

KKFI PROGRAMMER GUIDANCE FOR DMCA RULES RE: MULTIPLE ARTIST PLAYS

A summary of the Digital Millennium Copyright Act (DMCA) Guidelines is attached to the Programmers Policy & Operations Manual as Appendix C. As the Guidelines summary indicates, radio stations that livestream their content (as does KKFI) are subject to DMCA restrictions on how often songs by the same artist may be aired during any 3 consecutive hours of broadcasting. Programmers may NOT play:

- * More than 4 songs credited to the same artist
- * More than 3 songs from the same album or more than 2 songs *consecutively* from it
- * More than 4 songs from a compilation (e.g., hits package or boxed set) or more than 3 songs *consecutively* from it

Note that the above restrictions do NOT apply to live-in-studio appearances.

Guidance has been sought from the Programming Committee as to what is meant by the “same artist”.

The DMCA and related copyright rules do not define what is meant by an “artist”. Instead, the DMCA uses the term “featured performing artist” and references the “title of a sound recording” and the “title of the phonorecord embodying such sound recording, if any”. For example, in the rules requiring the reporting of information about music that is broadcast, broadcasters are required to report “information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information”. Given the context in which the term is used in the DMCA and rules, it appears that the referenced “sound recording” on which the artist is featured is an album or other sound recording released by an artist, and that it is therefore reasonable to conclude that, for the purposes of applying the limitations on how often songs by the same artist may be aired during any 3 consecutive hours of broadcasting, the term “artist” means the individual performer to whom (or performing entity to which) the release is credited.

Following is an example that illustrates what can and cannot be done relative to a particular artist’s catalog based on this interpretation. If in doubt about a playlist that you’re assembling, please ask the Station Manager or Programming Committee Chair. If you wanted to play a lot of ERIC CLAPTON:

You could only play up to 4 songs (3 per album) by artists in which Clapton’s name is a part of the name of the artist to which the release is credited or is otherwise designated as the artist that released the album, such as:

Eric Clapton (solo albums);
John Mayall’s Bluesbreakers with Eric Clapton;
B.B. King & Eric Clapton; or
J.J. Cale & Eric Clapton .

You could also play up to 4 songs (3 per album) from each of the following artists:

Cream;
Blind Faith;
Derek & The Dominos; or
Any other band in which Clapton played, where the band (rather than Clapton individually) released the album and Clapton was not otherwise designated as the artist that released the album.

Also, you could play up to 4 songs (3 per album) by each named artist on whose release Clapton guested, where Clapton was not designated as the artist that released the album, such as:

Steve Winwood’s “Nine Lives”
Carole King’s “City Streets”
Bruce Hornsby’s “Halcyon Days”
George Harrison’s “Cloud Nine”
Bob Dylan’s “Desire”

Roger Waters’ “The Pros And Cons Of Hitch Hiking”
The Band’s “The Last Waltz”
Phil Collins’ “But Seriously”
Dr. John’s “Sun, Moon & Herbs”
Billy Preston’s “That’s The Way God Planned It”

With a little creativity – coupled with a decent amount of research – it is possible to assemble a DMCA-compliant playlist that pays tribute to a certain performer and includes more than 4 tunes to which the performer contributed, but where the performer was not the “artist” for DMCA purposes – especially for performers who have been in the business for many decades and whose session work has been pretty prolific.

Still having trouble making the shoe fit? Here’s a suggestion for creating a playlist for an entire show that seeks to pay tribute to an artist in respect to whom you cannot assemble enough material *and* still follow the DMCA rules as summarized above: You might consider including cover versions of the artist’s material as performed by other, entirely unassociated performers.

Finally ... don’t forget that KKFI can be subject to some harsh consequences if it fails to comply with the DMCA rules (or reporting our playlist data by timely and accurately entering same into Spintron) – including fines, suspension, loss of rights to air copyrighted material or even loss of licensure – any of which penalties would be devastating to KKFI. Thanks for doing your part to ensure that the station is compliant!