



COPYRIGHT AND YOU!

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Background

- Current U.S. Copyright Law (passed into law in 1976) represents an attempt by Congress to balance the rights of creators and copyright proprietors with the rights of copyright users. That is, Congress wanted both to protect those that produce and own copyrighted materials (composers and publishers) and to recognize the needs of those that use and enjoy those materials (listeners, performers, and prominently, music teachers).
- In other words, to make the careful compromise written into the law work day-to-day, two basic factors must be taken into consideration:
 - *The pedagogical need of music educators for reasonable access to copyrighted material*
 - *The practical need for music creators and their publishers to stay in business*

U.S. Copyright Law: A guide for music educators

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<http://www.nafme.org/my-classroom/united-states-copyright-law-a-guide-for-music-educators/>

Rights of Copyright Owners

These rights, as stated in the law and relating to materials likely to be used by music teachers, are:

- To reproduce the copyrighted work in copies or recordings
- To prepare derivative works (e.g., arrangements) based upon the copyrighted work
- To distribute copies or recordings of the copyrighted work to the public (mostly by sale, but also by rental or other methods)
- To perform the work publicly
- To perform the copyrighted work publicly by means of a digital audio transmission

Rights of Copyright Owners – cont.

- So the law starts out by saying that the copyright holder has the exclusive right to reproduce, arrange, and perform works. The law, however, proceeds to limit these rights in certain specific instances, including library copying and educational broadcasting. The most important group of limitations for music teachers is embodied in the section of the law that outlines the concept of “educational fair use.”

Use by Educators

- The Fair Use provision of the law sets out four factors a court must consider in determining whether uses for these purposes may be judged “fair”:
 - *Purpose and character of the use (e.g., commercial or educational?)*
 - *Nature of the work (epic poem, song, limerick, novel, opera?)*
 - *Amount and substantiality of the portion used (how much is being copied and how important is the copied material to the work?)*
 - *Effect on the potential market for or value of the work (is the monetary value of the work hurt by the unauthorized use?)*

Use by Educators – Permissible uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

Use by Educators – Permissible uses

3. Printed copies which have been purchased may be edited OR simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

Use by Educators – Permissible uses

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyrights of the music itself and not to any copyright that may exist in the sound recording.)

Use by Educators – Prohibited uses

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be “consumable” in the course of study or teaching such as workbooks, exercises, standard tests and answer sheets and like material.
3. Copying for the purpose of performance except as in A-1 on previous page.
4. Copying for the purpose of substituting for the purchase of music except as in A-1 and 2 above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

Use by Educators

- Note that the fact that a work is out of print does not mean that permission is given to copy and distribute that work. Permission must be secured to secure a copy and duplicate works that are out of print from the copyright owner.
- No response does NOT equal permission. No response means NO PERMISSION granted.

Use by Educators - Recording

- The copyright owner has the exclusive right to reproduce copyrighted works in phonorecords (meaning any form of audio-only recording), limited in the ways outlined previously. A common complication comes up when, in addition to recording music as part of the learning process, music educators may occasionally wish to record student performances and distribute copies of the recording within the community. Here, the teacher needs a license to do so, but the law somewhat simplifies the process for non-dramatic musical works. **As long as the music has been distributed to the U.S. public under the authority of the copyright owner (who essentially gets the right to have the first try), any other person may obtain a compulsory license.** That is, music teachers can pay a royalty, set by law, to the copyright owner. Through 12/31/03, that rate is set at 8.00 cents per selection or 1.55 cents per minute of playing time, whichever is greater.

Use by Educators - Recording

■ Types of Licenses

- *Mechanical License (audio only)*
 - Harry Fox Agency
 - EasySongLicensing.com
 - Copycat Licensing
 - Tresona
- *“Master Use” rights (permission to use a previously recorded performance – Beach Boys actual performance of “Good Vibrations” is to be used in your recording)*
 - Obtain from Record Label before you secure a Mechanical License
- *Synchronization License (rights to record and distribute audio and video both)*
 - Talk to the Copyright Owner

Use by Educators - Recording

- The first recording of a work and its distribution in recorded form, as well as any recording of a dramatico-musical work such as a musical comedy, requires the consent of the copyright owner.

Use by Educators – Derivative Works

- Making arrangements of a piece of music is an exclusive right of the copyright owner, but under the legal compromises surrounding the law, some things are considered to be reasonable exceptions:
 - *Music teachers can edit or simplify purchased, printed copies, provided that the fundamental character of the work is not distorted or the lyrics, if any, are not altered or lyrics added if none exist.*

Use by Educators – Derivative Works

- *Music teachers who get a compulsory license for recording can make a musical arrangement of a work to the extent necessary for their ensemble (actually, “to conform it to the style or manner of interpretation of the performance involved”). This arrangement, however, cannot change the basic melody or fundamental character of the work. This privilege is not meant to extend to “serious” compositions.*
- Anyone wishing to arrange a copyrighted work that falls outside the exceptions noted above must obtain permission from the copyright owner.

Use by Educators – Performance

Complete information concerning licensing of public performances of copyrighted non-dramatic musical works may be obtained from [ASCAP](#), [BMI](#) and [SESAC](#); together, these three organizations work for composers and publishers to handle the performance licenses for the vast majority of musical works.

A public performance is one that occurs either in a public place where people gather (other than a small circle of a family or social acquaintances). **A public performance is also one that is transmitted to the public**, for example, radio or TV broadcasts, and via the Internet.

It should be emphasized that a performance of a dramatico-musical work—an opera, a ballet, a musical comedy, etc.—is customarily licensed by the copyright owner of the performing right or his agent. Often, this is the publisher of the music; sometimes, it is either [Tams-Witmark Music Library, Inc.](#) or [Rodgers & Hammerstein Library](#).

Use by Educators – Performance

- Dramatic (Grand Rights) or non-Dramatic Performance
 - *Copyright law does not define the terms "dramatic" or "nondramatic." As a result, rights-holders, music users and occasionally the federal courts must attempt to draw the line between "dramatic" and "nondramatic" performances. That line is often unclear and depends on the facts pertaining to a particular performance. As a general rule a **dramatic performance usually involves using the work to tell a story or as part of a story or plot.** When in question contact the rights-holder. (see ASCAP FAQ)*

Use by Educators – Performance

And although performance is one of the copyright owner's exclusive rights, the special needs of music educators, and others, are recognized in the fair-use limitations on these.

- ***The Face-to-Face Exemption:*** To qualify for this exemption, the performance must be initiated by instructors or pupils and must occur within the context of the “face-to-face teaching activities” of a nonprofit educational institution, in a classroom or similar place devoted to instruction (e.g., a library, studio or workshop). It should be noted that there is no specific restriction, in this case, on the type or amount of a copyrighted work that may be performed.

Use by Educators – Performance

- *The Face-to-Face Exemption (cont.):* This exemption is limited, and does not apply to:
 - *Performances by actors, singers, or instrumentalists brought in from outside the school to put on a program*
 - *Performances, whatever their cultural value or intellectual appeal, that are given for the recreation or entertainment of any part of their audience*
 - *Performances in profit-making institutions such as for-profit dance or music studios*
 - *Performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class (Only performances “in a classroom or similar place devoted to instruction” fit this provision; performances at shopping malls and the like are certainly not covered)*

Use by Educators – Performance

- *School Concert Exemption*: School ensembles, students, and teachers, can put on a performance of a non-dramatic literary or musical work at a school concert as long as no money changes hands. That is, nobody can gain any direct or indirect commercial advantage; no fee or compensation can be paid to the performers, promoters or organizers; and no admission charge can be levied. (There is even an exception to this: there can be an admission charge, but all of the proceeds must be used only for educational or charitable purposes.) The performance may not take place if the copyright owner objects in writing seven days before the performance.

Use by Educators – Display

Any music educator who has purchased or otherwise lawfully acquired a copy of a copyrighted work may display it to those present at the place where the copy is located. A teacher, as an agent of the school, can display a copy of music that he or she owns, or a school-owned copy. **The legislative compromise surrounding this part of the law indicates that displaying the image of such a copy by an opaque projector would not be an infringement, whereas making an unauthorized copy, transparency, slide, or filmstrip to project would not be permissible.**

Areas needing clarification

- Not everyone is aware of this document nor recognizes it as factual
- Where is the line between an edit/simplification and an arrangement?
- Definition of “Dramatico” music
 - *Marching Band*
 - *Show Choir*
- Compulsory Mechanical License vs Custom Arrangement License
- Non-exempt performance licensing for K-12 schools.

