

Review

Commercial & Dispute Resolution



PPL, PRS And Playing Music In Public

INTRODUCTION

We reported in June 2008 that PRS for Music was increasing its monitoring of music played in the workplace and in other premises, to check whether such businesses hold the appropriate licences. This trend is continuing.

In recent months it has become apparent that PPL is also conducting an aggressive enforcement campaign. It seems that PRS for Music and PPL share information. If your business needs licences from both of these organisations but only has a licence from one of them, then your business may well be a target for investigation by one of these organisations.

However, there is some good news. A recent ruling of the Copyright Tribunal, vigorously but unsuccessfully contested by PPL, confirmed that some of the tariffs charged by PPL from 2005 to 2009 were too high and unreasonable. Therefore, your business may be entitled to a refund if you paid PPL licence fees, under the affected tariffs, during that period.

In this article we explain:-

- Why you may need a licence to play music in public
- PPL and PRS for Music – who they are and what they do
- 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
- Claiming Rebates From PPL

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

WHY YOU MAY NEED A LICENCE TO PLAY MUSIC IN PUBLIC

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.

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In public

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

- Playing a radio, TV or CD player 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.
- Having the radio on in a private room forming part of a shop, bar or other premises, which can nonetheless be heard by the public coming into the shop or bar.
- Putting on live music in a hotel, exhibition hall, nightclub or restaurant.
- 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 CD's that I play?

No. When you buy a CD in effect you are buying a licence to play that music for your private and domestic purposes. Playing music in public will be outside that licence.

PPL AND PRS FOR MUSIC – WHO THEY ARE AND WHAT THEY DO

PPL and PRS are collecting societies that 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.

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.

PRS for Music, by contrast, collects and distributes licence fees relating to the performance in public of the underlying song lyrics and music.

For many businesses if you have a PPL Licence you will need a PRS for Music 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 Music (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 for Music and not from PPL.

WHEN AND HOW ARE PPL AND PRS FOR MUSIC FEES PAYABLE?

Both PPL and PRS for Music Fees are payable annually in advance. You can apply for your licence either online or by telephone. If you operate more than one premises, 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 FOR MUSIC CALCULATE THEIR 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

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 2009 to 31 December 2009, for a public house, bar, restaurant or café, with an audible area of 1 to 400 square metres, the licence fee payable to PPL was £109.75. 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 2009 was £54.88, (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 £109.75 but £164.63.

PRS for Music

PRS for Music 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 for Music 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 2010 is 15.90 pence per day for each unit of 25 employees, or part thereof, that can hear the music. For a hotel putting on a karaoke night the charge will be £8.75 per night for the first 100 people and then £2.21 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 for Music has a number of other tariffs, which are calculated in different ways. Where live music is performed the PRS for Music licence fees are generally calculated by reference to how much it costs the venue to put on such music on an annual basis.

PRS for Music also charges a 50% surcharge in relation to licence fees that are paid retrospectively, only after the public performances of works has already taken place.

PRS for Music's 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 for Music 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 for Music 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 for Music and PPL for their costs of pursuing those who do not take out a licence before they start playing.

If your business has played copyright material in public without first having obtained an appropriate licence, then PPL or PRS for Music could sue your business for copyright infringement. Such litigation could prove very expensive indeed as you could end up paying not merely PRS' or PRS for Music's standard licence fees but also additional punitive damages as well as your own and PPL's/ or PRS for Music's legal costs.

It is also worth noting that it is a criminal offence to play music in public without a licence if you knew or had reason to know that doing so amounted to copyright infringement. This could lead to directors of companies who play music in such circumstances being sentenced to up to six months in prison or paying a fine of up to £5000. Although such prosecutions are unlikely to be brought by the Crown Prosecution Service they could be brought privately by PPL or PRS for Music.

DEALING WITH APPROACHES FROM PRS OR PPL

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

Both PPL and PRS for Music 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 for Music'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 for Music 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 for Music and those they are pursuing there is a huge imbalance in experience: PPL and PRS for Music deal with complaints concerning unlicensed playing of music week in and 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. It is our experience that PPL/PRS can often be quite aggressive in their pursuit of licence fees. For businesses and those that work in them, who are not used to dealing with these issues, this can often 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 for Music or their lawyers. This should ensure that they get consistent 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 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 under pressure, which you subsequently have to correct, will often be characterised by PPL/PRS for Music 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 for Music 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 for Music 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 for Music 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 for Music.

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.

CLAIMING REBATES FROM PPL

As stated above, the Copyright Tribunal imposed new tariffs 210, 211 and 212 on PPL in 2009. This was done as a result of a legal proceedings between PPL and the British Hospitality Association, The British Retail Consortium and other interested parties. The Copyright Tribunal actually lowered the tariffs that PPL had been charging between 2005 and 2009. This means that many businesses which paid PPL's licence fees between 2005 – 2009 are entitled to a refund. These refunds can be very substantial indeed for a multi-sited business.

HAMMONDS

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

We have also developed a market-leading PPL/PRS compliance product, which will enable your business to meet its PPL/PRS obligations with the minimum of fuss.

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