

Q & A About the ASCAP License Agreement for Symphony Orchestras

Q. Why must we obtain permission for the public performance of copyrighted music at our concerts?

A. The United States Copyright Law requires it. Generally, under the Copyright Law (Title 17 of the United States Code) the public performance of copyrighted music requires permission from the copyright owner or its licensing representative, such as ASCAP. Just as you pay for use of other forms of property, you must pay for the use of musical property.

Q. What is ASCAP?

A. ASCAP, the American Society of Composers, Authors and Publishers, is the oldest, largest and foremost organization in the United States which licenses the right to perform publicly copyrighted musical compositions. Founded in 1914 by Victor Herbert, Irving Berlin, and other leading American composers and publishers, ASCAP is an unincorporated membership association of writers and publishers of music. It is the only American performing rights organization wholly owned and managed by and for writers and publishers of music.

Each of ASCAP's more than 285,000 members has granted to ASCAP a non-exclusive right to license the non-dramatic public performances of his or her copyrighted musical compositions. On behalf of all of its members, ASCAP licenses the right to perform publicly all of the copyrighted musical works in the ASCAP repertory. ASCAP collects license fees, and distributes those fees to its members after deducting its operating costs and payments to affiliated foreign societies — more than 87 cents of each dollar ASCAP collects goes to the creators and copyright owners of music. Indeed, license fees for public performances are the largest single source of income for most composers.

Q. Whom does ASCAP license?

A. ASCAP licenses tens of thousands of music users such as public and commercial radio and television broadcasters, cable program services, symphony orchestras, concert and recital promoters, hotels, restaurants, nightclubs, dance schools, and others who desire to perform lawfully the copyrighted musical compositions in the ASCAP repertory. Although any music user could obtain individual licenses from each ASCAP member for each of his or her works which will be performed, an ASCAP license enables you to perform all works of all ASCAP members (and members of affiliated foreign societies) without complex record-keeping or administrative burden. The ASCAP orchestral license provides an easy, economical means by which you may gain access to the vast ASCAP repertory and it grants flexibility, which comes from

advance permission to perform all the works in ASCAP's repertory.

Q. What kind of music does an ASCAP license allow us to perform at our concerts?

A. The ASCAP membership list reads like a who's who of American music, including Stephen Albert, Samuel Barber, Leonard Bernstein, John Cage, Aaron Copland, John Corigliano, David Del Tredici, Duke Ellington, George and Ira Gershwin, Philip Glass, Libby Larsen, Igor Stravinsky, and Virgil Thomson, among many others. An ASCAP license also covers the works of tens of thousands of foreign writers and publishers — members of over 90 affiliated foreign performing rights societies.

ASCAP represents every kind of music.

ASCAP's repertory includes pop, rock, alternative, country, R&B, rap, hip-hop, Latin, film music, television music, folk, roots, blues, jazz, reggae, gospel, contemporary Christian, new age, theater, cabaret, dance, electronic, symphonic, chamber, choral, band, concert, educational and children's music — the entire musical spectrum. ASCAP is home to the greatest names in American music, past and present, as well as thousands of writers in the earlier stages of their careers. ASCAP members include Irving Berlin, Stevie Wonder, Bruce Springsteen, Leonard Bernstein, Madonna, Wynton Marsalis, Stephen Sondheim, Dr. Dre, Erykah Badu, Michael W. Smith, Duke Ellington, Rodgers and Hammerstein, Garth Brooks, Tito Puente, the Dixie Chicks, Dave Matthews, Destiny's Child and Henry Mancini — just to name a few.

Among the works in the ASCAP repertory are: "Appalachian Spring," "Purple Haze," "I Get A Kick Out of You," "Ain't No Mountain High Enough," "How Do I Live," "Oh Happy Day," "Bills, Bills, Bills," "I Swear," "A Night in Tunisia," "Moon River," "Doo Wop (That Thing)," "Just the Way You Are," "I Shot the Sheriff," "My Girl," "Hello Dolly," "When Doves Cry," "Jailhouse Rock," "Chattahoochie," "Like A Rock," "Like A Virgin," and "Born in the U.S.A."

Information about specific works and ASCAP members can be obtained in a variety of ways. Separate databases of works in the ASCAP repertory that have been registered with ASCAP since January 1, 1991, or identified in ASCAP's surveys of performed works since January 1, 1978, are available online at the ASCAP web site, www.ascap.com (click on "ACE Database of Musical Titles"). The ACE Database can also be used to determine whether a particular songwriter or composer is a member of ASCAP. The same data contained in the

ACE Database is also available on CD-ROM and can be purchased at a cost of \$5.00 by written request to ASCAP, One Lincoln Plaza, New York, NY 10023, attn: Director of Repertory. More comprehensive records of the titles, dates of U.S. Copyright registration (if any), writers and current publishers or other copyright owners of all known works in the ASCAP repertory are available for public inspection at ASCAP's office in New York City during regular business hours. You can also call or write ASCAP for information as to specific works: 800-95-ASCAP or ASCAP, One Lincoln Plaza, New York NY 10023, attn: Repertory Dept.-Clearance Section.

Q. Must we continue our current ASCAP license agreement?

A. To perform copyrighted music lawfully, a license is required. A license may be obtained directly from the copyright owners, or, for works in the ASCAP repertory, from ASCAP. If you are performing music in the ASCAP repertory, and you believe that the agreement ASCAP offers does not fit your needs because your performances of music are very different from other orchestras, you have the right to apply to the United States District Court for the Southern District of New York or apply for proceeding in the district court that is the seat of the Federal judicial circuit in which the symphony is located to determine a reasonable license fee. If you wish to pursue this, ASCAP will furnish all the necessary information.

Q. What happens if we don't have an ASCAP license?

A. If you do not have a license from ASCAP (or from the individual ASCAP members whose works you perform) your organization and each individual responsible for any unauthorized performances of copyrighted musical compositions in the ASCAP repertory would be copyright infringers.

Q. What does the ASCAP symphony license do for us?

A. The ASCAP license authorizes the non-dramatic public performance of music in the ASCAP repertory at concerts presented by the orchestra at its "home" auditorium and at other auditoriums in which the orchestra performs while on tour in the United States.

Q. Does the ASCAP license authorize dramatic performances?

A. No. The ASCAP license permits only non-dramatic performances; it does not authorize dramatic

performances, such as operas, musical comedies, revues and ballets.

Q. What is the cost of the ASCAP license?

A. The annual cost of the ASCAP Symphony License is 0.95% (multiplied by .0095) of the "Adjusted Box Office" for the preceding season. The minimum annual fee for 2006 is \$285.00. This number will be adjusted annually according to the Consumer Price Index – Urban (CPI-U). ASCAP will provide report forms and instructions free of charge to assist you in calculating the ASCAP license fee for your orchestra.

Q. What is Adjusted Box Office?

A. Adjusted box office means all gross box office receipts less certain exclusions. All gross box office receipts means all gross box office receipts from concerts and concert fees for all concerts, excluding income from concerts benefiting the orchestra, such as pension fund concerts. With respect to "run out" concerts and tours, gross box office receipts may be adjusted by deducting transportation and per diem costs in connection therewith, but in no event shall such deductible costs for any such "run out" concert or tour exceed the gross box office receipts thereof. Moreover, gross box office receipts do not include income from program advertising, concessions, or recording or radio or television broadcasting activities.

Q. When must we report and pay license fees to ASCAP?

A. Your report and payment for the 2006/2007 season, which is based on "Adjusted Box Office" for the 2005/2006 Season, is due on or before October 1. For each succeeding Season, your report and payment is due on October 1 of the year in which the Season begins and will be based on the "Adjusted Box Office" for the preceding Season.

Contact us:

If you have any questions concerning the ASCAP license agreement or your responsibilities under the United States Copyright Law for performance of music at your concerts, please feel free to contact us at:

**Symphonic & Concert Licensing
ASCAP
One Lincoln Plaza
New York, NY 10023.**

Or by telephone, toll-free, at 1-800-652-7227, #1