

## **COPYRIGHT FAQs FOR MUSIC DIRECTORS\***

### **What copyrights are involved in using music?**

In any recorded music, there are two basic copyrights: the master recording and the underlying composition. These copyrights can be held by the same person if, e.g., a songwriter records his/her own composition. They can be different parties in the case of an artist recording a song written by someone else. It is also possible for the recording of the composition (or both) to be unprotected that is, in the “public domain” (PD). One could record a version of “Amazing Grace”. The composition is PD but the new recording is not and can be copyrighted by the artist or their label. There are copyrighted arrangements of PD compositions, so be careful.

For more about copyright basics: <http://www.copyright.gov/circs/circl.pdf>

### **What are the rights covered by a copyright?**

The three basic rights that any music-user needs to be aware of are: Performance, Reproduction and Synchronization.

**Performance** rights govern where and how you can perform a piece of music. Performing a musical work can be either playing a recording or having musicians playing at your event.

**Reproduction** relates to the act of making and distributing copies, digital or physical, of a protected work. (NOTE: this has nothing to do with selling the music or giving it away for free. Both acts are considered reproductions.)

**Synchronization** rights, for purposes of this FAQ refer to the act of combining the music with a visual product. This covers any audiovisual project including slide shows that have music underneath.

### **What is “Fair Use”?**

Fair use is a specific section of the copyright law that permits the use of copyrighted material without having to secure a license from the copyright owner. The four main criteria to determine if a use is considered “Fair Use” are:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
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.
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

The complete guidelines for Fair Use can be found here:  
<http://www.copyright.gov/fls/fl102.html>

Note: Merely giving away something for free does not automatically qualify for Fair Use status. It is often difficult to accurately determine whether or not certain exploitation is a Fair Use.

### **What do I need to do to include music in my weekly service?**

This is the good news. Copyright law exempts religious services from having to secure performance rights. This means that any use of music during an actual (live) religious service is completely permissible. The exact wording of the copyright act that pertains to actual religious services is:

“Notwithstanding the provisions of section 106, the following are not infringements of copyright... (3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assemble.”

This covers only performance rights, not any use outside of the actual service, including recording and printing of copyrighted material even in a church bulletin accompanying the service. Note that the exemption does not cover “dramatico-musical works of a non-religious nature such as secular operas or plays.

If you never use music outside your services, you do not need to obtain a license from a performing rights society (ASCAP, BMI, SESAC) or the master recording rights holders.

However, this does **not** grant you the right to stream, webcast, telecast, sell or distribute video or CD copies of the service. Only the live performance at the place of worship is exempt. Other uses of copyrighted material require a license from the respective owners.

### **May I use copyrighted music as part of other non-services related activities?**

This is a gray area. Section 110(4) discusses this:

“(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if

“(A) there is not direct or indirect admission charge; or

“(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection.”

What this is saying is if there is an educational, religious or other charitable organization that benefits from the use of the music, it is permissible to perform any work of music **unless** the copyright owner has provided a proper notice objecting to the performance.

Therefore you can perform music at social events, fundraisers, and other church-related functions without the need to obtain a license from anyone **IF** you can meet the above criteria. Be very careful. If anyone (other than the church) makes a profit over and above actual related expenses, the exemption does not apply.

### **May I send digital copies of sheet music or audio recordings to choir or band members?**

Yes. The above would also apply to distributing digital copies or streams provided that the general public does not have access to such material. So you are free to send PDF files, MP3 files, streaming audio of music that will be used during a service to those people who will be performing it.

### **How do I obtain licenses or permissions to use music in church-related activities?**

Licenses/permissions are available by inquiry to the copyright owner(s) of the song and the recording. Both licenses are needed but may be obtainable from the same person if he or she is the owner of both elements. Songs are owned by music publishers. Recordings are owned by record labels or individuals. Licenses are generally necessary for the use of music except for an actual live service (live streaming needs a license). Information to locate copyright owners is available through music industry publications and online. There are two primary organizations which assist in obtaining licenses for New Thought churches.

The first is emPower Music Rights (EMR), which represents the copyright interests of a large number of major New Thought songwriters and recording artists in licensing their works to Centers and churches. Current members include Karen Drucker, Daniel Nahmod and Rickie Byars-Beckwith. The EMR license covers songs and recordings of its members in performance, duplication, archiving and live streaming. Fees range from \$100 per year for congregations with attendance at less than 100 to \$1000 for congregations with attendance at 10,000 or more members. Fifty percent of EMR's income is paid semi-annually to its members. Synchronization license assistance is not offered.

If interested, contact Sue Riley, Tel: 727-430-2503; email: [sue@empowerma.com](mailto:sue@empowerma.com); website: [www.empowerma.com](http://www.empowerma.com). Sample contracts, member lists and fee schedules are readily available.

The second is Christian Copyright Solutions (“CCS”), which offers a comprehensive licensing service covering just about any song that would be performed at a Center or in Center-related activities for which no admission fee is charged. Services offered by CCS include performing under its “PERFORMmusic License”. Fees range from \$199 per year for congregations with less than 200 members to \$2,100 for congregations in excess of 15,000 members. Under the CCS “WORSHIPcast Streaming License,” non-commercial transmissions over the Internet (e.g. streaming) are authorized. Fees for this service currently range from \$225 per year for congregations with average weekly attendance under

200 to \$1750 per year for congregations with average weekly attendance in excess of 15,000, There is also a one-time activation fee ranging from \$25 to \$90 depending on size. . Discounted rates are available to CSL Centers by speaking with Stin Fox (see below).

CCS also offers a service called PERMISSIONSplus which obtains synchronization licenses for the use of music in audiovisual productions such as DVDs, films, etc. (See: [www.christiancopyrightsolutions.com/permissionsplus/](http://www.christiancopyrightsolutions.com/permissionsplus/)) This can be a costly and time consuming process. . Synchronization licenses may also be obtained directly from the copyright owners.

Sample contracts and other information are readily available from Stin Fox, Tel: 251-300-3402; email: [stin@christiancopyrightsolutions.com](mailto:stin@christiancopyrightsolutions.com). The CCS website is [www.christiancopyrightsolutions.com](http://www.christiancopyrightsolutions.com).

### **I want to sell copies of my services that may contain music. Do I need to pay royalties?**

Yes. Including music in an audiovisual production is considered “synchronization” and is never subject to any Fair Use exemptions. If you sell or give away copies of the service (or even just the audio portion) and it has copyrighted music, you have to negotiate a license with the owner of the composition (generally the publisher) and the master recording (if it is not a live performance). This is preferably done prior to distributing copies, even if you are not charging for them.

### **May I sell downloads of audio copies of my services or sermons that also contain copyrighted music?**

Audio only copies (i.e., MP3 files or CDs) are not considered synchronizations. However, they are still considered reproductions. The guidelines for licensing recorded copies are the same as for releasing any other type of CD. Permissions are required from both the publisher and master owner.

### **May I change or adapt the lyrics to a copyrighted song?**

Generally, only the copyright owner can authorize any meaningful change to their lyrics. But it is not clear if simply changing “Him” to “Them”, for example, would qualify as such. If the performance of a work is exempt, then usually any non-seditious lyrical change is generally acceptable. If a minor lyric change is made in performing the song in a service, it would likely qualify under the copyright exemption.

### **May I commission new arrangements of a copyrighted musical work?**

A new arrangement may be created with permission of the copyright owner. However, the owner of the copyright is entitled by law to own any derivative versions of the work. This includes any new arrangements that are created or commissioned. Creating a new arrangement does not grant the right to use the original, protected musical work.

## **I am teaching classes at our church. May I make copies of music for my students?**

Teachers are permitted to make limited copies of copyrighted works for use in the classroom. There are very specific guidelines: <http://www.copyright.gov/circs/circ21.pdf>

Most of the criteria concern excerpts from written works as opposed to recorded or sheet music. But it is a good guideline for a teacher not to sell or distribute music in the classroom which a student can use for non-educational purposes (e.g., continued listening enjoyment after the class is over). Giving someone an MP3 copy of a song would likely be considered an infringement. Giving an MP3 copy of a section of a song for rehearsal purposes is permissible. A teacher may print copies necessary to conduct a lesson in class without obtaining permission so long as the copies are not removed from the church.

For more information:

<http://www.copyright.gov/fls/fl102.html>

<http://www.copyright.gov/title17/92chap1.html#110>

<http://www.copyrightcommunity.com/presentations/PerformanceMyths.pdf>

<http://www.copyright.gov/circs/circ21.pdf>

(\*The original form of these FAQs was prepared and graciously made available to CSL by Corn Music Services, Inc. (Steve Corn) Tel: 818-762-0262 or Email: [scorn@bfmdigital.com](mailto:scorn@bfmdigital.com). Revisions to the original form were made by the CSL Legal Team with input from many individuals and companies active in the music business.)