

MUSIC LICENSING PRACTICES ACT

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott N. Howell

AN ACT RELATING TO COMMERCE AND TRADE; ESTABLISHING MUSIC LICENSING PRACTICES TO INCLUDE ACCESS TO REPERTOIRE; NOTIFICATION OF RIGHTS; CONTRACT REQUIREMENTS; SPECIFYING JURISDICTION OF ACTIONS AND COUNTER CLAIMS; PRESCRIBING EXEMPTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-2-1, as last amended by Chapters 26 and 79, Laws of Utah 1996

ENACTS:

13-10a-1, Utah Code Annotated 1953

13-10a-2, Utah Code Annotated 1953

13-10a-3, Utah Code Annotated 1953

13-10a-4, Utah Code Annotated 1953

13-10a-5, Utah Code Annotated 1953

13-10a-6, Utah Code Annotated 1953

13-10a-7, Utah Code Annotated 1953

13-10a-8, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-2-1** is amended to read:

13-2-1. Consumer protection division established -- Functions.

There is established within the Department of Commerce the Division of Consumer Protection. The division shall administer and enforce the following:

- (1) Chapter 5, Unfair Practices Act;
- (2) Chapter 11, Consumer Sales Practices Act;
- (3) Chapter 10a, Music Licensing Practices Act;

- [~~(3)~~] (4) Chapter 15, Business Opportunity Disclosure Act;
- [~~(4)~~] (5) Chapter 16, Motor Fuel Marketing Act;
- [~~(5)~~] (6) Chapter 20, New Motor Vehicle Warranties Act;
- [~~(6)~~] (7) Chapter 21, Credit Services Organizations Act;
- [~~(7)~~] (8) Chapter 22, Charitable Solicitations Act;
- [~~(8)~~] (9) Chapter 23, Health Spa Services Protection Act;
- [~~(9)~~] (10) Chapter 25a, Telephone and Facsimile Solicitation Act;
- [~~(10)~~] (11) Chapter 26, Telephone Fraud Prevention Act; and
- [~~(11)~~] (12) Chapter 28, Prize Notices Regulation Act.

Section 2. Section **13-10a-1** is enacted to read:

CHAPTER 10a. MUSIC LICENSING PRACTICES

13-10a-1. Title.

This act is known as the "Music Licensing Practices Act."

Section 3. Section **13-10a-2** is enacted to read:

13-10a-2. Definitions.

As used in this chapter:

- (1) "Copyright laws of the United States" means those laws specified pursuant to Title 17, United States Code.
- (2) "Copyright owner" does not include the owner of a copyright in a motion picture or audio-visual work or a part of a motion picture or audio-visual work.
- (3) "Division" means the Division of Consumer Protection.
- (4) "Performing rights society or organization" means an association, corporation, or other entity that licenses the nondramatic public performance of musical works on behalf of copyright owners, such as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.
- (5) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not for profit organization, or any other place of business or professional office located in this state in which:

(a) the public may assemble; and

(b) musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled.

(6) "Royalty" or "royalties" means the fees payable by a proprietor to a performing rights society for the nondramatic public performance of musical or other similar works.

Section 4. Section **13-10a-3** is enacted to read:

13-10a-3. Access to repertoire.

(1) Each performing rights society or organization licensing music in the state shall:

(a) maintain a current electronic list of the titles and names of the authors and publishers of all performed copyrighted musical works for which the performing rights society collects royalties on behalf of copyright owners;

(b) update the list at least quarterly; and

(c) provide to the division the electronic address at which the list may be viewed.

(2) Upon request, any person may review the list, in electronic form, of copyrighted works through the division.

(3) Each performing rights society or organization shall provide an electronic or printed copy of its most current lists of copyrighted musical works and members at cost, not including the cost of maintaining the database or any other overhead, to any person upon request.

(4) Each performing rights society or organization licensing music in this state shall establish and maintain a toll free telephone number which can be used to answer inquiries regarding specific musical works licensed by that performing rights society and the copyright owners represented by the performing rights society or organization.

Section 5. Section **13-10a-4** is enacted to read:

13-10a-4. Notification of rights.

No performing rights society or organization may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than 72 hours prior to the execution of the contract, it provides to the proprietor, in writing, a schedule of the rates and terms of royalties under the contract, including:

(1) any sliding scale, discounts, or reductions in fees on any basis for which the proprietor may be eligible; and

(2) any scheduled increases or decreases in fees during the term of the contract.

Section 6. Section **13-10a-5** is enacted to read:

13-10a-5. Contract requirements.

(1) Beginning July 1, 1998, each contract for the payment of royalties between a proprietor and a performing rights society or organization executed, issued, or renewed in the state shall:

(a) be in writing;

(b) be signed by both parties to the contract; and

(c) include at least the following information:

(i) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(ii) the name and business address of the performing rights society or organization;

(iii) the duration of the contract; and

(iv) the schedule of rates and terms of royalties to be collected under the contract, including any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

(2) (a) Nothing in this act shall be construed to affect any contract signed before July 1, 1998.

(b) All contracts signed before July 1, 1998, that are renewed after that date are subject to the requirements of this act.

Section 7. Section **13-10a-6** is enacted to read:

13-10a-6. Jurisdiction of court action.

An action may be brought or a counterclaim may be asserted in a court of competent jurisdiction against a performing rights society to enjoin a violation of this act and to recover actual damages sustained as a result of that violation.

Section 8. Section **13-10a-7** is enacted to read:

13-10a-7. Provisions of chapter not exclusive.

The remedies, duties, and prohibitions of this chapter are not exclusive and are in addition to all other causes of actions, remedies, and penalties provided by law.

Section 9. Section **13-10a-8** is enacted to read:

13-10a-8. Exemptions.

(1) This act does not apply to contracts between performing rights societies or organizations and broadcasters licensed by the Federal Communications Commission, unless any such society is licensed by the Federal Communications Commission.

(2) This act does not apply to investigations by law enforcement agencies or other persons with respect to suspected violations of Subsection 13-10-8(2)(b).

Section 10. **Effective date.**

This act takes effect on July 1, 1998.