THE UNIVERSITY OF MICHIGAN

STANDARD PRACTICE GUIDE

SECTION:	General University Policies and Services	**Number:**	601.20
		Revised:	1/31/03
SUBJECT:	Music Performance License Fees	**Date Issued:**	
		Review Date:	1/31/07
APPLIES TO:	All Departments of the University	**Attachment(s)**	0
ISSUED BY:	Financial Operations		

Policy

A. Applicability:

The University of Michigan has signed agreements with the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. whereby, in return for payment of annual fees, music in the repertory of the three organizations may be performed on campus and on any other premises owned, leased, engaged or used by the University in conducting its educational programs or activities, upon the payment of the various license fees. The fees are based upon the full time equivalent enrollment of all three University campuses. The University also has the option to pay significant event fees on a per event basis, if it elects to use an alternative form of license agreement.

B. Obligations of University Units:

1. On an annual basis, no later than the end of the Winter Term, University departments must send a copy of the programs, from any performances covered under the license agreements, to the organizations listed in paragraph one. All performances are covered except those specifically exempt (see Section C of this policy). The organizations pay royalties to the composers and publishers based on the music listed in the programs.

2. The musical performance licenses cover only performance rights. The performances can be either live or recorded. The agreements include the right to publicly perform musical compositions over the internet, including webcasts, but do not include the right to digitally retransmit particular sound recordings (i.e., the recording of an artist's performance of a given song). The musical copyright licenses cover the rights of the composer or publishing company in the actual music. The sound recording copyright could be in another party, but when anyone purchases a copy of the sound recording, the purchaser has acquired the right to play it, even in public.

3. The non-dramatic musical performance licenser does not give anyone the right to make copies of the music involved or to make derivative uses of such. Thus, one cannot make multiple copies or change the music involved to create a derivative use. A portion of the rendition in otherwise unaltered form is not regarded as a change. Also, if a show sound track is involved, one must be able to establish that the purchased copy of the music is being utilized in a technological sense that does not create a derivative work.

4. The musical copyright licenses do not permit any performance of the music in a dramatic sense, namely telling a story. If this is involved, then consideration is made as to whether the amount of music used is small enough so that fair use may exist. Music used for entrance and exit purposes may be covered by the licenses but substantial selections of music which are incorporated in the actual programs presented would be part of the story and therefore be a dramatic presentation and not covered by the license agreements. Thus, unless fair use exists, an infringement would be involved.

C. Exempt Performances:

Some performances of works which are exempt from the performance license fees under the above three agreements but which may have to be licensed by other parties are:

1. Dramatic music;

2. Literary works;

3. Carillon music;

4. Music by composers who do not belong to any of the three organizations mentioned in "A" above.

Other performances which are exempt from all licensing requirements of any kind are:

1. Nonpublic performances;

2. Public performances by voluntary performers without any purpose of direct or indirect commercial advantage which either lack any direct or indirect admission charge or which result in the admission proceeds being used for certain nonprofit purposes without proper statutory objection thereto by the copyright owner;

3. Instructional broadcasting activities for certain students;

4. Public performances which are permitted under the general concept of fair use.

D. Performances by University Performers:

Performances by University faculty, staff, students or alumni in their University capacity on behalf of the institution are not subject to the payment of any significant event fee under the three non-dramatic musical performance licenses, in the event that the University elects to use the alternative license agreement.

E. Double Payment:

Where the University has elected to use the alternative license agreement and a performance of a significant event is already licensed by another party, such as a performer or promoter, a double payment is not required by ASCAP or BMI. In such cases, the University should require evidence that the payment of the fee is made by such other party and that the appropriate musical performance society is informed accordingly.

F. Obvious precautions must be observed determining whether or not performances are covered by these licenses. Therefore, if further analysis is required, contact the Office of the General Counsel.