

A New Generation of Streaming Videos

An Update on Recent Funeral Video Streaming Issues

By Poul Lemasters, General Counsel ICCFA

The following is based on information available as of March 24, 2020.

As social distancing becomes the new norm, deathcare is being forced into a new platform of services. A few months ago, many deathcare providers were unaware of streaming funeral services or if aware - not incorporating it into the service they provided. Today, streaming services are becoming a necessary part of deathcare - and quickly becoming the norm. Like anything new, there are questions and issues that happen. One current issue is the blocked or muting of live streaming services through Facebook and YouTube. This article is meant to explain the issue as well as offer guidance.

ICCFA has been made aware that members, as well as others in deathcare, have recently had issues when trying to stream services on such platforms as Facebook and YouTube. ICCFA has spoken to BMI and ASCAP, as well as made contact with Facebook and YouTube, to not only discuss the matter but also gain some ideas on how to handle the issue. The current situation is this, when certain songs are played during a streaming webcast on Facebook or YouTube, the

video might be muted during a song or even stopped completely. This occurs whether the member using the music has a webcasting music license or not. Why?

First, let me give you a very broad overview of music licenses as they relate to deathcare. There are two licenses offered by ICCFA, as well as any other association; they include a music performance license and a music webcasting license. The music license allows a business to play (perform) any live or recorded music at any service and at any location. The key provision is that this is to play a song - it does not allow the recording of a song; not to be confused with the ability to play a recorded song. The webcasting license is an additional music license that allows a business to stream a funeral service - including the songs played during the service - on their website, without violating copyright laws. It is through these two licenses that a deathcare business can play music at a service and over their website.

It is that last part -- "over their website" -- that is important to understand. In conversations with BMI, Facebook and YouTube, this has become

one of the key issues. Current music licenses for deathcare are created so that the businesses can stream on their website. Facebook and YouTube are separate public platforms and they have their own agreements with BMI, ASCAP, SESAC and their own limitations on what is allowed. While the current music webcasting license for deathcare does provide some rights, there are limitations. (Here is more info on copyright issues according Facebook's FAQ: <https://www.facebook.com/help/1020633957973118/>)

The two music licenses for deathcare are created to allow performance rights based on the performance of a song. However, there are another set of rights for recording right holders (for example, record labels), which are limited by Facebook and YouTube. Basically, this set of rights are directly between the recording and anyone that streams a song. This is not an issue of what BMI, ASCAP, or SESAC can offer - the issue is between Facebook and YouTube and its restrictions in place between them and various recording rights holders -the record labels. (Please note that not all recording rights holders enforce their rights - so this is an everchanging list. It is also why some songs trigger the issue while others do not.) Because of these restrictions, Facebook and YouTube run programs to identify when certain "restricted" songs are played and when they discover them being played, they either mute the video or shut off the video completely. (Amazing what technology can accomplish.)

So, what can be done? First, ICCFA is looking into ways that Facebook and YouTube could offer solutions to work around this licensing issue. Unfortunately, this is a copyright issue that involves an almost unlimited amount of record labels (consider people self-producing songs) and these recording rights holders receive compensation when songs are streamed. So not

only is it difficult to get everyone to participate due to volume; you also have to get them to waive fees they are owed. Another potential solution would be to get Facebook and YouTube to automatically mute the song instead of stopping the stream. The issue here is determining a way for them to know this is a funeral related event and allow the mute option, versus others that may be streaming some type of event which is in violation.

Second, there are other options available to deathcare businesses so they can stream an event and avoid these issues entirely. Again, the licenses currently available allow a deathcare business to stream a service or event on their website. Consider other third-party platforms that you can use on your site and avoid the issues. While not a complete list, Zoom and Skype may work for your needs. These platforms provide links and players which can be posted directly on a deathcare business website, thus allowing the use of the ICCFA webcasting license which covers this type of technology. There are also some deathcare specific products/services that use your site for streaming; these would also avoid the recording license issue.

You may be re-reading some of this article now, and wondering about the comment above, "that not all recording right holders enforce these rights." You may then wonder if there is just a list of songs out there so a business could know which songs are allowed and which ones are not allowed. Unfortunately, the list is too long; too cumbersome; and changes too quickly for this to be an option at this time.

Remember, there is always a basic way to prevent this issue and that is to make sure you either use royalty free music OR you mute out any music as it is played during the service. Not great options - but they are options. Lastly, and not meant to

make this more confusing or difficult, remember that all of this is in reference to live performance and webcasting. Once the live event and stream are over, then the licenses no longer cover any additional publication if the music is part of the service. This means that if you choose to record the service and post it on your site so people can watch it for the next year or so, the music must be muted, because neither license allows a recording and playback of copyrighted music.

ICCFA is aware of the current issue and will work to see if other options with Facebook and YouTube are available. Please make sure you understand your process as well as your licenses. Make sure you have the proper license and are using it accordingly. Consider platforms that incorporate the use of your own website - as this will be the ultimate protection and proper use of your license.



Poul Lemasters, Esq. began his career in deathcare more than 22 years ago as a funeral director and embalmer. He quickly recognized that the growing risk and liability in deathcare along with the lack of support and resources for those in this profession made for a deadly combination. Today, Poul uses his unique background in both deathcare and law to provide resources and counsel to other deathcare professionals. He gets calls for assistance in risk management, daily operational conflicts, form and contract reviews, valuations, and regulatory matters. Poul advises several funeral homes, crematories, cemeteries, and trade associations across the United States.