

# **NATS Commonly Asked Copyright Questions for Teachers, Accompanists, and Students**

## **Purpose**

Voice teachers face copyright issues regularly. NATS has compiled these common questions and answers about copyright issues with teachers, accompanists and students in mind. The information below addresses copyright law in general, the doctrines of fair use and public domain music, and the educational use of copyrighted musical works, in everyday instruction and competitions. If you have additional questions about copyright issues, please contact the publisher of the material in question, the Music Publishers Association or an attorney.

## **GENERAL COPYRIGHT LAW**

### **1. What is a copyright?**

Federal law provides copyright protection in “musical works, including any accompanying words.” Musical works include original compositions, original arrangements, new arrangements of the composition, lyrics, and sound recordings. The rights given to a copyright holder include the exclusive rights to reproduce the copyrighted works (i.e., to make copies), to prepare derivative works based on the copyrighted music, to sell, rent, lend or transfer ownership of copies, and in the case of sound recordings, to perform the copyrighted musical work publicly by means of an audio transmission.

### **2. How long does a copyright last?**

The length of a copyright depends upon when the work was created. For works created after January 1, 1978, copyright protection is extended during the author’s life plus an additional 70 years after the author’s death. If the song was a joint work prepared by two or more authors, the term lasts for 70 years after the death of the last surviving author. If the work was created between 1964 and 1977, the copyright term is 95 years from the publication date of the work. For songs published between 1923 and 1963, if the author applied for a renewal of the copyright, the songs will not enter into the public domain until 95 years from the date they were published. Therefore, the earliest any of these songs would have entered into the public domain would have been 2018 (95 years from 1923). All works published in the United States before January 1, 1923, are in the public domain.

### **3. What are the penalties for violating the copyright laws?**

If an individual were found to be making illegal copies of copyrighted works, they could be liable for either the copyright owner’s actual damages and additional profits made by the individual or face fines of not less than \$750 nor more than \$30,000 (statutory damages), as the court determines to be equitable. If the court finds willfulness, the court may increase the award up to \$150,000 per copyright infringement. If criminal willful infringement for commercial advantage and private financial gain is proven, fines can increase up to \$250,000 and/or 5 years imprisonment or both.

**4. I have written several musical compositions. Do I need to file them with the U.S. Copyright Office in order to receive a copyright?**

No. For musical works that are created after January 1, 1978, the copyright automatically attaches to the musical composition when it is written or recorded for the first time. It is no longer necessary to register the work with the U.S. Copyright Office or to publish the work in order to receive copyright protection under the law.

**5. If a musical work automatically receives copyright protection, why do songwriters register them with the U.S. Copyright Office?**

Although an artistic work obtains copyright protection in favor of the artist at the time of creation, there are still several important advantages to registration of the work with the U.S. Copyright Office. First and foremost, registration constitutes public notice of your copyright claim. Additionally, if the work is registered within three months of its publication or prior to infringement of the work, the copyright owner will be entitled to receive statutory damages and attorney's fees against an infringer. Without registration, the owner would only be entitled to an award of actual damages and lost profits.

**6. May I copy sheet music if it does not have a copyright symbol on it?**

In most cases, no. While a copyright notice (either in the form of the symbol © or the words "copyright") 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. The only time a copyrighted work could be copied is if it has entered the public domain, or fair use applies, as explained further below.

**7. If I purchase a song book, I own it. How come I may not copy pages of the book I own and distribute it?**

One of the most important rights conveyed by a copyright is the exclusive right to reproduce the musical work. 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. If you copy from the book without the permission of the copyright holder, you infringe the copyright. In other words, you violate the rights of the copyright holder by taking his or her property.

**8. May I copy a work if I list the composer's name and the copyright symbol on the copy?**

For the most part, the answer is no. As seen below, there are certain exceptions in which you are allowed to make copies as long as you indicate that the work is copyrighted by someone else. However, in most cases, simply listing the author's name and indicating that the work is under copyright protection does not allow you to then make copies of the work. You will need the permission of the copyright owner.

**9. What if I distribute the copies for free and do not charge for them. Is that still a violation?**

Yes. This is one of the common misconceptions under copyright law. If you make copies and give them away for free, you are still infringing the copyright because you are making copies without the permission of the copyright holder. The fact that you gave the copies away versus making a profit on them may reduce damages that the copyright holder collects against you in an infringement lawsuit. Nevertheless, the simple act of copying the work without permission constitutes infringement and entitles the copyright holder to damages.

## **PUBLIC DOMAIN AND FAIR USE**

**10. I have heard that if a musical composition is on the Internet, it is in the public domain. Is that true?**

No. 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. One should assume that all works found on the Internet are protected by copyright unless explicit permission is granted from the owner or a licensor/publisher of the work to make copies of the work.

**11. Isn't any musical work composed prior to 1923 in the public domain?**

Yes, but be careful. It is true that music and lyrics written by an American author and published prior to 1923 are in the public domain in the United States. Once a work is in the public domain, it can be used by everyone. Anything placed in the public domain is a complete abandonment of all rights. Therefore, if a work has been put in public domain because the copyright has expired or because the copyright holder abandons their rights and places the work in public domain, it is available for anyone to use in any way they wish. For example, the classical works of Bach and Beethoven are free for anyone to use. 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 the recording even though the underlying musical works performed on the recording were in the public domain.

**12. Is there a list of musical works that are in the public domain?**

There is no definitive list of what music is in the public domain. There are, however, websites that make available sheet music which is in the public domain. One example would be the Mutopia Project located at <http://ibiblio.org/mutopia>. This site contains a collection of modern editions, arrangements and new music which is in the public domain. According to the site, all of the musical works on the Mutopia Project may be freely downloaded, printed, copied, distributed, modified, performed or recorded. However, be careful using websites such as Mutopia Project, as the music contained on

the website may be subject to different types of license requirements, such as “creative commons attribution,” which requires that you give the original author credit, or the “creative commons attribution-share alike” license which requires that you distribute your resulting work under an identical license.

**13. If I purchase sheet music, may I take photographs of it on an electronic device (e.g., an iPad or other tablet)?**

Generally, no. By photographing the sheet music, you are making an unauthorized copy of the sheet music.

**14. Since I am a teacher and am using the music sheets for instructional purposes, isn't that use “fair use?”**

The doctrine of fair use was created by Congress as a defense to infringement under the U.S. Copyright Laws. The doctrine of fair use permits limited copying without the permission of the author to allow such things as commentary, criticism, news reporting, research and education, subject to certain restrictions and limitations. Whether the use of a certain work will qualify as fair use depends on a number of factors including: 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; and 4) the effect of the use upon the potential market for or value of the copyrighted work. To assist educators, [certain guidelines](#) have been established to clarify how these fair use factors apply in certain educational settings. You may find those guidelines [here](#).

Under these guidelines, there exists a limited right of permissible copying by teachers, without the permission of the copyright holder, for educational purposes. As spelled out in the next section regarding educational use of copyrighted music, the types of permissible copying for education is limited. It does not allow unlimited copying of copyrighted works by educators. Rather, there are very restricted permissions given to educators under the fair use doctrine.

Copying should never be done for a work that is deemed to be “consumable.” For example, workbooks, standardized tests and answer sheets, and exercise manuals would all be considered “consumable” works, and therefore not eligible for copying under the “fair use” doctrine.

## **EDUCATIONAL USE OF COPYRIGHTED WORKS**

**15. May I copy selected pages of sheet music out of several books and assemble my own collection for the private use of my students?**

No. Each work from a collection or compilation of musical works is protected by copyright. Therefore, you cannot copy any performable unit and place it in your own collection. This is true even if you are not distributing the collection, but only using it

privately for your students. Any copying of the performable works would constitute an infringement.

**16. I have taken excerpts from musical compositions and made copies for my students. Is this permissible?**

As noted above, you may not copy a performable unit even for educational use. You may, however, copy excerpts of works for educational purposes, provided that the excerpts 1) meet the tests of brevity and spontaneity; 2) meet the cumulative effect test; and 3) each include a notice of copyright.

Whether the test of “brevity” is met, will depend on the type of work. For example not more than 250 words from a long poem may be used, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less.

In order to meet the test of “spontaneity”: 1) the copying must be at the instance and inspiration of the individual teacher; and 2) the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to request for permission.

The “cumulative effects” test requires that 1) the copying of the material is for only one course in the school in which the copies are made; 2) not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term; and 3) there shall not be more than nine instances of such multiple copying for one course during one class term.

Notwithstanding all these tests being met, there are certain exceptions and prohibitions to this permissible copying, which an individual who intends to copy under the fair use guidelines should make themselves aware of. For example, the copying shall not be repeated with respect to the same item, by the same teacher from term to term.

When copying the excerpt, music instructors may make one copy per pupil. Therefore, if you are teaching ten students, you may make ten copies of the excerpt for academic purposes.

**17. I have made copies of several excerpts of musical compositions for educational purposes. Each excerpt meets the tests set forth above . May I sell these copies to my students?**

No, no charge shall be made to the student beyond the actual out-of-pocket copying charges.

**18. I have two students that are playing a duet. May I make a copy of the sheet music for the second student?**

No. If two students are to perform a duet of copyrighted music, each would have to purchase sheet music. The same is true for accompanists. It would be a copyright violation to copy sheet music for one of the students.

**19. May I make copies of sheet music for page turning purposes?**

The law is not clear on this point. If you have legally purchased a copy of sheet music, and are copying only a single page for a difficult page turn, this might constitute “fair use”.

**20. My student forgot his sheet music for a recital. May I supply a photocopy of it?**

In this case, the fair use doctrine would permit an emergency copy to be made for the purpose of the recital. The copy could be used during the recital, so long as it is later replaced by a purchased copy.

**21. If I purchase song books or sheet music, may I re-sell it to my students? If so, may I re-sell it for more than I purchased it?**

Yes. Music teachers may purchase sheet music and instruction books on a wholesale basis and resell them to students on a retail basis. You may also sell the sheet music and instruction books at a profit. Please note that depending upon the state you are in, the sales to the students may be subject to state sales tax.

## **RECITALS AND COMPETITIONS**

**22. There are several online music services where sheet music may be downloaded for a fee. If I pay the fees necessary to download sheet music, may I then sell the sheet music to a student?**

No. Online music services require in their license with consumers that the consumer use the downloaded music only for personal use. You would violate your license agreement if you re-sold the sheet music to a third party (e.g., the student).

**23. Do I need a music license from ASCAP or BMI to hold a recital for my students?**

One of the rights held by a copyright owner of a musical work is the exclusive right to perform the work in public.

To perform or display a work “publicly” means— (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. If music is performed in a public place or if music is transmitted to the public via radio, television, music on hold, or by the Internet, it may only be done with the permission of the copyright holder. That permission is typically obtained by purchasing a music license from the three primary music licensing organizations of ASCAP, BMI and SESAC. Please note that a music license from ASCAP, BMI and SESAC is only required for public performance of music. Music performed in a private residence, during an educational lesson in a private studio, or as part of a private recital involving a selected group of students, usually does not constitute a public performance. Therefore, recitals by a music instructor’s students for a

select group of family and friends would likely not constitute a “public performance” and would not require a music license.

**24. Is a music license needed for music recitals in schools?**

No, there is a school concert exemption. If no performers, promoters or organizers of the event are paid and no admission fees are charged, or if all proceeds from admission fees go to charitable or educational purposes, then musical performances by students or teachers, including performances by student bands and orchestras, may take place without a license or permission. However, the performance may not take place if the copyright owner objects in writing seven days before the performance.

**25. May I record a student’s performance for the purpose of evaluation and instruction?**

As noted above, music may be performed in a private setting without the permission of the copyright owner. However, when a videotape or audiotape is made of the performance, the music is now not only being performed, but also copied. The taping of the music raises the question as to whether permission of the copyright holder is required since the musical work is being copied. It has been recognized that a music instructor may make a single copy of a recording of performances by students for the purpose of evaluation or rehearsal. That copy may be retained by the teacher for educational purposes. However, no more than a single copy may be made and retained. If multiple copies of the performance are made, the permission of the copyright holder would be required.

**26. May parents videotape their children’s piano recital without a license?**

Yes, as long as the videotaping is done for private purposes only and is not distributed outside of the immediate family. If a parent were to make copies of the videotape and attempt to sell or distribute them beyond the immediate family, there could be a copyright violation.

**27. May a music teacher create an instructional video and post it on the Internet (e.g., YouTube) as an educational service?**

The answer will depend upon whether the materials being used are covered by copyright. If the music being played in the video is in the public domain, there would be no infringement. However, if the music is covered by copyright and played without the permission of the copyright holder, there are infringements of the synchronization and broadcasting rights.

**28. What are synchronization rights?**

A song writer or publisher who owns the copyright possesses a bundle of rights. One of those rights is referred to as synchronization rights. Basically, it refers to the right to allow the music to be synchronized with a visual image. For example, when music is used in the background of a television show or film, or placed on a music video, the creator of that video or film must receive the permission of the copyright holder of the music. Typically, that permission is given through a synchronization license agreement.