

HOSTING MUSIC AT YOUR MARKET

A key component of a Market Manager's role is to curate a sense of community at their market, and offering live music during market hours is a common tactic used to enhance a market's atmosphere and encourage greater sales. From scheduling acts to performance site selection; from AV equipment management to establishing performance guidelines and rules, there is much to consider when it comes to planning a music program for your market. Evidence supports the economic and social benefits that music can bring, and coupled with that is a growing concern in the market community regarding performance vendor (i.e. musicians) liability and risk. This guide has been developed in response to both, offering market managers the tools needed to implement best practices for hosting music at their markets.

THINGS TO CONSIDER WHEN BOOKING MUSICIANS:

Recruitment:

How a market chooses to recruit musicians is subject to its unique circumstances. Established markets likely have a large database to draw from, while others that are just starting out might need to recruit more actively. Regardless of your situation, below are some basic recruitment tips:

- Before bringing musicians into the market, be sure to understand the market's personality and customer base. Choose music that appropriately aligns with the atmosphere of your market. Consider the experience level and quality of any musicians that you bring in. You can screen musicians by meeting them, asking them to provide sound clips, video and website links, etc.
- Always keep an up-to-date database with the musician's contact information; be sure to include things like: musician's name, phone number, email, frequency of performance(s), genre of music, community response to performance, paid or volunteer, AV requirements
 - This information could be easily gathered on an application form and transferred electronically to a spreadsheet/database.
- Consider implementing a recruitment campaign
 - *Example:* a Farmers Market in Virginia implemented a "Beats for Beets" recruitment program - a barter system to recruit local musicians to play at the market in exchange for produce. In this example, vendors donated vouchers for produce that the musicians then redeemed as payment. Coupons were worth \$5 and musicians were reimbursed for 4 coupons (\$20) per hour of music each.
 - Consider using social media, newsletter, website, bulletin boards, etc. to spread the word
 - Attend a local open mic night to establish relationships with grassroots musicians in the area

Performance Vendor and Busker Guidelines and Rules:

Many successful markets incorporate a section for musicians and performance vendors into their rules and regulations. Things to consider when drafting your rules:

- Does your market allow amplified music, acoustic, or both?
- Are there pre-existing laws in place by your city or local government that will influence the ways in which music is performed at the market?
- Are musicians paid or volunteer?
- How are buskers handled who just show up and start to play? Does the market allow them to accept donations?
- Are there specific hours that musicians can perform? If allowing busking musicians and hired musicians on the same market day, are there specific time windows when each can perform?
- What locations at the market are earmarked for performances?
- Does the market require musicians to have insurance?
- Does the market require musicians to fill out an application form? Sign a waiver of liability?
- Are musicians allowed to sell merchandise? If so, are they required to pay a vendor fee (i.e. does the market get a cut from merchandise sales)?
- What "gear" must the musician provide? What does the market provide?
- What is the check/in and set-up protocol? How is this communicated to musicians in advance of their performance? Who is the designated point-person for communications?
- How is music advertised at the market?
- Does the market have a cancellation/tardiness policy for late or no-show musicians? What if the market must cancel a performance due to weather or other unforeseen circumstances?

Some markets, like the Ithaca Market, have an entire page on their [website](#) dedicated to the music program at their market. Adding this section to the market's website may be a useful tool for recruitment, advertising, and communicating the market's performance rules and regulations.

PERFORMANCE RIGHTS ORGANIZATIONS (PROS)

"If...musicians play copyrighted music as part of a farmers market," writes Stacy Miller in a letter to Farmers Market Coalition members, "that market, or the hosting organization, is legally obligated to pay a licensing fee, just as shopping malls, cafes, and other stores pays licensing fees in order to play recorded music over their loudspeakers, or host performing musicians."

Beyond booking musicians and providing space, there are other considerations to hosting music, whether live or recorded. Farmers Markets face the scrutiny of three organizations who collect licensing fees on behalf of musicians who perform copyrighted music:

1. [ASCAP](#) (American Society of Composers and Performers)
2. [BMI](#) (Broadcast Music Incorporated)
3. [SESAC](#) (Society of European Stage Authors and Composers)

These organizations represent songwriters and composers "to collect and distribute royalties for public performances of their music" (www.ascap.com, accessed 1/2022). Unfortunately, each licensing organization has its own specific collection of music (songs) it represents; no *one* organization represents the entire database of copyrighted music. This means that if there are musicians at the market who do not *exclusively* play original music, the market is subject to licensing fees from all three organizations. If you would like to read more about these organizations, copyright law, and their influence on small businesses, read [this article](#) published by the Palo Alto Bar Association.

LICENSING FEES: WHO'S LIABLE - MARKETS OR MUSICIANS?

When it comes to playing copyrighted music at your market, either recorded or performed live, the liability rests on the market or venue, not the musicians themselves - regardless if they've been paid or are simply busking. PROs take the stance that because the market obtains the ultimate benefit from the performance, the market must obtain the license. According to ASCAP, "music license fees are one of the many costs of doing business." (www.ascap.com, accessed 1/2022).

Most markets operate on shoestring budgets, therefore the issue for Farmers Markets rests in the affordability of the added overhead expense of obtaining such a license. For example:

- If the Farmers Market is operated by a city, town, village or county government then the ASCAP [local government license agreement](#) is applicable
 - 2022 LGLA rates range from \$390 - \$77,960, depending on population size.
 - If this applies to your market, check to see if your city already has an ASCAP, BMI and/or SESAC license.
- Farmers Markets operated by other entities would obtain a [shopping center license agreement](#).
 - 2022 SCLA rates start at \$50.50/day, with a \$4106.50 maximum annual fee.
 - If you operated a year-round market with live music every Saturday, the estimated fee would be around \$2500

PUBLIC DOMAIN

There are certain musical compositions that are not protected under copyright law.

According to the Public Domain Information Project, "any Song or Musical Work Published in 1926 or Earlier is in the Public Domain in the USA...[and] Sound Recordings released before 1923 enter the public domain in the USA on January 1, 2022." (www.pdinfo.com/public-domain-music-list.php, accessed 1/2022).

So what does this mean for your market? If musicians (paid or busking) perform music that falls within this category, there is no risk involved. Most traditional Irish, Scottish and Appalachian music is of Public Domain, so a busking string band is likely a safe bet for markets wishing to avoid licensing fees. A Grateful Dead cover band, on the other-hand, would not be covered under Public Domain. To search within the Public Domain repertoire, visit the [Public Domain Information Project's](#) website.

WHAT CAN A MARKET DO?

Copyright infringement has a limited number of remedies. If you want a broad scope of music at your market, contact ASCAP, BMI, and SESAC to understand your options for licensure. Otherwise, your best bet is to provide or allow music that falls within the scope of Public Domain, although this is extremely limited and it is difficult to guarantee that musicians will only play songs within this repertoire.

If you do not have a proper licensing agreement in place, and you are contacted by a PRO for copyright violation, consider speaking with your lawyer for advice on the best way to proceed, before you formally respond.

In planning for music at your market, your best bet to mitigate risk (and avoid costly fees) is to “get ahead of the curve.” Be sure that your license is secure prior to the start of your market season. Contacting ASCAP would be a good place to start, as they are the organization that we have seen put the most pressure on Farmers Markets. Prior to making the call, be sure to have note of the following:

- Market name, location, and contact person
- Size of market
 - Square footage of space (and/or)
 - Population size of city where market is held (if market is operated by city, town, village or county government)
- Number of days you plan to host music
- Type of music you wish to play - recorded, live, or both
 - If recorded, how many speakers you intend to use

**Find ASCAP'S 2022 rate schedule guidelines attached to this document*

Licensing and contact information for each organization can be found by accessing these links:

- [ASCAP](#)
- [BMI](#)
- [SESAC](#)

When contracting for music at your market, the FMC recommends incorporating the below language into a signed agreement with any musicians at your market:

“I am aware of U.S. Copyright Law and fully respect its authority with regard to the playing of live music. I hereby certify that any music played at ___ Farmers Market is of my own authorship or in the public domain.”

REFERENCES:

[When Should a Small Business Pay ASCAP or BMI? | The Palo Alto Area Bar Association](#)

[A Letter to Members RE: Copyright Liability - Farmers Market Coalition](#)

[ASCAP, BMI, and Musicians at Your Farmers Market - WA Farmers Market Toolkit](#)

[Public Domain Information Project - Copyright Law](#)