

Why they're not playing your song in Seaside

SEEN FROM SEASIDE

R.J. MARX



If you walk down the streets of Seaside, there's one thing you don't see much of. That's live music. Oh, sure, you see some bold crooners holding court in Quat Park, melodian players, paint-bucket drummers and the like.

But you won't find too much live music around town. It's not that there aren't musicians — there are plenty of those. But requirements by licensing agencies like ASCAP and BMI have discouraged would-be musical venues — including karaoke, jukeboxes and open mic nights — from going forward.

You wouldn't know that this was the city that introduced groups like the Kingsmen and Paul Revere and the Raiders to the world in the 1960s, with a string of great music venues like the Bungalow, the Pypo Club and the cocktail lounge at the Lodge.

The music business may be biting itself in the foot with licensing rules that end up discouraging coffee houses, bars, tap rooms — even farmers markets — from having live music.

In Bend, a small bar called the M&J tavern was hit with a lawsuit from Broadcast Music Inc., the licensing agency better known as BMI, the Bend Source reported in December: BMI filed a federal copyright infringement lawsuit against M&J, stemming from six songs that were played at the tavern on a Wednesday open mic night — after the owner declined to pay \$378 per year for a license.

Other bars weren't so lucky. The Carey-On Saloon in Colorado Springs, Colorado went out of business in 2014 when it was hit with a \$21,000 fine for failing to license with BMI, Denver's alternative weekly Westword reported.

The saloon already had a license with the American Society of Composers, Authors and Publishers and the Society of European Stage Authors and Composers but not BMI. They got slapped after several patrons sang Toby Keith songs while a BMI scout was present.

In November, the Seattle Times reported, the High Dive bar — a karaoke spot — faced a suit asking for up to \$30,000 in damages without obtaining an ASCAP license.

The complaint specifically cited the "public performances" of three copyrighted songs — Stone Temple Pilots' "Interstate Love Song," Jill Scott's "The Way" and Jason Mraz's "I'm Yours" — during the club's karaoke night.

Close to home, the Newport News-Times recently reported the impacts of licensing rules: dwindling live music events or venues shutting down.

Linda Lewton, owner of the Bay Haven Inn, told the News-Times she received repeated calls and threats of lawsuits demanding payment. In late February, ASCAP filed 13 separate copyright infringement actions against bars and restaurants nationwide — from Baltimore to Seattle — arising out of the unauthorized public performance of its members' copyrighted musical works.

Small-business impact

The impact on music at the grassroots, organic small-town level may be profound. Small business owners seeking to open their doors to new talent leave themselves



File photo

Seaside's Pypo Club debuted some of the great bands from the Pacific Northwest in the 1960s.



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A sign on Broadway holds promise for music lovers, comics.

open to requests for licensing from each of the licensing company.

For a venue that presents a banjo player once a month singing "On Top of Old Smoky," the licensing cost may exceed the month's profit.

While the musicians aren't liable for the fines, the club owners are, whether they're a 16-seat cafe or a 200-seat club.

Under U.S. law, any establishment that uses music — whether as background or with DJs, karaoke or live bands, and meets certain criteria must obtain a license to do so, said John Johnson, ASCAP's senior vice president, licensing.

"Nearly 90 cents of every dollar collected goes back to our members as royalties, so they can make a living and keep making the music we all love," Johnson said. "Hundreds of thousands of businesses purchase an ASCAP license to use music in their establishments and to ensure that music creators get paid for their work."

ASCAP license fees for smaller establishments are very inexpensive and generally cost about \$2 or \$3 per day, Johnson added.

The fees are designed to be flexible and are based on the size of the venue and other factors such as whether the music is recorded or played live.

"We use the fire code to measure a venue's size because it is an impartial number that is set by a third party and is easily available," Johnson said. "We treat all similarly situated establishments the same, whether they are in a large metropolitan or a rural area. Licenses for smaller establishments are

very inexpensive and generally cost about \$2 or \$3 per day.

Even so, with the potential of being hit by fees from multiple licensing agencies, club owners are less likely to take the risk of at best getting collection phone calls or at worst facing high and mounting fines.

"Sometimes our licensing operations are misunderstood, most often by local bar owners trying to avoid being licensed," they write in a frequently asked questions document. "There are more than 100 different types of ASCAP licenses, and we've always adapted our licensing to reflect new ways that businesses are using music."

ASCAP has a staff of people that find businesses that are using music, mainly by using the internet, Johnson said. "Many businesses that use music do so to attract patrons and will advertise, so we also check to see which establishments are advertising in local publications. We're then able to contact those businesses and educate them on the need for an ASCAP license. Typically we contact a business multiple times via email, phone and in-person visits to educate them on their obligations under the law and encourage them to purchase a license."

Originals only?

My musical cohort, guitarist John Orr, suggests that licensing agencies are trying to "recapture royalties lost," especially now in this age of Spotify and Pandora.

Vinyl records and later cassette and CD sales drove a thriving industry, with small clubs serving as venues to promote and grow the record industry.

No more.

But, he added, live music in small clubs is a way to keep help prevent the music from dying. "Live music is a vehicle for songwriters to have their music heard — and not many people are making money selling records," Orr said. "If a songwriter is not getting royalties from a small club, but his song is getting broader recognition and familiarity, it may lead to commercials, movie soundtracks, more popularity on the tour."

Seaside guitarist/composer Bruce Thomas Smith and his Z.Z. Top Tribute Band plays big halls that can afford to pay up to \$7,000 a year in licensing privileges.

But close to home, smaller venues often require him to play only original music because of licensing fees.

The Astoria Sunday Market, rather than pay the \$1,200 licensing fee to ASCAP, changed to booking musicians and bands that only play original music, the market's director Cyndi Mudge said.

She said she is pleased with the outcome. "It has actually been a great fit for our market," Mudge said. "We like promoting that our music is also fresh and original."

Only originals and public domain songs — music published before 1923 — are allowed, she added.

State seeks action

The state is very aware of the conundrum facing small businesses: They've taken steps to smooth the process and protect club owners from harassment by licensing companies.

A bill passed in the 2018 legislative session, advocated by the Oregon Restaurant and Lodging Association on behalf of Oregon Winegrowers Association and winery tasting room managers, requires performing rights societies to provide specified information at least 72 hours before entering into, or offering to enter into a contract with a proprietor.

The law protects clubs from the most egregious abuses by licensing companies: licensing company "spies" who do not identify themselves, who use "abusive or obscene language when communicating," or harass business owners with after-hours calls.

The bill was passed out of the House Business and Labor Committee.

Legislation intended to craft the legislation to protect small venues/musicians from expensive lawsuits while maintaining copyright/licensing integrity, Dan Jarman, a lobbyist for the winegrowers, said in an email.

According to the bill, performing rights societies must file templates of annual contracts with the Secretary of State, as opposed to copies of each executed contract. The Secretary of State has no duty to review or verify the contents of contracts filed.

The bill allows courts to impose a fine of up to \$1,000 for violations.

Johnson said ASCAP "has always conducted its licensing and enforcement activities in a lawful manner. ... Oregon Bill 4088 added new language to existing law but has had no effect on the way we conduct those activities, because we already comply with the law."

Nevertheless, there is a need for clarity in a musical environment that crosses city, state and federal — even international — jurisdictions.

The end result: club owners are reluctant to take a chance on musical talent — and talent has no stage to be heard, no obscure songs rediscovered or repertoire to be appreciated.

Something fishy in Astoria, and it's worth the trip

A friend in Gearhart who I trade "Have you eaten here yet?" information with recently made a strong case for a new place called South Bay Wild Fish House in Astoria.

"Everything is wild caught," he said. "You've got to try the tacos."

I don't get to Astoria anywhere near as often as I'd like; Astoria, in my opinion, is a perfect city because it's close, it has a scenic waterfront, and there are sea lions. It is also alive and vibrant with a happening and diverse food scene, unique shops, and enough bars, brew pubs, coffee houses, and galleries to support a burgeoning population of artists, young entrepreneurs, and young professionals.

South Bay Wild, Inc. is one of the newer businesses to stake a claim in Astoria. They are a small, family owned and operated commercial fishing vessel, harvesting and marketing high quality sustainable seafood using the triple bottom line approach; when the boat's not in the water, you can find it parked at the West End Moorage Basin. The restaurant and market where they sell their bounty is located at 262 9th Street, Astoria, just off Commercial



Eve Marx

Fish tacos come three tacos to a plate. You could share. Or not.

Street. There's a sign outside that says Fish House. You can't miss it.

Mr. Sax and I started with the crab cake appetizer, two meaty crab cakes accompanied by a small load of fresh arugula and red pepper salad that was plenty to share. I am fussy about my crab cakes and these did not disappoint.

I was sorely tempted to sample one of the daily specials, that day poached Willapa Bay oysters or steamer clams, but I

VIEW FROM THE PORCH

EVE MARX



remembered my Gearhart pal's suggestion and ordered the fish tacos, which came three to a plate. Each taco was maximally stuffed with delicately fried rockfish, a tangy slaw, and avocado sauce.

Mr. Sax and I could have easily shared one order, the portions were so generous. I'm pretty sure our server was Tiffani Seitz, who owns the restaurant with her fisherman poet husband, Rob. In addition to his life as a commercial fisherman, he's a regular participant in the Astoria Fishermen's Gathering, and this September will be traveling to New Bedford, Massachusetts, to headline at the Working Waterfront Festival.

OK, back to the eats. We also ordered beers. I had a Fort George City of Dreams pale ale, which arrived with a frosted glass. Then our server urged us to try the bread pudding. Who says no to bread pudding?

Is it weird to say I almost licked the plate?

I learned from South Bay Wild's website that 90% of seafood harvested in the United States is exported, and we import 80% of what we consume. Those numbers seem crazy. Who wouldn't prefer to eat what's caught a few miles from home?

If you aspire to prepare your fresh caught wild fish at home, the Seitz's are happy to share their favorite recipes. On the website are recipes for Wild Lingcod Chowder, as well as easy directions how to make your own fish stock. For those interested in a weight-reducing heart healthy diet, check out the steamed petrale sole with uncooked tomato sauce, or simple poached sole; cheese lovers won't be able to resist the gorgonzola baked lingcod. The recipe for their "Rockin' Fish Tacos" with Morro Bay avocado sauce is on the site. The secret is marinating the fish for 20 minutes in the refrigerator before cooking it in a chili powder, cumin, ground cayenne red pepper and garlic mixture. Yum.

South Bay Wild Fish House has a full bar upstairs. We went for lunch.

Next time I want dinner.

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