

Music License for Hospitality Industry



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MUSIC LICENSE FOR HOSPITALITY INDUSTRY

Ambience is one of the main factors that are kept in mind while eating out, either when relaxing at a local coffee shop or dining in a restaurant or having a party or enjoying a special event. The music played there contributes to making that place a memorable one. With all our devices connected to multiple music applications, it is easy to listen to any song at any time anywhere. Then there arises a question whether restaurants and hotels can play music? Can they play music by just connecting their speakers to their personal devices? Is this a violation of Copyright Act?

Meaning of Copyright:

Copyright has been defined under section 14 of the Copyright Act, 1957. This provision¹ grants exclusive right to do or authorize the doing of any of the acts specified therein, in respect of a work or any substantial part thereof in the case of a literary, dramatic, musical work, artistic work, cinematographic film, which is not a computer programme. The original copyright owner of any musical work or sound recording is the author of the work.

The Copyright Act, 1957 also defines musical work, sound recording and communication to public as follows:

i. Musical Work²:

Musical Work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. The Copyright holder of a musical work has the exclusive right to perform their work in public or communicate the same to the public.

ii. Sound Recording³:

Sound Recording means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced. The copyright holder of a sound recording has the right to communicate the sound recording to the public.

iii. Communication to the public⁴:

¹ Section 14, the Copyright Act, 1957.

² Section 2 (p), the Copyright Act, 1957.

³ Section 2 (xx), the Copyright Act, 1957.

⁴ Section 2 (ff), the Copyright Act, 1957.

Communication to the public means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Music apps such as Spotify, Apple Music, Gaana are all streaming apps meant only for private use and not for commercial use. If the same songs have to be played in a restaurant or a hotel, a music license must be obtained. The purpose of issuing music licenses is to protect the rights and interests of the composers, songwriters, song recording companies and publishing houses. To make this process an easy and smooth transaction, copyright societies were formed. Registered copyright societies⁵ are authorized to grant licenses to the concerned applicants on behalf of the owners. A registered society is supposed to renew its registration every 5 years⁶. Under the copyright act, it is mandatory for all the copyright societies to publish its tariff scheme for the benefit of the public⁷.

Each copyright society issues license for protecting various underlying works in a piece of music. When a song is licensed, it may require one or more license from different copyright societies.

A. licensing only the sound recording

If a hotel or restaurant wishes to use and play recorded music, license has to be procured from Phonographic Performance Limited India (PPL), a registered Copyright Society.

i. Phonographic Performance Limited India (PPL)⁸:

PPL is a performance rights organization founded in 1941. It licenses sound recordings of its members for public performance and broadcast. By obtaining a PPL License, a licensee is granted exclusive access to their wide collection of sound recordings of its members. PPL is a non-profit organization that enforces the rights of

⁵ Section 33, the Copyright Act, 1957.

⁶ Section 33 (3), the Copyright Act, 1957.

⁷ Section 33 A, the Copyright Act, 1957.

⁸ <https://www.pplindia.org/s/what-is-ppl>.

their members by ensuring that the music used is duly compensated to the rightful owners.

Any individual, firm, association or a body corporate who is the owner of any sound recording and has the right to communicate the same to public by way of broadcast or public performance can become a member for free. To obtain a license from PPL, one must contact their facilitation centre and provide all the relevant information sought.

PPL has classified its licenses in to three main categories:

- i. Annual Background License – This is when an individual wants to play or communicate sound recordings either in public spaces or commercial establishments such as lounge bars, shops, gyms, salons, theatres, resto bars, hotels, etc. via medium of streaming audio or video, radio, background music supplier, CD's DVD's, mobile phones, etc.
- ii. Event License – This is for an individual who wishes to play sound recordings at events such as corporate events, fashion shows, product launches, award ceremonies, sports events via medium of streaming audio or video, radio, background music supplier, CD's DVD's, mobile phones, etc.
- iii. Radio Broadcast License – This is for a broadcaster who wishes to play sound recordings within India.

B. underlying musical and literary works:

If a hotel or restaurant wishes to use only musical scores and lyrics or perform live concert or provide live music, license has to be procured from:

- i. Indian Performing Right Society Limited (IPRS)⁹:

The IPRS is a representative body of the owners of Music, who can be composers, lyricists (or Authors) and the Publishers of music that came into existence in 1969. IPRS issues licenses and collects royalties from music users on behalf of its members who are lyricist, composers and publishers. To become a member of IPRS one must fill an online membership form¹⁰ and file it with the applicable fees. The completed and scrutinized forms if accepted by the IPRS Board on recommendation of the

⁹ <https://www.iprs.org/about-iprs/>.

¹⁰ <https://online.iprs.org/onlineBG/>.

membership committee and CEO. The accepted decision of the Board is ratified by the membership of IPRS at its annual general meeting.

The royalty charges¹¹ is payable annually, by the licensees and is collected in advance by IPRS. The charges are calculated based on different circumstances in which the music is performed in the various categories of premises and classes, venues or platforms of entertainment by any mechanical or electronic device in:

- i. Arcades multiplexes, shopping plazas, info tech center/parks/Industries, and automobile showrooms;
- ii. Amusement parks;
- iii. Utilization by cinematograph films;
- iv. community radio broadcast;
- v. Hotels, guest houses, motels, holiday homes, etc;
- vi. Internet non - interactive music streaming services;
- vii. Internet interactive music streaming services
- viii. Karaoke services;
- ix. Ringtone and caller back tone;
- x. Pub and Disco;
- xi. Radio broadcast;
- xii. Retail premises;
- xiii. Satellite and television broadcast;
- xiv. Live/DJ (recorded);
- xv. Standalone banquets/ auditoriums;
- xvi. Bars and restaurants;
- xvii. Music in commercial;

Unlike PPL that deals with only administering rights in sound recording, IPRS has been registered to conduct copyright business in ‘musical works’ and ‘literary works associated with the musical work’.

Apart from the above mentioned there is another copyright society governing the performer/singer’s rights and license can be obtained from the same.

¹¹ <https://www.iprs.org/tariffs>.

i. Indian Singers Rights Association (ISRA)¹²:

ISRA was incorporated in 2013 as a company limited by guarantee and registered as the first copyright society after the amendment made to the Copyright Act. ISRA administers and controls the exploitation/utilization of the performance of its members and collects royalties on behalf of its members and distributes it to them. To become a member of ISRA, a membership form must be filled and submitted with the required amount as membership processing fee.

It is pertinent to note that there is no association between PPL, IPRS and ISRA. PPL deals with the interests and royalties of music labels, IPRS looks after the interest of royalties of composers and lyricists while ISRA administers the interests and royalties of singers.

C. By direct purchase or license from the owner:

Any party can obtain sound recording, music score and lyrics by purchasing the same from the owner or can get license for the same.

Infringement:

Infringement of a copyright is when there is unauthorized use of a copyrighted work. It is deemed to be a copyright infringement¹³ in the following circumstances of:

- a. When a person who has not obtained copyright does any act which is only the right of that copyright holder;
- b. If a person permits any place to be used for communication, selling, distribution or exhibiting an infringing work, without obtaining copyright from the owner. Such an act may not amount to infringement, if the person providing that place was not aware, nor has any reasonable ground to believe that such permit will result in the violation of copyright.
- c. Any person who imports infringing copies of a work.
- d. Any person without obtaining permission from the copyright holder reproduces his work in any form.

Conclusion:

If an owner of a restaurant or a café resorts to playing music through any of the music apps to cut costs without obtaining a license, it would amount to violation of copyright for not having

¹² http://isracopyright.com/about_isra.php.

¹³ Section 51, the Copyright Act, 1957.

the authorization from owners to do the same. It is a herculean task for an artist to keep track of where and how all of his work is being consumed by the users. The copyright society undertakes to keep a watch on all the uses of its members' work and collect the royalties due on behalf of its members. It also acts as a facilitator between its members and international users as well. The copyright societies also take strict actions against infringement of the work of its members. Thus, the copyright society plays a huge and an important role in safeguarding the interests of its members.

-Theekshna Amin