



Record Companies Pursue Restaurant Owners for Public Song Performances

03.05.2010

Record companies pursue restaurant owners for failing to get ASCAP licenses for the public performance of several songs in three recent cases filed in the Eastern District of Virginia. See [*The Twin Towers Co. v. Knuckleheads, Inc.*, No. 2:10cv 50 \(E.D. Va. 2010\)](#); [*WB Music Corp. v. Blcj, Inc.*, No. 1:10cv104 \(E.D. Va 2010\)](#); [*6 Deep Pub'ng v. Tropical Soul, Inc.*, No. 3:10cv062 \(E.D. Va 2010\)](#).

Public performance is one of the bundle of rights protected under the Copyright Act, 17 U.S.C. § 101 *et seq.* Music publishers and songwriters have protected this right through affiliation with performing rights organizations, such as ASCAP, BMI and SESAC, which in turn license the performance right for a statutory royalty to restaurants, movie or television producers, or other business that desire to perform the music. Through ASCAP, for example, businesses can obtain the right to perform millions of songs created or owned by more than 500,000 songwriters, composers, lyricists and publishers.

Failure to get the licenses to perform can result in statutory damages under the Copyright Act, of between \$750 - \$30,000 for each work infringed, as well as costs and attorneys fees spent in enforcing the right. Restaurant owners in cases brought by the music companies over the last few years in the Eastern District of Virginia have felt that burden, largely through settlement or default judgment. In the most recent cases, the record companies allege that each of the restaurant owners has allowed the unauthorized public performance of three to six different songs within the last couple of years. If the highest statutory amount is ordered by the court with respect to six songs, this could result in up to \$180,000 in damages.

Businesses need permission to play music even if they are only playing CDs, records, or tapes. On the other hand, businesses do not need permission for radio and television transmissions if the performance is through TV or radio transmission, as long as the establishment uses a limited number of speakers or TVs, the reception is not further transmitted (for example, from one room to another), and there is no admission charge.

To find out more information about obtaining the proper licenses, businesses can go to <http://www.ascap.com/licensing/licensingfaq.html>.

Related People

- Amy G. Pruett – 757.473.5393 – apruett@williamsmullen.com