in advance based upon the audited admittance figures for the preceding year as certified by an accountant. Upon receipt of the actual audited certified figures, the organisation will then calculate if any additional fees or indeed any rebates are due in relation to the fee paid in advance.
- (ii) If the accountant acting for the discotheque or dance hall certifies that the number of persons admitted to the premises during a given year cannot be determined, then the number admitted shall be deemed to be half of the licensed capacity of the premises (as set out in the local Fire Officer's Certificate) multiplied by the number of nights when the premises were or are expected to be open (whether to the public or on private hire) in the year concerned.

PRS has a number of other tariffs, which are calculated in different ways. Where live music is performed the PRS licence fees are generally calculated by reference to how much it costs the venue to put on such music on an annual basis.

PRS also charges a 50% surcharge in relation to licence fees that are paid retrospectively, only after the public performances of works have already taken place. Licence fees increase annually by an amount which depends on either annual changes to the Index of Average Earnings or the annual changes to that index and the RPI.

Licence fees payable to both PPL and PRS attract VAT.

Play Then Pay?

It is always sensible to acquire the necessary licences from PRS and PPL before you start playing music in your business. To play then pay can have a number of serious consequences.

As stated above if your business plays music in public without first having the necessary PRS and/or PPL licences in place then the most likely consequence is that you will be required to pay the retrospective licence fees plus a 50% uplift, which is levied to compensate PRS and PPL for their costs of pursuing those who do not take out a licence before they start playing. If you have played music for a number of years without having either or both of the required licences in place, the 50% uplift could add up to a very significant amount, particularly where your business or organisation operates across numerous sites.

What is more, if you have permitted the playing of copyright material in public without first having obtained an appropriate licence, then PPL or PRS could sue your business for copyright infringement. Such litigation could prove very expensive indeed as you could end up paying not merely PRS' or PPL's standard licence fees but also additional damages, as well as your own and PPL's or PRS' legal costs.

Dealing With Approaches from PRS or PPL

We have significant experience in acting for clients who are being pursued by PPL or PRS for licence fees or who are in dispute with PPL or PRS about the amount of fees payable.

Both PPL and PRS maintain enforcement teams that seek to identify unlicensed businesses, which play music in public. They frequently receive tip offs from disgruntled employees or ex-employees.

Neither PRS nor PPL are government bodies. They are private sector organisations. Like any other private claimant the burden is on them to prove that a third party owes them licence fees. There is no presumption of guilt on the part of any third party: unless and until legal proceedings have been commenced, there is no requirement on a third party to prove that it has not infringed PPL's or PRS's copyrights. That said there is an obligation on businesses to ensure that they have the necessary PPL and PRS licences in place and they should comply with that obligation. When dealing with PPL and PRS businesses should at all times conduct themselves in a reasonable fashion, that will stand up to scrutiny in Court.

In most encounters between PPL/PRS and those they are pursuing there is a huge imbalance in experience: PPL and PRS deal with complaints concerning unlicensed playing of music week in week out but most of those accused of such activities will be completely unfamiliar with the nature of the complaints made against them and the legal proceedings they are likely to be threatened with or involved in. Businesses and individuals report that PPL/PRS can often seem quite hostile and dogmatic in their pursuit of licence fees, even if it is not absolutely clear that such fees are due. For businesses and those that work in them, who are not used to dealing with these issues, this can be intimidating.

Some important points to bear in mind when dealing with either PPL or PRS are:

- **Control the flow of information** – You should have one (and only one) senior person nominated to deal with PPL/PRS or their lawyers. This should ensure that they get consistent and correct information. Other employees should be told to refer any communications or calls from PPL/PRS for Music to the nominated person.
- **Don't be panicked or pressured into giving incomplete or inaccurate information** – For a multi-site organisation it can be time-consuming to work out what music has been played where, when, in front of whom and by whom.

Providing inaccurate information in good faith but under pressure, which you subsequently have to correct, will often be characterised by PPL/PRS as proof of dishonesty and may generally undermine credibility in any subsequent legal proceedings.

Make it clear to PPL/PRS that you will answer relevant questions, properly raised, only once you have had an opportunity to collate and review all relevant information.

- **Make it clear that you will pay what is properly due and that you won't infringe** – PPL/PRS will frequently threaten legal proceedings and injunctions.

Make it clear in relation to historical liabilities that you will promptly pay what is properly due once the relevant information has been collated and reviewed and the figures agreed.

In relation to continuing or future playing or performing in public, it is important to make it clear to PPL and PRS that you undertake to (a) take all necessary licences in relation to future public playing/performances and (b) to pay all licence fees properly due going forwards. Providing your business is solvent and good for the likely future licence fees then giving such an undertaking will make it very much harder for PPL or PRS to obtain a temporary injunction to restrain public playing going forwards.

- **Engage specialist experienced lawyers early on** – Often it will save money in the long run if specialist lawyers are engaged early on. These should be lawyers who have significant experience in dealing with PPL and PRS.

You should not agree to disclose any of your documents nor agree to the terms of any court order, without having first taken proper legal advice.

- **Agree a deal where possible** – If your business has played music in public, without having the necessary licences in place, then you will need to settle with PPL/PRS to avoid court proceedings, which will inevitably be expensive. This does not mean that you need to write a blank cheque to PPL/PRS but it does mean that realism is required.

The use of without prejudice save as to costs offers and special offers made under Court Rules (known as Part 36 offers) can give a measure of costs protection for your business where PPL/PRS bring proceedings to recover unpaid licence fees. Such offers can provide costs protection where PPL/ PRS are claiming a sum which is both greater than (a) the amount they are entitled to claim and (b) the amount which has been offered to them or paid into Court.

Face to face meetings with PPL/PRS representatives and mediation can both help to resolve disputes.

- **Have a written policy on playing music in your business and enforce it** – It may well help your case, when dealing with PPL or PRS, if you can evidence that your business has a written policy on playing music in the workplace, which is enforced. This policy should be referred to in employment contracts and handbooks and be on your firm's intranet site and notice boards. Breaches by employees should be dealt with formally and the process documented.

Why Choose Us

We have significant experience in managing disputes with PPL or PRS and with claiming rebates. We can also provide both standard and bespoke written policies for staff relating to the playing of music in your business.

We can assist your business in managing your dispute with PPL or PRS, with drafting your organisation's music at work policy documents and with claiming rebates.

We can provide you with market leading PPL/PRS compliance tools which will enable your business to meet its obligations with the minimum of fuss.

For further information please contact any of the lawyers below.

Contacts



Andrew Clay

Partner, Leeds

T + 44 113 284 7655

E andrew.clay@squirepb.com



Stephanie Perraton

Partner, Birmingham

T +44 121 222 3359

E stephanie.perraton@squirepb.com



Nicola Smith

Senior Associate

T +44 121 222 3230

E nicola.smith@squirepb.com

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.