



BY KENNETH YARDY

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Music licensing

THE STATE OF PLAY FOR NIGHTCLUB OWNERS IN LIGHT OF THE RECENT FEE RULING

Q. I own a nightclub and I've heard that I have to pay large licence fees just to play music. I paid for the music legitimately. What is it all about?

A. Nightclubs and dance parties are always about the music. And just as a nightclub requires a liquor licence and an entertainment licence or approval, licences are required for the 'public performance' of music.

Buying the music by way of purchasing a CD or download is not enough. The price of a CD only allows private use and enjoyment, not public performance. It's all about copyright law and the payment of royalties and licence fees. Just as you can rent or buy a DVD, but not set up a fee-paying public theatre, you can't run a nightclub by just bringing in your private CD collection. It's called copyright infringement and there is a long history of copyright owners taking venues to court for breaching the *Copyright Act* and not paying royalties.

Providing recorded music, live music or DJs in nightclubs or dance parties has always been subject to having a licence from the copyright owners to provide musical entertainment. It's big money as well, as copyright involves about five per cent of employees and GDP directly in Australia. It is not a new phenomenon, either.

Copyright collection agencies such as APRA

(Australian Performing Rights Association) and PPCA (Phonographic Performance Company of Australia) have been around for over 50 years. They issue licences based on payment of a tariff, depending on the type of music provided and the premises, on a collective basis for the copyright owners. It removes the obligation to enter agreements with every copyright holder, which would be extremely difficult to obtain.

There are a number of different copyright holders to pay if you want to publicly use music lawfully. Licences cover DJs, live bands, recorded music, background music and outdoor concerts, depending on the type. Generally, licences have to be obtained from both APRA and PPCA. The licence fee charged is determined (if an agreement is not already existing) by the federal government board, the Copyright Tribunal. The Tribunal recently raised the fees or 'tariffs' for nightclubs (from \$0.07 to \$1.05 per person, per night of operation, based on the occupancy level of the venue), and for dance parties (from \$0.20 to \$3.07 per person attending the event) on the basis of market

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research, economic modelling and statistical studies presented to them at a hearing.

Attempts to avoid the licence fees are fraught with danger. Some nightclubs have attempted to avoid the fees by hiring out their venue to promoters on an irregular basis and expecting them to have the appropriate licences. The courts haven't agreed with the venue operators, as the occupiers are responsible under the *Copyright Act* and the venues have been forced to pay back licence fees for a number of years, long after the promoters were gone.

The fact is, if you use someone else's music, you need the appropriate licences. It's always cheaper to pay up front and avoid lawyers!

If you have any liquor licensing questions, contact Yardy Legal at 497 Elizabeth Street, Sydney, NSW 2010. T: 02 9318 2288 www.yardy.com.au Questions are published anonymously.

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