Facing the Music

by George White, Past Executive Director of CALLERLAB

It's all about copyrights and royalties: Authors, composers, and publishers own copyrighted music and users need to pay a fee to use their work. It's called music licensing.

Two main organizations--the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), both based in New York--collect the fees.

It isn't enough to pay only ASCAP or BMI. Each represents such a wide variety of music that it would be difficult to play songs from only one group. Damages for copyright infringement range from \$500 to \$20,000 per song.

The Copyright Act of 1976 requires event organizers (sponsors) to pay for their use of music if the event is a "public performance," defined as a "place open to the public or at any place where a substantial number of persons outside a normal circle of family and its social acquaintances is gathered."

A wedding, for example, isn't public. But a square dance, a festival, and a convention--they're all public. And sponsors of those events are responsible to see that the proper music licenses are obtained <u>before</u> the event occurs.

Listed here are many of the questions CALLERLAB has received over the past 4 years. We hope the answers will lead to a better understanding of the music licensing agreements between CALLERLAB, ASCAP and BMI.

- Q: In the world of square dancing, what events must be licensed?
- A: <u>Any</u> event which uses copyrighted music must be licensed. This includes square dances, round dances, line dances, clogging, workshops, lessons, festivals, conventions, week-ends, one-night-stands, fun-niters, play parties... any event that is in any way related to square dancing.

Dancing in parades, shopping malls, street dances, county fairs, state fairs, nursing homes, convalescent homes, hospitals, schools, churches, etc. must also be licensed.

- Q: Who is responsible to see that an event is licensed?
- A: The <u>sponsor</u> of the event is responsible to see that the proper license is obtained <u>before</u> the event occurs.

In the case of square dances, round dances, line dances, clogging, workshops, lessons, festivals, conventions, week-ends, fun-nighters, play parties, etc. the sponsor is usually a square dance club, association, federation, council or other officially recognized dancer organization. The elected officers of these organizations are responsible to see that proper licenses have been obtained for the event.

If the event is sponsored by a caller, cuer, leader, prompter or callers association, then the individual caller/cuer/leader/prompter or officers of the sponsoring callers' organization are responsible to see that proper licenses have been obtained for the event.

In the case of dances in parades, at shopping malls, street dances, county fairs, state fairs, nursing homes, convalescent homes, hospitals, schools churches, etc., the organizers (sponsors) of the event are responsible for obtaining the proper licenses. This could be the owners, managers, directors or renters of the facility where the event will occur, or it could be the club or association officers, the caller, or even an individual dancer. It all depends on who sponsors or arranges the event.

- Q: As an officer of a square dance club, association, federation, council or other officially recognized dancer organization, what action can I take to assure that our event is covered by a music performance license?
- A: Basically, if you hire licensed performers (callers, cuers, leaders, prompters) any event, *other than a state or national convention*, will be covered.
- Q: What square dance activities are covered by the caller's or cuer's BMI and ASCAP license?
- A: <u>All</u> square dance activities <u>with the exception of state or national conventions</u> are covered by the CALLERLAB agreements with BMI and ASCAP. This includes regular club dances, classes, workshops, special dances, weekends, hoedowns, jamborees, fun-nights, festivals, demonstrations, parades, nursing homes, shopping malls, county/state fairs, street dances, etc. The agreement covers square dancing, round dancing, line dancing, contra and traditional dancing. Country Western dancing (Texas Two-Step and other 'couple' dances) is covered provided the caller/cuer has purchased an optional CW license offered by CALLERLAB.
- Q: Why are national and state conventions licensed differently?
- A: National and state conventions are explicitly excluded from the CALLERLAB agreements. Meetings, conventions, trade shows and expositions are licensed under pre-existing contracts and apply to <u>all</u> conventions, not just square dance conventions. It was beyond the scope of the CALLERLAB negotiations when so many other organizations would be affected.
- Q. What about 'amateur' nights or beginning callers that call one tip at a club dance?
- A. As long as a licensed caller/leader has been booked for the dance and is in attendance, the club is covered. Amateur nights must be MC'd by a licensed caller/leader.
- Q. When multiple callers are hired for a weekend, festival or other special dance, must all callers be licensed?
- A. Yes, although there are some exceptions. Especially when callers are not hired but are invited to participate without compensation. If a club, caller or organization plans to sponsor a dance where unlicensed callers will be invited to call one or more tips, they should contact the CALLERLAB office for specific details.
- Q. A caller's partner cues round dances, does s/he need a license?
- A. Yes and No. If s/he cues rounds at a dance where the partner is doing the calling, s/he does <u>not</u> need a license. The caller's license will protect the club. If s/he cues rounds at a club that has engaged a licensed caller, other than her/his partner, s/he <u>does not</u> need a license. If s/he cues rounds at an event that has <u>not</u> engaged a licensed caller, s/he <u>must</u> have a license in order to protect the sponsoring organization.
- Q: Must a caller's partner, who teaches/cues round dances, join ROUNDALAB to get his/her own license?
- A: No. A caller's partner may obtain a license to cue rounds through CALLERLAB. The fee covers the cost of licensing only. S/he does <u>not</u> pay a separate membership fee. Partners are <u>not</u> included in the CALLERLAB group liability insurance coverage but may purchase coverage for an additional fee. Please contact CALLERLAB for complete details.
- Q: Many callers call <u>and</u> cue rounds. Do they need another license from ROUNDALAB?
- A: No. The CALLERLAB license includes round dancing as part of the square dance activity.

- Q. What about the new caller or the retired caller that only calls for classes, demonstrations, nursing homes, hospitals, one-night-stands, etc. and doesn't charge for his services?
- A. Unfortunately, neither the size of the group, the payment received nor the location of the dance has any bearing on whether or not a license is required. A LICENSE IS REQUIRED ANYTIME COPYRIGHTED MUSIC IS PERFORMED IN PUBLIC.

 Normally, the sponsor of the event is the one responsible for the license. If a caller is approached to

Normally, the <u>sponsor of the event</u> is the one responsible for the license. If a caller is approached to call a one-night-stand for a scout troop, a church group, a 'western night' or an exhibition for a local business, he should advise the sponsor that a music performance license is required by law and ask if they have obtained such a license. If the caller is licensed, they are protected. If the caller is <u>not</u> licensed, then the caller and the sponsor are operating 'at risk'.

- Q. Does the fact that a club or organization is incorporated as a non-profit entity have any bearing on the need for a license?
- A. No. As stated earlier, a license is required anytime copyrighted music is performed in public.
- Q: Sometimes callers are called upon to provide music at non-square dance events, such as wedding receptions, church socials, camp outs, company picnics, etc. Does his/her license cover the music used at these events?
- A: No. The CALLERLAB agreement is limited to calling or cueing at square dance related activities i.e., where square dances, round dances, line dances, contra or traditional dances are performed. It does <u>not</u> cover disk jockeys, karaoke operators, or other types of entertainment.
- Q. "My job occasionally interferes with my calling. I have recorded some of my dances and when I have to miss a club dance, they dance to one of my tapes. Is the club still covered?"
- A. No. You cannot legally record copyrighted music on another medium (tape, CD, video, etc.), and use it for a public performance, without obtaining appropriate reproduction, distribution and synchronization rights, sometimes referred to as a Mechanical License. Neither BMI nor ASCAP can issue mechanical licenses. They must come from the Harry Fox Agency in New York City and the producer of the music to be recorded. Contact Mr. Ng at the Fox Agency, (212) 370-5330 for more information.
- Q. "Does this mean that if a dancer tapes my dance then gets a square together in his basement to practice, he is breaking the law?"
- A. Technically, Yes! He should have a mechanical license if he is going to entertain others with the recorded music. If he used records, which he purchased, he would be safe because the law allows the use of copyrighted music "in the home or within a small group of family friends or acquaintances".
- Q. "I tape record my dances then sell the tapes to anyone interested in using them. Is this legal?"
- A. Not unless you have purchased the appropriate mechanical licenses or own the copyrights to the music being used. The license you obtain from CALLERLAB is a <u>performance</u> license and does not cover you for recording copyrighted music. Contact the Harry Fox Agency or CALLERLAB for more information.
- Q. Why did CALLERLAB and ROUNDALAB enter into an agreement with BMI and ASCAP?
- A. Because many clubs were threatened with copyright law compliance and there was no national association representing all square dance clubs. Had all the clubs in the U.S. been a member of some national association, it would have been more logical for that organization to assume the leadership in solving this problem. Since CALLERLAB and ROUNDALAB represent the largest, organized group of professional callers and leaders in the U.S., they were the most logical choice to represent the square dance activity in this license issue.

Please remember, music licensing was not initiated by CALLERLAB or ROUNDALAB. BMI and ASCAP are service organizations, similar to CALLERLAB or ROUNDALAB. They provide a service to their members. Their purpose is to collect royalties on copyrighted music for their members. They are backed by Federal law in their efforts to collect those royalties.

- Q. What would happen if BMI or ASCAP should visit a square dance and find that neither the club, the caller nor the cuer were licensed?
- A. Neither BMI nor ASCAP is interested in pressing charges or filing a lawsuit for a first violation. They typically offer the club, caller or cuer a chance to purchase the appropriate license 'on the spot'. If refused, they will explain why the performance of copyrighted music must be licensed and ask that their music not be performed until a license is obtained. If the club, caller or cuer continues to violate the copyright laws after being warned, a lawsuit will be filed. The penalties can be as high as \$20,000 per copyrighted song performed and/or up to 10 years in federal prison for each violation. Since club officers are typically considered the sponsors of a dance, they would be the ones usually named in the lawsuit. Legally, however, the caller and/or cuer could also be named in the lawsuit.
- Q. "I am responsible for booking callers for our club. What should I do to assure I am protected? How can club officers protect themselves from possible litigation?
- A. We recommend that you add the following to your club contracts or agreements:

I CERTIFY THAT I WILL BE LICENSED BY BM	I AND ASCAP TO	O PERFORM	COPYRIGHTED
MUSIC AT YOUR SQUARE DANCE EVENT.			
(signature)	_		

When the caller/leader arrives at your dance, you should ask to see his/her BMI/ASCAP license card.

- Q. What about callers that have already signed contracts or agreements without this statement on them?
- A. You should contact them, as soon as possible, to verify that they will be licensed by the time they call a dance for you. If they indicate that they will not be licensed, you must take steps to protect yourself by negotiating a release from the contract and booking a caller that <u>will</u> be licensed or obtain a license directly from BMI and ASCAP to cover your dance.
- Q. "Many clubs are asking me for my license number or other proof that I am licensed. What should I tell them?"
- A: The CALLERLAB agreements make no provisions for a license number. CALLERLAB and ROUNDALAB has provided their members with a BMI/ASCAP license card. You can show this card to club officers or make a copy of it to attach to your signed contracts before returning them. Non-believers may contact the CALLERLAB office for verification.
- Q: "You've answered many of my questions but I still have a couple more. What do I do now?"
- A: Anyone having questions about music licensing may call the CALLERLAB office at (321) 639-0039. Please be advised that we are not attorneys and cannot give you legal advice but we will try to answer any questions you have, or get an answer for you from BMI and/or ASCAP.