

Practical Copyright Answers for Pastoral Musicians



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Copyright law is complex. But its practical application in parish music is reasonably straightforward. In this article, we will sift through the legal jargon to arrive at no-nonsense answers for some common copyright questions.

Unlike its name might seem to imply, a copyright is not a right to make a copy. To illustrate this, let's say you are a composer and write an original piece of music with original text. You are already free to make as many copies of it as you like; you don't need a copyright to do that. You might, however, wish to restrict *other* people's ability to make copies of your original music, and that is where copyrighting enters the picture. It is a legal protection for you, as the composer, which gives you the exclusive right to *grant permission* (a license) to someone *else* to copy your work. You retain the right to restrict how many copies the *licensee* may make of your original work.

Why did copyrighting develop? Essentially, because it allows someone who creates a work to be compensated for the time he or she spent writing it. An equally important by-product of this is that it encourages the pursuit of excellence: the better the work, the more likely it is to be read or used by many, and the better compensated the author or composer will hopefully be.

The history of copyrighting goes back to the early 1700s, but for the purposes of this article, the US Copyright Act of 1976, and a subsequent 1998 amendment, are sufficient to look at.

So, is it ever allowable to photocopy a piece of music? It depends. Let's look at a few different scenarios.

1. "If I buy a single choral octavo, can I photocopy it for my whole choir?"

No, you cannot legally photocopy it, nor scan it and e-mail it to your choir members. Publishers intentionally keep the cost of a single choral

octavo low, as it is expected that music directors will buy multiple copies to outfit the whole choir. A composer typically receives around ten percent of the selling price of an octavo as a royalty from the publisher. So, at \$1.50 a copy, the composer only receives fifteen cents if you buy only one. If you instead purchase 30 copies for your choir, the composer receives a royalty of \$4.50. As you can see, a composer isn't exactly getting rich from even the legal sales of a piece of his or her music, but \$4.50 is far better compensation for his or her talents than fifteen cents, wouldn't you agree?

2. "Why is music so expensive in the first place?"

Good question. You can easily spend \$10 on a single piece of sheet music; surely the paper isn't that expensive, is it? No, but bear in mind that you're not buying ten dollars worth of paper and ink. You're buying the ability to perform a song; or more accurately, you're *licensing* the right to perform a song from the copyright owner, who actually retains exclusive performance rights according to the Copyright Act of 1976. Paper and ink themselves are actually some of the least expensive parts of producing sheet music. The music publisher pays for many things; for example: it employs an editor who can assure that the music is written well and suits the purpose for which it was written; the publisher does copyright research, to insure that either no part of the piece belongs to someone else, or if it does, that proper permission and payments are negotiated with the other copyright holders; the publisher registers the copyright with the Library of Congress to protect both publisher and composer; the publisher typesets and engraves the music so that it is legible; and the publish-

er markets and distributes it so that people know about it and can actually get it. When all these costs are added up, the price of publishing a single piece of music can be several thousand dollars!

3. "Can I photocopy a piece for my own personal use?"

Maybe. It depends what you intend to do with it. If you keep the photocopy and give the original away to a friend, then you are likely depriving the publisher and composer of a sale. If you are intending to heavily annotate the piece, and don't wish to deface your original, then yes, you may photocopy it and keep your original intact. If you are a keyboard player trying to make a score with easier page turns, yes, you may use a photocopy to cut apart. Essentially, one purchased copy should only be used by one person at a time, so if you are using a photocopy and your original is not being used by someone else, then you have not deprived the composer of a legitimate sale of the piece, and you are thereby maintaining the spirit of the copyright law.

4. "What does 'public domain' mean, and how do I know if a piece is public domain?"

Any work that is not subject to copyright protection is in the "domain of the public"; in other words, free for anyone and everyone to use, including reproducing it and selling it. Whereas it's fairly easy to tell if a piece is under copyright (just look for the copyright line), it is more difficult to know when it ceases to be. By law, copyrights have a limited duration, which, as of 1998, is seventy-five years after the death of the author/composer.

So, can you freely photocopy a choral work of Palestrina, over four

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hundred years after his death? Unfortunately, it's not an easy answer, because although the music itself is in the public domain, a publisher can create its own *edition* of the work, with its own unique annotations, fingerings, etc., and copyright that edition. However, the music itself is available for you to—if you want—input into a music notation program yourself and print it. (You could even sell it if you like.) Or you can search for an edition of the music that is not copyrighted by a publisher.

5. "Shouldn't all religious music be free?"

Yes, ideally. But practically speaking, not everyone can write good music. Do we really want our good church music composers to starve? Even though J.S. Bach signed "*solī deo gloria*" (glory to God alone) at the end of his music, he still had several children to feed! Seriously, royalties earned from the sale of a composer's works are the way that composer makes a living. After all, very few churches keep a composer in residence anymore.

And what about the publishers? Are they making a mint from the sale of religious music? The music publisher I work for is a not-for-profit company, meaning that all revenue goes back into publishing more music (thereby helping to support more composers) or is given out as charitable contributions. OCP gave \$135,000 worth of parish grants to seventy-six parishes in 2010 alone, furthering the work of the Church at the local level. That's a good use of your music-buying dollar, wouldn't you say?

6. "My church has no budget for buying music. How can we sing unless we photocopy music?"

This is a difficult question. Many churches are struggling just to keep the lights on, let alone provide music for the assembly to sing. And despite relying on royalties to keep their own lights on, many composers would probably allow a struggling parish to use their music for free, because most composers consider music their ministry first, and their income second.

Let's look at the legal side first. By law, a copyright holder must *defend* a copyright, or risk *losing* that copyright. This is somewhat akin to squatters on a parcel of land; if a property owner knowingly allows squatters to remain, eventually the squatters may claim ownership of the land. Similarly, if a publisher knowingly allows its music to be used without permission, then it risks forfeiting its copyright. As I mentioned above, a publisher may have thousands of dollars invested in a copyright, so losing it is not good business.

The ethical side of this question is, of course, more challenging. Simply put, when a church uses music without permission or payment, someone suffers. The composer suffers because of reduced royalties. The employees who work for the publisher suffer because there may not be enough revenue for them to keep their jobs. It creates a domino effect, and no one can know for sure just how far it reaches. Ultimately, the Church suffers too because a publisher's ability to continue publishing good music is undermined. How many great songs will never be sung because a composer couldn't get published due

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to insufficient resources brought on by copyright infringement?

7. "If I write my own arrangement of a piece of music, I own the copyright to the arrangement, don't I?"

No, you don't; not if the original piece is copyrighted. This surprises many people, but your arrangement is actually owned by whomever holds the copyright to the piece, whether the copyright holder knows of the arrangement's existence or not! The Copyright Act of 1976 grants to the copyright holder the exclusive right to produce *derivative works* of the original work. A new arrangement is a derivative work, and so legally, you cannot even *write* an arrangement without the copyright holder's permission, and you certainly cannot post it online or sell it.

But let's look at the practical side. You're using a piece at Sunday liturgy, and you have a clarinetist, but there is no published clarinet part for the piece. So, you write one. Are you going to wind up in court? Not likely, not unless you start selling your arrangements. (You should, however, include the publisher's original copyright notice on your arrangement.) In this situation, you are not depriving the composer or publisher of a sale, as there is nothing available to buy. You are making the piece more usable for your situation, thereby increasing the likelihood that you'll use it more often—and that's something that most composers and publishers welcome.

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Other Resources

US Copyright Act of 1976:
<http://www.copyright.gov/title17>

LicenSingOnline
Affordable annual and single-use licenses for churches, covering more than 100,000 hymns and songs from over 340 Christian music publishers and copyright holders, including OCP, Hope Publishing, and many others.
www.licensingonline.org

Guidelines for the Use of Copyrighted Music Material
Article published in the Advent-Christmas 2000 issue of *Today's Liturgy*. www.ocp.org/tl

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