

# performance rights myths

Performance rights are an important concept in any church or ministry's copyright planning. They are also frequently misunderstood.

The laws regarding performing are quite clear. It is actually quite simple and inexpensive for churches and ministries to address their performance licensing obligations.

## Overview

Music performance rights represent a fairly simple concept, but one that is often misunderstood by churches. Myths often spread when there are misunderstandings, so this paper focuses on identifying five common myths in regards to the performance rights for songs and music in the context of church activities.

## Performance Rights Basics

Let's look at some brief definitions to help lay the groundwork for understanding performance licensing. First, the legal definition of a performance is an instance of music being performed "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." Most church performances fit those criteria. A performance license grants permission to have these public performances, whether it is a live performance or playing of pre-recorded music.

Performance licenses are controlled and managed by performing rights organizations or "PROs." The three PROs in the United States are ASCAP, BMI and SESAC. Every songwriter and publisher who wants to be paid performance royalties is registered with one of these three organizations, which represent more than 16 million songs. PROs collect performance license fees for a wide range of uses, from Internet, radio and TV broadcast to stadiums and restaurants.

Churches qualify for an important exemption in the U.S. Copyright Law (section 110[3]), but it is vital that church leaders understand which performances qualify for the exemption and which do not. According to the exemption, the following performances are not infringements of copyright:

*"Performance of a nondramatic music work or of a dramatico-music work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly."*

Now that we have laid the groundwork, let's investigate some common myths about performance licenses.

## Myth #1: "I need a performance license to play secular music in service."

Due to the religious service exemption, churches do not need a performance license to play or perform secular music in worship services. In fact, churches do not need a performance license to play any kind of music, whether it's live or pre-recorded. Much of the confusion stems from a misunderstanding of exemption.

The religious service exemption applies both to live performances of music as well as the playing of pre-recorded music. The exemption applies to all music, Christian and secular.

The only exception in the exemption is "dramatico-musical" works of a nonreligious nature, such as secular operas or plays. These are not exempt and would require licensing.

**Myth #2: "Churches are exempt from performance licensing."**

Another common misunderstanding of the copyright exemption is when churches believe that the exemption applies to all of their use of copyrighted music, regardless of the context. This is not the case. The religious service exemption applies only to actual religious services. All other performances require a performance license, as stated below:

*"...in the course of services at a place of worship or other religious assembly."*

Outside of religious services, churches have the same copyright responsibilities as a restaurant, business or stadium.

**Myth #3: "The religious service exemption allows me to broadcast my church's performances."**

Many folks are under the assumption that the religious service exemption allows them to webcast their performances of music, such as the worship team during a service. This is also not true. While the religious service exemption allows churches to play and perform copyrighted music without paying royalties, this exemption does not extend to re-transmission of the service.

This was a real grey area until 2006, when a publisher named Simpleville took a radio station to court for rebroadcasting several church's services, including the music portion. The defendant's argument against liability was that he could broadcast the songs because the songs had been performed during church services. The court rejected the argument, stating that the exemption applies only to performances that occur at the place of worship; it does not extend to broadcasts of those performances.

The Congressional history shows that the exemption does "not extend to religious broadcasts or other transmissions to the public at large, even when the transmissions were sent from a place of worship." If a church is going to have its services on TV or radio, those stations will need to have a performance license. If a church is going to webcast its services, it will need a performance license if it is performing copyrighted songs.

**Myth #4: "My CCLI license provides performance licenses."**

There is a lot of confusion over what the CCLI license covers and what it does not cover. Many think that the CCLI license gives them blanket coverage for all music uses. This is not accurate. The CCLI license covers some very specific music uses, including:

- Printing of songs, hymns, lyrics in bulletins for congregational singing
- Creation of custom songbooks for congregational singing
- Creation of visual format for projecting lyrics for congregational singing
- Limited creation of custom arrangements for congregational singing
- Limited recording of worship services onto CDs and DVDs

The CCLI license is a great resource for churches, but it does not provide any form of performance license. (For further detail of what is covered by the CCLI license, contact your CCLI representative.)

**Myth #5: "My church does not perform music outside services."**

When church leaders realize that the religious service exemption does not apply to music performed outside of services, often the immediate response is, "We don't play any music outside of services."

This is very rarely the case. After some quick reflection, most churches recognize that they are playing lots of music outside of their worship services, including:

- Coffee shops
- Bookstores
- Concerts (non-ticketed)
- Retreats
- Picnics & barbecues
- Singles groups
- Dances
- Carnivals & festivals
- Graduations
- Award ceremonies
- Testimonials & retirements
- Dance classes
- Exercise classes
- Karaoke
- Conferences & seminars
- Vacation Bible School
- Camps
- Sporting events
- Movie nights
- Pageants
- Youth group gatherings
- Guest speakers
- Wedding receptions
- On-hold music
- Music before & after service
- Community events
- Retirement home visits
- Day care

Each church should review its music uses to determine if it needs a performance license. Most will find that they do.

**Bonus Myth: "PRO licenses are difficult and expensive to obtain."**

Many folks believe that performance licenses are difficult and expensive to maintain. This is not true. Christian Copyright Solutions ([www.CopyrightSolver.com](http://www.CopyrightSolver.com)) offers two licenses that cover all of the song catalogs of ASCAP, BMI and SESAC.

The **PERFORMmusic License** provides churches and ministries with a license for the performance of live and pre-recorded music in their facilities, including satellite campuses. The license covers all 16 million songs from ASCAP, BMI and SESAC. The **PERFORMmusic License** starts at \$199 per year.

The **WORSHIPcast** license allows churches and ministries to webcast their performances of more than 16 million songs from ASCAP, BMI and SESAC. The **WORSHIPcast** license starts at \$500 per year.