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What Copyright Protects

• U.S. copyright law protects “original works of authorship fixed in any tangible medium of expression.” (17 U.S. Code § 102)

• Types of protected works of authorship include:
  • literary works
  • musical works, including any accompanying words
  • dramatic works, including any accompanying music
  • pantomimes and choreographic works
  • pictorial, graphic, and sculptural works
  • motion pictures and other audiovisual works
  • architectural works
  • compilations and derivative works
  • sound recordings (beginning in 1972)
Copyright in Sound Recordings

Two copyrights in sound recordings:

©  
®
The owner of a copyright has the exclusive rights to do and to authorize the following:

- to make copies or recordings
- to distribute copies or recordings
- to perform the copyrighted work publicly
- to prepare derivative works
- to display the copyrighted work publicly
- to perform sound recordings by means of digital transmission

(17 U.S. Code § 106)
Performers’ Rights

§ 1101. Unauthorized fixation and trafficking in sound recordings and music videos

(a) Unauthorized Acts. - Anyone who, without the consent of the performer or performers involved —

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States, shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

- A Release, Waiver or Sound Recording Agreement is required to satisfy § 1101.
- Use of Name, Image and Likeness
- Control of Copyright
- Payment of Royalties
Copyright Infringement

• Unauthorized or prohibited use of copyrighted works that infringes upon any of a copyright owner’s exclusive rights. Infringement occurs when music is copied, recorded, distributed, modified or performed without proper authorization.

• Legal Test: 3 Requirements
  • Substantial Similarity
  • Market Impact
  • Damages or Harm

• Remedies:
  • Injunction against future infringement
  • Destruction of infringing copies
  • Statutory damages: generally $750 to $30,000 per copyrighted work, if work is registered; up to $150,000 per work for willful infringement. (17 U.S. Code §504)

• Infringement v. Piracy
Using Music Legally

If a musical work is in copyright, in order to use (i.e., copy, record, distribute, perform, or digitally transmit) it legally, your use must be a fair use or licensed.
What is in copyright?
Current U.S. Copyright Durations

<table>
<thead>
<tr>
<th>Date and Nature of the Work</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published in the U.S. before 1923.</td>
<td>Public Domain</td>
</tr>
<tr>
<td>Published in the U.S. between 1923 and 1977, inclusive, without a copyright notice.</td>
<td>Public Domain</td>
</tr>
<tr>
<td>Published in the U.S. between 1923 and 1963, inclusive, with a copyright notice but copyright was not renewed.</td>
<td>Public Domain</td>
</tr>
<tr>
<td>Published in the U.S. between 1923 and 1963, inclusive, with a copyright notice and copyright was timely renewed.</td>
<td>95 years from the date of first publication.</td>
</tr>
<tr>
<td>Published between 1964 and 1977, inclusive, with a copyright notice.</td>
<td>95 years from the date of publication (renewal term automatic).</td>
</tr>
<tr>
<td>Created, but not published or registered before 1978.</td>
<td>Single term of 120 years from creation for unpublished works made for hire, and unpublished or pseudonymous works.</td>
</tr>
<tr>
<td>Created 1978 and later.</td>
<td>Life of author + 70 years. For works of corporate authorship, 120 years after creation or 95 years after publication, whichever endpoint is earlier.</td>
</tr>
</tbody>
</table>
Online Resources for Determining Copyright Durations

- American Library Association, Public Domain Slider

- Cornell University Copyright Information Center, Guide to Copyright Term and the Public Domain in the United States

- For copyright duration in other nations, see Wikipedia

- For international status of musical works possibly in the public domain, see IMSLP
Copyright in Critical “Urtext” Editions of Public Domain Musical Works

• In Canada, urtext editions generally receive no copyright protection.

• In the EU, urtext editions get up to 30 years of copyright protection after publication.

• In the US, urtext editions are theoretically protected like any other work, although many have come into the public domain due to failure to renew, give proper notice, etc.
Internet Jurisdiction

Determining Legal Jurisdiction on the Internet

Factors:

• Where website is maintained or location of server.
• Whether a website owner purposefully, specifically, intentionally, or knowingly directed it to Internet users in another jurisdiction.
Fair Use

§ 107 of the Copyright Act of 1976 limits the exclusive rights in copyrighted works for purposes of criticism, comment, news reporting, teaching, scholarship, or research.

Determination of fair use based on four factors:

1.) the purpose and character of the use;
2.) the nature of the copyrighted work;
3.) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4.) the effect on the potential market

Since 1994, courts also consider how transformative the use is.
Fair Use of Music

• Generally limited by purpose and amount:
  • Educational purposes:
    • Face-to-face instruction at not-for-profit educational institutions.
    • Planned non-commercial study or investigation undertaken to contribute to a field of knowledge.
  • Presentation of research findings at scholarly conferences, workshops, or seminars.
Fair Use Guidelines for Copying and Recording Music

- Copies of excerpts of musical scores, librettos, etc., but not a “performable unit” – i.e., a complete song, movement, aria, etc.
- A student may make a single recording of a performance of copyrighted music for rehearsal or auditions, and a teacher or educational institution may retain a copy.
- Recordings can be made for instructional use, such as music identification exams, or ear-training exercises.
- Emergency copying of music for an imminent performance, provided replacement copies are purchased for future performances.
- The notice of copyright must be included on any copies.
Licensing Music

Copying or Reproducing Sheet Music or Scores in Print or Digital Media:

Permission to copy out-of-print music:
www.mpa.org

Permission to reprint hymns, congregational and service music:
Christian Copyright Licensing International (http://www.ccli.com/)
OneLicense.net (https://www.onelicense.net/)

Reprinting a musical excerpt in a dissertation and other uses:
http://www.schott-music.com/rights_rental/
License to Perform Music

Performance Royalties: paid each time a non-dramatic musical work is played or broadcast (on the radio, in concert, in a business, on television, or on a website). Amount depends on size of audience and other factors.

Performance Rights Organizations:

- ASCAP
- BMI
- SESAC
License to Perform Dramatico-Musical Works

**Grand Rights Licenses:** cover the dramatic performance rights encompassing several copyrights (i.e. in the libretto, the music, the choreography, etc.) to stage such things as an opera, operetta, ballet, play with music, or a work of musical theater (i.e., a musical composition in a dramatic setting where there is narration, a plot, and/or costumes and scenery). Negotiated between producers and publishers and owners of the copyright of the work.

Examples:

[Martha Graham Dance Company](#)
[G. Schirmer, Inc.](#)
[Leonard Bernstein](#)
License to Record Music

Mechanical License: paid each time a musical work is mechanically reproduced

Mechanical Royalty Rates:
- 9.1 cents per track or 1.75 cents per minute of playing time or fraction thereof, whichever is larger.
- 24 cents for ringtones

Royalty Rate Calculator

Mechanical Rights Agencies in the U.S.:
- Harry Fox Agency
- Songwriters Guild of America
- American Mechanical Rights Agency (AMRA)
- SESAC
- Limelight (RightsFlow)
License to Record and Perform Music in Conjunction with Moving Images

Synchronization “Sync” License: an agreement and negotiated fee allowing for the use of a song or music to be used in conjunction with a moving image: for movies, television, or internet streaming.

Rates: range from $200-$300 for a podcast, to $50,000-$500,000 for a song or other musical composition featured in a motion picture.

Generally negotiated directly with a publisher:

- Schott Music
- Philip Glass

But some licensing agencies are offering limited synchronization licensing:

- rumblefish
- Harry Fox Agency eSynch Beta
Licensing Derivative Works

• Identify the rights holder and their contact information
• Request permission, either by letter or online form, identifying precisely the uses you are requesting, no more and no less.

Musical Arrangements:
  G. Schirmer, Inc.
  Philip Glass
  Music Publishers of America

Literary Works:
  Random House
  Wylie Agency

• Upon approval, sign agreements, return by due date or upon publication, and pay fees.
• Include required copyright notification on derivative work.
• If derivative work is registered, identify previously copyrighted material in your application.
Distributing Your Recordings

cdbaby.com

personal/professional website
1. Affiliate with ASCAP or BMI (only one allowed)
   a. Request the application and contract:
      ASCAP (http://www.ascap.com/join/)
      BMI (http://www.bmi.com/join/)
   b. Identify publishing company name(s) and complete forms.
      ASCAP has a one-time fee of $35.00
      BMI application fee is $250 for corporately owned publishers; $150 for individually owned publishers
   a. Complete clearance forms.
2. File a Doing Business As (DBA)/Fictitious Business Name (FBN) statement and establish a bank account.
   a. DBA or FBN statements are filed with the clerk of the county in which you reside. Sometimes includes a requirement to pay local business privilege tax.
3. Administer your work.
   a. Register copyrights.
   b. File clearance forms with performance rights organization for new published works. Check BMI or ASCAP website to make sure that the work has been registered properly. If in error, contact the indexing department at BMI or ASCAP.