

## COPYRIGHT

Copyright is an exclusive bundle of rights provided to an author(s) of an original work of authorship, such as books, music, poetry, pictures, drawings, etc. For musical works, copyright extends to both the music and the lyrics. The "bundle of rights" that are included in copyright are the right to: (1) distribute copies of the work, (2) reproduce (or make copies of) the work, (3) display the work publically (for example, a painting that you want to allow a museum to publicly display), (4) perform the work publically, and (5) create derivative works based upon the original work. A copyright owner or holder is a person or company, such as a publisher, that owns any one of the exclusive rights of copyright in a work.

The rights mentioned above can be separated. The rights of musicians can vary depending on whether they are composers or performers. A composer is a person who creates the music — i.e. the melody, rhythm and lyrics. A performer is one who performs music. The performer's copyright exists in the sound recording.

Copyright ownership is separate from the ownership of the work itself. For instance, when a musician sells a CD to someone, the musician retains the copyright in the music. That means the buyer of the CD will have the right to play the CD at home or in their car but the musician will retain the rights to copy, perform and distribute the music, and make other works based on the music. When you purchase a song book, you do not purchase the right to make copies of that song book; that property right remains with the copyright holder.

Moreover, copyrights not only can be sold independent of the work itself, but the different exclusive rights can also be sold separately. For instance, a musician could sell the right to make copies of his CD to one person and could sell the right to publicly perform it to someone else.

Copyright ownership is generally indicated by the word "copyright," a small enclosed letter (c) or ©, followed by a date and the name of the owner of the copyright in the work (e.g., © 2016 Sweet Adelines International). Permission to copy this material may be given to others by the owner and is usually shown by adding a phrase such as "Used by Permission" on the bottom of the first page. While a copyright notice was once a requirement of copyright protection, it was made optional in 1989. Therefore, copyright protection attaches to a work even though it does not have a copyright notice on it. Of course, it is important to place copyright notices on musical works to put people on notice that a copyright is claimed. However, the absence of the copyright notice does not indicate that the work has not been copyrighted or that it is in the public domain.

Moreover, simply because a work appears on the Internet, does not mean that the author has placed the work in public domain or granted permission for anyone to download the work and make copies of it. Please assume that anything that appears on the Internet is protected by copyright unless you receive explicit permission from the owner to make copies of the work.

Copyright protection does not last forever. A copyright has a "term" or length, depending on when the work itself was created. For works created after January 1, 1978, the term of copyright is the life of the author plus 70 years or, if the work is a Work-for-Hire, the term is 95 years from first publication or 120 years from creation, whichever expires first. For works published or registered between 1964 and 1977, the term of copyright is 95 years, and for works published or registered between 1923 and 1963, the term of copyright is 95 years, if renewed in the 28th year. Copyright in works published or registered prior to 1923 has expired, and thus, are now in the public domain. It is important, however, to clearly understand what is in the public domain and what is not. While all



of Beethoven's musical works are in public domain, most of the sheet music of Beethoven's works would not be in the public domain. That sheet music would, unless created prior to 1923, be protected by copyright. The same is true with sound recordings of Beethoven's symphonies. The publisher of the sound recording would have copyright protection in it even though the underlying musical works that were performed were in the public domain.

Because of the nature of our organization, we are primarily concerned with the right to reproduce songs, specifically music manuscripts and recordings and the right to perform songs in public. Unless the copyright on a song has expired (public domain), fees designated by the song owner (royalties) must be paid for copies made. In addition, you need permission of the copyright owner to publically play the song during a performance or concert.

Sweet Adelines International works with the American Society of Composers, Authors & Publishers (ASCAP), Broadcast Music, Inc. (BMI), Society of European Songwriters, Artists and Composers, Inc. (SESAC), and the Society of the Composers, Authors and Music Publishers of Canada (SOCAN) to comply with the copyright law, and to protect the rights of the copyright owners and the Sweet Adelines International music arrangers.

It is the responsibility of Sweet Adelines International performance groups to determine that all music they use in public performance is legally cleared and applicable fees have been paid. If you are unsure about a particular piece of music, take steps to be certain as to the legality of copying or purchasing the music. In order to create a permanent record and avoid any confusion in the future, documents relating to all music purchases should be retained. Listed below are several sources for determining copyright status and obtaining legal music:

***Sweet Adelines International Published Music*** Just as the music publisher acts as an agent for the copyright holder, Sweet Adelines International administers the rights for the songs it publishes. All song titles that appear on the international sales single-copy sheet music list, in Sweet Adelines International music folios, or that have been printed in *The Pitch Pipe*, are either copyrighted by Sweet Adelines International or used by permission. This music should not be photocopied; a copy for each singing member should be purchased.

***The Arranged Music List*** This list, available from the international sales department, contains songs submitted by individual arrangers. These arrangements have received the necessary clearance from copyright holder(s). The sheet music is available either from the arranger or international headquarters as indicated on the list.

The men's organization maintains lists of their legal music similar to ours.

***Creative Commons*** Creative Commons, an organization founded by a number of legal scholars, has developed a series of licenses that allows copyright holders to retain control over their works, but still make them available under terms more favorable than copyright allows. The copyright holder can choose to make the work available under a single license or a combination of licenses. For example, a copyright holder can permit use of the work only if it is used for noncommercial purposes and if the work is attributed to her/him, while retaining the right to make derivative works. Or she or he could make it available for derivative works, but require that the derivative works be made available under the same terms as the original.



Creative Commons has recently introduced a new sampling license under which artists are allowed to use portions of other artists' works in sampling. Various artists are expected to offer their work to be used for sampling through the Creative Commons website. More information about the Creative Commons license is available on their website at [www.creativecommons.org](http://www.creativecommons.org).

**Mutopia Project** Mutopia Project (<http://ibiblio.org/mutopia>) contains a collection of modern editions, arrangements and new music which is in the public domain. All of the musical works on the Mutopia Project may be freely downloaded, printed, copied, distributed, modified, performed or recorded.

**The Arranger** The arranger is your best source for information regarding any music not found on these lists. If an arranger cannot be identified or prefers not to seek clearance, you may contact the music services department for assistance.

**Other** The public library can be helpful in determining copyright holder. Many music stores have catalogs showing music titles, composers/arrangers, copyright dates and publishers.

### Copyright Exemptions

The rights of the copyright owners, the rights and obligations of performers, and the penalties for infringement can be found in the United States copyright law. An exemption to an exclusive right means that the user does not need permission from the copyright owner to use the work. Exemptions to copyrights in music and sound recordings apply to the public performance right. Certain performances like those that happen in the course of teaching in a classroom, instructional and religious broadcasts, and non-profit performances are exempted from the scope of the performance right.

"Fair use" is the right of the public to make reasonable use of copyrighted material in special circumstances without the copyright owner's permission. The United States Copyright Act recognizes that fair use of a copyrighted work by educational, religious, or nonprofit organizations such as ours "for purposes such as criticism, comment, news reporting, teaching, scholarship, or research", but there is no clear-cut-rule.

Factors to be considered include (1) the purpose and character of the use, including whether the use is for a commercial purpose or is for non-profit educational purposes; (2) what kind of work is the copyrighted work (for instance, is it creative or factual); (3) the amount and importance of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential commercial market for or value of the copyrighted work. Fair use is determined on a case-by-case basis. An activity may qualify in one instance as fair use, while it would be an infringing activity in another context. Where there is doubt about whether something qualifies for the fair use exception, you should request a license from the copyright holder.

To illustrate a common sense approach to the application of these copyright exclusions, some permissible uses and prohibitions are listed below:

- You may photocopy a piece of music in an emergency, but you must replace it as soon as possible with a purchased copy. This exception includes any music added to notebooks for new members. Do not copy or retain copies without the inclusion of the copyright notice.

- You cannot copy any performable unit and assemble it in your own collection for the private use of your students. This is true regardless of the fact that you are not distributing the collection, but only using it privately for your students. Any copying of the performable works would constitute an infringement. Therefore, if you copied 20 separate works and assembled them in an instruction book for your students, you would have committed 20 different acts of copyright infringement.
- For music classes only, one copy per student may be made of small excerpts of a work, so long as the excerpt does not constitute a performable unit. For example, because a tag is a performable unit, it could not be copied in this instance.
- Minor re-voicing and similar adjustments to adapt the music for use by a particular group are permitted. Rewriting in a different style or altering the lyrics would require permission of the copyright holder, i.e., you cannot change the basic melody or the fundamental character of the song.
- A single recording of a chorus performance may be made for evaluation or rehearsal purposes. Additional copies of the recording require the compulsory mechanical license and royalty payment to the copyright holder. Refer to the Mechanical Licensing heading of this section for additional information.
- When Sweet Adelines International produces learning media, we, as producer, take responsibility for obtaining the mechanical licenses that cover the product. No one should record music to make their own set of learning tapes without the permission of the owner.
- Performance is one of the copyright owner's exclusive rights. However, performance of copyrighted material by instructors or pupils within a nonprofit educational institution as part of a classroom activity is permissible. A performance license is not required for chorus rehearsals or international and regional music schools.
- If directly related and of material assistance to the teaching content of a particular program, musical performances on video recordings or closed-circuit television are permissible. The viewing must occur in face-to-face situations in a classroom, or to a disabled student, within a nonprofit educational institution. The training of our approved candidate judges through the use of video recordings of competitions has proven to be one of our most effective educational tools.
- All copyrighted music used in public performance must be purchased. Part of the price goes to the copyright holder in the form of per-copy royalties. If and when the music is performed for a public audience, a performance license must be acquired. Refer to the Performance Licensing heading of this section for performance license application procedures.
- Just because you purchased content doesn't mean that you own the rights to upload it to YouTube. Even if you give the copyright owner credit, posting videos that include content you purchased may still violate copyright law.

- Additionally, just because you recorded something yourself does not always mean you own all rights to upload it to the Internet. If what you recorded includes someone else's copyrighted content, such as copyrighted music playing in the background, then you would still need to get permission from the appropriate rights owners.

Though the copyright law is very complicated, it can be simplified to two basic premises:

- Do not photocopy copyrighted music without the express permission of its owner.
- Obtain a performance license for shows given for the public. (Members in countries not covered by ASCAP, BMI or SESAC should check the performance license laws in their respective countries to ensure they are following the prescribed procedure for complying with the requirements of their countries.)

### ***Samples, Medleys and Parodies***

Music sampling is an example of a derivative use of older works. However, sampling is a controversial practice. While sampling very small portions of a composition has been held to be permissible, sampling of even small portions of sound recordings has not. However, the law in this area is far from settled. As such, before sampling you should obtain a license from the copyright holder or music publisher.

Medleys require licensing of each song part separately. You must contact and obtain permission from the copyright owner before proceeding. Medley arrangements cannot change the lyrics and/or the melody of the portion of the song that is used in the medley. The song title and copyright notice must be properly acknowledged in the medley arrangement.

A parody is the “use of some elements of a prior author’s composition to create a new one that, at least in part, comments on that author’s works.” Any parody lyric or the revision of a lyric that changes the integrity of the work requires authorization from the copyright owner. Since copyright law only allows for *de minimis* use without permission of the copyright owner, and because such permission is highly unlikely when the use is to create a parody, it would be necessary to rely on the fair-use defense to forestall any liability for copyright infringement. The law has continually struggled with parody cases when ascertaining whether a particular parody falls within the parameters of fair use or is instead copyright infringement. As such, before creating a parody, you should obtain a license from the copyright holder or music publisher.

You 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. If you get a compulsory license for recording, you can make a musical arrangement of a work to the extent necessary for your 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. If you wish to arrange a copyrighted work that falls outside the exceptions noted above, you must obtain permission from the copyright owner.

Further reference material on the subject of copyright can be obtained from *Copyright: The Complete Guide For Music Educators* by Jay Althouse, available from Alfred Publishing Co., Inc.



## **MECHANICAL LICENSE**

An exclusive right afforded to copyright owners of musical works is the right to reproduce the work on paper or by making a mechanical recording. When making an audio recording, a mechanical royalty must be paid to the copyright owner. The rate is currently 9.1 cents per song per recording for songs five minutes or less, or 1.75 cents per minute or fraction thereof per song per recording for songs over five minutes. The compulsory mechanical royalty is due on all recordings made and distributed, even if the recording is not made "for profit."

A copyright owner cannot, after the first recording of a musical work, prohibit any subsequent recordings. Nevertheless, your first step should be to contact the copyright owner with a request for a license to record the work within 30 days of making the recording and before distributing it. If the work has never been recorded, the copyright owner does have the right to deny your request. Because music publishers are usually happy to have their works recorded, you most likely will be granted a license to record.

For commercial recordings, many publishers use the services of an agent who specializes in handling mechanical licenses. The most widely used agent is The Harry Fox Agency, Inc., 601 W. 26<sup>th</sup> Street, New York, NY 10001, (212) 370-5330, [www.harryfox.com](http://www.harryfox.com). If you are planning a recording project with several songs, one contact with The Harry Fox Agency may save you a lot of time. The Fox Agency may represent many of the publishers involved in your project and can issue licenses on their behalf.

When you contact an agent, be sure to correctly list the following:

- Song title
- Writer
- Publisher
- Playing time (minutes/seconds)
- Expected release date
- Artist (your chorus/quartet)
- CD title

Contact The Harry Fox Agency, Inc. or visit their website for specific directions on how to submit a licensing request. If the owner's name and address cannot be found in copyright office records, the notice can be filed in the U.S. Copyright Office.

## **SYNCHRONIZATION LICENSING**

Synchronization licensing covers the use of recorded music when combined with any audio/visual media. In other words, video production requires its own separate license, which pays a royalty to the composer of the song for the right to use their song on your new video recording. Unlike the mechanical license for audio recordings, a synchronization license must be negotiated on an individual basis directly with the music publisher or copyright owner. The copyright holder may charge any rate he or she wants and is not obligated to issue a license.

You should secure a synchronization license before you upload or publish a video of recorded music combined with any audio/visual media to the Internet. Even if you create the entire performance and recording yourself, you still need both the mechanical and synchronization license to legally publish the video on YouTube, Facebook or any other website, unless it falls within public domain, or if it was published under a Creative Commons license allowing for free re-use. Reputable websites will remove videos with unlicensed copyrighted material.

Printing and recording rights, especially for synchronization licensing, may be held by different owners. There is no easy way to determine the appropriate person to contact. If you are planning to negotiate for yourself, start with the publisher who holds the print rights.

Pursuit of synchronization license requires the following information:

- Production company or name of the company to whom the license is to be issued
- Title, composers (both lyrics and music) and publisher
- Name of the project, film or video
- Duration of use (minutes/seconds)
- Nature of the use such as background, parody, vocal, instrumental, foreground
- Geographic scope of use
- Term of license requested
- Commencement date
- Episode number, if applicable
- Retail price
- Program or scene distribution, i.e., how the song will be used
- Number of units

With very few exceptions, all videos require synchronization licensing. You are, however, allowed to make a master copy of an individual performance such as your regional contest. A separate license is required for each song on your project.



## **PERFORMANCE LICENSES**

The purpose of organizations such as ASCAP (American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Inc.), SESAC (Society of European Songwriters, Artists and Composers, Inc.), and SOCAN (Society of Composers, Authors and Music Publishers of Canada) is to protect the rights of composers and authors, and to ensure that they receive fair compensation for the performance of their works. Organizations of this nature serve as clearinghouses through which users may obtain permission to perform music. The permission is granted in the form of a license.

Because the sale of printed music does not by itself provide a livelihood for most composers, they are largely dependent on fees received for public performances of their music. Unless paid for their work, composers have little time or incentive to compose, and the publication of music will be hindered. Because compositions are property and under the law a copyright owner has exclusive rights to her/his musical compositions, both a legal and a moral obligation exists to share the proceeds from musical performances with the men and women whose talents make the music available.

In Canada, the United States, and most other countries, copyright laws are very similar. Using clearinghouses simplifies the performers' task of obtaining the appropriate license.

Sweet Adelines International choruses and quartets should use the following methods to obtain a performance license.

### **ASCAP, BMI, and SESAC**

Agreements exist between ASCAP, BMI, SESAC, and Sweet Adelines International that allow international headquarters to serve as a clearinghouse for the collection of license fees and the distribution of license certificates to chapters. License application forms are available from international headquarters. (Instructions and a *sample* application can be found at the end of this section and on the Sweet Adelines website.) Upon receipt of the application form and fees, a license will be forwarded to the chapter by international headquarters.

The rate schedule on the license application form is valid only for musical events where the attraction consists solely of vocal groups performing under the Sweet Adelines International name and does not extend to any other musical performance.

### **SOCAN**

Public performance of music in Canada requires a license from SOCAN. Reporting requirements and payment of license fees to SOCAN will authorize the music user to publicly perform works from the world repertoire of copyrighted music.

Canadian chapters should contact SOCAN with the number and types of performances their chorus will participate in throughout the year. Based on anticipated activity, SOCAN will place the chapter on either a quarterly or semi-annual reporting schedule. SOCAN will provide the reporting forms and instructions. Licensing fees may not be paid in advance and the retroactive payment will be due along with the reports. Reporting is based on the calendar year.



SOCAN also requests that a program be submitted with the titles and other available particulars of the musical selections performed at all events. Complete instructions will be included in the material sent by SOCAN.

When an event takes place in a hospital, nursing home, prison, etc. and is of a benevolent nature, the chapter is not required to pay the license fee as long as no admission fee is charged, the chapter receives no reimbursement for the event and the event is not open to the general public. If the chorus performs in a shopping mall, at a banquet, etc., the license fee is due either from the chapter or the host organization. Be sure to determine in advance who is responsible for the license fee. It is always a good idea to verify with SOCAN that the host organization does have a license when they agree to that responsibility.

SOCAN personnel are happy to answer questions by telephone or by mail. They may be reached at:

**SOCAN**  
Licensing Department  
41 Valleybrook Drive  
Toronto, Ontario, CANADA M3B 2S6  
416-445-8700 or fax 416-445-7108

#### **Countries Not Covered by ASCAP, BMI, SESAC, or SOCAN**

Copyright laws vary from country to country and the methods of meeting their requirements may also vary. If your country is not covered by ASCAP, BMI, SESAC, or SOCAN, check your local regulations before sponsoring a musical concert for the public.

*ASCAP, BMI, SESAC, and SOCAN are not concerned with the reproduction (printing) or recording (taping) of copyrighted songs. They are concerned with performing rights only. Permission to reproduce a copyrighted work or to record a copyrighted work must be obtained from the copyright owner.*