

COPYRIGHT LAW: FREQUENTLY ASKED QUESTIONS

Prepared by Tuk Law Offices solely for Cavalcade of Bands, Inc. and the directors of its members
June 22, 2017.

For more specific information, contact Bryan Tuk, Esq. via email at bryan@tuklaw.com

NOTE: Nothing herein creates an attorney client relationship. This content is for general guidance only. For any specific questions on a specific situation, you should contact your legal counsel.

Q: Are the Copyright Laws and best practices different for different ensembles? Do Marching Band, Jazz Band, and Indoor ensembles all have to follow the same rules and best practices?

A: Yes. The Copyright Act applies with equal force to every performing ensemble within the membership of Cavalcade of Bands, Inc.. All of the FAQs listed below apply whether you are running a high school jazz band program, a marching band, or an indoor ensemble. **NOTE:** With respect to indoor guard ensembles, which are not performing musical compositions, but are broadcasting a public performance of music to accompany the show, or maybe combining pieces of protected compositions and recordings, licenses are necessary. Please contact me with specific questions on that topic.

Q: How do I get permission to make photocopies of “out of print” works?

A: Works that are “out of print” are exactly what they sound to be: works that a publisher has in its catalogue but there may be no more physical copies at that point in time. Whether a composition or arrangement is out of print or not does not have any bearing on whether or not that work is still subject to copyright protection. Thus, discovering a work is “out of print” does not mean that it is automatically in the public domain and may be reproduced without licensing.

Q: How do I find the publisher of a work?

A: Most often, the name of the publisher is usually included on the cover, score, or on parts of the music. If not, refer to the music publishers Sales Agency List or check with ASCAP, BMI, or search the internet.

Q: How can I tell if a work is still protected by copyright?

A: As a threshold matter, all works published in the United States before **January 1, 1923** are in the public domain, and are no longer subject to copyright protection.

For works created and published after **January 1, 1923** and before **January 1, 1978**, the maximum copyright protection could have been extended is **95 years** (a first term of **28 years** plus a renewal term of **67 years** under the Copyright Act as it existed at that time).

The duration of copyright protection depends: for works created **after January 1, 1978**, copyright protection (if the work has been federally registered), last for the author's life + **70 years**. There are different rules for works made for hire and ghostwritten works, which tend to apply more to literary works (i.e. copyright protection for **95 years** from first publication or **120 years** from creation, whichever is shorter).

Q: Do I need permission to make an arrangement or transcription?

A: Yes. You must obtain an arrangement license from the rights holder.

Q: What do I do if I want permission to reprint portions of a work in my thesis, book, or journal article?

A: Under the “Fair Use” Doctrine, the Copyright Act provides provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. The Fair Use Doctrine is a slippery concept and one should consult legal counsel.

Q: May I make copies of existing recordings for my students to take home and practice?

A: Yes, this would constitute Fair Use if the recording is given only to the student for the purposes of education and neither the teacher nor the student publishes the recording on any platform whatsoever.

Q: May I extract one or two pieces out of a collection and use photocopies of those pieces instead of purchasing the entire collection?

A: No. A license must be purchased for the entire work.

Q: Why can't I copy anything I want?

A: Composers and creators earn their living through the licensing and sale of their intellectual property. There are significant monetary penalties that a court can and will assess against a person or organization that is violating the Copyright Act.

Q: What if I'm faced with a special situation?

A: In this area of the law, there are no "special situations". If the work is public domain, then it can be reproduced, published and performed without license. However, if the work is protected by the Copyright Act, you must purchase a license from the rights holder.

Q: What if there is not enough time to ask or I can't find the owner of a copyrighted song?

A: This is not a defense to a copyright infringement claim.

Q: What about photocopies currently in our school or music library?

A: *Destroy any unauthorized photocopies immediately and replace them with legal editions.*

Q: Can I make copies of the copyrighted music first, and then ask permission?

A: *No. Permission must be secured prior to any duplication.*

Q: As a soloist is it permissible for me to make a photocopy of a copyrighted work from my accompanist?

A: If the performance generates *any* income for *any* person or organization whatsoever (i.e. is a ticketed event), then no. Permission for duplication, for any purpose, must be secured from the copyright owner.

If the performance does not generate revenue of any kind and is purely for educational purposes, then this arguably constitutes fair use. Consult your legal counsel with specific questions.

Q: Can I make a transparency or file of a copyrighted song to use on an overhead projector or through a computer program?

A: If the performance generates income for *any* person or organization (i.e. is a ticketed event), then no. Permission for duplication, for any purpose, must be secured from the copyright owner.

If the performance does not generate revenue of any kind and is purely for educational purposes, then this arguably constitutes fair use. Consult your legal counsel with specific questions.

Q: Can I make a CD or midi file using a prerecorded instrumental accompaniment track?

A: This presents two issues: First, the need for a license from the rights holder, and secondly the need for a mechanical license to physically produce the recording, if the recording is produced in a physical format such as vinyl, CDs, and the like. The exception however here is that if the CD or midi file is created and distributed to students for educational purposes only and no value or money is exchanged (i.e. learning a marching band arrangement by having the student practice along with a midi file, etc.) then that is arguably fair use and permissible without any licensing. Those recordings should not be made publicly available, but rather distributed by a closed intranet the students and faculty have access to.

Q: Can I make a band arrangement of a copyrighted piano solo? Can I make a flute arrangement of a copyrighted work for clarinet?

A: No. Making any arrangements is duplication and permission must be obtained from the copyright owner.

Q: What about the photocopiers who don't get caught?

A: It is attractive to possibly think that one won't get caught with an unlicensed reproduction or publication. However, that person *is breaking the law*. Given that we live in a truly interconnected world and everyone knows everything via social media, rights holders are more vigilant now than ever, and it is not unheard of for a rights organization to send representative to marching band contests to verify that the performances are all fully licensed. The financial penalties under the Copyright Act are severe and can involve the school district you work for in litigation, possibly having an adverse effect on your teaching position with that school district.