

# Copyright, Collection Societies and all that jazz: A review of public performance of music in the UAE

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We have recently seen another influx of letters being sent to local UAE entities regarding the use of music, and in particular the collection of public performance royalties.

These letters are coming from a European Collective Licensing Body. This seems to happen annually in the Middle East and, given that the letters cause some confusion and anxiety amongst local operators, it is a good time to address the issue of copyright in music and in particular the role played by music Collective Licensing Bodies.

First let's have a look at the position of music copyright in general under the Federal Law No.7 of 2002 regarding Copyrights and Neighbouring Rights (the "Act"). It is clear under Article 2 of the Act that music comprising both the composition itself (sub Article 5: "music compositions with or without words") and the sound recording (sub Article 6: "sound and audio visual works") are capable of attracting copyright protection. This means that the originators of copyright – which will for compositions and sound recordings be the composers/lyricists and the singers/musicians – hold the copyright in and relating to the work in question. They are therefore entitled to deal with those rights as they see fit.

Composers and lyricists tend to assign their rights in relation to a musical work to a music publishing company for them to either manage or own. These contracts are usually complex, and whether they assign the rights to the composition or grant some form of exclusive distribution rights, they tend to give all rights in relation to the exploitation of the composition to the publishing company. In many publishing contracts, the composer or lyricist will sign a long term 'umbrella' publishing agreement which means that any works that they compose during the life of the agreement will automatically become subject to the publishing agreement.

Contracts for sound recordings tend to have a shorter life than a publishing contract. Singers and musicians are usually contracted for a certain number of sound recordings – for example "your next three albums". Record agreements come in different shapes and sizes depending on the strength of the artist's reputation, the size of the record company involved and the commercial terms that may be associated with the deal itself.

Under the Act, the owners or controllers of copyright works are able to control the way in which the work is used. This applies across the board to all copyright owners and applies equally to composers/lyricists and singers/musicians. In addition, under Article 7, it is clear that in relation to performers only the author and successors can grant a licence for exploitation of their work by any means, including (amongst other matters) by way of "broadcasting, ... public performance [and] public communications".

So the right of public performance exists in this region and is protected by the Act.

The way in which a third party can obtain a right to use a musical work and a sound recording in order to comply with the Act will depend upon the contract that the composers/lyricists and singers/musicians have signed in relation to the work in question. Most people are aware, for example, that if they want to use a particular song within a soundtrack for a commercial, a

television program or a film, they have to seek rights in relation to the composition from the composer, or more likely, the publishing company. They will also need to seek rights in relation to the sound recording from the artist, or more likely, the record company that holds the relevant rights in relation to that particular song.

### **But what about licensing the rights for public performance?**

In a nutshell, public performance is the right to play music in public. This includes concerts and events, broadcasters and radio stations but also extends to music in shopping malls, hotels, lifts, airlines, restaurants and bars. As noted above, the Act clearly states that this is an activity that is controlled and must therefore be licensed.

In order to play music in public, you will need the permission of both the owners of the composition and the owner of the sound recording. But from a practical perspective, if you (for example) wish to play music in a retail space during your opening hours, you would need to get permission from the people involved in all the songs that you would like to play. It is no surprise that most operators hesitate to undertake this enormous administrative task.

In order to bypass this difficulty, Collective Licensing Bodies were established across the globe. In effect the owner or controller of the music and the sound recordings will grant the Collective Licensing Body a right to collectively license and, importantly, collect fees from all the places that play that music in public. Collective licensing has, over time, become a simple and popular way for composers/lyricists and singers/musicians to collect fees for the use of their works.

Section 6 of the Act deals specifically with the administration of a Collective Licensing Body in the United Arab Emirates. Under Article 30: "The holders of the copyright and the neighboring rights may assign their economic rights to specialized professional societies to administer them, or authorize other bodies to practice these rights". It is clear from this article that collective licensing is anticipated as being possible and is allowed to occur. However Article 32 of the Act then adds: "The societies or the bodies who shall administer the rights of the author and the neighboring rights must not practise any activities before having annually a license from the Ministry". Why is this a problem? Because the government has not yet licensed or authorised any agency, whether based in the United Arab Emirates or otherwise, to undertake any collective licensing activity in this country. In addition, no tariffs have been agreed between the relevant parties (that is, the rights holders and the users) for the use of music within the UAE. The setting of the applicable tariffs is an extremely important part of the usual framework for operating a Collective Licensing Body anywhere in the world and no tariffs have been set.

This causes a great problem to composers/lyricists and singers/musicians who cannot readily receive revenue for the public performance of their work in a commercial environment. It also presents a difficulty for those parties that would like to use music in a public space but in a legal way. In UK or France, if an owner of a shop wanted to play music to the public, they would simply seek a blanket license from each of the UK based Collective Licensing Bodies (one controlling the composition and the other controlling the sound recording) and then they would be legally permitted to play all music covered by that Collective Licensing Body. In the United Arab Emirates, as we have no Collective Licensing Body, this is not possible.

Of course this has not stopped foreign Collective Licensing Bodies, who represent numerous artist catalogues from across the globe, from looking at this unlicensed market and attempting to collect money from people who are using music in public spaces. But given that these parties don't have a licence from the government to undertake such activities – as is required under Article 32 – it is difficult to argue that they have any standing to make a claim or pursue action locally against any party in the United Arab Emirates.

It therefore appears that, in the United Arab Emirates, the lack of a registered and authorised Collective Licensing Body for music means that the only way that a party can legally play music in public is to receive a licence directly from the publishing company and record company themselves.

There is one legal issue that further complicates this matter. The majority of composers often directly license global collection rights to a particular Collective Body. So, for example, if you are a UK composer, you have likely granted the public performance collection rights relating to your catalogue to the English Collection Society, PRS For Music. In that case, it would be impossible for that UK music publisher to grant a public performance licence to a party in the United Arab Emirates because the publisher may not have been granted those rights in the first place.

So what is a company to do if it wishes to legally perform music without infringing the right of the copyright owner/controller? You can see from all of the above that this is not a simple question. Collective licensing remains unavailable as no one is licensed to operate. Direct licensing may not work because the party granting the rights might have been granted those rights. It is made even more complex because the foreign Collective Licensing Bodies are maintaining a position that is not conciliatory with those parties that use music. We remain a long way from finding a solution to the problem.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on music rights issues. For further information, please contact Fiona Robertson (f.robertson@tamimi.com)