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Stop the music

Licensing group goes after tavern to pay performance royalties

When Craig Thomas, owner of Red Tavern restaurant on Third Avenue and The Esplanade, received the first letter in the mail he thought it was a scam, just another company asking him to pay hundreds of dollars for a service he didn't want.

The letter was from the American Society of Composers, Authors and Publishers (ASCAP), and the organization was asking Thomas to pay nearly \$300 for a license to host the live jazz bands that play on Thursday nights at his restaurant.

"Oh, absolutely. I thought it was a scam," says Thomas, remembering the first letter that arrived just over a year ago. He says he ignored the letter.

"From then on I have been basically hounded by mail or by phone about once every two to three weeks," he said.

After the second letter, Thomas called the contact number and spoke to a representative about his restaurant.

"I said, 'Hey, this is what we are doing. We don't charge cover. They are only here for our enjoyment one night a week. And it's out of my pocket,'" Thomas says. "And if I have to pay this licensing fee I probably won't end up doing the music anymore. And in the end is that what you guys want?" She said, "Well, we are just trying to do our job and get everyone in compliance."

ASCAP has a large job. Its function, with a membership of more than 80,000 composers, songwriters, lyricists and music publishers, is to protect the rights of its members by licensing and paying royalties for the public performances of their copyrighted works.

That means any time a jazz musician, such as the ones who play at Red Tavern, cover a Miles Davis song, ASCAP must collect a royalty for the use of that song. In turn, that royalty is turned over to the musician; in this case likely it would be the estate of the late Miles Davis.

ASCAP has a long list of "customers" it collects from: the three major television networks, public television (PBS), virtually all cable

systems, more than 1,000 local television stations, Univision, about 13,500 commercial and non-commercial radio stations, background music companies (MUZZAK), about 2,300 colleges and universities, more than 1,000 symphonies and about 5,700 concert presenters. And it's the last category that Thomas falls under: the "general" licenses, which include bars, restaurants, hotels, circuses and roller-skating rinks.

"I think it's unfair because I'm a small restaurant doing one night a week," Thomas, arguing that ASCAP is wasting its time picking on the small man. "There are other, larger venues playing live music as part of their profit."

In the meantime, Thomas says, he just throws away the letters, hoping he can keep dragging it out.

But ASCAP means business and will continue to enforce the federal copyright laws, says Vincent Candilora, senior vice president of licensing for ASCAP.

"We are obligated. That's our job," says Candilora. "Congress says, 'We're owned by our writers and publishers. It is our job to enforce the federal law and certainly if you [the Red Tavern] don't think that music is of value in their establishment, they can simply not play it.'"

Candilora says that ASCAP sues between 250 and 300 general license establishments for being in noncompliance with ASCAP copyright laws each year. And Candilora said that even if the Red Tavern doesn't charge its customers for the music and pays the musicians out of its own pockets, the restaurant still must buy a license.

"That's great, and if he enjoys it he ought to pay for it," Candilora says. "It's no different than [the fact that] I can't just go and take your car and use it and not get your permission or pay you something for it. And what he is doing is using other people's property—songs—without their permission."

Thomas argues that there should be a sliding-scale formula to determine the cost of a yearly ASCAP

license, especially since restaurants only offers live music once a week.

"I think that the licensing fee is outlandish for what it is," Thomas says. "It's way out of line."

Candilora says the average restaurant in this country pays ASCAP about \$1.50 a day for a license, which means Thomas would wind up paying about \$300.

"Of course, if he continues to offer music without the proper permission and without paying, under federal copyright laws and with the statutory damages, he could wind up paying \$10,000 per song," Candilora says. "It's ridiculous."

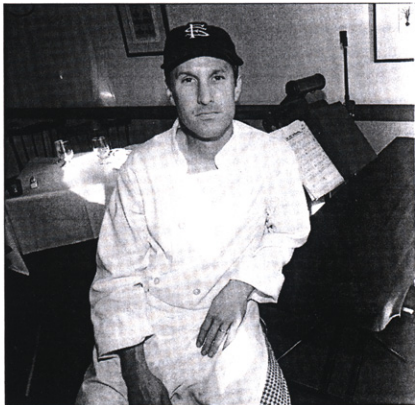
Thomas says the threat of a lawsuit is something he thinks about, and that he still doesn't know what he is going to do. He just wonders how he got in this situation because just before he got the letter from ASCAP, he put up a Web site for his restaurant that advertised he had live music on Thursday nights.

Candilora says there are several different ways ASCAP finds out about an establishment that is in noncompliance.

ASCAP has representatives working all over the country, scouring newspapers, local entertainment guides and just about any form of advertising. Candilora said they also research on the Internet and get tips from the Alcoholic Beverage Control about new bars and restaurants about to open.

"We also get them from other establishments," Candilora said. "There might be a restaurant not far from him that is complying and they feel like why should someone get away with it? They put them in at a disadvantage."

Thomas says he has bars, restaurants and coffee shops that offer live music revealed that Thomas at Red Tavern might be one of the only establishments in town contacted by ASCAP.



The manager at Bidwell Park, which has live music on the week-ends including cover bands, said that when the shop first opened someone said they might be approached by ASCAP, but they have never been contacted.

A representative from Chico Performances, Chico State University's public events department which brings in musicians to perform on campus from all over the world, said she has never heard of ASCAP and that the university currently doesn't pay any sort of licensing fee for royalties.

Candilora said that even a hardware store could be in non-compliance.

"If the manager turns on the radio in a hardware store, for example, if it's just a regular radio, then no, they don't need a license," Candilora explained. "Now, plug it into a speaker system and it's going to carry that transmission to where it normally wouldn't be heard from that radio speaker, then yes, it does require a license. Because basically it's retransmitting—it's carrying that song to where it wouldn't be heard from the radio."

On the ASCAP Web site it explains how the organization tracks down "general license" establishments, and even admits "it would be impractical to monitor all performances in bars, clubs, restaurants and the like."

Though Candilora clarified that means "impractical in the sense that it would cost so much money to try and track every song that is played in

every restaurant or nightclub or bar or tavern, everywhere that music is played in public. So what we do is survey radio in all different formats and we say that what is popular, what is being performed on radio, most likely is also being performed."

The Web site goes on to explain that the money collected from these establishments goes into a "general" licensing fund and is paid out to its members "on the basis of feature performances on radio and all surveyed performances on television."

But to Thomas, it still doesn't make sense. "I don't know how these musicians get paid and how that whole royalty thing works. It's all gibberish to me."

Thomas said he recently talked with one of the musicians who play old jazz covers in his restaurant about the ASCAP licensing fee. The musician told Thomas that a jazz cover can't possibly be reproduced exactly like the original.

"I don't think any jazz musician would ever say they would want to [reproduce the music verbatim]," Thomas suggests. "So, how can you say that the music is being covered when in essence it is being changed every time?"

Craig Thomas, owner of the Red Tavern restaurant in Chico, says it's unfair that he should have to pay a \$300 licensing fee to the American Society of Composers, Authors and Publishers (ASCAP) because one night a week at his restaurant he offers live music—jazz band that play cover music

Break it down: According to ASCAP, approximately 84 cents of each dollar collected from its customers—from amusement parks to nightclubs—goes right back to its members.