

STATE OF NEW YORK

7910

IN SENATE

March 9, 2018

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

AN ACT to amend the arts and cultural affairs law, in relation to music licensing agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The arts and cultural affairs law is amended by adding a
2 new title H to read as follows:

3 TITLE H

4 MUSIC LICENSING

5 ARTICLE 26

6 MUSIC LICENSING AGREEMENTS

7 Section 26.01. Definitions.

8 26.02. Registration of agreements and members.

9 26.03. Representative conduct.

10 26.04. Information.

11 26.05. Contracts.

12 26.06. Enforcement.

13 26.07. Statutory construction.

14 § 26.01. Definitions. 1. As used in this section:

15 (a) "Copyright owner" means the owner of a copyright of a nondramatic
16 musical work recognized and enforceable under the copyright laws of the
17 United States pursuant to Title 17 of the United States Code (17 USC
18 Sec. 101 et seq.). Copyright owner does not include the owner of a copy-
19 right in a motion picture or audiovisual work, or in part of a motion
20 picture or audiovisual work.

21 (b) "Performing rights society" means an association or corporation
22 that licenses the public performance of nondramatic musical works on
23 behalf of copyright owners, such as the American Society of Composers,
24 Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC,
25 Inc.

26 (c) "Proprietor" means the owner of a retail establishment, restau-
27 rant, inn, bar, tavern, sports or entertainment facility, or any other

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 similar place of business or professional office located in this state
2 in which the public may assemble and in which nondramatic musical works
3 or similar copyrighted works may be performed, broadcast, or otherwise
4 transmitted for the enjoyment of members of the public there assembled.

5 (d) "Royalty" or "royalties" means the fees payable to a copyright
6 owner or performing rights society for the public performance of nondra-
7 matic musical works or other similar works.

8 § 26.02. Registration of agreements and members. 1. Each performing
9 rights society shall register and file annually with the department of
10 state a copy of each agreement made for the payment of royalties for the
11 licensing of a nondramatic musical work.

12 2. Each performing rights society shall register and file annually
13 with the department of state, and make available electronically to busi-
14 ness proprietors, the most current available list of members and affil-
15 iates represented by the performing rights society and the most current
16 available list of the performed works that the performing rights society
17 licenses.

18 § 26.03. Representative conduct. 1. Before seeking payment or a
19 contract for payment of royalties for the use of copyrighted works by
20 that proprietor, a representative or agent for a performing rights soci-
21 ety shall:

22 (a) identify himself or herself to the proprietor or the proprietor's
23 employees; and

24 (b) disclose that he or she is acting on behalf of a performing rights
25 society, and disclose the purpose for being on the premises.

26 2. A representative or agent of a performing rights society shall not:

27 (a) use obscene, abusive or profane language when communicating with
28 the proprietor or his or her employees;

29 (b) communicate by telephone or in-person with a proprietor other than
30 at the proprietor's place of business during the hours when the proprie-
31 tor's business is open to the public. However, such communications may
32 occur at a location other than the proprietor's place of business or
33 during hours when the proprietor's business is not open to the public if
34 the proprietor or the proprietor's agents, employees, or representatives
35 so authorizes;

36 (c) engage in any coercive conduct, act, or practice that is substan-
37 tially disruptive to a proprietor's business;

38 (d) use or attempt to use any unfair or deceptive act or practice in
39 negotiating with a proprietor; or

40 (e) communicate with an unlicensed proprietor about licensing perform-
41 ances of musical works at the proprietor's establishment after receiving
42 notification in writing from an attorney representing the proprietor
43 that all further communications related to the licensing of the proprie-
44 tor's establishment by the performing rights society should be addressed
45 to the attorney. However, the performing rights society may resume
46 communicating directly with the proprietor if the attorney fails to
47 respond to communications from the performing rights society within
48 sixty days, or the attorney becomes nonresponsive for a period of at
49 least sixty days.

50 3. A representative or agent of a performing rights society shall
51 provide at least forty-eight hours notice before entering a place of
52 business for investigative or educational purposes.

53 § 26.04. Information. 1. The department of state shall inform proprie-
54 tors of their rights and responsibilities regarding the public perform-
55 ance of copyrighted music as part of the business of licensing service.

1 2. The department of state shall encourage performing rights societies
2 to conduct outreach campaigns to educate existing proprietors on their
3 rights and responsibilities regarding the public performance of copy-
4 righted music.

5 § 26.05. Contracts. 1. No performing rights society may enter into, or
6 offer to enter into, a contract for the payment of royalties by a
7 proprietor unless at least seventy-two hours prior to the execution of
8 that contract it provides to the proprietor or the proprietor's employ-
9 ees, in writing:

10 (a) a schedule of the rates and terms of royalties under the contract;
11 and

12 (b) notice that the proprietor has electronic access to information
13 pursuant to subdivision two of section 26.02 of this article; such
14 notice shall include how to access such information electronically.

15 2. A contract for the payment of royalties executed in this state
16 must:

17 (a) be in writing;

18 (b) be signed by the parties; and

19 (c) include the:

20 (i) proprietor's name and business address;

21 (ii) name and location of each place of business to which the contract
22 applies;

23 (iii) duration of the contract; and

24 (iv) schedule of rates and terms of the royalties to be collected
25 under the contract, including any sliding scale or schedule for any
26 increase or decrease of those rates for the duration of the contract.

27 § 26.06. Enforcement. Anyone who willfully violates any of the
28 provisions may be liable for a civil penalty of not more than one thou-
29 sand dollars per violation. Multiple violations on a single day may be
30 considered separate violations. The attorney general may seek recovery
31 of all such penalties in a civil action. The attorney general may issue
32 civil investigative demands for the inspection of documents, interroga-
33 tory responses, and oral testimony in the enforcement of this article.

34 § 26.07. Statutory construction. Nothing in this article may be
35 construed to prohibit performing rights societies from conducting inves-
36 tigations to determine the existence of music use by a proprietor's
37 business or informing a proprietor of the proprietor's obligations under
38 the copyright laws of the United States pursuant to Title 17 of the
39 United States Code (17 USC Sec. 101 et seq.).

40 § 2. This act shall take effect January 1, 2019.