

Everything You Wanted to Know About Copyright . . .

. . .but were afraid to ask

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Blame it on her!

- Statute of Anne, 1710
 - Prevented the copying of “writings” for 14 years
 - Renewable for another 14 years (life expectancy)
- French laws (1791, 1793)
 - Works of “fine art”
 - Granted authors right to control copying, distribution and sale of their works
 - Included a fixed term of rights after the author’s death.



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The U.S. Constitution



- Article 1, Section 8 (1787)
 - “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors, the exclusive Right to their respective Writings and Discoveries.”
 - Purpose was to promote the creative process
 - Note use of “exclusive”
 - Laid the groundwork for the US Copyright Act of 1790
 - First-ever federal copyright law (some states had laws already)
 - “Fourteen years from the time of recording the title thereof” with option to renew for another 14 years
 - Did not include performance rights (or mechanical, obviously)

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US Copyright Act of 1909

- Protects the right to:
 - Perform the work publicly
 - Translate the work into other languages
 - Mechanical reproduction (“mechanical license”)
 - First term of copyright lengthened to 28 years with the option to renew for an additional 28 (within 1 year of expiration of first term) – total 56 years
 - Copyright notice is required on printed music



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US Copyright Act of 1976

- Sound Recordings – defined as “original works of authorship comprising an aggregate of musical, spoken or other sounds that have been fixed in tangible form”
- Phonorecords – defined as “physical objects in which sounds are fixed” (records, tapes, etc.)
- Publication - defined as “distribution to the public” included works not published by in “fixed form,” copyright notice no longer required
- Finally addressed use of music in TV, cable TV, records and movies
- Life of the composer + 50 years
- Went into effect January 1, 1978



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CETA, 1999 (The “Sonny Bono” Act)

- Copyright Term Extension Act
- Increased the total term of all works already under copyright protection as of January 1, 1999 were extended by 20 years
- Goal was to align USA with European Union
- Works published after December 31, 1977 are protected for 70 years after the death of the composer (or in the case of joint works, the last survivor)



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Summary of Copyrights

- Created on or after January 1, 1978
Life of author + 70 years
- Published between 1923 and 1978
95 years from publication
- Works for hire, anonymous works created on or after January 1, 1978
95 years from publication or 120 from creation, whichever is earlier
- Copyright notice not required after March 1989
protection is now automatic



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“Copyright” Defined

- The Copyright Owner has the **exclusive** right to:
 - Reproduce in print or phonorecord
(“phonorecord” includes ringtones)
 - Prepare derivative works/arrangements
(includes compilations)
 - Distribute copies to the public
(sale, rental, lease, lending)
 - Perform the work publicly
 - Display the work publicly
 - Perform the work publicly by means of digital audio transmission
- Called the “Bundle of Rights”



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Fair Use (Copyright Act of 1976)

- Four factors to be considered:

- The purpose and character of the planned use
(transformative factor)
- Nature of the protected work
(“performance” vs. “education”)
- The amount and substantiality of the portion used
(general rule upheld in court is <10% of work)
- The economic harm to the copyright owner
(i.e., is it replacing purchase?)



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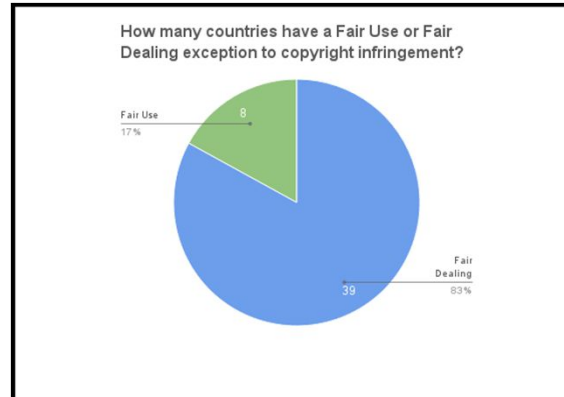
More on Fair Use

- Reproduction for home use (only)
- Definition of “performance” vs. “educational”
If it’s played, it’s “performance” use
Educational use – e.g. harmonic analysis
- Amount copied cannot be performable as a unit
- Any copies made to avoid purchase are ***illegal***
 - Extra copies for judge or accompanist?
 - Copies of a piece that doesn’t have enough parts?
 - Copies so students don’t write on/lose originals?
 - “Imminent performance?”
That term ***doesn’t exist*** in US Copyright Law



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International Fair Use



Out of 46 countries with Fair Use or Fair Dealing exceptions to copyright infringement, only 8 had a flexible Fair Use limitation.

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The Fair Use/Fair Dealing Handbook

- <http://infojustice.org/wp-content/uploads/2015/03/fair-use-handbook-march-2015.pdf>
- Updated March 2015
- Nearly 50 countries' and territories' policies with specific legal citations
- e.g.: UK "Copyright, Designs and Patents Act" - Allows for non-commercial and private study use, research, parody, reporting of current events. In some cases "sufficient acknowledgement" is required.
 - Additional copying by other than the researcher, student or librarian is not allowed.

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Public Domain



- Copyrighted before 1922
 - You must have proof before copying
- permission is not automatic!
(Tangible copy with a copyright date before 1922)
 - Finding a piece on imslp is no guarantee either!
 - Distinction between a public domain piece and a recording or arrangement of the same piece
A print music copy of a piece and a recording or arrangement of that piece are two different entities
 - No recordings are considered public domain until 2067, even if the piece itself is public domain

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Four Types of Licenses

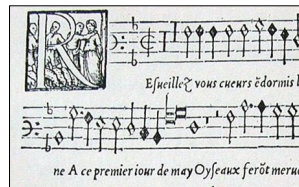


- Print Music License
- Mechanical License
covers all recorded copies, including digital recording
- Compulsory Mechanical License
*for making a recording of a previously-recorded piece
9.1¢ if under 5 minutes, paid to publisher (<5,000 cc)
"Compulsory" means you cannot be refused permission*
- Synchronization License ("Synch")
covers putting audio to video
- Performance Rights License
covers any public performance whether free or not
- PROs (Performance Rights Organizations)
ASCAP, BMI and SESAC

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Out of Print and Backordered Pieces

- **To copy an out-of print piece**, you must have permission of the copyright holder.
- **To copy a backordered piece**, you must have proof that you have the piece on order, proof of unavailability, and a letter from the seller or publisher plus a receipt.
- **To copy a commercial recording**, you must have permission of the owner of the song's copyright as well as the owner of the recording itself.
- **"Home Use"** applies only to use for "a normal circle of family & its social acquaintances"
- Your local print music dealer can help [\(another reason to shop local!\)](#)



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Recent Developments

- The Hatch-Goodlatte Music Modernization Act Signed into law October 11, 2018
- Updates the laws to facilitate licensing of digital services, combining:
 - The Music Modernization Act of 2018 (now called the Musical Works Modernization Act)
 - The Classics Protection and Access Act
 - The AMP (Allocation for Music Producers Act)
- Follows comprehensive study "Copyright and the Music Marketplace" and earlier report, "Federal Copyright Protection for Pre-1972 Sound Recordings."

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MMA, cont'd.

Music Modernization Act



- Music Licensing Modernization
 - Creates a blanket license for digital music providers which covers specific activities (permanent downloads, limited downloads and interactive streaming).
 - Currently these are only on a song-by-song basis
 - Rates to be determined by a market-based standard
 - Physical recordings (CD's, vinyl) still song-by-song
 - Mechanical License Collective (MLC)
 - Collect, distribute and audit the royalties
 - Create and maintain a public database to identify works and their owners

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MMA, cont'd.

- Classics Protection and Access
 - Extends remedies for infringement to owners of pre-1972 sound recordings
 - Available for 95 years after first publication, with additional protection in some cases
 - Statutory licensing for noninteractive digital streaming (internet radio, satellite, cable TV)
 - Lawful (non-commercial) uses of pre-1972 sound recordings not in public domain, e.g. fair use, libraries and archives).

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MMA, cont'd.

- AMP – Allocation for Music Publishers Act
 - Sound Exchange, a collective designed to collect and distribute royalties for owners of sound recordings
 - Instructions (referred to as a "letter of direction") from the person who owns the exclusive right to publicly perform a sound recording by means of a digital audio transmission, or from a recording artist of a such a sound recording; to distribute a portion of royalty payments to a producer, mixer, or sound engineer who was part of the creative process behind the sound recording.

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Digital Millenium Copyright Act

- DCMA signed into law October 28, 1998
- Implements two WIPO (World Intellectual Property Organization) Treaties
 - US is to recognize the copyright of a work copyrighted in another country until it enters the public domain *in its country of origin*.
 - Works created outside the US do not need to be on file with the US Copyright Office before undertaking a copyright infringement lawsuit.



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DMCA, con'td.

- Title I – “*The WIPO Copyright & Performances & Phonograms Treaties Implementation Act of 1998.*”
 - It is illegal to circumvent technological measures taken to prevent people from accessing/copying a work
 - It is illegal to manufacture devices that do this
 - CMI – Copyright Management Information – info (attached to electronic works) about the work outside of its actual content – cannot be altered
 - Law enforcement has exceptions from both



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DMCA, cont'd.

- Title II – “The Online Copyright Infringement Liability Limitation Act”
 - ISP’s are not responsible for the actions of their clients as long as they meet certain provisions
- Title IV – Miscellaneous Provisions
 - Ephemeral recordings (re-recorded for ease of broadcast, e.g. playlists)
 - Library copies of phonorecords (properly labeled)
 - To replace lost or damaged works, works in obsolete formats – if digital copies, they cannot leave the library.

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Meanwhile, in Europe

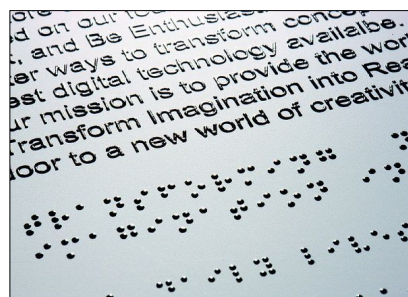


- European Copyright Directive
March 2019
Approved 348-274 by European Parliament
- EU member states have 24 months to translate this into national law
- Article 11 – the “Link Tax”
 - Publishers can charge platforms like Google when they upload links or snippets
 - Article 13 – the “Upload Filter” (now Article 17)
 - Gives sites like YouTube new duties to stop users from uploading copyrighted content.

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■ Marrakesh Treaty Implementation Act

- Treaty signed in 2013, implemented in the US in 2018.
- Amends the US copyright law to allow the US to facilitate access to published works for people who are blind, visually impaired or otherwise print-disabled.
- Applies in cases where needed published versions are not already available (but not to replace a purchase).



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To Add to the Confusion . . .



- Remember that the printed music, the arrangement, the audio and video are all separate entities and each needs licensing separately.
- To apply for permission to re-arrange a piece or copy an out of print piece, contact the *owner of the copyright* (not always the publisher)
 - For example, Southern Music publications are distributed by Hal Leonard, but copyrights are still administered by Lauren Keiser Music, which owns Southern Music.

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Applying for Permission

- Your local print music dealer
(another good reason to use a local dealer!)
- Music Publishers Association
www.mpa.org
dictionary of "imprints"
- Contact the copyright owner directly
give them title, composer/arranger, copyright date/holder and intended dates of use

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What are We Really Teaching Them?

- As potentially expensive as this can be, the fines for infringement are much higher.
- If we are teaching students life skills, then we need to set an example of following – not openly disregarding – the law.
- Rather than focus on “how much we can get away with,” focus on teaching respect for the value of music, the livelihood of the composers and performers, and the legal rights of others.



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Through the use of a short animated video, classroom discussion, and extension activities:

- Students will consider the role of the artistic creator in society and the importance of respecting creative property.
- Students will develop an understanding of what creativity and creative property are, how creators earn a living, and the importance to our society of new creative ideas and products.
- Students will develop a concept of fairness regarding use of creative property. The lesson can also be used to address morals and the principle of cause and effect that what each of us does has an impact on the world.



I made it. I own it. Please don't steal it.

Encouraging & Respecting Creative Work

Visit IMadeIt.org today!

Watch our informative video and download all the resources you'll need to teach your students about respecting creative work.



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PEOPLE ARE WILLING TO PAY \$5
FOR A CUP OF COFFEE THAT

...COST PENNIES TO MAKE
 ...TAKES MINUTES TO PREPARE
 ...IS GONE FOREVER AFTER ONE USE



BUT PEOPLE DON'T PAY \$1
FOR A SONG THEY LIKE THAT

...COST THOUSANDS TO RECORD
 ...CAN BE USED OVER AND OVER AGAIN
 ...TOOK YEARS OF PRACTICE TO CREATE
 ...AND LASTS A LIFETIME

RESPECT THE ARTIST
BUY THE MUSIC

For retailers:

How do we deal with the reality that normally honest people often illegally copyright music – without losing customers??

For publishers:

How can publishers make it easier to get what directors need without having to copy? (e.g. enough trumpet parts)

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Thank you!

Here's my number, so



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