
Is It Legal To Use Radio On Hold?

Licensing Guide To Music On Hold



By Tim Brown

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Is the use of music on your telephone or in your establishment legal? It's nice to have good music playing when you place callers on hold, or when guests are waiting or shopping in your business, but getting that music from the wrong place can cost you thousands of dollars in fines. Yes, business owners do get fined for playing music without license or permission, and it's not cheap!

Music Licensing Guide

- **On-hold music:** All on-hold music (even if a radio station is being played on hold) must be licensed. If you use an on-hold service, it is still the responsibility of the business to make sure that service is licensed.
- **Background music:** Most businesses will need to pay licensing fees for environmental (also known as overhead music, atmospheric or background music), even if using a radio station.
- **Recorded music:** Playing recorded music on-hold or overhead requires a license. The only exceptions are for demonstration purposes (such as audio equipment sales).

Licensing Organizations Seek Fees And Fines

You can't be sure whether you're next on the list to be called by a licensing organization, looking for fees. Easy On Hold, a provider of music and message productions for on-hold, has received calls from businesses and even licensing organizations collecting information on the music being used on-hold.

“The best way to avoid fees and fines is to use a reputable music on hold provider,” says Julie Cook, president of Easy On Hold. “If you get a call from a licensing organization, you can have the on hold music provider handle the call. The music we use is covered under a blanket license that allows us to offer lower prices than paying for the music yourself,” Cook said.

Aren't Radio Stations Already Licensed?

Playing a radio on-hold is common. Many times a telephone system technician will hook up a radio for use on-hold, knowing that music royalties are "not his problem". Most people using radio on hold probably are not aware that they're in violation of any laws, in that they assume the radio station has already covered all licensing costs on their end. Perhaps you believe that radio stations are already licensed.

It's true that radio broadcast stations are licensed to perform the music they carry on their airwaves, but your phone system is technically creating a RE-broadcast. Radio phone on hold music is considered an unlicensed, separate performance under the copyright law. The spirit of the law is that responsibility falls to the end-user, so your re-use of a radio station is therefore subject to fees.

In cases where a radio station is being "re-broadcast" on the music on hold system, fees and fines can be applied. These laws apply to all establishments, not only retailers.

Custom Content On Hold Messages Is An Affordable Problem-Solver

A custom on-hold production is the only way to fully control the content your customers hear while waiting on hold. While radio stations are known for unpredictable chatter, sensational news stories and loads of commercials (even for your competitors), custom-scripted on hold messaging provides the right message to the right people at the right time. Callers are tuned in to you and what you have to offer, so that's prime time for making a good impression. Even with the more powerful marketing potential custom music on hold messages provide, the cost is significantly less than national music services, do-it-yourself solutions, or (gulp) fines and fees.

Custom productions (typically about 4-minutes in length) repeat endlessly, to deliver your messages continuously. A complete music on hold system can cost between \$700 and \$800 including a custom script, announcers, royalty free music and your own digital on-hold equipment.

The bottom line? When businesses weigh the benefits of using music on hold against potential legal headaches, custom on hold messaging becomes a real problem-solver.

Seven out of 10 callers will be put on hold at your business today. What they hear will speak volumes about you.

\$400,000.00 Law Suit For Playing Music

How would you like to be informed that you have been sued for \$400,000 for playing music in your store? The Michigan Retailers Association reports that Larry Leigh, owner of Leigh's and Mettie's women's clothing stores in Grand Rapids, Michigan, found out the hard way about penalties for unlicensed music use. Several years ago, he received a letter from licensing organization ASCAP stating that he was violating copyright regulations by playing tapes and CDs in his stores. Unfortunately, Leigh got some bad advice from the business that installed his store stereo system, having assured assured him he didn't need to worry. Two years later, he was sued by ASCAP for \$400,000. His attorney informed him that his chances of winning the suit were not good, he settled out of court for a \$5,000 fine.

"It looks like their tactic is to catch you off guard," said Faye Hirt, owner of Faye's at Mira, a women's clothing store in Holland, Michigan that was called by BMI. She later got into what she described as a testy conversation with a follow-up caller from BMI. "They didn't seem to be looking out for our best interests," she said.

What Music Licensing Organizations Do

When your business uses music-on-hold you must first obtain permission from the copyright owners for the use of that music in your business. To accomplish this you would have to determine who the songwriters and publishers are for each song you want to use and then negotiate a fee with each of them in order for you to play their copyrighted music legally. Licensing firms such as BMI (Broadcast Music, Inc.) offer contracts known as a Music Performance Agreement. To cover the use of the music, you will be asked to pay an annual fee which authorizes you to use copyrighted musical works. Such a payment covers only music from those writers and artists affiliated with BMI.

Key Concepts: Music Ownership and Public Performance

Just because you purchased an audio CD, doesn't mean you have the right to use it in your business. The law says there's a difference between owning a CD and owning the songs *on* the CD. Most people remember the Napster case, whereby the general public became aware that paying for a CD doesn't include the right to make copies. The record companies got involved because copyright infringement threatens their industry. The writers are involved because, legally, the songwriter, (the person who composed the music) actually retains ownership of the songs that you buy when you purchase a CD. Buying a CD only allows your private listening use. Additionally, there's an important distinction of what constitutes a public performance of a copyrighted musical work. Playing music in your business is not private, but a public performance.

Who Gets Licensing Fees?

Licensing organizations collect and distribute music licensing fees. After paying for their own (non profit) operating expenses, which is currently about 15%, composers, songwriters, and publishers receive a share.

BMI states the situation this way, "Isn't it only fair that the creators of the music you use to enhance your business - the songwriters, composers, and publishers - are compensated as any other businessperson would be for the part they play in your success?"

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