Music rights cases cooling nightclubs

By Thanassis Cambanis, Globe Staff, 4/7/2002

The bartender at The Muse probably never noticed the "verifier" who paid three surreptitious visits to Nantucket’s self-styled "coolest nightclub" in June and February.

Like most of these contract enforcers whom copyright companies send out to confirm the illegal playing of licensed music, the verifier was probably a disc jockey or musician making some extra cash. Trying not to attract attention, the verifier records the time every song is played, draws a picture of the establishment’s floor plan, gets a receipt as proof of the visit, and scribbles notes just in case things get ugly and go to court.

In The Muse’s case, copyright lawyers have a short and nasty message: You play, you pay.

Broadcast Music Inc., which represents songwriters and holds the rights to more than 50 percent of the songs performed nationwide, filed a federal lawsuit last week against The Muse, a popular club and pizza parlor on Surfside Drive.

"It's not free to play copyrighted music in a public place," BMI spokesman Jerry Bailey said. "It definitely is a problem that more businesses don’t know about this."

Bailey wouldn’t say how much revenue had grown at BMI or how much enforcement is on the rise as songwriters struggle to protect their incomes. But he said that as more and more restaurants, bars, and public venues use music to draw customers, copyright companies want to make sure everyone required to pony up a licensing fee does so. BMI might be filing as many as 200 federal lawsuits nationwide this year, Bailey said, a big increase over previous years.

Verifiers paid The Muse one visit last June and two more in February of this year. Bailey said the verifiers catalogued an illicit playlist of BMI songs: The Rolling Stones’ "Honky Tonk Women," George Thorogood’s "Bad to the Bone," Chuck Berry’s "Johnny B. Goode," and Sheryl Crow’s "My Favorite Mistake," along with nine other songs.

Copyright holders send a verifier only when a business already has refused requests to pay a licensing fee. "They’re not free-ranging bounty hunters," Bailey said.

So the club whose Web site boasts "the music never stops" just might have to change its tune. The BMI lawsuit asks for damages of up to $30,000 and attorney’s fees. The Muse previously signed a licensing agreement with BMI, Bailey said, but stopped paying its fees.

Michael C. O’Reilly, The Muse’s representative named in the lawsuit, declined to discuss the matter. "We own The Muse, but I have no knowledge of any lawsuit," O’Reilly said in a telephone conversation from his Nantucket home. "It sounds very interesting, but I’m not going to discuss something I have no knowledge of."

According to federal copyright law, every restaurant, bar, or club that plays recorded music
BMI has to pay a licensing fee to the copyright holder. The only exemptions are bars and restaurants smaller than 3,750 square feet that play the radio.

Copyright law applies to almost every kind of public space, including universities, hospital lobbies, and summer camps. In the 1990s, copyright holders mounted embarrassing campaigns to collect fees from Girl Scout camps and assisted-living facilities, from which they backed down after a flurry of negative publicity.

BMI, Bailey said, prides itself on being ’’reasonable.’’

’’We don’t go after nursing homes,’’ he said. His company does, however, license YMCAs and fraternal organizations like the Elks Lodge.

BMI and another collective, the American Society of Composers, Authors and Publishers, hold the copyrights on more than 90 percent of all American recordings. Both are non-profit corporations, not affiliated with the recording industry, which funnel most of their roughly $1 billion in revenue back to the actual song authors.

’’Most songwriters are not stars and are not recognized by the public,’’ Bailey said. ’’They don’t tour or sell T-shirts, either.’’

Depending on the size of a business, annual licensing fees can run from $265 to more than $8,000. The average restaurant’s licensing fee costs about $600 and authorizes unlimited playing of BMI’s 4.5 million songs.

Usually, Bailey said, establishments illegally playing BMI music agree to pay after a few calls or complaints. ’’Occasionally,’’ he added, ’’people can be difficult.’’

BMI spends most of its energy informing establishments on copyright law and asking them to pay the required licensing fee. The company made 1 million phone calls last year, mailed 80,000 letters, and visited more than 12,000 businesses. Only a few dozen times a year, Bailey said, does BMI file lawsuits.

’’It’s a worst-case scenario,’’ Bailey said. ’’A lot of people don’t know about copyright law and how it works,’’ Bailey said. ’’It’s my job to educate them.’’

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