



**National Association  
for Music Education**

# Basics of Copyright for Music Educators



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# 21st Century Advocacy Organization

- **Federal Lobbying: “The National Voice”**
- **Coalition Facilitation and Participation**
- **Capacity Building**



# The NAFME Approach

- **2 Full-Time** Registered Federal Lobbyists on Staff
  - Capitol Hill and state Department of Education experience
- High-Level Relationships with key members of Congress and Staff
- Regular Interactions with U.S. Department of Education
- Well-established Footprint for Music Education on the Hill
- Public Policy Expertise on All Issues Impacting Music Education
  - Elementary and Secondary Education Act
  - Higher Education Act
  - Carl D. Perkins Career and Technical Education Act
  - Appropriations
  - Regulatory & Implementation of ESSA





**National Association**  
*for Music Education*

Copyright

# Legal Disclaimer

The materials and information provided by this session are for informational purposes and not for the purpose of providing legal advice.

# Basics – What Does Copyright Mean?

**Copyright** was created in **Article I, Section VIII of the United States Constitution** –

“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.”

**Copyright laws are designed to protect and promote creativity.**

- Artists of all kinds must be compensated for their creations. Without U.S. Copyright Law to protect artists, there would be little incentive for your favorite artists to create your favorite songs, movies, or TV shows.

**The music in your classroom reaches you as a result of the collaboration of a number of people:**

1. The time and creative effort of the composer and all performers.
2. The investment of time and money by the publisher.
3. Your music retailer who supplies your musical needs.

CIRCULAR 92

**Copyright Law of the United States**  
*and Related Laws Contained in Title 17 of the United States Code*

DECEMBER 2016



# Infringements

Copyright owners have **EVERY** right to prosecute offenders under the U.S. Copyright Law. To date, there have been a number of notable court decisions against individuals, churches, colleges and other institutions for violations of U.S. Copyright Law - **some involving substantial fines.**

**Statutory damages range from \$750 to \$30,000 in the simplest cases.** If the court finds that the infringer “was not aware and had no reason to believe that his or her acts constituted an infringement.”

**If infringement is purposeful, the fine could be \$150,000 per case.**



# Fair Use

**Fair Use** - is a “legal doctrine” that portions of copyrighted materials may be used without permission of the copyright owner provided the use is fair and reasonable, does not substantially impair the value of the materials, and does not curtail the profits reasonably expected by the owner.

**Education fair uses includes classroom reproduction for:**

- Criticism
- Commentary
- News reporting
- Research



# Fair Use

In order to be considered fair use, one must evaluate how they are using the copyrighted material in these **4 categories**:

- 1. Purpose and Character** – Use of the copyrighted work, including whether such use is of a commercial nature or is for nonprofit educational purposes.
- 2. Nature of the Work** – The more creative or original the work, the more protection the copyright owner has. The more factual the work, the more accommodations exist for fair use.
- 3. Amount of work being used -**
  - 1. Quantitative Substantiality** – How much of the work is being used?
  - 2. Qualitative Substantiality** – How valuable or when the most valuable part of copyrighted work is being used?
- 4. Potential Harm Caused to the Creator** - Does the use of the derived work potentially harm the ability of the copyright owner to market their work or harm the value of the copyrighted work?

# Arrangements

**An arrangement** is a modification, beyond the minor edits and simplifications allowed by U.S. Copyright Law, of a musical work either in notation or recording.

- Making arrangements of a piece of music is an exclusive right of the copyright owner, but under the legal compromises surrounding the law, some things are considered to be reasonable exceptions.

**A stock arrangement** is music that has been arranged and is available for sale to multiple consumers typically through music retailers. They are published, unaltered settings of songs for a particular ensemble such as marching band, show choir, orchestra, and others.

# Arrangements

You **MUST** contact and obtain permission from the **copyright owner** (usually also the publisher) to create an arrangement.

- Custom Arrangement License
- Music Publishers Association (MPA) has a generic “*permission to arrange form*”

## **Publishing Rights Organizations (PROs)**

Many publishers, such as **ASCAP, BMI, and SESAC** have title databases and catalogs, which allow music educators to search by song, title, songwriter, or publisher.



# Types of Licenses

**Compulsory License** - Also known as a **compulsory mechanical license**, allows an artist to legally sell their rendition or "cover" of another song based on a set royalty payment scale.

**Synchronization License** - Also known as a **sync license**. The copyright owner of a particular work grants this license and allows the licensee the right to use the music in a film, such as a movie, video game, or commercial. This is the license needed for educators to create DVDs of their performances.

**Master License** - To obtain permission to use an existing recording of the composition, you must secure a master license from the owner of the sound recording, typically the record label.

**Performing Rights License** – Composition owners reserve the right to control public performance of their compositions. These are typically granted by PROs.

- You must obtain a performing rights license if you make your video available via streaming.

# Minor Edits

**Music educators can create “simplifications.”** That is they can edit or simplify purchased, printed copies.

This is provided the fundamental character of the work is **NOT** distorted or the lyrics, if any, are not altered or added if none exist.

Music educators **CANNOT**:

- Change the fundamental character of the work
- Change or add lyrics
- Change basic melody
- Change key



# Copies

Making a photocopy, digital copy, or cloud-based copy of printed or recorded music without permission is **ILLEGAL**.

DO NOT COPY = 

## **2 Exceptions for Copying:**

1. Emergency Exception
2. Making one copy per student of up to 10% of a music work for class study

## **NAfME supports and recommends creating a Copy-Free Zone in your school.**

- This national campaign, launched in 1999 by the Music Publishers Association (MPA), calls upon school music department chairs to initiate and oversee United States Copyright Law education and compliance in their schools.



# Recordings (Q&A)

**Question:** Can I audio record my spring concert and sell the copies for a fundraiser for my program?

- **Answer:** If you want to audio record your group and sell the copies as a fundraiser, you will need a mechanical license. You may also need additional licenses if you want to make a cloud-based recording, a video recording, or a ringtone.

**Question:** Can I make a single recording of my student performance for concert review or to have on file at my school?

- **Answer:** Yes! U.S. Copyright Law specifically allows for this.

**Question:** Can I make a single recording of aural exercises for use as tests comprised of copyrighted materials?

- **Answer:** Yes! This is permitted in the Design Protection Act of 1976 as found in Circular 21 from the U.S. Copyright Office.
- A single copy of a sound recording of copyrighted music may be made from sound recordings owned by an educational institution or an individual educator for the purpose of constructing aural exercises or examinations.

## Recordings (Q&A)

**Question:** Can I record my group and place the performance on a private YouTube channel for my students to access and review?

**Answer:** No. As a user on YouTube, even with a private channel, you are unable to globally restrict access to what is posted online once you send the link out to your students to be reviewed.

The best option for a digital educational review is to work with your school's IT department to place this content behind a sign-in wall where school credentials are required to view the content, and thus keeping the content strictly for educational use.

# Public Domain

**Public domain, or “PD,”** means that a copyright for a song, literary work, or motion picture has expired and was either not renewed or was abandoned.

**However, arrangements of PD music may be under copyright protection.**

The easiest way to know if a PD arrangement is under copyright protection is to look at the bottom of the page to find the copyright symbol and statement.



# Public Domain

**Copyright has expired for all works published in the United States before 1923.** In other words, if the work was published in the U.S. before January 1, 1923, you are free to use it in the U.S. without permission.

**Copyright Extension Act of 1998** - States no additional works will fall into the public domain until 2019, when works published in 1923 will expire. In 2020, works published in 1924 will expire, and so on.

- For works published after 1977, if the work was written by a single author, the copyright will not expire until 70 years after the author's death.
- If a work was written by several authors and published after 1977, it will not expire until 70 years after the last surviving author dies.

# Performances & Exceptions

Performance Exemptions indicated in copyright law;

**Non-Dramatic Performance** - A non-dramatic musical work or performance is a performance that does not portray a story line or plot. There is typically no character, costuming and no choreography that advances the storyline or plot.

**The School Concert Exemption** - The law does permit a performance of a non-dramatic literary or musical work that has no direct or indirect commercial advantage, and if:

- There is no direct or indirect admission charge; or
- The proceeds are exclusively for educational or charitable purposes and not for financial gain.
- However, the performance may not take place if the copyright owner objects in writing seven days before the performance.

**Distance Education Exemption** - The law does permit performance or display of a musical work by distance education transmission in an amount comparable to that which is typically displayed in the course of a live classroom session.

# Contests - Festivals

**Each state has a unique contest systems.**

- Some are run by state activities or athletic associations, others by state music educator associations (MEAs), and more.

**It is important to know your specific state rules and requirements for the events you participate in with your students.**

**Question:** My band is performing from purchased music and I'm conducting from a purchased score at our state contest or festival. I need 3 adjudicator copies - do I have to purchase or borrow 3 additional scores or can I give them photocopies as long as I destroy the photocopies afterwards?

**Answer:** All music utilized by the adjudicators or the performers must be legally purchased. Duplication is not allowed unless permission has been specifically secured from the copyright owner.

# Contests - Festivals

## **Question:**

There is no published score for the copyrighted duet my students are performing; yet our regulations state that I must provide the adjudicators a score. What, if any, permissions are needed to legally create one for the adjudicators' convenience?

## **Answer:**

If none is available for purchase, you will need to request permission from the publisher, as it would be considered an arrangement.





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through our NEW state-of-the-art online learning platform.



<https://nafme.org/community/elearning/>

Questions? Email - [nafmeacademy@nafme.org](mailto:nafmeacademy@nafme.org)





**Here you will find different ways on how YOU can:**

- Support Music Education in Federal Education Policy!
- Be Involved With the Legislative Process!
- Engage Your Members in Congress!

<https://nafme.org/advocacy/grassroots-action-center/>

# Resources

- NAFME Academy Courses on Copyright:
  1. \*\*NFHS – NAFME: Understanding Copyright And Compliance\*\*
  2. Copyright Law for Music Educators: the Good, the Bad and the Clarification – by Brian Lukasavitz
  3. Fair Use: Navigating the Murky Waters – by Brian Lukasavitz
- NAFME Website:
- <https://nafme.org/my-classroom/copyright/>

## Q&A



**Stay in Contact!**

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