Strict enforcement of copyrights jeopardizing live music in small venues

By Joan Anderman
Globe Staff / June 9, 2010

The threatening letters started arriving in early 2009, a few months after Jim Whitney opened J Dubs Coffee, a tiny storefront coffee shop in a Manchester, N.H., strip mall. Fifteen came over a few months, right around the time Anthony Demings, owner of the Brooklyn Coffee and Tea House in Providence, was receiving his own string of letters, and Lorraine Carboni, proprietor of Somethin’s Brewin’ Book Cafe in Lakeville, began getting calls and then lunch hour visits from a brusque man.

“I was blown away by his demeanor,” Carboni said. “He was rude to my staff. He was adamant about getting information. They were threatening me with lawsuits. So I did what I had to do, and ended my music program.”

Across New England, church coffeehouses, library cafes, and eateries that pass the hat to pay local musicians or open their doors to casual jam sessions are experiencing a crackdown by performance rights organizations, or PROs, which collect royalties for songwriters.

Copyright law requires that any venue where music is performed publicly, from cheerleading competitions and mortuaries to nightclubs and stadiums, has a performance license. Recorded music is subject to license fees as well. The three US-based PROs — ASCAP, BMI, and SESAC — collect the fees and distribute them to their members.
With the music industry in steep decline, PROs are ramping up their pursuit of the little guys, who acknowledge that songwriters are entitled to compensation but are angry and frustrated at what they see as unfair targeting of small businesses and nonprofits that make no money from the music they present.

Among them is Magret Gudmundsson, who until recently hosted a monthly acoustic open mike in her Middleborough cafe, Coffee Milano. "I like having it here, but we’re not making any money from it and they wanted $332 a year," Gudmundsson said. “The town really needs something like this. They ruined it.”

Performance license fees are calculated based on a variety of factors: a venue size and seating capacity, the number of musicians who perform there, and the number of live performances per week, among others. The average fee for a small coffeehouse would be $200 to $400. But owners could be required to buy licenses from all three PROs.

The PROs have been criticized for years for their aggressive stance; in the mid-1990s ASCAP bowed to public outcry after attempting to collect licensing fees from the Girl Scouts for singing campfire songs. (They now charge the scouts a symbolic $1 a year.) But Vincent Candilora, ASCAP’s senior vice president for licensing, has no sympathy for Gudmundsson and her ilk.

“They’re selling coffee for four dollars and they can’t afford a dollar a day for music? If they don’t think it’s worth it, that’s their choice,” Candilora said. “But I have to say that most people recognize that music is a value to their business. Every now and then we run into people that think, ‘I’m just a small little bar; they’re not going to sue me,’ and that’s a mistake. Frankly, once you’re on our radar we can’t let you go.”

ASCAP files between 250 and 300 copyright infringement lawsuits a year. BMI files 100 to 200 annually, and it’s always a last resort, according to spokesman Jerry Bailey, often following years of attempts to enforce compliance with the law. BMI is currently suing the owner of a saloon in Rochester, N.H., that the company has been trying to license since 2003.

“We’ve made one personal visit, 59 phone calls, and sent 39 letters," Bailey said.

Fewer than 10 percent of copyright infringement suits go to trial, because, he said, “once a business owner gets an attorney, they find out they don’t have a prayer of winning.” Penalties in court range from $750 to $30,000 per song, and are determined by a federal judge.

Bailey said he understands how difficult it is for small business owners to survive. “But are they going to the electric company and saying, ‘Times are tough; can we get some free service?’ ” The number of lawsuits is on the rise, in large part because of technology. Not only do sites such as Facebook, Citysearch, and Yelp make it easier to spot potential violators, but sophisticated software simplifies the process of identifying music at its source, and determining whether it falls under copyright protection.

BMI owns the technology many cellphone users know as Shazam, a mobile app that identifies songs (the other PROs have their own version). Regional licensing agents use the app during anonymous visits to venues.

And that, said Howie Newman, a Massachusetts musician who has lost work on the local coffeehouse circuit because of all the canceled music programs, is cause for concern.

“The song ‘Happy Birthday’ is covered by copyright. Where do you draw the line?” said Newman, who also runs the Music in Melrose coffeehouse at Church of the Nazarene, which features monthly performances between September and May. “We couldn’t afford a thousand dollars a year [the price for licenses with
all three PROs]. We don’t gross that for the whole season. There needs to be some kind of amendment to the law where venues of a certain size or which generate a certain amount of revenue are exempt or have a small fee.”

To that end Louis Meyers, the executive director of Nashville-based Folk Alliance, is negotiating with the PROs to formalize a license waiver for nonprofits, nontraditional venues, and coffeehouses with a capacity of 50 or fewer. But he said talks are progressing slowly. “There’s been such an incredible shrinkage in their revenue streams, because sales of music are down across the board, that all of a sudden they’re much hungrier and less willing to give up any money,” Meyers said. “Right now their collection people on the street are going after everyone.”

That includes numerous people who declined to speak on the record for fear it would draw more attention from the PROs. One proprietor of a small restaurant in Western Massachusetts, who says he’s lucky if 25 people show up for live music on Tuesdays and Thursdays, has written letters to each of the PROs explaining that entertainers in his establishment play only originals and traditional folk songs, which aren’t protected by copyright.

“They wrote back and said, ‘I don’t believe you,’ ” he said. “They say that the problem is I don’t know every song that’s been written and someone could throw in a song that I’ve never heard. How do I get around that? Buy a license that covers everything.”

Most coffeehouses would be eligible for the minimum fee of $200 to $400. But even that is roughly a quarter of the profits one South Shore summer music series, at a rural education center, brings in during an entire season of concerts.

“I think the artists should be paid something for their work, but at the same time you shouldn’t be hitting these coffeehouses that are volunteer-driven and lucky to be breaking even,” said the center’s executive director, who has been presenting music for 15 years and began getting letters from ASCAP a year ago. “It really feels like extortion.”

Joan Anderman can be reached at anderman@globe.com. © Copyright 2010 Globe Newspaper Company.

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Lorraine Carboni of Somethin’s Brewin’ Book Cafe received threats of lawsuits. (John Tlumacki/Globe Staff)

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READER COMMENTS (17)

ames123 wrote:
ai have a difficult time feeling any sympathy for the music industry (the gusy that want the royalty fees). Are these the same folks who in the 50’s and 60’s were giving out heroine, babes, and coke to get “their” songs featured on the radio?
I think I liked it better when there were groups like the Troubadors who wandered from castle to castle singing whatever they wanted however they liked. You could probably play their stuff for free.

Music was meant to be communal, to be shared. The small venues give certain artists a place to perform and experiment and spread songs around. If you charge the places that host this, they will quit. Isn't that counterproductive in the long run?

6/9/2010 6:19 AM EDT

schadenfreude99 wrote:
They should raise the price of their coffee and pay the fee.

6/9/2010 6:39 AM EDT

tryphena wrote:
I ran local church coffeehouses for years and there was always a rumor that songwriters should get adequate compensation for their work, charging small venues, especially non-profits, is showing how desperate these groups are. But the really sad part is that the songwriters who get paid from the fees are not the ones who wrote the songs that are being performed. If someone plays an obscure song by a one-shot songwriter, does that songwriter get the money? No...it probably goes to the Estate of Michael Jackson, for example. There needs to be a fair system and I hope that the Folk Alliance can work something out soon to help the local church/non-profit coffeehouses.

6/9/2010 5:39 AM EDT

businessowner wrote:
If I were a coffeehouse or another small venue I would drop music like a hot potato. Once these guys start losing even more money they will come to the bargaining table.

6/9/2010 5:49 AM EDT

Billybee wrote:
We only had 10 people at most come to our Friday night music night and buy 1 cup of coffee and sit for 2 hours. Not worth the money, but I thought I was providing a community service in a community that needed it. I finally, dropped the music night at my coffeehouse once the PROs started hassling me. Now we can't even play the radio in the kitchen because it could possibly be heard by the customers and that would constitute entertainment...sorry, didn't realize that WBZ was entertainment.

One of the musicians said she was represented by AFSCME, but never got any reimbursement from them herself. What are they doing with the licensing fees anyway????

6/9/2010 6:16 AM EDT

scottprevost wrote:
The Day the Music Died!!! Not a good sign.

6/9/2010 6:29 AM EDT

civicsguy wrote:
Way to go music industry - put musicians out of a job. That'll get the public on your side. And like Billybee points out - these funds go into a general pot - not like the artist sees money for the 1 or two songs that were performed.

Haven't the millions lost on the RIAA lawsuits taught you anything? How much does it cost administrators, detectives and lawyers you use to wring $200 out of a church group?

6/9/2010 6:29 AM EDT
amarshall1 wrote:
The looters are coming for your music now.
6/9/2010 6:42 AM EDT

M--S wrote:
These organizations are going to be more effective at killing music than the Taliban. The music industry wont be happy until copyrights last 500 years and you have to pay $4.99 every time you hear a song, even if it's inadvertently.
6/9/2010 6:48 AM EDT

TheDope wrote:
Nothing like shooting your industry in the foot! What a bunch of short-sighted morons. Many's the time I've asked a proprietor what was playing so I could go out and BUY IT myself. So...let's kill the free advertising; that's a really good business plan.
6/9/2010 6:53 AM EDT

dadadee wrote:
What a bunch of A-hole bullies. Why should any place be required to prove that all musicians in their shop play original music? The burden of proof should belong to the organizations. This just makes me annoyed and sick. Does this mean that if my husband plays his guitar at my child's b-day party, we should have to pay a licensing fee. And why are there three organizations who can collect fees? It may be time to start protecting small musicians and small businesses.
6/9/2010 7:09 AM EDT

formelyteapartymover wrote:
What is Lars Ulrich multiplying!
On another note, the music industry pays bands, groups, singers....whatever, millions for a pre determined amount of albums in a set of years. Thats why you have bands like Googoo dolls greatest hits...and why you buy a CD and there is only one song worthy of your 15 bucks cause they are saving anything good so the next CD will sell. Its a bunch of bull!
6/9/2010 7:18 AM EDT

ImaLittleteacup wrote:
Ridiculous and outright evil. This is a symptom of an "industry" that is quickly going out of business. It doesn't really benefit the singers, songwriters, musicians, and performers. It imposes comically insane restrictions on what can be done with music...and even who is allowed to hear what...and when. And it is clearly all about money: as everyone gravitates to the digital distribution model, the record companies and music rights gangs get ever more vicious in trying to wring dough out of the little guys...because their primary profit machines are breaking down.
Its going to be great to see a new model emerge where the performers and writers get paid directly for their work...and these parasites get put entirely out of business.
6/9/2010 7:28 AM EDT

bduce wrote:
These people are parasites. They steal the money from these small venues and keep most of it for little or no work. These no talent law school drop outs couldn't earn an honest living anywhere. Most of the songs performed are from
other folk artists who either started the same way or are still performing on these small venues. Too bad unions and now these infections are really killing the entertainment industry.

Subcritical wrote:
And we silly Americans think we are free.

Everywhere you turn there is a corporation/government exerting governance over your life.

Musicians don't see this money, The executive from these organizations do and live fat off the land.

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dtthem2008 wrote:
This is a shame. Ask how many musicians covered songs and played the streets and these coffee houses before they hit it big and they were not paying fees. I agree with another commenter that music is meant to be shared by all. The music industry screwed up big time when they missed the boat on online music sharing (Napster, etc.) and now they are looking for ways to make up for it.

Won't these execs ever make enough money?

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