**Georgia Music Educators Association**

*State In-Service Conference*

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Pulaski Room



**Copyright: Are you in Compliance?**

**Important Information for All Music Educators**

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1. **Introduction**
	1. This is not a fun topic, but it is an important one.
	2. It is a bit of a rabbit hole, as well, and extremely complicated.
	3. Disclaimer! I am not an attorney.
	4. Copyright law is complicated and, in many instances, lacks clarity on the enforcement of the law. This is part of the problem.
	5. There are a lot of accepted practices, which are not legal, that place your certificate at-risk.
	6. Can you see this issue from the artist’s viewpoint?
	7. Goal of the clinic:
		1. Educate you on an important set of laws that impacts all musicians,
		2. Hopefully, simplify and provide some clarity on the topic, and
		3. Help you continue to do what you have done and stay in compliance?
2. **Is this piece under copyright? Public Domain: What does that really mean?**
	1. A copyright is a "limited duration monopoly" provided by the U.S. Constitution to authors, inventors, and other creative individuals.  Copyright law is written to encourage the growth of knowledge by giving authors and artists limited time exclusive rights to use and profit from their creations.
	2. A public domain work is a creative work that is not protected by copyright and
	which may be freely used by everyone.  The reasons that the work is not protected include:
	(1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory
	formalities to perfect the copyright or (3) the work is a work of the U.S. Government. (source: http://www.unc.edu/~unclng/public-d.htm)
	3. If the piece is truly, public domain, then there are no copyright restrictions on what you can or cannot do with the music.
	4. Is this piece in the public domain?
		1. <http://www.unc.edu/~unclng/public-d.htm> (Summary)
			1. Before 1923, yes, in public domain.
			2. Between 1923-1978, basically, 95 years from publication (67 if not renewed)
				1. There are a wide variety of exceptions. Be careful.
			3. After 1978, Life of composer plus 70 years.
			4. International compositions: before 1978=95 years
	5. <http://www.pdinfo.com/public-domain-music-list.php>
	6. <http://www.pdmusic.org/>
	7. <http://imslp.org/> (CAUTION!)
3. **Types of Rights: It is not just about copying music.**
	1. Permission to Arrange (Arranging a copyrighted work, regardless if it is sold.)
	2. Mechanical Rights (Right to record and distribute)
	3. Synchronization Rights (Right to perform to recorded music or to add to a video)
	4. Digital Rights (Streaming digital music, i.e., websites)
4. **Recording:**
	1. What are my rights as an educator?
		1. You may make/keep a recording of a performance of your group for evaluation and archival purposes only. You cannot duplicate and distribute this recording, even if you are not charging anything for the recording.
	2. How can I make recordings available to my students and be in compliance? Through the Harry Fox Agency, which is connected to ASCAP and BMI (who are the liaisons with the artists).
		1. Go to [www.songfile.com](http://www.songfile.com)
			1. Setting up the account took 2 minutes.
			2. <https://secure.harryfox.com/register/registration.jsp>
		2. Cost is 9.1 cents (For works 5 minutes or shorter) per unit sold per license. If you sell a CD of your group for $10 and there are 9 selections on the CD. You would owe $.82 per CD sold.
			1. 1.75 cents per minute for works longer than 5 minutes.
		3. Get a mechanical license
		4. Copycat Music Licensing will also do this for you, but you pay more for the service. [file:///F:/Home%20PC%20transfer/My%20Documents/Clinics/Mechanical%20Licensing%20Service%20-%20Over%20500%20Units\_distributed.pdf](file:///F%3A/Home%20PC%20transfer/My%20Documents/Clinics/Mechanical%20Licensing%20Service%20-%20Over%20500%20Units_distributed.pdf)
5. **Copying: What am I allowed to do?**
	1. Imminent performance clause
		1. Allowed to make copies, with conditions
		2. Must order replacement parts
		3. Then destroy copies
	2. ‘Fair use” is a complicated legal term. Ask different people get a different answer.
		1. Basically, are you denying income to the artist/copyright holder?
	3. Music that is out-of-print. What now?
		1. Contact the publisher directly. Here are few relevant links:
			1. <https://www.halleonard.com/permissions/index.jsp>
			2. Alfred requires you set-up an account to submit this type of request.
			3. <http://www.fjhmusic.com/permission.htm>
			4. <http://www.lorenz.com/forms/PrintLicense.pdf>
			5. <http://kjos.com/display.php?f=s_l_main.htm>
		2. Often, what the distributor says and what is truly out-of-print are very different. If a piece is truly out-of-print, most publishers will grant permission to copy for a performance, given that the copies are destroyed following the performance.
	4. But my chorus grew by 10 members from the last time I sang this piece, what do I do?
		1. Purchase the copies, if at all possible.
		2. Classroom sets have been accepted precedence for sharing copyrighted material in educational settings. This is a widely used practice throughout all levels of education. It is a fine legal line between shared music and copied music, both create the same end result. The weight, however, of the precedence leans toward shared music.
		3. Same can apply to method books for your classes.
		4. Some band/orchestra publishers are moving toward PDF parts and completely getting out of the limited number of copies business. In my opinion, they are conceding that is a battle that is not winnable. I was unable to find a counterpart in the choral world.
			1. <http://www.bandworkspublications.com/home/>
			2. <http://www.stormworld.com/index1.html>
			3. <http://www.maestroandfox.com/Maestro_%26_Fox_Music/Home.html>
	5. If I have 10 trumpet players, and the published set of parts has 9 trumpet parts, can I copy the extra part of the music I need?
		1. From [www.barnhouse.com](www.barnhouse.com%20)
			1. *“No, this is not allowed under the "fair uses" section of the copyright law... We charge $3.00 for extra parts… If your regular music dealer has difficulty filling an order, or quotes a different price, you may order directly from us.”*
			2. See above for some publishers who are moving away from this business model and the issue of “shared” music also mentioned above.
6. **Arranging: Do I have to get permission for everything?**
	1. Costs to get permission?
		1. From $0 to $1,000s depending on the composer/publisher
		2. On average, expect $150-$375
		3. In some cases, permission will not be granted.
* <http://www.bands.org/Public/resourceroom/copyright/copyright_guide.asp> (excerpted from this link) some composers or publishers do not allow arrangements of the material they own.
	+ "The Easter Symphony - Mvt. 2 (Death Tree)" by David Holsinger
	+ Music and film scores by John Williams
	+ Music by Charles Ives that is not in PD.
	+ "God Bless America"
	+ Music and stories of Dr. Seuss
	+ "Symphony #3" by James Barnes
	+ Works by David Maslanka (Mr. Maslanka will consider personally creating a new commissioned work or arrangements for your band.)
	1. Do I have to get permission for everything?
		1. <https://www.tresonamusic.com/page/custom-arrangement-faq> (excerpted below)
* Re-voicing a choral arrangement: If one purchases a choral arrangement that was published as an SSA arrangement, and wants to re-voice it as a TTBB arrangement, that requires a custom arrangement license and the permission of the publisher or rights holder.
* Using a small selection of the music: We are frequently asked whether or not the permission of the rights holders or publisher is required if one is using “less than 20 seconds”, or “less than eight bars.” The answer is that if one is using any portion of a song that is recognizable, then the permission of the publisher or rights holders is required…In short, there is no time limit.
	1. Cost to not get permission?
		1. I know one well-known band composer who will file a legal order and requires $4,000 for continued use of the music, a letter is sent to your principal and you are given a cease-and-desist order until his terms are met. (Originally rights were $500)
		2. He finds violators on YouTube and from friends at band contests.
	2. How do I go about getting permission?
		1. Contact individuals? Hal Leonard? CopyCat? Tresona?
			1. <https://www.tresonamusic.com/>
			2. <https://www.halleonard.com/permissions/index.jsp> (Uses Tresona for all marching related licenses. Hal Leonard handles other requests through their website.)
			3. <http://copycatlicensing.com/OurServices.aspx> (Handles all of Eric Whitacre’s music)
			4. John Mackey does his own licenses [www.ostimusic.com](http://www.ostimusic.com)
	3. Can I rewrite a part for a missing instrument or simplify a part for a struggling player?
		1. Yes, provided that: [http://barnhouse.com/faq.php#rewrite\_pub](http://barnhouse.com/faq.php%23rewrite_pub)
			1. The fundamental character of the work is not distorted
			2. The modifications are not being made to avoid purchase of copyrighted music
			3. Such modifications are made expressly for your specific teaching situation
1. **YouTube and Social Media: The Wild, Wild West of Copyright**
	1. <http://www.harryfox.com/license_music/youtube_license.html>
		1. To post a video on YouTube of a performance, you must obtain a **synchronization right.** Some publishers have entered into agreements with YouTube for a percentage of advertisement revenue and there is a limited, to no fee. In most cases, you will be required to pay a fee and some music is blocked from being on YouTube.
	2. As digital media expands, artists are losing revenue. Many are becoming more aggressive toward copyright violations.
		1. <http://www.aux.tv/2014/12/pharrell-williams-earned-less-than-3000-for-43-million-happy-streams/>
	3. <http://musiced.nafme.org/resources/copyright-center/licensing-and-other-copyright-questions/> (excerpted below)
		1. *“So, if you wanted to post a video of your choir singing “A Really Nice Song” onto a website like SchoolTube, you would need to make sure that SchoolTube has an ASCAP license (it does). If you post the video on your personal website or your school’s website, those websites will need an ASCAP license, although it might be only for a minimum fee. In any case, before you post any music onto a website, you should contact the relevant PRO to make sure that the website in question is licensed.”*
		2. “*If you are posting any video of your students, you should be sure that you have obtained the students’ permission and, if they are minors, permission from their parents.”*
		3. “*Finally, you should be aware that if you are replicating a well-known piece of choreography and/or replicating well-known costumes as part of your choir’s performance, it is possible that the choreography and the costumes are copyrighted. In this instance, you should try to identify the producer of a prior performance of the choreography and they will likely be able to put you in contact with the copyright owners.”*
2. **Websites and “free” music: What do I need to know?**
	1. That old rule you learned from your parents: If it sounds too good to be true…it probably is!
	2. Some websites that may be acceptable, but still require some investigation.
		1. <http://imslp.org/> (CAUTION!) Canadian website (excerpted from the website)
			1. *IMSLP makes no guarantee that the files provided for download, viewing or streaming on IMSLP are public domain in your country and assumes no legal responsibility or liability of any kind for their copyright status. Please obey the copyright laws of your country and consult the copyright statute itself or a qualified IP attorney to verify whether a certain file is in the public domain in your country or if downloading a copy constitutes fair use.*
		2. <http://www.free-scores.com/download-sheet-music.php?pdf=1045>
			1. Appears to be a brass quintet of a PD musical composition.
			2. Arranged by John Rutter, which means the arrangement is probably not PD.
3. **Performance Rights: Required? What does this really mean for me?**
	* 1. Performance rights are required for professional organizations, websites, restaurants, concert venues, radio stations, etc... Performance rights are not required for:
			1. <https://www.ascap.com/applications/performancenotification> (excerpted from the above link)
				1. *Please confirm that your performance is* ***NOT*** *one of the following, as these types are* ***NOT*** *licensed by ASCAP:*

*Dramatic works (opera, ballet, musical theater, etc.)*

*Broadcasts of dramatic works*

*Concert performances of complete dramatic works*

*Performances within religious services*

*Events solely presented by the U.S. Armed Forces*

*Elementary, junior and senior high schools (Kindergarten - 12th grade)*

1. **Closing**
	1. You can provide your students a quality musical experience and comply with copyright laws.
	2. Please use the links in this handout to help you find out more information about this important topic.
	3. When money is involved, we as educators need to be informed and protect ourselves.
	4. Following the herd, however, can be dangerous.
	5. Contact information: Andrew Poor, South Forsyth Middle School, APoor@forsyth.k12.ga.us 770-888-3170 ext. 140561