MWR use of Copyrighted Sound and Video

**Background/Facts:**

(1) Within the DON, displays or performances on-board ship, in bachelor officer or bachelor enlisted quarters, day room, barracks, general messes in an isolated area or deployed area are not considered "public" provided the performances or displays are made without any purpose of direct or indirect commercial advantage and without charge to the recipients.

(2) Within the DON, displays or performances in open messes and clubs are considered "public" and will not be performed or displayed without the permission of the copyright owner, except for isolated areas or deployed units...

Obviously, our MWR F&B establishments (other than in isolated or deployed areas) fall more into the category of messes and clubs than day rooms and barracks, and are thus "public" locations for the performance of music falling under copyright protections.

**There are, however, exemptions under 17 U.S.C. 110(5) that you might be able to apply:**

\* Food or drinking establishment having less than 3,750 gross square feet of space;

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 (I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.

**Analysis/action:**

It seems to me that these exemptions could cover most, if not all; of your F&B locations (you could always remove a loudspeaker or two if necessary...). If a specific F&B location does not fall within the protection of 17 USC 110(5), then you will need to either ask for permission for royalty-free performances (See SECNAVINST 5870.4A, Paragraph 6) or alternatively work out licenses and pay royalties (See SECNAVINST 5870.4A, Paragraph 6(b)(8). Contact: CNIC HQ Associate Counsel John Treanor- 202-433-4357, john.treanor@navy.mil prior to any communications with ASCAP, SESAC, or BMI.