

COPYRIGHT POLICY AND LAW

A. Why a Copyright Law?

1. United States copyright laws stem from Article I, Section 8 of the Constitution. Our founding fathers determined that it was in the public interest that the creation of a person's mind and spirit, should, under law, belong for a limited time to that person and or, if deceased, to the family of that person.
2. The law is designed to encourage the development of the arts and sciences by protecting the work of the creative individuals in our society.

B. What is a Copyright?

A copyright is a statutory grant of certain rights for limited times.

C. What may be Copyrighted?

Original works of authorship which are fixed in a copy or a phonorecord. The law provides 7 classes:

- *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
- *sound recordings

D. When is a work Copyrighted?

A work is protected from the moment of creation, fixed in a copy or phonorecord. Copyright Registration is another step in the process and while it is not mandatory for protection to register a copyright, it is advisable to do so for additional protection in cases of infringement.

E. Who owns a Copyright?

The composer and lyricist or the duly authorized agent (Publisher) to whom they have transferred ownership.

RIGHTS OF COPYRIGHT OWNERS

F. What are the Exclusive Rights of Copyright owners?

1. To reproduce the copyrighted work in copies or phonorecords.
2. To prepare derivative works based upon the copyrighted work.
3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.

1 4. In the case of literary, musical, dramatic, and choreographic works, pantomimes,
2 and motion pictures and other audiovisual works, to perform the copyrighted work
3 publicly.

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5 5. In the case of literary, musical, dramatic, and choreographic works, pantomimes,
6 and pictorial, graphic or sculptural works, including the individual images of a
7 motion picture or other audiovisual work, to display the copyrighted work
8 publicly.

Duration of a Copyright

G. What is the Duration of a Copyright?

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14 A major change in the law has to do with the length of the protection provided to
15 copyright owners.

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17 1. Works created after January 1, 1979 will be protected for the life of the composer (author)
18 plus 50 years.
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20 2. Works copyrighted prior to January 1, 1979, if renewed will be protected for 75 years
21 from the date copyright was originally secured.

Guidelines for the 1976 Copyright Law

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25 A limitation on the exclusive right of copyright owners to reproduce a copyrighted work
26 is dealt with in Section 107 of the law under the title "Fair Use" which reads in its entirety:

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28 "Notwithstanding the provisions of Section 106, the fair use of a copyrighted work,
29 including such use by reproduction in copies or phonorecords or by any other means specified by
30 that section, for purposes such as criticism, comment, news reporting, teaching (including
31 multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.
32 In determining whether the use made of a work in any particular case is a fair use the factors to
33 be considered shall include---

- 34
35 (1) The purpose and character of the use, including whether such use is of a
36 commercial nature or is for nonprofit educational purposes;
- 37 (2) The Nature of the copyrighted work;
- 38 (3) The amount and substantiality of the portion used in relation to the copyrighted
39 work as a whole; and
- 40 (4) The effect of the use upon the potential market for or value of the copyrighted
41 work."

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43 As active participants in the shaping of the new law, music publishers and music
44 educators have developed Guidelines for Educational Uses of Music, in both graphic and
45 recorded form, that set forth specific uses which are permissible and those which are prohibited.
46 These Guidelines are published in the official Report on the Copyright Law of 1976, which
47 supplements and amplifies the meaning of the Law itself.

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49 Although developed for inclusion in and now contained in the Report on the new law, to

1 clarify Fair Use as it applies to music education, the following Guidelines should be useful as a
2 guide to all users of music.
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4 **A. Guidelines for Educational Uses of Music** 5

6 The purpose of the following guidelines is to state the minimum and not the maximum
7 standards of educational fair use under Section 107 of HR.2223. The parties agree that the
8 conditions determining the extent of permissible copying for educational purposes may change in
9 the future; that certain types of copying permitted under these guidelines may not be permissible
10 in the future, and conversely that in the future other types of copying not permitted under these
11 guidelines may be permissible under revised guidelines.
12

13 Moreover, the following statement of guidelines is not intended to limit the types of
14 copying permitted under the standards of fair use under judicial decision and which are stated in
15 Section 107 of the Copyright Revision Bill. There may be instances in which copying which
16 does not fall within the guidelines stated below may nonetheless be permitted under the criteria
17 of fair use.
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19 **1. Permissible Uses** 20

- 21 a. Emergency copying to replace purchased copies which for any reason are not
22 available for an imminent performance provided purchased replacement copies
23 shall be substituted in due course.
24
- 25 b. For academic purposes, other than performance, single or multiple copies of
26 excerpts of works may be made, provided that the excerpts do not comprise a part
27 of the whole which would constitute a performable unit such as a section,
28 movement or aria, but in no case more than ten percent (10%) of the whole work.
29 The number of copies shall not exceed one copy per pupil.
30
- 31 b. Printed copies which have been purchased may be edited or simplified provided
32 that the fundamental character of the work is not distorted or the lyrics, if any,
33 altered or lyrics added if none exist.
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- 35 d. A single copy of recordings of performances by students may be made for
36 evaluation or rehearsal purposes and may be retained by the educational
37 institution or individual teacher.
38
- 39 e. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted
40 music may be made from sound recordings owned by an educational institution or
41 an individual teacher for the purpose of constructing aural exercises or
42 examinations and may be retained by the educational institution or individual
43 teacher. (This pertains only to the copyright of the music itself and not to any
44 copyright which may exist in the sound recording.)
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46 **2. Prohibitions** 47

- 47 a. Copying to create or replace or substitute for anthologies, compilations or
48 collective works.
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- b. Copying of or from works intended to be "Consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
- c. Copying for the purpose of performance, except as in 1a above.
- d. Copying for the purpose of substituting for the purchase of music, except as in 1a and 1b above.
- e. Copying without inclusion of the copyright notice which appears on the printed copy.

B. Additional Information

YOU MAY NOT: Make copies of a recorded performance for distribution without securing the permission of the copyright owner and paying the royalty provided of 2 3.4 cent per selection or 1/2 cent per minute of playing time, whichever is greater.

The copyright owner cannot deny this permission if the work has been previously recorded by himself or with his consent. You may procure the permission from the copyright proprietor, or contact the Harry Fox Agency which handles recording rights for most music publishers. The Harry Fox Agency, 110 E. 59th St., New York, NY 10022 (212) 751-1930.

C. Performance

Performance is one of the copyright owner's exclusive rights. The new law provides that:

YOU MAY:

---perform non-dramatic musical works or dramatic-musical works of a religious nature, in the course of services at places of worship or at a religious assembly.

---perform a non-dramatic musical work if there is no purpose of direct or indirect commercial advantage, no fee or compensation paid to the performers, promoters or organizers, and no admission charge; if there is an admission charge; 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.

---perform a non-dramatic musical work on closed circuit television to other classrooms or to disabled person for teaching purposes, only if the transmission is part of the systematic activities of the Church, and only if the performance is directly related and of material assistance to the teaching content of the program.

Complete information concerning licensing of performances of copyright non-dramatic musical works may be obtained from ASCAP, BMI, or SESAC.

Broadcast Music, Inc.
40 W. 57th St.
New York, NY 10019

SESAC Inc.
10 Columbus Circle
New York, NY 10019

1 American Society of Composers, Authors and Publishers
2 ASCAP Building
3 One Lincoln Plaza
4 New York, NY 10023
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6 **PENALTIES FOR INFRINGEMENT**

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8 The remedies provided by the law to a copyright owner could mean that churches found
9 making illegal copies, or otherwise infringing, could face:

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11 1. Payment of from \$250.00 to \$10,000.00 (statutory damages) and if the court finds
12 willfulness, up to \$50,000.00 per infringement.

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14 2. If willful infringement for commercial advantage and private financial gain is
15 proved, fines up to \$50,000.00 and/or two years' imprisonment, or both.

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17 The nature of the remedies provided by the law indicates that copyright infringement is
18 something serious and needs to be viewed with concern.

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20 Church musicians need to understand "fair use" and make the most of the privileges it
21 grants, but they must also abide by its very definite limitations.

22 **USEFUL INFORMATION**

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25 1. How to tell if a work is copyrighted.

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27 All copyrighted works bear a copyright notice in which the date of copyright is included.
28 Under the old law, the term of copyright was 28 years with the possible renewal of an additional
29 28 years. However, during the legislative process leading to the new law, all copyrights from
30 September 19, 1906 which had been renewed but which would otherwise have expired were
31 extended so that they did not fall into public domain. Thus, all subsisting copyrights, if renewed,
32 will have, under the new law, a term of copyright of 75 years from the date copyright was
33 originally secured. Therefore, to be safe, a church musician should assume that any publication
34 which bears a copyright notice of 1906 or later protected. Absence of copyright notice does not
35 necessarily mean it is free.

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37 2. Out-of-print works.

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39 When copyrighted works are out of print it may be, occasionally, that church musicians
40 would like to procure a copy or copies for specific purposes. You must write to the copyright
41 owner to inquire of their policies for procuring copies or for permission to reproduce. You may
42 write to the Music Publishers Association (MPA) or National Music Publishers Association
43 (NMPA) for a simple form relative to the procurement of out-of-print works.

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45 3. Copyright owners action

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47 Copyright owners are fully prepared to prosecute for infringements under the new law in
48 order to protect their rights. Be advised that there are innumerable ways of discovering
49 infringements and that damages resulting therefrom are clearly defined.

1 4. Addresses of publishers
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3 Sometimes, a church musician who wishes to secure a permission, to make an
4 arrangement, or for some other copyright inquiry, may have difficulty in locating the copyright
5 proprietor. The name, of course, may appear with the copyright notice on the title page or
6 elsewhere in the publication. Sometimes, however, the publishing company has been absorbed
7 by another; changed its name and address, or for some other reason is difficult to locate. The
8 following organizations will undertake to supply that information. While this may not always be
9 possible, the information available to those organizations makes them the best source to assist all
10 those who have difficulty in locating a music publisher.

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12 Church Music Publishers Association (CMPA)
13 P.O. Box 4329
14 Washington, D.C. 20012

15
16 Music Publisher's Association of the United States (MPA)
17 Third Floor
18 130 West 57th St.
19 New York, NY 10019
20 (212) 582-1122

21
22 National Music Publishers' Association, Inc. (NMPA)
23 110 E. 59th St.
24 New York, NY 10022
25 (212) 751-1930

26 **POSTLUDE**

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28 The 1976 Copyright Law is an honest attempt to balance the rights of the copyright
29 proprietor with the needs of a democratic public and certain of its members such as church
30 musicians.

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32 Many church musicians realize that they depend upon the creative efforts of composers
33 for success in their ministry and are, above all others, arbiters of integrity and honesty in support
34 of obeying the law. These church musicians are setting a splendid example for they realize that
35 there is no justification for breaking the law for "Religious Service."

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37 Obedience to the new copyright law can establish a new day for encouragement of the
38 creative process by composers and authors.

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40 The new law provides a good opportunity for a new resolve to uphold the law.
41 Encourage your church to provide an adequate budget in order to avoid a temptation to break the
42 law. Explain to ministers and governing boards the facts of the law and the possible damages for
43 infringements.

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45 In no way does the intent of the new law inhibit the encouragement or practice of the
46 creative arts. Rather, it defines and establishes a climate in which the creative process can
47 mature and thrive with equal protection for all.

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49 Only you, the church musician, can assure its success.