

© GUIDELINES ON COPYRIGHT ©

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 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 website of the Library of Congress: www.loc.gov/copyright

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 could belong, for a limited time, to the creator. The protection of these works is called “copyright.” Thus, 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 70 years. (For many songs written prior to 1978, the term is 95 years total.) 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 (p) (for sound recordings), the year of first publication, and the name of the copyright owner.

2. What are the rights of copyright owners?

Copyright owners have the rights...

- to reproduce the copyrighted work in printed copies or with any duplicating process now known or that later comes into being
- to make arrangements and adaptations of the 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

A copyright owner of a musical composition has the exclusive right to copy, adapt, distribute, display, and publicly perform that work. Music publishers who own music copyrights control the authorization of most public performances of music. However, to ease administration of performance rights, publishers and composers have formed performing rights societies and delegated disposition of these rights to them. A

composer may only join one society through execution of a society membership agreement. A composer’s publisher must be a member of the same society as the composer (see question 9).

3. Who owns the legal right to make copies?

The original creators (authors and composers) and/or publishers, their assigned agents, and so on, can legally make copies of a copyrighted work. Legal editions do not result from unauthorized duplications of religious works. Purchasing one copy of sheet music, then making 30 copies for the choir without permission is neither legal nor ethical.

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 that 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 not 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 permission over the phone.

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

Destroy unauthorized photocopies and recordings, and replace them with the 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. Permission is not required for music performed from legal editions as part of a worship service or in religious assemblies unless that service is transmitted beyond where it takes place (for example, a radio or television broadcast). Performances as part of face-to-face teaching activities at non-profit educational institutions are also exempt (see question 15).

9. Can I perform a song at a Mass that is going to be broadcast on television or radio?

Yes, if you have permission. A wide range of performances is subject to licensure. A “public performance” is defined as one that occurs “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and its social acquaintances is gathered.” Certain religious and charitable music events are exempt, but there are strict requirements: the performance must have no direct or indirect commercial advantage; there may be no admission charge; and no one involved with the performance such as performers, organizers, or promoters may be paid. Transmissions of a performance by devices such as radio or television are also considered public performances if the transmissions occur in a public or semi-public place.

There are three performing rights societies in the United States: ASCAP (The American Society of Composers, Authors, and Publishers), BMI, and SESAC. ASCAP and BMI probably control over 90% of all copyrighted songs, with SESAC controlling the remainder. (They do not license the right to print copies of musical works, nor do they license rights to make adaptations or arrangements.) All three societies can issue blanket licenses authorizing public performance of all songs in their respective repertoires. Major radio and television stations, performance venues, and corporate business entities obtain blanket licenses from ASCAP, BMI, and SESAC to ensure that any music performed will be authorized. They do not license the right to record music on a CD or tape or as part of a multi-media or an audio-visual work such as a motion picture, video, or television program. Those rights, known in the music industry as mechanical and synchronization (or “synch”) rights, are licensed by writers or publishers.

The societies distribute over 80% of collected fees directly to composers and publishers as royalties. These fees constitute a major source of revenue in the music industry.

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

Yes, if you plan to hire your own musicians and singers and create an original recording of the copyrighted song, then you need the permission of only the music publisher. 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. Recording rights for most publishers are represented by The Harry Fox Agency, Inc.

711 Third Ave., New York, NY, 10017
Telephone: (212) 370-5330 Fax: (212) 953-2384
www.harryfox.com

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

You may do so 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. A fee is usually required for each permission.

12. 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.

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

No, it is illegal. Duplication of copyrighted material is against the law when the purpose avoids a legal purchase.

14. Must I get permission to make copies of copyrighted music, print songbooks or song sheets containing copyrighted works for use in churches, Bible study, or prayer groups as long as they are not sold? 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, youth, or children? Make a MIDI or another kind of electronic reproduction? Have a recording or video available through the Internet, on a website, or by another kind of electronic medium?

All of the above activities are permissible provided that permission is secured prior to any such use or means of duplication.

15. What is “fair use”?

Fair use is not generally available to churches. Fair use is established by a statute and interpreted by the court. It 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 on previous page). The publishers of the music will inform you of their requirements concerning your request.

16. What is “public domain”?

If a song is in the public domain, 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 in the public domain.

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

Embarrassment is a first. Additionally, the law provides for the owner of a copyright to recover the 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.

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

19. 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 is usually annual. Each of the **three main Catholic publishers (OCP, GIA, WLP)** utilizes a different licensing agent.

LicenSingOnline (www.licensingonline.org) is a reprint permissions service that covers more than 100,000 songs drawn from over 340 Christian music publishers and copyright holders from around the world. It offers two types of licenses: annual and time-based. LicenSingOnline replaces New Dawn Music as the licensing agent for these publishers (check website for complete list of publishers):

OCP Publications

New Dawn Music
North American Liturgy Resources (N.A.L.R.)
St. Thomas More Group, England
TEAM Publications
St. Meinrad Archabbey
San Pablo Internacional, S.S.P. Madrid, Spain
Ediciones Musical Pax, Madrid, Spain
Editorial Apostolado de la Prensa,
Madrid, Spain
Ediciones Música-Liturgia y Oración,
Pamplona, Spain

OneLicense.net (www.onelicense.net) is a licensing agent for texts and music by the following publishers (check website for new additions):

GIA Publications

Abingdon Press
Augsburg Fortress
Beckenhorst Press
Canta Nova
Carl Fischer Music
Celebration
Choristers Guild
Church Publishing
CRC Publications
Concordia Publishing
ECS Publishing
Fred Bock Music
CBGMusik/UMC

Good for the Soul Music
Hinshaw Music, Inc.
Hope Publishing
Jan-Lee Music
Jay Beech - Baytone Music
Kevin Mayhew
Neil A. Kjos Music Co.
Lillenas Publishing
Litmus Productions
Liturgical Press
LNW Hymns
Lorenz Publishing
Manna Music
Morningstar
Northwestern Publishing House
Oxford University Press
Paraclete Press
Pavane Publishing
Presbyterian Publishing
Selah Publishing
Shawnee Publishing
The Pilgrim Press
Troubadour for the Lord
United Church Press
Veritas Publications
Wayne Leupold Editions
Willow Publishing
Zimbel Press

World Library Publications (WLP), a division of J.S. Paluch Company, Inc., offers options for parishes and other worshipping communities to legally reproduce music owned and/or controlled by World Library Publications and J.S. Paluch Company, Inc. 3708 River Rd. Ste. 400, Franklin Park, IL, 60131 Telephone: (800) 566-6150 www.wlp.jspaluch.com

Note that the licenses issued by these companies are for assembly-sung music only. The license does not convey the right to photocopy or duplicate any choral or instrumental sheet music, accompaniments, arrangements for keyboards, hand bells or other instruments, choral songbooks, or other ensemble works.

Christian Copyright Licensing, Inc. (CCLI) is a licensing agent much like OneLicense and LicenSing. In fact, CCLI's license covers many of the same publishers and songs. They do not specialize in Catholic music. Visit them on the web at www.ccli.com to view their publisher list. 17201 NE Sacramento St., Portland, OR 97230. Telephone: (800) 234-2446.

20. 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 contact 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 locating the address or a phone number, write Music Publishers' Association, 711 Third Ave., New York, NY 10017.

21. What about out-of-print items?

Most publishers are agreeable, under special circumstances, to allow reprinting of out-of-print items, but permission must be secured from the copyright owner prior to any duplication.

Postlude

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.

These guidelines were adapted by the Office for Liturgy and Spirituality in the Diocese of San Diego from guidelines compiled by Music Publishers' Association, OCP Publications, and New Dawn Music. Readers are encouraged to reproduce them in order to assure their widest possible circulation.

Addendum

Additional licensing agents provided by the Office for Liturgy and Spirituality, Diocese of San Diego.

www.diocese-sdiego.org/liturgy.htm

Additional copyright information from the ASCAP website: www.ascap.com/licensing

Excerpts from "About the Music Performance Right" by Rob Monath, printed in a Hinshaw music mailing.