

Q&A

Guidelines for the Use of Copyrighted Music Material

This guide does not presume to be a comprehensive summary of the Copyright Act of 1976. It does not attempt to deal with all the issues covered by the legislation, nor does it provide answers to many of the legal questions.

It is intended to help users of church music understand the nature of copyright in order to improve their ministries, to maintain a proper standard of ethics and to protect themselves and their churches from incurring liability or subjecting themselves to the possibility of being embarrassed or even sued. The questions addressed are those most frequently asked by church musicians.

A complete copy of the Copyright Law of 1976 and further information may be obtained by writing: The Copyright Office, Library of Congress, Washington, DC 20559, or by using the Library of Congress web site www.copyright.gov.

1. What does “copyright” mean?

Our nation’s founders determined that it was in the public interest that the creative works of a person’s mind and spirit should belong, for a limited time, to the creator. The protection of these works is called “copyright.” This United States Copyright Law grants to any copyright owner the exclusive rights to original material for a term that usually is *equal to the length of the life of the author/creator plus 50 years*. (For many songs written prior to 1978, the term is 75 years.) The copyright owner is the only one who has the privilege of reproducing the work. If any other party

wants to reproduce the material in some manner, permission must be obtained from the copyright owner.

Visible notice of copyright should appear on all copies of copyrighted music. Whether on the owner’s original works or on permitted copies, the notice should be visible and contain the word “copyright” or the symbol © (for printed material) or ® (for sound recordings), the year of first publication and the name of the copyright owner.

2. What are the rights of copyright owners?

- To reproduce the copyrighted work in printed copies or on recordings *or with any duplicating process* now known or that later comes into being.
- To make arrangements and adaptations of that copyrighted work.
- To distribute and/or sell printed or recorded copies of the work or to license others to do so.
- To perform and/or display the copyrighted work.

3. Who owns the legal right to make copies?

The original creators (authors and composers) and/or publishers, assigned agents, etc.

4. Do other countries have copyright laws?

Yes. Most of the world now recognizes the need to give incentive and protection to creative persons. Copyrighted material owned by U.S. citizens is protected in many countries by those countries’ copyright laws and treaties with the U.S.

5. What if I'm faced with a special situation?

If you want to include copyrighted lyrics in a song sheet, arrange a copyrighted song for four baritones and kazoo, or make any special use of copyrighted music which the publisher cannot supply in regular published form, the magic word is ... *Ask*. You may or may not receive permission, but when you use someone else's property you must have the property owner's consent.

6. What if there's no time to write?

Think of copyrighted music as a piece of property, and you'll be on the right track. *Plan ahead*. Some publishers routinely grant permissions over the phone.

7. What about photocopies or recordings that are already in our church?

Destroy unauthorized photocopies, recordings, etc., and replace them with legal editions. Possession of any illegal copies is the same as harboring stolen goods.

8. Are we permitted by law to perform copyrighted religious works in church?

Yes. You are permitted by law to perform copyrighted religious works from legal editions in the course of services at places of worship or in religious assemblies. Legal editions do not result from unauthorized duplication of religious works (e.g., to purchase a copy of religious sheet music, then to make 30 copies for the choir without permission and perform it is not legal or ethical).

9. Can I make an original recording of a copyrighted song?

Yes, but you must secure a recording license (also known as a mechanical license) from the copyright owner and pay a specific royalty per song, per recording.

10. Can I make a recording using a pre-recorded instrumental accompaniment track?

Yes, provided you have proper permission; two different permissions are necessary in this situation. The first is from the copyright owner of the selection to be recorded, and the second is from the producer/manufacturer of the accompaniment track. Fees usually are required for each permission.

11. Must I get permission to:

- **Make copies of copyrighted music?**
- **Print songbooks or songsheets containing copyrighted works and use them in churches, Bible study or prayer groups as long as they are not sold?**
- **Make a transparency or slide of a copyrighted work for use by projector?**
- **Make a photocopy of a copyrighted work for my accompanist in order to sing a solo?**
- **Make videos of worship services or special musical presentations such as those for holidays, for youth or for children?**
- **Make a MIDI or another kind of electronic reproduction?**
- **Make available through the internet, on a web site or by any other kind of electronic medium?**

Yes. Permission must be secured prior to any such use or means of duplication.

12. Is there a source I can contact to obtain permission to use many assembly-sung compositions?

Some publishers and songwriters license their own compositions. Others combine with a licensing agent that offers blanket permits for assembly use at a fee that usually is annual. One such agent is LicenSing Online, P.O. Box 13785, Portland, OR 97213; licensingonline.org, 1-800-452-9805. Licensing Online licenses all music copyrighted by OCP and more than two hundred other publishers. Note: This license is for assembly-sung music only. The license does not convey the right to photocopy or duplicate any choral or instrumental sheet music such as octavos, cantatas, musicals, accompaniments, hand bell music, keyboard arrangements, vocal solos, choral songbooks, or other ensemble works. (Some of these are available for digital download for a small additional cost.)

13. What if I can't find the owner of a copyrighted song? Can I go ahead and use it without permission?

No. Check the copyright notice on the work or with the publisher of the collection in which the work appears. Once you know the name, write or call the copyright owner. If you need assistance in locating the address or phone number, visit LicenSingOnline.org or call 1-800-452-9805. Or write Music Publishers Association, 711 Third Avenue, New York, NY 10017.

14. What about out-of-print items?

Most publishers are agreeable, under special circumstances, to

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allow reprinting of out-of-print items, but permission must be secured from the copyright owner prior to any duplication.

15. What is “public domain”?

If a song is in the public domain (PD), the copyright protection for the song has expired and the song is dedicated to the public for use as it sees fit with no permission required from anyone. The absence of a copyright notice (see question 1) is one indication that a song may be PD.

16. What is “fair use”?

Fair use is not generally available to churches. Fair use is established by statute and interpreted by the court, which permits portions of copyrighted works to be legally reproduced for purposes of criticism, comment, news reporting, classroom teaching, scholarship and research. In no instance does this apply to a performance. The various interest groups involved have agreed upon guidelines that constitute the minimum and not the maximum standards of educational fair use. If you are interested in a copy of these guidelines, please contact The Copyright Office (address above).

17. Is it permissible to make duplicates of the recording that accompanies a musical or printed work to use for “learning” or “rehearsal” purposes?

No. It is illegal. As good as this

idea is, and as helpful as it would be to teach the music to members of the choir, such duplication without permission is against the law. Write or call the publishers of the music. They will inform you of their requirements concerning your request.

18. If I buy a recording, is it permissible to make a copy for a friend?

Duplication of copyrighted materials is against the law when the purpose avoids a legal purchase.

19. What are the penalties for making unauthorized copies of copyrighted music?

Embarrassment is the first. Additionally, the law provides for the owner of a copyright to recover damages for unauthorized use of copyrighted music. These damages include the profits of the infringer and statutory damages ranging from not less than \$500 to not more than \$100,000 per infringement. In addition, prison terms are provided for willful (deliberate, with knowledge that it is wrong) and commercial infringement. Churches, schools and not-for-profit organizations can be infringers, too.

20. What about photocopiers who don’t “get caught”?

Professional musicians in most schools and churches know the reasons for the law and therefore would not derive satisfaction from doing something against it. Such action forces the price of legal edi-

tions higher. Perpetrators risk dishonor from professional colleagues who understand the law. They risk fines and jail sentences if taken to court.

Plainly stated, *making unauthorized copies of copyrighted material is strictly illegal*. However, music publishers desire to have their songs used as much as possible; so in many cases permission can be obtained, but you must contact the copyright owner prior to use or duplication.

Postlude

Music Publishers’ Association, OCP Publications and LicenSing Online prepared these guidelines. No copyright is claimed for these guidelines. Readers are encouraged to reproduce them in order to assure the widest possible circulation.