



SING  
*for*  
PLEASURE

# SfP Pointers

## #9: Copyright - a brief guide for musicians

### What is copyright?

Copyright is an automatic legal right which protects original literary, dramatic, musical and artistic works. In order to qualify for copyright protection, it must be set down in some form; either written or recorded.

### Why is copyright important?

Copyright enables those who have created a work to be paid for their creativity and to be acknowledged as the creator. Others can only use copyrighted work with the permission of the copyright owner. For us as musicians, permission to rehearse/perform is usually implicit, particularly as most copyright owners are music publishers. Should a performance of any copyrighted work take place, then the Performing Rights Society (PRS) should be informed so that an appropriate fee can be calculated and charged – often this is done by the venue which holds a licence. If the venue does not hold a PRS licence, then the performing group will need to let PRS know directly.

Copyright owners can also control how their work is used, i.e. how it is copied, distributed, altered, transmitted, broadcast or performed. Anyone who uses a copyright work without permission can be guilty of infringement, and action could be taken against them.

### When I write something, do I apply for copyright?

No. Copyright is an automatic right which exists as soon as the work exists in a tangible form. Ideas that are not documented in some way (i.e. they are still in your head) cannot be copyrighted.

Copyright for music rests with the composer, unless reassigned. In a piece of choral music there are two copyrights; one with the composer and another with the lyricist unless the text is in the public domain (see below).

### Is copyright protection enforced by law?

Yes. The Copyright Designs & Patents Act 1988 is enforced for copyright protection in the UK.

### How long does copyright last?

#### □ For music, literary and other artistic works

In the UK and the rest of the EU copyright expires 70 years from the end of the calendar year in which the last surviving author of the work dies (<sup>1</sup>). Other areas of the world have different copyright durations (notably Canada, where IMSLP and CPDL servers are often located). If something is hosted on these sites it does not necessarily mean it is legal for use in the UK.

If the author is unknown, copyright will last for 70 years from end of the calendar year in which the work was created, although if it is made available to the public during that time (by publication, authorised performance, broadcast, exhibition, etc.), then the duration will be 70 years from the end of the year in which the work was first made available.

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<sup>1</sup> e.g. A choral piece was composed in the 1990s. The composer, who also wrote the words, died in the year 2000. That work will enter the public domain on 1 January 2071. If however the words were written by someone who died in the year 2010, then the work (both words AND music) would not enter the public domain until 1 January 2081.

### ❑ **Typographical arrangement of published editions**

Copyright protection expires 25 years from the end of the calendar year in which the work was first published in its new typographic form <sup>(2)</sup>. So for example, OUP's Tudor Anthems book is now [partially] out of copyright - see footnote below.

### So what does this mean for me?

The clue is in the word – COPYright. You are not allowed to COPY anything without the permission of the copyright owner. This includes:

- ❑ **Copying any part of the sheet music.** It's worth noting that copying means photocopying, scanning, copying by hand, putting into Sibelius/Finale (other computer notation programs are available), re-notating into a graphic score and any other way you can think of!
- ❑ **Arranging the music for your ensemble.** If you wish to do this, you should ask the copyright owner for permission. The new arranger may be identified as the arranger, but copyright in the new arrangement will normally revert to the original copyright owner.
- ❑ **Copying the words of songs to give out as song sheets.** The words are covered under separate copyright and the lyricist must have been dead for 70 years for this to be legal.
- ❑ **Recording a performance of a copyrighted work.** Even if it's only on your phone...
- ❑ **Copying CDs, MP3s etc.** And of course, sending them to friends.
- ❑ **Transcribing from a recording** – listening to a recording, working out the tune/harmony and then notating it in ANY way.

The following are grey areas:

- ❑ **Recording a song-teaching session** – recording workshops and/or parts as they're being taught. Fine for Mozart, probably not fine for arrangements of pop songs.
- ❑ **Teaching a song by ear that you've heard somewhere** – either from a workshop or a recording or being taught by a friend; by not purchasing a copy of the original music you are denying income to the copyright owner...

It is worth pointing out that for songs designed to be taught by rote, such as those published by Sing for Pleasure, it is extremely unlikely that any copyright owner would take action (although having an original copy means you will teach it correctly...)

*[Additionally, the Copyright Act of 1988 created additional copyright of 50 years for works that were unpublished on 1 August 1989. These works will enter the Public Domain on 1 January 2040. The creates the anomaly where, for example, a new, undiscovered piece by William Byrd is technically still in copyright...]*

### Help! I do all/some of the above and want to stay legal, what can I do?

The reality is that we all do some of the above and that if copyright owners enforced all of their rights all of the time, there would be very little music-making going on in the world. Performance of music that is published is often managed by PRS, and by making a PRS return (i.e. letting them know what you have performed) you will be complying with all relevant legislation. See below for the specifics regarding physical copies of music.

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<sup>2</sup> e.g. An editor prepares a new scholarly edition of Mozart's piano music. The music (i.e. the actual notes) is in the public domain as Mozart has been dead for over 70 years, **BUT** copyright exists in the typography and layout on the physical page and therefore it cannot be copied exactly. However, this new edition may be used for a further edition, as copyright in the music no longer exists. **\*Beware of edited Renaissance music\***: if the editor has made significant changes to the music (e.g. adding realised organ accompaniments), a new copyright exists in those parts which are new/additional and the editor would need to be dead for 70 years for those parts to be used.

## Copyright myths

### 1. **Everything on the Internet is ‘public domain’ and free to use.**

Unfortunately the term ‘public domain’ does not mean what most people think. It actually means ‘not copyrighted’. In the UK, a work enters the public domain 70 years after a composer/writer’s death. Works published on the Internet may be publicly accessible, but most are not in the public domain.

This is especially important to note with editions on CPDL. Many typesetters and arrangers release their work on CPDL licensed under Creative Commons licences (for more information, see <https://creativecommons.org/licenses/>). More often than not, this means that their work can be used for free, but take care that editions of earlier works still falls within the 70-year rule. Some countries have a 50-year rule, which means that some editions on CPDL are Public Domain in some countries, but still subject to original copyright in the EU and elsewhere.

### 2. **Anything without a copyright notice is not protected.**

No. Copyright protection always applies.

### 3. **If I change/arrange someone else’s work I can claim it as my own.**

This is a common misconception. Any arrangement you may make should have the permission of the copyright owner. The act of copying or adapting someone else’s work without permission is a breach of copyright. Also any adaptation will be legally regarded as a derived work; so if you simply adapt the work of others, it will still be their work and they have every right to object (and they are also entitled to any money you make from their work).

### 4. **I can legally copy 10% without it being infringement.**

No. Unless it is allowed under fair dealing/fair use rules, any unauthorised use of copyright work can potentially lead to legal action.

When using quotes or extracts, there is no set percentage figure that can be applied; each case must be viewed on its own merit. In copyright cases that have gone to trial, it has been shown that it is the perceived importance of the copied content, rather than simply the quantity, that counts.

### 5. **It’s OK to use, copy or publish other people’s work if I don’t make any money out of it.**

No. Except in specific circumstances permitted under fair dealing rules, any copying or publication without the consent of the copyright owner is an infringement.

If the use has a financial impact on the copyright owner (e.g. lost sales from photocopies), then you could also face a claim for damages to reclaim lost revenue and/or royalties.

### 6. **It’s hard to prove copyright infringement.**

This is not the case, as copyright law is classed as civil not criminal law. Civil law requires a lower burden of proof. In a civil case, the ‘beyond reasonable doubt’ threshold for guilt is replaced with the ‘balance of probability’ test.

### 7. **Copyright in music recordings.**

A sound recording will have a separate copyright to the underlying musical composition. This means that a new recording of an old piece of music will still be protected under copyright, even if copyright has expired in the original music.

### 8. **I’ve bought an original copy – I can legally copy it.**

No. You are permitted to make one copy of one page to aid with difficult page turns, and to make one or more copies for examiner’s use in an examination only. For any other copying, you must have permission of the copyright owner for each and every piece you wish to copy. Usually these copies will need to be destroyed after use, and the copyright owner may charge a licensing fee.

This leads nicely on to...

## Photocopying – the musician’s nightmare

*Photocopying also means scanning, copying by hand, putting into Sibelius/Finale (or any other computer notation program), and any other conceivable copying method!*

The basic rule is this:

### **Photocopying music is not necessarily illegal, but unauthorised photocopying is.**

We’ve all been there, we’ve all done it at some point or another: either used photocopies, or photocopied for our ensembles.

The rule boils down to this:

- If the work is in the public domain (i.e. 70 years after composer and lyricist’s death) **AND** the edition was published more than 25 years ago, then it may be copied (but see footnote on page 2 about editorial additions).
- If the work does not fall into the above category, then it is not legal to copy in any way unless you have the permission of the copyright owner, preferably written.

## Fair use/fair dealing

The concept of fair dealing or fair use is a common one, and you may have heard many examples of what is and isn’t permitted under fair use rules.

### ***Don’t believe any of them.***

The UK’s fair dealing rules are quite a lot more restrictive than those of other countries and most rules, as they relate to printed music, can be found in this document:

[http://www.mpaonline.org.uk/sites/default/files/Code\\_of\\_Fair\\_Practice\\_1.pdf](http://www.mpaonline.org.uk/sites/default/files/Code_of_Fair_Practice_1.pdf)

In a nutshell, there are only six scenarios in which you can make copies under fair dealing rules and none of these apply to performing musicians [with the possible exception of the final scenario]:

1. Research and private study
2. Instruction or examination
3. Criticism or review
4. News reporting
5. Incidental inclusion
6. Accessibility for someone with a visual impairment

## Further Reading

For those who want the full picture, go to:

<http://www.legislation.gov.uk/ukpga/1988/48>

A shorter version is available at:

[http://en.wikipedia.org/wiki/Copyright\\_law\\_of\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Copyright_law_of_the_United_Kingdom)

Lots of useful information on the subject also appears on the Music Publishers Association website:

<http://www.mpaonline.org.uk>

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