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Craig Jordan, Presenter

Important Copyright Issues for the Music Educator

History of Copyright in America

- Copyright Act of 1790. Protection to the authors of books, maps, and charts for 14 years and a renewal of an additional 14 years. (Althouse: 23)
- Revised in 1831 to include composers of musical works. Revised again in 1865 to protect photographs and again in 1870 to protect works of fine art and dramatic works. (Althouse:23)
- Copyright Act of 1909. Increased the term of protection from 14 years with a 14 year renewal to 28 years with a 28 year renewal. It also introduced the “mechanical license” and the right of performance. (Althouse:24)
- Copyright Act of 1976. This act and the Extension Act of 1998 provide the following terms: (Althouse: 28)
 - Works published between 1923 and 1963 have the original 28 year term and can be renewed for an additional 67 years for a total of 95 years.
 - Works published between 1964 and 1977 have the initial 28 year term and an automatic 67 year renewal for a total of 95 years.
 - Works published after 1977 are protected for the life of the composer plus 70 years.
 - Works published prior to 1923 are in the Public Domain.
- Sonny Bono Copyright Term Extension Act of 1998. Also known as the Mickey Mouse Copyright Extension Act. The Disney Corp. and Gershwin estate pushed for perpetual rights. This act extended the rights to 120 years from creation or 95 years from first publication. Whichever is shorter.

Exclusive Rights of Copyright Owners

1. To reproduce the work in copies or phonorecords.
2. To prepare derivative works based on the work
3. To distribute copies or phonorecords of the work to the public by sale, rental, lease or lending.
4. To perform the work publicly.
5. To display the work publicly.
6. In the case of sound recordings, to perform the work publicly by means of digital audio transmission.

Fair Uses

1. The purpose and character of the use, including whether such use is of a 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 or value of the copyrighted work.

Fair Use Guidelines for Copying Music.

1. Make a copy of a lost part in an emergency, if it is replaced with a purchased part in due course
2. Make one copy per student of up to 10% of a musical work for class study as long as that 10% does not constitute a performable unit
3. Make up to three copies to replace a copy that is damaged, deteriorating, lost, stolen from a public

library or archive (or if the existing format has become obsolete, and if, after reasonable effort by the library/archive, an unused replacement cannot be obtained at a fair price)

4. Make one copy of a short verbal or a graphic work for teacher's use in preparation for or during a class

Prohibited Uses

1. Copying to avoid purchase
2. Copying music for any kind of performance (but note the emergency exception above)
3. Copying without including a copyright notice
4. Copying to create anthologies or compilations
5. Reproducing materials designed to be consumable (such as workbooks, standardized tests, and answer sheets)
6. Charging students beyond the actual cost involved in making copies as permitted above
7. Making copies so that students don't lose originals.

Sound Recording Fair Uses (Frankel: 75)

1. Make a single recording of a student performance for study and for the school's archive.
2. Copy songs from a legally obtained CD to create a compilation (for personal use)
3. Use legally obtained personal CDs (including compilations) in the classroom for evaluation, rehearsals, exercises, or examinations.
4. Make a single recording of aural exercises or tests using copyrighted material

Prohibited Sound Recording Uses (Frankel:175)

1. Make multiple copies of a recording of a student performance without paying the appropriate mechanical licensing fees.
2. Copy songs from a legally obtained CD to create a compilation for someone else.
3. Downloading music illegally from peer to peer file sharing services.
4. Download or upload MIDI files of music that is protected by copyright.
5. Make copies of accompaniment CDs for students.
6. Post recordings on a Website without the permission of the publisher.

Video Recording Fair Uses (Frankel:176)

1. Display a legally obtained video to a class for face- to-face educational purposes.
2. Make an archival copy of a video.
3. Videotape a concert or student performance for archival purposes.
4. Include 10% or three minutes in a multimedia presentation or project.
5. Incorporate video images for display during a school concert
6. Videotape broadcast television programming for use in the classroom for a limited time.
7. Videotape certain cable TV broadcasts if the channel participates in Cable in the Classroom.

Prohibited Video Recording Uses (Frankel:176)

1. Show a video to a class as a reward
2. Videotape a concert or student performance and make more than one copy. A Synchronization license is required.
3. Broadcast a videotaped concert or performance on television without permission or synchronization license.
4. Include more than 10% in a multimedia presentation.
5. Use video images in a concert where admission is charged.

Public Performance Right Limitations

1. **Face-to-face teaching activities** of a nonprofit educational institution, in a classroom or similar place devoted to instruction. Playing recordings in class also falls under this category. However,

this exemption does not apply to:

- Performances by actors, singers, or instrumentalists brought in from outside the school to put on a program.
 - Performances given for the recreation or entertainment of any part of an audience (regardless of cultural value or intellectual appeal).
 - Performances in profit-making institutions (for-profit dance or music studios).
 - Performances in an auditorium or stadium during a school assembly, graduation ceremony, class play, or sporting event, where the audience is not confined to the members of a particular class.
2. **Distance education activities** where a musical work is performed or displayed in a transmission in an amount comparable to that typically displayed in a live classroom session. The law places the onus of copyright policy on the transmitting body or institute. To comply with this exemption, the performance must be
 - Made by, at the direction of, or under the actual supervision of an instructor
 - An integral part of a class session offered as a regular part of the normal teaching of a public school or accredited nonprofit educational institution
 - Essential to the teaching content of the transmission and be made solely for and (to the extent technically feasible) limited to reception by students officially enrolled in the course.
 3. Religious services.
 4. **Performances at a school concert** of non-dramatic literary or musical works as long as no money changes hands. No one can gain any direct or indirect commercial advantage. There is an exception to this rule. Admission can be charged as long as it is used for educational or charitable purposes.

Parody (Frankel:78)

1. The work is an actual parody. The public will not confuse the parody with the original.
2. The parody is not made for commercial use.

Lending Music Libraries are considered a fair use in copyright law as long as the following requirements are followed. This includes school and music libraries. (Frankel:87)

1. You must lend the complete set of original parts for educational purposes.
2. You must make no photocopies of the originals.

Posting videos of Musical Performances on You Tube or School Tube.

You Tube

1. You need to get permission from all individuals or their parents in the video.
2. Permission from the copyright owner(s). www.youtube.com/t/howto_copyright

School Tube Performances are considered public performances not recordings since the video is streaming. www.schooltube.com

1. Reproduction Right—Uploading a video of a performance of a song to the Internet is considered a reproduction and requires a license. Contact the music publisher for a license to reproduce (sometimes called “synchronization right”).
2. Public Performance Right

Music Licenses

Mechanical License: Grants the right to record, reproduce and distribute a specific composition at an agreed upon fee per unit manufactured and sold.

Synchronization License: Grants the right to synchronize the musical work in timed relation with audio-visual images in a film, motion picture, video tape or digital file.

Performance License: Grants the right to the owner of the copyright to collect royalties on any public performance of the work.

Print License: Grants the right of reproduction and distribution of a printed work, including books and musical compositions.

Fair Uses for Derivative Works

1. “Music teachers 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.
2. Music teachers who get a compulsory license for recording can make a musical arrangement of a work to the extent necessary for their ensemble. The arrangement cannot change the basic melody or fundamental character of the work.”

Permission to Arrange

If you want to make an arrangement of a copyrighted work you must contact the publisher or copyright owner to request Permission to Arrange. You can download this form from the SCSBOA or MENC website. Begin this process early as it can take several weeks to months to get permission. If the publisher grants the permission, you will be sent a contract outlining the terms of the agreement and usually a licensing fee. You must sign and return the contract and any license fees to the publisher to FULLY execute the contract prior to beginning any work on the arrangement. Do not wait until the last minute or begin arranging the work prior to fully executing the contract.

This arrangement will usually be a Work for Hire, which means that the copyright holder will own this arrangement and the arranger will not have any right to the work. The license will state that it is for the sole use of the students and staff of your program and the arrangement may not be loaned, leased or sold to anyone else. Be very cautious of purchasing arrangements of copyrighted works from arrangers or websites that are not the copyright holder of the work. You most likely will be denied permission.

Special Considerations for Marching Band

Most marching band, indoor percussion, and winterguard associations now require that every ensemble has obtained copyright clearance on all of the music performed. Several circuits sell video and audio recordings of the performances. It is the responsibility of the videographer or producer of the DVD to secure the mechanical and synchronization licenses and to pay the appropriate royalties to the copyright owners. Therefore, you must have approved arrangements and will be asked to fill out a Music Information Sheet for the production company. SCSBOA provides these sheets for Championship performances.

There are a few other grey areas that I have observed that can put you, your school, and district at risk. First of all, be very cautious about using other copyrighted content in your productions. You must get permission to use text or sound bytes from copyrighted TV, films, movies, books, images, characterizations, or any other audio content. The use of any copyrighted recording is prohibited. In addition, be very careful with music from musicals that are covered under Grand Rights. These include characterizations from Disney movies and Broadway musicals. The use of the characters and images is strictly prohibited in your production, even if you have secured the rights for the music, the permission is for the music alone. These organizations regularly peruse the Internet looking for violations and infringements. Finally, make sure that a composition that is considered an “original” composition does not contain any copyrighted material. If you can name the tune, it has to be licensed. Remember that if you are not sure, ask for permission, or do not include it in your program. In this day of You Tube, cell phones, and the Internet, it is very easy for your performances to be broadcasted worldwide with or with

out your permission and control. Make sure that you have protected yourself by avoiding potential infringements.

Penalties for Infringement

1. Statutory damages of from \$750 to \$30,000 in the simplest cases.
2. If a court decides that the act of infringement was willful, the damages can go up to \$150,000 per copyright infringed.
3. If a court finds willful infringement for commercial advantage and private financial gain is proved, the infringer can face criminal fines of up to \$250,000 or five years' imprisonment, or both.

Please remember to be a good advocate to your students and teach them by your example to respect copyright law and the intellectual property of others. There are some useful ideas for the classroom on the MENC Copyright Center webpage.

Disclaimer: Craig Jordan is not an attorney and therefore any information in this clinic or handout presented by the SCSBOA is for informational purposes only and is not legal advice. If you are in need of legal advice please consult a copyright attorney.

Resources

Althouse, Jay. *Copyright: The Complete Guide for Music Educators* Van Nuys: Music in Action, 1998.

Frankel, James. *The Teacher's Guide to Music, Media, and Copyright Law* Milwaukee: Hal Leonard Books, 2008

MENC Copyright Center www.menc.org/resources/view/copyright-center

United States Copyright Office www.copyright.gov

American Society of Composer and Publishers (ASCAP) www.ascap.com

Music Publishers Association (MPA) www.mpa.org

Broadcast Music, Inc. (BMI) www.bmi.com

The Harry Fox Agency www.harryfox.com

RoyaltyFreeMusic.com

Bands of America www.musicforall.org

Copycat Music Licensing www.copycatlicensing.com

SCSBOA www.scsboa.org

Craig Jordan
Hutchinson Middle School
La Mirada, CA
cjordan@nlmusd.k12.ca.us
craigjordan@me.com
www.craigjordanmusic.com