Question regards to MWR use of Copyrighted Sound and Video

Q: Is an MWR F&B establishment subject to any copyright restrictions or required to pay royalty fees when it plays broadcasted music or displays video works in customer dining areas?

A: Yes, copyright protections under 17 U.S.C. 101, et. seq. apply to use by federal government entities and, generally speaking, licensing must be secured for any public performances. Furthermore, SECNAVINST 5870.4A, Paragraph 5(b)(1) states that: “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 or video falling under copyright protections. Music licensing is arranged through ASCAP, SESAC, or BMI. Video licensing for movies is handled by MPLC, and ASCAP also deals with television licenses.

Q: Are there any exceptions?

A #1: As intimated above, the Navy considers performances of music or video at isolated areas or deployed units to be non-public. Specifically, SECNAVINST 5870.4A, Paragraph 5(b)(2) states that: “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.”

A #2: In addition there are exemptions under 17 U.S.C. 110(5) that are relevant to F&B:

\* 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.

These exemptions would appear to cover most, if not all, of our F&B locations. For the few units that might still fall within the parameters of the statute, F&B could either remove a loudspeaker or two, 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.