

PLAYING MUSIC AT YOUR WINERY



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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

MUSIC AT YOUR WINERY

If you play music (live, recorded, or streamed) for customers at your winery—even if you own copies of the songs, whether you downloaded the copy or created the digital copy yourself—you **must have the appropriate licenses**. It may be a hassle to figure out what licensing structure is right for you, but getting caught without the necessary permissions means potentially severe penalties. Recently, a court awarded over \$200,000 in damages against a restaurant playing recorded and live music without proper permission. And, Napa Valley wineries have reported that they are being targeted for enforcement.

It is important to understand:

- You cannot play music from YouTube, your personal Pandora account (including Pandora One), your Spotify account, or legally downloaded digital copies of songs audible to customers at your winery unless you have appropriate licenses. Typically this means acquiring a public performance license from ASCAP, BMI and SESAC or subscribing to a service that already has these licenses.
- Live performances usually require you obtain additional licensed rights, especially if you plan to record or stream the performance.
- There is a very narrow exception to this music licensing obligation if you play only “over-the-air” radio and TV and your tasting room (or other area you publicly play music) is small. **Streaming music does not fit under this exemption; this only applies if you are playing radio or TV.**
- Be careful if you are regularly playing music not meant for, but still audible to, customers (e.g., in the kitchen). This might cause problems if a music rights holder considers this a “public” performance.

Deciding What Price is Right for You. If you want to play music for your customers, every winery’s situation is unique. For recorded music, the biggest questions are how much are you willing to pay to control what’s playing (and when) and do you want to have the ability to play every song. Typically the more control you want over the exact music played, the more expensive the licensing. For live music, the biggest questions are what rights the performing musicians have, what kind of music are they playing, and do you also want to stream or record the performance.

MUSIC LICENSING OPTIONS FOR WINERIES

You Want to Play Recorded Music at Your Winery

- **Option 1: Play Radio or TV:** In this narrow case, you can play music **for free** through over-the-air (i.e. not over the Internet, not cable) radio or television stations so long as you do not charge customers to listen or watch and:
 - The area of your winery where the music is played (e.g., tasting room) has less than 3,750 square feet of space (including kitchen, storage rooms, and offices, but excluding the parking lot and vineyard); **OR**
 - The area of your winery where the music is played (e.g., tasting room) has more than 3,750 square feet, but uses no more than six speakers AND no more than four speakers in any one room or adjoining outdoor space.
- **Option 2: Subscribe to Pandora for Business or Sirius XM for Business:** You can subscribe to a business account through Pandora or Sirius XM, and those companies will pay the necessary licensing fees for you. These services will include genre stations and some ability to control the type of music played (e.g. mood or genre), but may not be able to provide all music and may specify the playlists or limit the specific musicians or songs available to you. The subscription fees vary based on the service you select, but they typically include an installation fee (~\$150) and monthly subscription fees of \$25-\$50. (**Note:** Spotify’s current business service is for management only, and does not cover licensing from BMI, ASCAP, and SESAC).
- **Option 3: Subscribe to a Similar Subscription Service From a Start Up Company or New Company:** There are a number of new companies that want to provide music subscription services for bars, restaurants and other hospitality businesses. Virtual Jukebox and Rockbot are two such companies. These companies often offer prices and subscriptions that are lower than that offered by their larger competitors. If you’re interested in trying one of these services, you will want to ensure that the service is properly licensed by the record labels and publishers (some aren’t) and that you are prepared in case the company doesn’t have the staff to provide good customer support or is purchased or goes out of business and can no longer provide the service.

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- **Option 4: Installation of a Mood Media or Play Network System in the Winery:** Mood Media, formerly known as Muzak, (which is the service that underlies Pandora for Business) and Play Network offer full systems that they will install in the winery. These systems are more expensive than merely subscribing to one of the subscription services, but they offer a fully integrated system in the winery and can integrate branded content and provide consulting services so that you can use the content to better connect with customers of the winery. These systems typically have custom pricing and require discussions with a sales representative.
- **Option 5: Obtain Public Performance Licenses Directly from ASCAP, BMI and SESAC:** Three different performing rights organizations (ASCAP, BMI, and SESAC) enforce the public performance rights of their enrolled musicians' music. ASCAP and BMI are the two biggest, with SESAC a distant third. These organizations charge annual license fees for access to their musicians' music. If you have a public performance license from each of these organizations, you don't have to subscribe to any other service and you can play whatever music that you want, whenever you want, and on or through whatever device you want. In other words, you can play your music collection without concern. There are some administrative headaches. Obtaining a license may require you to disclose certain financial information, one typically needs to obtain a license from all three organizations, and there is some paperwork that requires you to disclose sample playlists. This is also the most expensive option. The total cost to obtain a license from all three is likely to be \$1500-\$3000 per year and likely will vary based how large your winery is.

You Want to Play Live Music at the Winery.

- **Unless the music is in the public domain (i.e. the music was composed before 1924), you have to get a license from ASCAP, BMI and/or SESAC. If you want to use the performance in some other way, you may also have to get consent from the musician's record label and from the musician.**
- To play live music to the public, whether it's a rock band at the annual summer party or woodwind quintet at a wedding, the winery will need to have a license from the applicable performing rights organization(s) (an additional license at an additional cost from the license described above). The total cost is likely to be \$2,000 and above, plus a percentage of ticket revenue above certain thresholds, to obtain the rights from all three organizations.
- If the winery also makes an audio or video recording of the performance, uses any of the musical performance in promotional audio or video for the winery, or shows the performance later in the winery or on the winery website, the winery will also need additional consents from the musician and/or the record label.
- *Be careful, just because the musician claims to have the necessary ability to give permission, that may not actually be the case.*

You Want to Play Music on Your Website.

- Videos with music that you want to play on your website or on a video screen in the winery are a different type of use and require a different license, and the licenses discussed above for recorded and live music do not cover such use. This license must be obtained directly from both the record label and the publisher. In short, it's complicated.
- Linking to someone else's video located on YouTube, Vimeo or another service does not require any permission so long as you do not place the video on your servers.
- Uploading a video produced by the winery that includes music will require a synchronization license from both the composer/publisher and the performer/label. There is no obligation for either party to grant permission or license the music at a reasonable price.

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HOW YOU GET THE LICENSES:

Product Name	Where to sign up or make an inquiry:
Pandora for Business	https://www.pandora.com/everywhere/for-your-business
Sirius XM for Business	https://www.siriusxm.com/siriusxmforbusiness/services
Mood Media	http://us.moodmedia.com/contact-us/
Play Network	http://www.playnetwork.com/#contact
Spotify for Business*	https://www.soundtrackyourbrand.com/soundtrack-business

*Note: using this service still requires licenses from the below Performance Rights Organizations.

Performance Rights Organizations	
ASCAP	Template annual license for wineries available at: http://www.ascap.com/~media/files/pdf/licensing/classes/wineries.pdf You can search their catalogue here: https://www.ascap.com/Home/ace-title-search/index.aspx
BMI	Web page for wineries available at: http://www.bmi.com/licensing/entry/winery You can search their catalogue here: http://www.bmi.com/search
SESAC	Provides an interactive licensing process available at: https://www.sesac.com/Licensing/formreqlicense.aspx You can search their catalogue here: https://www.sesac.com/Repertory/RepertorySearch.aspx

WHAT TO DO IF ASCAP, BMI, OR SESAC CONTACTS YOU:

If you have paid the relevant organization, or using either Pandora for Business or Sirius XM for Business, you should be able to resolve the issue by showing proof of your licensing payments. Otherwise, we recommend seeking legal counsel.

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