

FAQs on Performing, Playing or Showing

Copyright Works in Public

The following information is provided for reference only and does not constitute legal advice. Readers should seek independent legal advice if in doubt.

MUSIC AND SONGS

Q1. As an operator of a shop in a shopping mall, I need to play music on the premises for attracting more walk-in customers. Is playing a legitimate copy of a CD good enough for due compliance with the copyright law?

A1. Unless the activity in question is an act expressly excepted by the law [see **Q&A3** (applicable to films, sound recordings and their underlying works), **Q&A7** and **Q&A8** (applicable to broadcasts and cable programmes), and **Q&A5** (applicable to all the above works)], the performing, showing or playing of a copyright work in public constitutes an act of copyright infringement unless it has been authorized by the relevant copyright owners or their agents. The concept “in public” refers in this context to any public place that covers not only a place to which members of the public have or are permitted to have access (e.g. a shopping mall, a restaurant, the lobby of a building etc.), but also any place the access to which is restricted to a particular class of the public (e.g. the premises of a club, company or any other organization).

Legitimate copies of sound recordings, whether recorded in CD format or stored in digital files available for lawful downloading at online music stores, are generally sold to consumers for their own private and domestic use. Playing these works in public is outside the scope of such private and domestic use. If the activity in question is not an excepted act, an appropriate “public performance” licence should be sought from the copyright owners or their agents.

Q2. Why do I need to pay licence fees to different groups of right owners for playing a song in public?

A2. A piece of music or a song usually incorporates several underlying copyright works, which may be owned by different copyright owners. For example –

- (a) the melody as a musical work, the copyright of which may be held by its composer;
- (b) the lyrics (if any) as a literary work, the copyright of which may be held by its

author;

- (c) the recording itself, whether in the format of a CD or a digital file, as a sound recording the copyright of which may be held by its producer, e.g. its record company.

For the above reason, even though only one song is played in public, separate “public performance” licences granted by different copyright owners may be required.

For more effective management and administration, most copyright owners have appointed agents or collective organizations (also known as “copyright licensing bodies”) to administer their rights on their behalf. In the local music industry, the major copyright licensing bodies include -

- (i) *Composers and Authors Society of Hong Kong* (also commonly known as “CASH”) representing a group of composers as well as authors¹; and
- (ii) *Phonographic Performance (South East Asia) Limited* and *Hong Kong Recording Industry Alliance Limited*, each representing different music record companies².
(Each of these copyright licensing bodies grants “public performance” licences for works in its own repertoire.)

Q3. A church is planning for a fund raising event which involves performing and playing music inside the church building in order to appeal for more donations. Does the law provide any copyright exception so that such organization can dispense with applying for any “public performance” licence?

A3. Public performance, showing or playing of works by a “non-profit-making” entity (i.e. any club, society or organization that is not established or conducted for profit) without licence is permitted if all the following conditions are met: -

- (a) The main objects of the entity are charitable or are otherwise concerned with the advancement of religion, education or social welfare.
- (b) The works intended to be performed, shown or played by the entity do not include any radio/television broadcast or cable programme (see **Q&A7** & **Q&A8** about playing or showing of public broadcasts or cable programmes).
- (c) The performance, showing or playing of the works must be done either as part of the activities of the entity or for the benefit of the entity.
- (d) Where there is any charge for admission to the place where the works are to be performed, shown or played, the proceeds of such charge must be applied solely for

¹ See <http://www.cash.org.hk>

² See <http://www.ppseal.com> and <http://www.hkria.com>

the purposes of the entity.

In other cases, a “public performance” licence is generally required. See also **Q&A5** and **Q&A6**.

FILMS

Q4. Can I show or play a film in public?

A4. The basic principle and the exception as respectively explained in **A1** and **A3** also apply to the showing or playing a film in public. One should however note that the sound-track accompanying a film is treated as part of the film. Hence a licence to show the film in public includes playing the film sound-track to accompany the film.

*Motion Picture Licensing Company (Hong Kong) Limited (MPLC)*³ is one of the copyright licensing bodies in the Hong Kong SAR which represents various film and television producers and grants licences for public performance of the films and programmes concerned. Therefore, if you wish to show or play a film in public places (and if no relevant exception is applicable), you should enquire with MPLC (for films and other programmes administered by MPLC) or the relevant copyright owners for obtaining a licence to cover the public performance.

Q5. A teacher of a secondary school plays a short clip of a documentary movie about the World War II from YouTube for his students during a history lesson. Does the law provide any copyright exception which permits such playing?

A5. Yes. The playing or showing of a film, broadcast or cable programme before an audience consisting wholly or mainly of teachers and pupils at an educational establishment for the purposes of giving or receiving instruction is not a playing or showing of the work in public for the purposes of infringement of copyright. For the meaning of “educational establishment”, please refer to Schedule 1 of the Copyright Ordinance (Cap. 528). However, one should note that if the playing or showing is for purposes other than giving or receiving instruction (e.g. entertainment), the exemption will not apply.

Q6. To assist students in completing an assignment of film appreciation, a lecturer in university plays the entire movie for his students in a class. Is the teacher allowed to do so?

³ See <http://www.mplc.com.hk>

A6. Although the law provides for an exemption of infringement for the playing or showing of work in course of activities of educational establishment as explained in **Q&A5** above, one should note that in determining whether or not an act may be permitted by law, the primary consideration is that the act does not conflict with a normal exploitation of the work by the copyright owner and does not unreasonably prejudice the legitimate interests of the copyright owner. Hence, an exemption is not to be used to avoid the purchase of legitimate copies of works where they are available, nor to save money for students or teachers.

BROADCASTS AND CABLE PROGRAMMES

Q7. It is quite common for public places like restaurants, clubs, hospitals and elderly homes etc to have radio/television programmes shown or played to customers, patrons or members who are admitted to the premises. Does the law provide any copyright exception which permits such showing or playing?

A7. Similar to other copyright works, the showing or playing of a broadcast or cable programme in public is an act restricted by copyright except where: -

- (a) The broadcast or cable programme is not encrypted; and
- (b) The showing or playing of the broadcast or cable programme to the audience is free of charge, i.e. the audience have not paid for admission to the place where the broadcast or cable programme is shown or played.

However, one should note that the above permitted act does not cover any literary, dramatic and musical works which may underlie the broadcast or cable programme. For example, where a popular song is broadcasted and the relevant broadcast is shown in public, the latter constitutes public performance of the underlying works in the song, i.e. the music as well as the lyrics. In this connection, irrespective of due compliance with conditions (a) and (b) above, free public showing of the programme may still be restricted by the copyright in the music and the lyrics, and a licence should be sought in advance from the relevant copyright owners/licensing bodies.

Q8. For the purpose of point (b) under A7 -

- (a) under what circumstances would the playing or showing of the broadcast or cable programme be considered not to be free of charge, and**
- (b) what about the position of clubs, elderly homes, hospitals and charitable organizations where the broadcast or cable programme is being shown to their members, residents or inmates who may have paid to be admitted to the premises?**

A8.

(a) The showing or playing of the broadcast or cable programme in a public venue is not treated as free of charge if: -

(i) the audience have paid for admission to a place of which the venue forms part (e.g. each patron to a pub, where the live broadcast of a football match is being shown, is required to pay an entry fee as a minimal charge regardless of whether he will be ordering any food or drink); or

(ii) where goods or services are available at the venue (or a place of which the venue forms part), they are supplied at prices which are either: -

- substantially attributable to the facilities afforded for seeing or hearing the broadcast or cable programme; or
- exceeding those usually charged there and which are partly attributable to those facilities.

(e.g. a restaurant has several sections, one of which is broadcasting a live football match, and by reason of this additional entertainment facility, the food and drink served in that particular section are more expensive than the same items served at other parts of the restaurant)

(b) The following persons are not treated as having paid for admission to a place where a broadcast or cable programme is shown or played: -

(i) residents or inmates of places (e.g. hospitals, rehabilitation centres, nursing or elderly homes) operated by a charitable organization provided that the facilities therein are not provided for profit;

(ii) persons having paid for admission as members of a club or society whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, if the provision of facilities for seeing or hearing the broadcast or programme is only incidental to the main purposes of the club or society.

MATTERS TO CONSIDER WHEN OBTAINING “PUBLIC PERFORMANCE” LICENCES

Q9. What should I pay attention to when applying for copyright licence(s) for public performance, playing or showing of works?

A9. Where your proposed activity involves the public performance, playing or showing of one or more copyright works, and such activity does not fall within any of the copyright exceptions as explained in **Q&A3, Q&A5, Q&A7 or Q&A8** above, you will need to obtain a “public performance” licence. You should obtain an appropriate licence that suits your

business needs. Some of the issues which you may need to consider include -

- (a) What are the types/categories of copyright works that will be used?
- (b) Are there any copyright agents or licensing bodies that are authorized by the copyright owners to grant the requisite licences? (If not, you may need to contact the copyright owner directly.)
- (c) Do the terms of the licence/licensing scheme offered by the copyright agent or licensing body, e.g. the repertoire of copyright works covered by the proposed licence, the acts so licensed, the duration of the licence, and other special conditions or restrictions (if any), suit your business needs?
- (d) If the terms of the licence/licensing scheme do not suit your purpose, you may need to negotiate a separate licence with the copyright agent, the licensing body or the copyright owner directly for appropriate licensing terms.

DISPUTES OVER LICENSING SCHEMES OR LICENCES

Q10. When applying for a “public performance” licence, what should I do if some of the proposed licensing terms are not agreeable to me?

A10. Obtaining a licence is just like entering into a contract. A simple attempt to resolve a dispute over any proposed licensing term, such as the proposed scale of royalty or tariff, is through direct negotiation. In case the negotiation fails and you want an independent adjudication of the dispute, you may consider referring the case to the Copyright Tribunal.

General information about the Copyright Tribunal can be found in its official website at <http://www.ct.gov.hk>. The answers to some frequently asked questions about the Tribunal are also set out in <https://www.ct.gov.hk/eng/faq.html>. You should consider seeking advice from qualified legal advisors about the Tribunal’s power, rules and procedures as applicable to your case.

Intellectual Property Department
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