

MEMORANDUM

TO: ORDTA Members

FROM: Ralph W. Lambert, BMI/ASCAP Coordinator
Oregon Federation of Square and Round Dance Clubs
(And ORDTA Member)

DATE: November 5, 2003

SUBJECT: RECORDED DANCE MUSIC AND CUES

At the October 25, 2003 ORDTA Fall Meeting, there was discussion of a problem related to a cuer recording music and cues onto a mini-disc, giving the disc to the caller or another dancer, for use at a dance event in which the cuer who made the recording was not going to be in attendance. A motion was made and passed that the ORDTA Chair would contact me about this practice and the legality thereof.

I have discussed this matter by phone with ORDTA Chair Dennis Smith on October 27, 2003. We agreed on a two pronged approach to this problem. 1. I will include this matter in my November 16, 2003 report to the Oregon Federation of Square and Round Dance Clubs. Copies will be provided to all of the officers, committee chairs, and Area Council Delegates. The Delegates can take this back to their respective area clubs. This subject was treated in the ROUNDALAB Journal in the Spring 2002 and Summer 2002 issues. I have distributed copies of these ROUNDALAB Journal articles to Capital Callers and Cuers Association. As I understand, the North Willamette Callers and Cuers Association is in the process of disbanding. The people in Oregon who are probably the most affected by this subject are the cuers themselves. Therefore, the second part of my approach is direct information to ORDTA members.

As stated previously, this subject was addressed in articles in the Spring and Summer 2002 ROUNDALAB Journals. Following are pertinent quotes from these ROUNDALAB Journal articles:

Spring 2003 Journal - BMI/ASCAP Questions by Tim & Nana Eum

Question #2: Is it legal to use mini-discs created by another cuer in our club?

Answer #2: ROUNDALAB's BMI/ASCAP license allows a member to play (perform) music in a room in which they are physically present. If there is someone in the room who has BMI/ASCAP licenses and you have the recorded cuer's permission to use their cueing, then it is legal for the BMI/ASCAP holder to play the mini-discs.

ROUNDALAB as an organization applauds efforts to keep round dancing alive and well. However, officially we cannot endorse any efforts to produce or distribute music and cues. Each member must research this or obtain legal advice on this for themselves. ASCAP and BMI only deal with performance licensing. Reproduction and distribution

licensing are areas which ROUNDALAB does not offer assistance. However, we can give you the following general guidance:

Question #3: Is it legal for a cuer to produce cued mini-discs specifically for the purpose of sending them to another cuer for their use on a regular basis?

Answer #3: To produce a tape, mini-disc, video, or any other “recording” for commercial use, you must obtain a “mechanical”, “compulsory”, and/or “synchronization” license/permissions. BMI/ASCAP does not cover these. If your production of the “recording” is not “commercial” but is instead for “private use” then it is legal. ROUNDALAB will not adjudicate or advise you further on this. Your need to consult your own legal counsel.

Summer2002 Journal - Legally Using Pre-Recorded Music by Chuck & Sandi Weiss

In the last publication of the ROUNALAB Journal, an article was written that discussed several items concerning our rights and privileges under our BMI/ASCAP licensing.

For the most part the article was thorough and accurate. There was, however, one exception. This exception was the answer to Question #2, “Is it legal to use mini-discs created by another cuer in our club?” The answer given was correct as far as it went, but it was not complete. Our then Vice-Chaircouple, Ralph & Joan Collipi, have contacted the offices of both BMI and ASCAP and were advised as follows: While it is technically legal to use these disks if there is a licensed individual in the hall, **the person who originally recorded the disk must have a mechanical license to record the music before he/she can give permission for the disk(s) to be used.**

As a general rule, I would suspect that none of us routinely acquire this mechanical license. This is a copyright issue and the fines for failure to obtain this license can range up to \$10,000 **per tune**. The mechanical license itself is not particularly cheap and it must be obtained separately for each piece of music on each disc.

Additional, I will quote some of the text from our Supplementary Policies and Procedures Manual.

“TAPING AND ETHICS

A cuer who tapes his cues and supplies to clubs so callers do not have to hire a round dance cuer is violating the licensing law and operating unethically. Depriving a fellow member of the organization of the opportunity to cue for the club. Ethics committee is replying. Any duplication from pre-recorded material requires a license from the record company who owns the master as well as a mechanical license from the Harry Fox Agency. The special pressing of records and taping pre-recorded material without a license is illegal. Ethics committee chairman recommends in the next Journal having the Harry Fox Agency guidelines including functions and history of Harry Fox agency. We are opposed to anyone who makes special pressing of records without permission, illegally.”

Here is an additional quote from a previous Journal:

“In a related area but not part of BMI/ASCAP, the following information on Mini Disks is provided:

FOR THOSE WHO OWN MINI DISK RECORDERS

Mini Disks are like computer data, you are permitted to make a backup/working copy of your record on your mini disk recorder. You may use you backup/working copy at your dance but not give copies to other teachers/cuers. If you are questioned you **MUST** be able to produce the record from which the mini disk was made.”

So, in summary, while the club can legally, under BMI/ASCAP rules, use the disks if a licensed individual is present, they are not the ones who will be in violation. It is the cuer whose voice is on the disk who will be the one to suffer should the situation be reported.

While we cannot and will not tell you not to use pre-recorded disks in the absence of a teacher, please be aware of the jeopardy in which you are placing the cuer.

If you have any questions or concerns regarding this issue, please feel free to contact us and we will either give you an answer or direct you to our legal counsel for an opinion.

For more information on obtaining a “mechanical license” go to the following web-sites:

National Music Publishers Association www.nmpa.org

Includes Harry Fox Agency

Songfile www.songfile.com

This information is being provided per ORDTA’s request for your information and use. Every one of us need to make our own decisions on complying with the various laws regarding copyrighted music and the duplication and public performance thereof. I hope all of you make the right decisions. Remember, I am only the “messenger”, not the “policeman”.