

**GUIDELINES FOR USING
COPYRIGHTED MATERIAL IN
MARCHING BAND ARRANGEMENTS:
CUSTOM AND PUBLISHED**



INTRODUCTION

In the course of operating a vibrant collegiate marching band program, it is often desirable to incorporate music (“Intellectual Property”) that is under copyright protection. This Intellectual Property may come in the form of the latest popular tune (or radio hit), motion picture soundtrack or symphonic composition.

The music you seek may well be found in published form (i.e. commercially available arrangements). Music publishers are usually eager to issue the latest popular song or movie soundtrack in versions designed for the academic market. These versions have the advantage of being both affordable and user friendly.

If the music you seek is not available in commercially published form, or the available versions are not suitable for your college marching band, then you might consider creating your own custom arrangement designed to perfectly match the talent level of your students. This is entirely possible, but will require a license (and fee paid) for the use of the Intellectual Property owned by another individual.

This document has been prepared by the College Band Directors National Association to assist our membership in the proper use of Copyrighted Intellectual Property by athletic bands. It has been reviewed by members of the CBDNA Athletic Band Committee, Tresóna Multimedia, LLC and representatives of various music publishing and sheet music publishing companies.

It is our hope that the college band directing profession will serve as leaders in protecting the rights of copyright holders by (a) using published music in an appropriate and fair manner, and (b) following proper procedures (and paying fees) for use of Custom Arrangements of Intellectual Property owned by other musicians.

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NOTES

Every attempt has been made to make this document as thorough as possible, but covering *every contingency* for *every situation* is simply not possible. If your specific needs are not addressed in these pages, you should ask for permission before proceeding with your plans. Tresona Multimedia, LLC is a good place to begin asking these questions as they represent many of the major music publishers. You can address your questions easily by e-mailing Tresóna Multimedia, LLC at <info@tresonamusic.com>.

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USING MUSIC IN THE PUBLIC DOMAIN

Public Domain is usually considered in effect when the copyrights protecting the Intellectual Property rights (a) have expired, (b) have been forfeited, or (c) are inapplicable. Public domain music is usually easy to identify by virtue of age. Music in the public domain does not require a license.

However, be very careful before ‘assuming’ that a particular piece of music is actually in the public domain. While classical music of the 18th and 19th Centuries is old enough to be in the public domain, much of the music written in the 20th Century is still under copyright protection. This, of course, includes much of the modern concert band repertoire.

It is important to note that published arrangements of musical compositions where the source material for the composition is in the public domain, would probably be protected by copyright because the arranger’s version of the public domain composition would enjoy the protection of a US Copyright.

When in doubt about the status of public domain music, you are encouraged to research as needed to be certain you are not infringing on the rights of a copyright owner. In some cases, it may be necessary to consult a copyright attorney.

One final word of caution: just because something is ‘out of print’ does not mean it is in the public domain. The rights of the copyright holder might well be in effect even though the printed music is unavailable.

CREATING CUSTOM ARRANGEMENTS

1) If you desire to use copyrighted material for a custom arrangement, a license from the copyright holder must be secured. Most of the arrangement licenses you will seek are available from the Tresóna Licensing Exchange, which issues licenses on behalf of most music publishers. The Licensing Exchange is located at <www.tresonamusic.com>.

2) Requesting a license does not guarantee a license. The lack of an approval or license from the rights holder means your request for a license has not

been granted and is to be treated as if it has been denied. Many songs are pre-approved but many others will require permission from the copyright holder. Allow six weeks for requests to be confirmed or denied.

3) The resulting arrangement, once approved, must be uploaded into the Tresóna Licensing Exchange by the arranger so that it can be marked with the terms of license. The arrangement, once uploaded into the Licensing Exchange will remain in the director's account, where it can be downloaded and then handed out to the members of the ensemble. It will automatically be marked with the terms of the license, the correct copyright information, and the ensemble for whom the arrangement has been created. This is not done by the arranger, editor or party requesting the arrangement. There is no valid license issued through the Licensing Exchange if these steps are not followed. The publishers who issue through the Licensing Exchange are very concerned that this procedure be followed without exception.

4) In general, a license for a college marching band will be good for three years, however, some publishers are more restrictive and a term of one year or less could be granted. Each publisher sets their own term. After the license has expired, it must be renewed for continued use.

5) The licensed score and parts may be photocopied in sufficient quantities for use by the requesting school. Do not share or loan scores and parts to other institutions or individuals except as allowed by the License Exchange.

6) The license is considered a 'site-license' meaning that the license is requested by, and owned by, the academic institution, not the director, staff, or arrangers. (This is similar to licenses issued for use of computer software which is also considered "intellectual property.")

7) Academic institutions should make certain that the arranger understands that their services are being used to create a 'work for hire' with no extended rights granted (or royalties paid) thereafter (except as allowed by the License Exchange).

8) You may wish to consider obtaining arrangements created for, and licensed by, other schools through the Tresóna Resale Custom Arrangement Program.

USING PUBLISHED ARRANGEMENTS

Published arrangements must be purchased in sufficient quantities to satisfy the needs of the performing ensemble. For example, if a published set contains 10 flute parts, but the performing ensemble has 16 players, then two sets must be purchased. Photocopying parts to avoid purchase is prohibited.

Entering a published arrangement into notation software (Finale or Sibelius) is prohibited unless permission is obtained by the publisher. This is a violation of copyright law.

MINOR EDITS TO PUBLISHED ARRANGEMENTS THAT DO NOT REQUIRE PERMISSION

Some minor editing of published arrangements is permitted in the name of practicality and/or creativity. To create the minor edits listed below, in numbers 1 - 6 of this section, it is understood that these minor edits will be created for the applicable section of the arrangement only and preferably marked by the user in the original parts. Minor edits may not be achieved by entering the entire arrangement into notation software for the purpose of editing and must be limited to the changed section only. These minor edits include:

1) Tempo Changes

The tempo indicated on the score is often not the best choice. Conductors have discretion to adjust tempo.

2) Extending the Length of the Arrangement with Repeat Signs

It is often necessary to make an arrangement longer than published. This is most often due to the demands of drill writing. Common practices...

- a. Repeating a drum break (e.g., one measure break becomes two measure break)
- b. Repeating 'vamp' sections (e.g., two measure vamp becomes four measure vamp)

- c. Repeating whole sections verbatim (e.g., repeat Letter C to D)
- d. Extending an ending (e.g., one whole note becomes two, three or even four whole notes)

3) Altering Certain Chords

Minor alterations to chords may be made in the name of (a) taking advantage of advanced players or (b) simply making certain moments (usually endings) more interesting. Common practices...

- a. You have a trumpet player capable of playing very high notes and therefore add an additional note to the last chord for this player.
- b. The arranger ended the arrangement with a simple major triad. You may add a Major 7 or #11 to add color to the last note.

4) Reducing the Length of the Arrangement with 'Cuts'

It is often necessary to make an arrangement shorter. This is sometimes due to the demands of drill writing, but also often occurs when the halftime show must be made shorter at the last minute. Common practices...

- a. Delete Letter B to C.
- b. Delete four measures before the ending.

5) Doubling Parts due to Instrumentation Deficiencies

Sometimes, there are not sufficient players to cover all parts (especially in ensembles at medium and small sized schools). Reinforcing specific passages ensures a musical performance. Common practices...

- a. You do not have enough French horns to hear the melody so doubling in the alto sax or first trombone to help cover the French horn part.

6) Upgrading Battery Percussion Parts

Battery percussion parts may be rewritten to better fit the talent level of the performing ensemble. (Note: only non-melodic, battery percussion parts are eligible for upgrade.) Please note that when creating an upgraded drum part,

one does not have permission to enter the entire work into a notation program and that the drum part (non-melodic percussion) must be created and handed out as an addendum to the purchased parts.

MAJOR EDITS TO PUBLISHED ARRANGEMENTS THAT REQUIRE PERMISSION

The following edits go beyond the simple edits listed above and permission must be obtained. Depending on the nature of the request, permission may be granted or, if considered too extensive, a custom arrangement license may be needed.

- 1) Changing the Key.
- 2) Rewriting or Creating Melodic Percussion 'Pit' Parts.
- 3) Adding countermelodies or other material not included in the original arrangement.
- 4) Altering the structure or form of the arrangement beyond the simple edits noted above.
- 5) Entering the entire arrangement into notation software will require the permission of the rights holders.

AD-HOC MEDLEYS

When using portions of published arrangements, exercise caution to avoid creating an ad hoc medley. Cutting and pasting purchased published arrangements so that medleys can be created from different compositions is forbidden and a custom arrangement license is required.

It is possible to perform incomplete (or reduced length) versions of published music, but clear, well-defined breaks must be a part of the performance. Avoid performing multiple published arrangements 'in succession' without a discernible break as the music publishers may consider this a medley and

thus require a custom arrangement license. When in doubt, ask Tresona for clarification and/or permission.

ELECTRONIC DISTRIBUTION

College and university bands are increasingly using paperless methods for distributing music to students. Some have school-owned devices, but more and more schools are going to the 'Bring Your Own Device' (BYOD) model. In BYOD, directors upload music to a cloud server and students download their parts to their own device (usually a smartphone or small tablet).

If you are granted a custom license (following the guidelines stated above) permission to upload digital parts is included as part of the license for the duration of that specific license. Parts should be removed from the server when the license has expired. Care should be taken so that the parts are accessible only by the performing members of the school ensemble.

Commercially published arrangements may not be digitized (i.e. scanned) and uploaded to any device without a license from the publisher. Tresóna can provide digital reprint licenses. To obtain permission for this, apply for a custom arrangement license and, in the notes section, explain that you have purchased enough copies for the members of your ensemble and Tresóna will issue the reprint license.

OTHER THINGS TO KNOW

1) An approved custom arrangement created for marching season may be used by a smaller 'pep band' at the same academic institution as long as the license is still in effect. The reverse is not true: a custom arrangement created for a smaller 'pep band' may not necessarily be used by the larger marching band without paying the fee associated with the larger ensemble. When in doubt about this, check with Tresona.

2) Any portion of a 'tune' that is a recognizable melody unto itself needs to be included as part of a custom arrangement. For example, an arrangement of *Living for the City* by Stevie Wonder that includes a two-measure quote from

Superstition (also by Stevie Wonder) must be licensed for BOTH songs. In effect, the arranger has created a 'medley' regardless of how much of the secondary melody has been quoted.

3) As stated previously, this document cannot cover every contingency. We will update and revise this information as needed or as requested by the music publishers. For the latest information, visit the Copyright page on the CBDNA website at <cbdna.org>.

4) Many schools have extensive libraries of music (commercially published and custom arrangements) in their school band libraries. In some cases, the library may contain arrangements that are quite old with many titles that are permanently out-of-print. These archived arrangements, regardless of their age or condition, may still be under copyright protection. If the original source material itself is still protected, then the arrangement may be protected as well. Do not assume that these may be photocopied or scanned. You should check on the current state of copyright protection for archived arrangements before using with a current ensemble.

FINAL THOUGHTS: BUDGET CONSIDERATIONS

CBDNA recommends that members allow for use of music under copyright protection when submitting an athletic band budget to school officials. It is far better to submit figures up-front rather than be surprised by unexpected costs after the fact. These costs should be considered 'normal and fair' by colleges and universities everywhere.

It is also a good idea to check with your school officials on the current state of your ASCAP/BMI performance license. All schools should be making annual payments to ASCAP and BMI for performance of music on campus by schools ensembles as well as broadcasting recorded performances. These licenses cover many uses of music on campus including performances by your athletic bands. Trezona does not issue performance licenses. These are made directly to ASCAP and BMI.