

ASPEN PUBLISHERS

NOVEMBER/DECEMBER 2007

DEVOTED TO
LEADERS IN THE
INTELLECTUAL
PROPERTY AND
ENTERTAINMENT
COMMUNITY

VOLUME 27 NUMBER 10

THE *Licensing* Journal

Edited by the Law Firm of Grimes & Battersby

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Music Licensing at Trade Shows and Conventions: Who Pays the Band?

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Attendees at a trade show are often surrounded with noise. Heard above the din of traffic and conversations is a variety of music. A soft, unimposing melody may be playing as you enter the show, and music can frequently be heard in many exhibits booths, sometimes just as background music and other times as part of a video presentation. Music often is an integral part of conventions and meetings, whether incorporated into PowerPoint and video presentations or simply background music. Exhibitors and convention organizers may not think twice about playing a CD they own at such an event, but the setting may subject them to liability under copyright law.

All the music heard at a trade show or convention was written by someone, arranged by someone and performed by someone. These artists make their money by selling copies of the music and by licensing others to perform or play the music. Not every musical performance, however, requires a license fee. Playing a CD you purchased in your car or listening to it in the privacy of your home does not require a fee to be paid. Yet, using that same CD as the music for a radio commercial or a restaurant owner playing it as background music may require a license fee. As a result, the question arises as to whether or not fees are due when music is played at trade shows, exhibitions and conventions.

The Copyright Law

Copyright law grants certain rights to authors as an inducement for them to create works for the public benefit. Authors are given certain exclusive rights to control the reproduction and distribution of the works they create. Among the rights granted exclusively to the copyright owner is the right to "perform the work publicly."¹ To constitute a public performance, the copyrighted music must be performed:

(1) at a public place (such as a movie theater or a concert hall); (2) before a public audience (more than a gathering of family and close friends); or (3) through the transmission of the work to the public (such as transmitting movies).² A public performance takes place when any one of these factors is present.

As a result, playing music at a home (a private place) for family and friends (a private audience) will not be considered a public performance requiring licensing fees. Similarly, playing music in a hotel guest room will not be considered a public performance, because a hotel room is private and the audience is private.³ Yet, a tradeshow exhibitor using that same hotel room to display its products would be publicly performing any music it played. The hotel room may be a private place, but the audience is now public. Similarly, if the hotel were transmitting the very same music to hotel guest rooms, this would be considered a public performance.⁴

As applied to trade shows, expositions and conventions, the answer to whether a performance is public and requires a licensing fee will depend on the circumstances and the setting where the music is played. Playing music at a small gathering of business acquaintances in a conference room, such as a regularly scheduled board meeting, would not constitute a public performance. The room is private and the audience does not constitute a "substantial number of persons."⁵ Playing music at a convention center, on the other hand, would be considered a public performance, because it takes place at a public place and would likely involve a larger audience.⁶ Whether a licensing fee is required for such a performance depends on whether the performance falls within any of the exemptions.

Exceptions to License Fees

The copyright law recognizes that in certain circumstances it would be unfair to limit the use of certain copyrighted materials. The law does not require licensing fees for: (1) music performed at religious functions;⁷ (2) music performed in certain circumstances as part of an academic lesson in a

classroom;⁸ and (3) under certain circumstances, music performed on an ordinary home stereo radio system at a small business.⁹ As a result, licensing fees are generally not required for music played at weekly religious services or the music heard at the local barbershop.

The application of these exemptions to trade shows, exhibitions, or conventions is significant. Music played at an educational seminar that is an integral part of that academic lesson may not require fees.¹⁰ More significantly, exhibit booths may fall within the home style or small business exemption. There are several variations to this exemption depending on the type of business and the type of equipment used.¹¹ For a typical convention booth, to fall within the home style exemption the exhibitor would have to use a single home style receiving apparatus, like those used in private homes. A booth also may qualify as an exempt small business establishment if it is less than 2,000 square feet, the music is played over a simple home-type stereo system and the booth would have to be open to the general public for the primary purpose of selling goods or services.¹² These exemptions should apply even if the exhibitors business or regular locations do not qualify. A chain store owner, for example, whose individual stores used home style stereo system, qualified for the home style exemption even though it operated over 2,000 stores—hardly a small business.¹³ Whether these exemptions apply to an exhibit booth has yet to be tested in the courts.

Vicarious Liability

In certain circumstances, copyright law imposes liability on those who do not personally perform the music. Under a concept known as “vicarious liability,” companies or individuals may be considered responsible for the copyright infringement of others if they: (1) have the right and ability to supervise the playing or non-playing of music; and (2) receive a financial benefit from the public performance of the music.¹⁴ For example, the owner and operator of a bar would be vicariously liable for copyright infringement as a result of bringing in a band that played copyrighted music without permission. The bar owner had both a right and ability to allow the band to perform at the facility and received a financial benefit by attracting additional customers to the bar.¹⁵

The issue is far less clear when it is applied to the organizers and sponsors of trade shows, expositions, and conventions. The courts have not consistently ruled that trade show organizers or sponsors have sufficient control over exhibitors or receive a financial benefit from the music they play to warrant

the imposition of vicarious liability for copyright infringement. In *Artist Music, Inc. v. Reed Publishing (USA), Inc.*,¹⁶ a New York federal district court held that trade show organizers have neither the right or ability to “determine how exhibitors conduct their business or even whether they use music at all” in their exhibit booths.¹⁷ Equating the organizer-exhibitor relationship to that of a landlord-tenant, the court held that the mere fact that organizers could police the exhibitors was insufficient to demonstrate supervision and control. The court also found that the organizers charged a flat rental fee per square foot and did not charge an admission fee to attendees. Accordingly the show organizer had no direct financial benefit from the performance of music in the exhibit booth because the fee was not dependent on whether music was played at the exhibit booth. The trade show organizer, therefore, was not liable for any copyright infringement for music played by exhibitors at its trade show.

In contrast, a Massachusetts federal court in *Polygram International Publishing, Inc. v. Nevada/TIG, Inc.*,¹⁸ ruled that the trade show organizer did have sufficient control over its exhibitors and did receive a financial benefit. The organizer had imposed a set of rules and regulations that it enforced. Moving away from the landlord-tenant analogy, the court reasoned that organizers could have enforced a rule or regulation regarding the performance of copyrighted music because they already required exhibitors to obtain the appropriate music licenses.¹⁹ The court also found that the organizers had a significant financial interest in playing music at the trade shows. Playing music enhanced the overall attractiveness and atmosphere of the show and thus the exhibitors and organizers received a financial benefit from the music played by the exhibitors.²⁰ This arguably benefited the show organizers because it charged an admission fee to enter the show. The more attractive the show, the more attendees would pay to visit the show. As a result, whether trade show organizers and sponsors are vicariously liable for copyright infringement of exhibitors remains unsettled and depends on various factors.

Music Licensing Societies

The American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and the Society of European Stage Authors & Composers (SESAC) are organizations that represent the composers and authors of musical compositions. ASCAP represents approximately 10.5 million song titles and BMI represents approximately

6.5 million musical works. SESAC is the smallest of the three performing rights organizations. Although originally designed to serve underrepresented European artists, SESAC now claims a broader base of titles. These organizations are authorized to both negotiate licenses for the use of copyrighted musical compositions and then pay each composer and author a portion of the fees. Of the performing rights organizations, ASCAP and BMI contend that trade show organizers and convention plan sponsors are responsible for obtaining license agreements for any music played at a trade show, exposition or convention. SESAC has recently approached convention facilities and sought to license them for the music that may be performed at events held at the facilities.

Generally ASCAP, BMI, and SESAC negotiate blanket licenses. Under such a license, all the music in their repertoire can be used for one fee, regardless of how titles are actually used. Licensees have challenged, with mixed success, the requirement of ASCAP and BMI that all their music must be included in each license.²¹ A license from each organization covers only the music in that organization's repertoire. A license from ASCAP, for example, will not cover a song that is not in its collection and a separate license from one of the other organizations will be needed.

These licensing organizations are subject to government consent decrees. The federal government has sued both organizations for violating the antitrust laws.²² As a result, these organizations must operate within the confines of the consent decrees, which restrict some of their activities. Among the restrictions are: (1) the organizations must offer identical license agreements to all companies that compete in the same market; and (2) if an agreement cannot be reached on an acceptable licensing fee, the matter will be submitted to the federal district court in New York. The court will determine the fee upon hearing evidence from both sides.²³

The Facility's Music License

The mere fact that ASCAP, BMI, and SESAC contend that tradeshow and conventions are obligated to enter into licensing agreements does not necessarily mean that a license is required. Each situation must be evaluated by competent legal counsel to determine whether a license agreement is necessary and advisable.

A key issue is the music licensing agreement that exists between the facility hosting the event and the music consortiums. Many facilities, if not most,

have entered into license agreements with the performing rights organizations to allow the playing of music at their facility. Those contracts need to be reviewed to determine whether they would cover music played at the facility as a result of a convention or trade show. If the facility has a license that would cover the location where the event is to be held, it would not be necessary for the organizer to also obtain a license. The copyright owner is entitled to a royalty, but not to two or three royalties for the same performances.

Hotel Music Licenses

ASCAP's licenses with hotels, for example, generally include a provision that specifically excludes music played at trade shows and conventions held in the hotel.²⁴ It is vital for the show sponsors to verify whether their venue's license agreements include this type of exception.

Under the ASCAP standard agreement, hotels pay various fees depending on whether the music is performed live or is performed on audio or visual equipment. For live performances, the fee is based on the hotels annual expenditures for live entertainment. For music performed on audio or video equipment, the fee is based on the number of rooms. The fee per 100 rooms varies on whether there is a cover or admission charge, whether the music is part of a show or act, and whether dancing is permitted. With limited exceptions, a license fee is not due for music played in the privacy of a hotel room, on audio or visual equipment, such as a radio, CD player and television.²⁵ As a result, the hotel fee only covers music played in its public areas such as the lobby, restaurants and bars.

The standard BMI hotel agreement looks very similar to the ASCAP agreement. BMI has a series of schedules based on whether the hotel provides live or recorded music. The fees for live music are based on the annual music and entertainment cost, but the fees for recorded music or recorded and live music are based on the number of hotel rooms. Again, the standard hotel agreement specifically excludes music performed at trade shows, convention centers, expositions and business presentations.

Arguably, if the meeting and convention space is not covered by a license agreement, then the license agreement can only cover the bar, restaurant and lobby of the hotel. If this is all that is covered, the hotel should not be required to pay a fee higher than that charged for a bar or restaurant under the ASCAP and BMI consent decrees. Moreover, it can be argued that the number of rooms included in the hotel fee should be reduced by the number of rooms rented

to the attendees of any events that already have a license with ASCAP for its trade shows and conventions. If these rooms are included, then the hotel may have already paid the necessary license fees for music performed at the event.

Convention Facility Contracts

Convention facilities also may already have license agreements that need to be reviewed.²⁶ SESAC has focused on the convention facilities, demanding that they obtain licenses for the music played at events held at the facility. The fees are based on the square footage of convention and meeting space at the facility. Many convention facilities have not signed music license agreements under the contention that they have neither control over nor financial interest in whether music is played at any of the tradeshow, exhibitions or conventions held in the facility. Several convention facilities have, however, entered into such agreements specifically to cover music played at the events held at their facilities. If the facility has a music license from SESAC, it is unnecessary for the event organizers or sponsors to obtain another license to play music in SESAC's repertoire.

The key is to discuss the copyright issue with the hotel or convention facility to determine whether or not the facility's music license agreement already provides the right to play music in the areas that will house the event. It is important to note, however, that the facility license or licenses must cover the music played at the event. A SESAC license, for instance, will not cover the music in ASCAP or BMI's repertoire.

Trade Show and Convention Music Licenses

ASCAP and BMI currently offer a license for conventions and trade shows. Under the ASCAP rate schedule,²⁷ the licensing fees for a convention or trade show are based on whether the music is performed mechanically or live, and the number of attendees at the event.²⁸ If the event organizer holds 10 or more events a year, ASCAP offers a slightly higher rate schedule per attendee but without distinguishing between mechanical and live music.²⁹ There is a minimum and maximum annual fee for such event organizers.

The current BMI license for meetings, conventions, trade shows, and expositions does not distinguish between live and recorded music but rather asks for a flat rate per attendee.³⁰ Licensees pay a minimum annual fee when they sign the agreement and pay the remainder of the fees within the first 30 days of the following calendar year.³¹

Music Licensing for Trade Shows and Conventions

The issues that sponsors of trade shows and conventions face are whether a performance constitutes a "public performance," whether the performance falls within one of the copyright licensing exceptions and, if not, whether the exhibitors have obtained licenses and rights to perform the music. There are five basic types of music performances at trade shows and conventions that could give rise to an obligation to pay a royalty under a copyright license. As explained below, whether a license fee is mandated will depend on the particular circumstances surrounding the performance of the music.

Piped-In Music

It is common that music is piped into a trade show or convention facility through an existing loudspeaker system. The piped in music may provide background music at an entryway for a trade show, provide the ambiance at an exhibit hall itself or maybe background music at a convention function. These types of performances likely are to be considered a public performance requiring a license—the music is being played to the general public in a public facility over a commercial sound system.

Whether the event organizers or sponsors will need a license, however, depends on the license agreement that may already exist with the facility. If the facility has a license agreement that covers its loud speaker system, then a separate license is redundant. The copyright owner is not entitled to more than one royalty for the same performances.

It is, therefore, essential that the organizers and sponsors obtain the necessary information from the facility to determine whether the facility's license fee already covers music piped in through the existing loud speaker system. If such music is covered by the existing licensing agreement, then the event organizers or sponsors should include in the contract with the facility that the facility be responsible for licensing of music transmitted through the existing loud speaker system, and the facility will "hold harmless, indemnify and defend" the event in case there is an allegation of copyright infringement based on the use of the loud speaker system.

Live Performances

It is common to see live performances at trade shows and conventions. A small ensemble may play music at the entry of a trade show or as background music at an event, such as a dinner. These types of performances likely are to be considered public if

they were to take place at a public facility, such as a hotel or a convention facility, and include a public audience.

Whether or not a license agreement is needed for such performances will again depend on whether an existing license agreement covers these musical renditions. The event organizers and sponsors need to determine whether the facility already has a license agreement that would cover such performances. For example, the hotel's license would cover the event if it was held in the hotel's restaurant or bar. Moreover, the performers may already have a license that permits them to play at the event and the event sponsor does not need to obtain a separate license.

Special Events and Excursions

Performances at special events, such as a boat tour, a bus excursion, or an awards ceremony, may well be considered a public performance requiring a license agreement. Such live performances at one of these events likely would give rise to liability unless the band or the excursion operator, such as the boat company, already has a license that covers these performances. Once again, it is essential to review these issues with the various vendors to determine whether they already have the necessary licenses.

Music at Small Gatherings

Music may be included in presentations at certain meetings held at a trade show or convention. Copyright law recognizes that it is not a public performance to play music or even show movies in an office conference room, provided that it is not before a substantial number of people or open to the general public.³² As a result, small gatherings at a trade show or convention, such as a Board or Executive Committee meetings, may not require licensing under the law even if the music is piped in or played at those gatherings.³³

Music at Exhibitors' Booths

The law is unsettled as to whether music played by exhibitors in their exhibit booths could subject the event organizers and sponsors to copyright liability. While a New York court held that the sponsors were not vicariously liable, a Massachusetts court found the sponsor could be vicariously liable for copyright infringement.³⁴

There is also the untested argument that the music at an exhibit booth may fall within the home style or small business exception. To fit within the exception, the exhibit booth must be 2,000 square feet or less, the music must be played on a non-sophisticated

loudspeaker system with no more than four speakers and there can be no cover charge to listen to the music.³⁵ Although no court has determined whether the small business exception applies when the exhibitor is a large business that happens to be utilizing a small booth, the courts have ruled that a company's multiple small locations could not be added together to create a large location and avoid this small business location exception.³⁶

In addition, use of copyrighted materials may fall within the "fair use" exemption if only a small portion of the music is used.³⁷ Thus, a small and very short music clip, used to introduce a demonstration video at an exhibit booth may not constitute copyright infringement under this fair use exception. In addition, the exhibitors may already have licenses for public performance of music. It is common, when a video is professionally prepared which incorporates music, that a license fee is obtained to use the music. If the exhibitor has a license, then the event organizers and sponsors do not need a second license.

Finally, the event organizers and sponsors can contractually obligate exhibitors to take responsibility for obtaining all licenses for music played in their exhibit space. The exhibitor agreement should specifically state that the exhibitor is responsible for obtaining permission under all the intellectual property laws, including copyright laws, for any materials used or exhibited at its space. Such a contract provision, however, will not prevent the event organizers and sponsors from being sued for vicarious liability. It also may be valuable to include in the exhibitor agreement that the exhibitor will "hold harmless, indemnify and defend" the event organizers and sponsors for any copyright infringement that may arise from the exhibitor's violation of intellectual property rights.

Conclusion

The law regarding musical performances at trade shows, exhibitions, and conventions is unsettled. With differing court opinions and untested exemptions, event organizers and sponsors should take precautions to avoid liability and to minimize the risk of being sued.

First, the event organizers and sponsors should check with the facility to see if the facility has a license that would cover the event. A license may be unnecessary if a facility has an existing license. Second, vendor agreements also should be reviewed to verify if licensing agreements are in place for any performances, excursions, and activities that are part of a trade show, exposition, or convention. Third, if

possible, all contracts with exhibitors and vendors should obligate the exhibitor or vendor to obtain the necessary copyright licenses. The contract also should require the exhibitor or vendor to “hold harmless, indemnify and defend” the event organizers and sponsors for any copyright claims. Such a provision will not prevent ASCAP or BMI from suing, but will require the exhibitor to pay to defend the suit and pay any damages awarded.³⁸

Taking such precautions may be difficult, time consuming and expensive. A number of event sponsors and organizers may, as a practical matter, find it more feasible to simply enter into a license agreement with the performing rights organizations. This is an individual choice. Before making that decision, however, it is wise to consult with legal counsel familiar with the issues and the copyright laws to ensure that a license agreement is really necessary.

1. 17 U.S.C. § 101.
2. 17 U.S.C. § 101.
3. *Columbia Pictures v. Professional Real Estate Investors*, 228 U.S.P.Q. 743, 746, *aff'd*, 866 F.2d 278, 280 (9th Cir. 1989) (“When occupied, a hotel is private” and renting videos to hotel guests to play in their rooms is not a public performance); *On Command v. Columbia Pictures*, 777 F. Supp. 787, 789 (N.D. Calif. 1991) (citing *Professional Real Estate* for the proposition that hotel guest rooms are not “public places”); *but see Columbia Pictures Indus., Inc. v. Aveco, Inc.*, 800 F.2d 59 (3d Cir. 1986) (holding that small individual booths rented to watch videos were public places).
4. *On Command*, at 789–790 (holding that playing videotapes through a central console at the request of guests was a “transmission” of videos to hotel guests that constituted a “public performance”).
5. H.R. Rep. No. 94-1476, at 64-65 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5677.
6. *Polygram Intern Pub., Inc. v. Nevada/TIG, Inc.*, 855 F. Supp. 1314 (D. Mass. 1994).
7. 17 U.S.C. § 110(3).
8. 17 U.S.C. § 110(1). This exemption is limited to face-to-face teaching activities at a nonprofit educational institution, in a classroom or similar place devoted to instruction. A separate provision governs instruction transmitted via digital network. *See* 17 U.S.C. § 110(2).
9. 17 U.S.C. § 110(5)(B)(i) (exemption for nonfood establishments); 17 U.S.C. § 110(5)(B)(ii) (exemption for food service or drinking establishments).
10. 17 U.S.C. § 110(1). *See supra* n.8.
11. 17 U.S.C. § 110(5). There are three types of exemptions that may be relevant: (1) a home style equipment exemption; (2) a small business exemption for a business of less than 2,000 gross square feet that uses certain types of audio or audiovisual equipment; or (3) a food or drink establishment of less than 3,750 gross square feet that uses no more than six speakers of which not more than four are located in one room or adjoining space. For all three types of exemptions, there can be no direct charge to see or hear the transmission and the transmission cannot be further transmitted to the public. *See* 17 U.S.C. § 110(5) for more details.
12. 17 U.S.C. § 110(5)(B)(i). The cited exemption only applies to nonfood and drink establishments of less than 2,000 gross square feet. Specific limitations on the placement of speakers apply depending on whether the establishment will be using audio devices or audiovisual devices.
13. *Edison Brothers Doors v. BMI*, 954 F.2d 1419, 21 U.S.P.Q.2d 1440 (8th Cir. 1992), *cert denied*, 504 U.S. 930 (1992) (finding BMI’s interpretation that the chain was only allowed to use the home style exemption for one of its locations, but not all 2000, was contrary to the plain language of the statute).
14. *Shapiro, Bernstein & Co. v. H.L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963).
15. *See id.* at 307–308; *see also Jobete Music Co., Inc. v. Johnson Comm’n, Inc.* 285 F. Supp.2d 1077, 1083–1084 (S.D. Ohio 2003) (citing cases in which Circuits have adopted two-prong vicarious liability standard that considered whether the defendants exercised supervisory control and received a financial benefit from the operation, and finding the elements had been met in the case of radio station’s airing of songs); *E Beats Music v. Andrews*, 433 F. Supp.2d 1322, 1324 (M.D. Ga. 2006) (noting that defendants exercised supervisory control and received a financial benefit from the operation of the nightclub).
16. *Artist Music, Inc. v. Reed Publ’g (USA), Inc.*, Nos. 93 CIV. 3428 (JFK), 73163, 1994 WL 191643, at *5–6, 31 U.S.P.Q.2d 1623 (S.D.N.Y. May 14, 1994).
17. *Id.* at *6.
18. *Polygram*, 855 F. Supp. 1314.
19. *Id.* at 1329.
20. *Id.* at 1333. The court dismissed this suit, notwithstanding a finding that the trade show organizer could be held vicariously liable, because the plaintiffs had failed to prove copyright ownership in the music they allege to have been infringed. *Id.* at 1334.
21. *See, e.g., Broadcast Music Inc. v. CBS*, 441 U.S. 1 (1979); *Buffalo Broadcasting Co. v. ASCAP*, 744 F.2d 917, 223 U.S.P.Q. 478 (2d Cir. 1984); *ASCAP v. Showtime/The Movie Channel*, 912 F.2d 563, 567 (2d Cir. 1990) (all challenging the blanket licensing system). Under the consent decree, ASCAP had to offer a per-program license to broadcast stations to use all music in the repertoire for a particular program. *United States v. ASCAP*, CIF No. 41-1395, 2001 WL 1589999 (S.D.N.Y. June 11, 2001), available at <http://www.ascap.com/reference/ascapaff2.pdf> (Second Amended Final Judgment) (hereinafter “Second Amended Final Judgment”) (describing the per-program and per-segment licenses).
22. *United States v. ASCAP, 1940-1943 Trade Cas. (CCH) ¶ 56, 104 (S.D.N.Y. 1941)*. *See United States v. ASCAP*, 32 Copyright Off. Bull. 601 (S.D.N.Y. 1960), 37 Copyright Off. Bull. 559 (S.D.N.Y. 1969); Second Amended Final Judgment, *supra* n.21. For the BMI consent decree, *see United States v. Broadcast Music, Inc.*, 35 Copyright Off. Bull., 870 (S.D.N.Y. 1966).
23. Second Amended Final Judgment, *supra* n.21.
24. ASCAP Standard License for Hotels & Motels.
25. *Professional Real Estate Investors*, 866 F.2d at 279–281 (music and movies played on a video player in a hotel room does not require a license fee); 17 U.S.C. § 101.
26. Many convention centers are owned and operated by state and local government entities. While a state or local government are generally immune from liability for their actions, the copyright laws specifically state that term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity. 15 U.S.C. § 501(a).
27. ASCAP 2007 Rate Schedule for Conventions, Expositions, Industrial Shows, Meetings and Trade Shows.
28. Under ASCAP’s rate schedule, the number of attendees is based on the greater of the number of attendees reported by the licensee or the number as reported in Tradeshow Week Data Book published by Tradeshow Week or any other publication.
29. ASCAP 2007 Rate Schedule for Conventions, Expositions, Industrial Shows, Meetings and Trade Shows Ten or More Events Per Year.
30. BMI 2007 License for Meetings, Conventions, Trade Shows and Expositions, available at <http://www.bmi.com/gl/license/>.
31. *Id.*
32. *Professional Real Estate Investors*, 866 F.2d at 279–281; H.R. Rep. No. 94-1476, at 64–65.
33. *Professional Real Estate Investors*, at 278.
34. *Compare Artist Music, Inc. v. Reed Publishing (USA), Inc.*, 31 U.S.P.Q. 2d 1623 (S.D.N.Y. 1994) with *Polygram Intern. Pub., Inc. v. Nevada/TIG, Inc.*, 855 F. Supp. 1314 (D. Mass. 1994).
35. 17 U.S.C. § 110(5)(B)(i).
36. *Edison Brothers Doors v. BMI*, 954 F.2d 1419, 21 U.S.P.Q.2d 1440 (8th Cir. 1992), *cert denied*, 504 U.S. 930 (1992).
37. *See* 17 U.S.C. § 107 (describing the factors relevant to a “fair use” analysis).
38. It is essential that the event’s organizers and sponsors ensure that the exhibit or vendor is capable of fulfilling its obligations to indemnify and defend against any copyright infringement. If the exhibit or vendor is unable to fulfill its obligations, then the event sponsor or organizer will be left responsible for these expenses.