

BACKGROUND INFORMATION ON COPYRIGHT

Copyright protects original creative works that are “fixed in a tangible form”; i.e., in writing, on a computer, on a CD-rom, film, etc. Musical works and sound recordings of musical works that meet those criteria are protected by copyright.

Generally, rights begin with an originator and are assigned to another entity.

Written or published works:

- Composer/Lyricist -> assign rights to Music Publisher

Recorded music:

- Musicians -> assign rights to Recording Company

Copyright owners hold exclusive rights to reproduce, distribute (by license, sale, etc.), publicly perform, publicly display, and modify their works, the exclusive right to give others permission to exercise any of those rights in their works, and in the case of sound recordings, the exclusive right to perform the sound recording publicly by means of a digital audio transmission.

If you want to exercise any of those rights in a work that is protected by copyright, you need to have permission (unless your use falls under one of the exceptions to the license requirement).

When you use a song or sound recording in connection with a dance that is open to more than your family or close friends or students in a particular course, you are exercising the copyright owner's right of public performance.

If the music will be performed live, you will need the permission of the **music publisher**.

If you intend to use a sound recording, you will need the permission of **both the music publisher and the recording company**.

If you video tape that performance and post it on line, you are again exercising the owner's right of public performance and right of distribution and reproduction and will need **synchronization permissions**.

Aren't all uses of copyrighted works at a University lawful, or "fair use?"

NO. The fact that you are a university student does not give you carte blanche to use copyrighted works of others.

Copyright law provides that "the *fair use* of a copyrighted work, including such use by reproduction in copies or phonorecords (audio recordings) or by any other (specified) means, for purposes such as criticism, comment, news reporting, teaching (copies for classroom use), scholarship, or research, is not an infringement of copyright.

In determining whether the use made in any particular case is a fair use, factors considered include:

- (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 as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work."

What is a dramatic performance?

ASCAP defines a dramatic performance or a dramatico-musical work, including musical comedy, opera, play with music, revue or ballet. These are described as:

- Performance of a dramatico-musical work (or its sound recording) in its entirety;
- Performance of one or more musical compositions (or sound recordings) from a dramatico- musical work accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken; or
- Performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual representation

(Although no court has issued a published decision on the issue, it is unlikely that a single song or recording that tells a story qualifies as a dramatic performance unless it is used to tell a story larger than the song/recording.)

How do I decide if a dance or play is dramatic or non-dramatic?

All plays are dramatic. All ballets and all musicals (West Side Story) are dramatic performances regardless of the number of songs/recordings you use. These are bullets 1 and 2 above.

To decide if your dance performance qualifies as a dramatic presentation under bullet 3 above, ask the following questions:

1. Does the dance involve, conjure up, or evoke any definite plot or storyline where the performance of the music supports and carries forward that plot or storyline?
2. Does the dance performance involve characters, costumes, scenery, lighting, staging and other theatrical production components?

If you answer "yes" to either question, your performance qualifies as dramatic.

You will have to obtain a DRAMATIC PUBLIC PERFORMANCE LICENSE or “GRAND RIGHTS” LICENSE.

If a piece will be performed live, you will need to contact the music publisher for a license. If you want to use a sound recording, you will need to contact the recording company and the music publisher.

The following companies maintain databases that will help you identify the music publisher and recording company:

US Copyright Office database: <http://www.copyright.gov/records/>.

The Copyright Office database does not include works that have not been registered with the Copyright Office or records of works that were registered before 1974.

ASCAP: <http://www.ascap.com/index.html>

BMI: <http://www.bmi.com/>

SESAC: <http://www.sesac.com/index.aspx?flash=1>

Music Publishers' Association: <http://www.mpa.org/>

Harry Fox Agency: <http://www.harryfox.com/index.jsp>

Once you identify the publisher/recording company, contact them by phone or through their web site and be prepared to supply the following information:

- Type of performance (workshop, formal recital)
- The scheduled date(s) of the performance
- The location of the performance
- Seating capacity and expected audience size
- Admission price, if any, and amount of money you expect to generate after expenses

How much will the license cost?

It is hard to tell. The information you provide about the performance will certainly affect the cost. The amount you pay may also depend on who holds the copyright. Some people say that when copyright is acquired by the estate or heirs of the creator, the fees are higher than when the music publisher or recording company holds the copyright.

Expect the process to take a long time. As soon as you know you want to use a particular piece of music, decide if you can rely on the University licenses or will need to obtain a dramatic or grand rights license from the music publisher.

What if I decide the dance performance is not dramatic?

The University's public performance licenses with ASCAP, BMI, and SESAC apply to both live performances of a song and sound recordings of a particular performance. You should retain a record of the music you use and, if the performance is sponsored by the University, you should give a copy of that list to a designated person in your department. The University licenses require us to submit programs of the music used occasionally.

What licenses do I need to use music in a video I want to post online?

YouTube, Facebook, MySpace and similar web sites do not have public performance licenses that cover the inclusion of copyright protected music in vides posted on their sites. Rather, they require their users to promise, as a condition of posting on their sites, that the users have

obtained permission to include any copyright protected material in their video.

To use a sound recording in a video you intend to make public, you will need to obtain:

- a license, called a SYNCHRONIZATION LICENSE OR VIDEOGRAM LICENSE, from the music publisher; AND
- a license from the record company. This is essentially a public performance license that falls outside the scope of the University's public performance licenses. You don't need a license from the recording company if the song will be performed live in the recording but you will still need to obtain a synchronization license from the music publisher.

What if I include copyright protected material in my video without getting permission and post it online?

Due to pressure from movie and recording companies, among others, YouTube has installed a program on its site that allows copyright owners to place their copyrighted works in an audio/visual database. Every video is automatically checked against that database. If a video matches up with material in the database of copyright protected works, the copyright owner receives notice and has the right to remove your video, track its use or place ads around it and retain some portion of the revenue received from those ads.

You have a right to contest the removal of your video. If you do that, the copyright owner will receive notice and will have the option to issue a "take-down notice" to YouTube to remove your video because it infringes copyright. When YouTube receives such notices, it removes the video. It also places a strike your account. If you acquire 3 strikes, YouTube will remove all your videos and prohibit you from posting more.

You have a right to file a "counter-notice" to the take-down notice. Your counter notice must include your name, address and a statement under penalty of law that "the material was removed or disabled as a result of a mistake or misidentification." The copyright owner has 2 weeks to file a lawsuit against you. If it doesn't file a suit, YouTube will remove the block on your video and the strike on your account.

Persons who are found guilty of copyright infringement are subject to monetary damages ranging from \$750 and \$30,000 per work. Persons who are found guilty of **willful infringement** may be charged damages of up to \$150,000 per work. If copyright in the work that was infringed is registered with the U.S. Copyright Office, the music publisher/recording company is entitled to treble damages—3 times the damages assessed.

WEB SITES THAT OFFER FREE MUSIC OR MUSIC THAT IS IN THE PUBLIC DOMAIN

<http://search.creativecommons.org/>: Creative Commons maintains a database of "Legal Music for Videos." It also maintains a list of sites that provide free music for noncommercial uses using one of the creative commons licenses.

<http://www.pdinfo.com/Music-Production-Video.php>. This site organizes its music by genre, mood, etc.

<http://www.royaltyfreemusic.com/public-domain/>

<http://new.music.yahoo.com/public-domain/>

WEB SITES TO HELP YOU FIGURE OUT IF A WORK IS PROTECTED BY COPYRIGHT

How to Investigate the Copyright Status of Work (US Copyright Office):

<http://www.copyright.gov/circs/circ22.html>

When Works Enter the Public Domain (University of North Carolina):

<http://www.unc.edu/%7EuncIng/public-d.htm>

Duration of Copyright (US Copyright Office): <http://www.copyright.gov/circs/circ15a.html>