

COPYRIGHT AND THE MUSIC MINISTRY

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Copyright is a subset of the concept of “intellectual property,” which includes the world of created works, patents, trade secrets of proprietary nature, trademarks, and industrial designs. Today, the very concept of ownership of intellectual property is not only changing greatly, but is under direct attack by those who want knowledge and creative works to be freely accessible by all. While this movement produces helpful shareware programs or websites such as Wikipedia, the immoral side to it amounts to stealing through piracy, with disastrous economic results.

DEFINITION: copyright by law regulates how an original *expression of an idea or information can be disseminated (e.g. copied) for a limited duration of time.* It is limited to the means in which the particular concept has been expressed – the “form of material expression.” Thus the estate of Charles Schultz retains the copyright on Charlie Brown, but cannot copyright the general concept of small boys. Similarly, if everyone in the class took a photo of the same subject, we could all individually claim copyright on every photo we took. But we can’t copyright the subject.

The text of the Bible makes for a great example of how copyright protects “original expression” based on an existing work. Due to their age, the original manuscripts have no copyright. However, critical texts, translations, and commentaries are original *derivative works*, and copyright may be claimed.

What can be copyrighted? There are four broad categories that together are comprehensive:

- **Written works** – books, articles, papers, publications, plays, poems, scripts, computer software, etc.
- **Visual works** – photographed works, whether still or motion, painting, sculpture, television broadcasts, etc.
- **Choreographed works** – dance and ballet.
- **Auditory works** – music compositions (notated or not), audio recordings, broadcasts
This includes *printed* musical works.

Duration

An excellent flowchart showing how the laws governing the duration of copyright protection have changed may be found at: <http://www.sunsteinlaw.com/practices/copyright-portfolio-development/flowchart.htm>.

Copyright protection of a work currently lasts for 70 years after the *author’s death*, or, in the case of works of corporate authorship and works first published before 1978, 75 to 95 years from the date of *first publication*.

Copyrights used to have to be registered with the Library of Congress. While this formality still provides a measure of protection, it is no longer necessary to do so in order to *claim* copyright. It isn’t even necessary to affix a copyright notice to an original work, although there are advantages to doing so.

Copyright protection originally lasted only 28 years, and in the final year a renewal could be filed with the Copyright Office for an extension of 67 years. These were eliminated in 1992, in part due to the significantly longer copyright terms that were in effect by that time. However, there was no retroactivity for non-renewed works already fallen into the public domain. Thus, all works published in the United States before 1923 are in the public domain, and works published from 1923 to 1963 are either now in public

domain or are still protected depending on the actions of the copyright owners – renewals extend the copyright to 95 years from the date of first publication. Therefore, the public domain will not be enlarged any further until 2018.

Protecting ideas for a substantial length of time is motivated in part by ownership of lucrative characters such as Mickey Mouse and his ilk, and suits such as that against the Walt Disney Company over who owns the Winnie-the-Pooh characters.

Rights

The owner of a copyright controls the following rights:

- Reproducing the work for sale whether materially or electronically;
- Creation and ownership of *derivative works*;
- Public performance or display of the works;
- Import or export of the work; and
- Sale or assignment of these rights (in part or whole) to others

Is the owner of a copyright always the one who creates the work? No, because rights are transferrable (e.g., to a publisher), or in the case of work-for-hire, the employer owns whatever is produced. This is important to the pastor because, technically speaking, the church owns his sermons. If you want control of your material for publication purposes, negotiating an “understanding” with your elders may be helpful, in writing, of course.

Fair Use

Can you use protected material without permission? Are there exceptions to the constraints of copyright? Sometimes, under what is called “Fair Use.” However, the restrictions are substantial. While there are definitely *some* instances where *limited* reproduction of others’ works under copyright is OK, **the law is very ambiguous about what is defined as “fair use.”**

It comes down to the aggregate of

1. The **purpose and character of your use**
2. The **nature of the copyrighted work**
3. The **quantity of the whole work taken**, as well as proportion to the whole work
4. The **effect of your use on the potential market** for or value of the work

In other words, if you want to use copyright material, and you are not the owner, then “Fair Use” may apply if (1) the amount of usage is insignificant and (2) no financial loss will result to the owner. The purpose can be personal, academic, satirical, or promotional. For all public usage acknowledgement of the owner is essential.

Examples of what you *can* do under fair use:

- Make a tape copy or hard drive copy of a CD you’ve purchased *for your use only*. In essence this is a one-for-one substitution of something you own a legitimate copy of. Therefore, the purpose is for your use only, the nature being a royalty-compliant audio recording, the quantity determined by you, with *no* effect whatsoever on the potential market. But if you were to give copies away, it is *not* fair use, violating copyright by devaluing the work’s market potential and circumventing the owner’s right to control distribution. This is the heart of the problem with Internet file sharing. *Money need not be involved for a copyright to be violated.*
- You may quote a copyright-protected book in a term paper, research project, or published review. Therefore, the purpose is intellectual interaction, the quantity is insignificant, and the effect on the potential market would be positive by drawing attention to the work.

- Lengthier copying is permitted for certain kinds of classroom use (educational purposes).
- You may represent copyright-protected property in parody and satire
- Make a *temporary* copy of a sound or video broadcast. The “fairness” of permanent copies is questionable at best.

Types of copyright licensing that pertain to music

COMPULSORY LICENSES ESTABLISHED BY LAW:

Print license – (lyrics AND/OR notation) – Works are reproduced in printed form via this type of agreement. This includes liner notes in CDs as well as sheet music to perform from.

Mechanical license – Pertains to the “mechanical” reproduction of sound recordings. Only this type has a standard rate set by law. Presently, it is 9.1c per copy per song for any length up to 5 minutes. Above that the rate is 1¾ cents per minute rounded up to the next full minute. When we make our CDs and use others’ material, we must pay!

Synchronization license – Pertains to the inclusion of any type of copyrighted work into a motion recording (film, video, etc.). Rates vary by usage and can be formidable for major TV or motion picture licenses.

NON-COMPULSORY LICENSES ESTABLISHED BY VOLUNTARY CONTRACT:

“**Blanket**” license – is really nothing more than an agreement between many parties. This is an unusual, flexible solution in the form of a contractual agreement, which can incorporate functions of all types of licenses. The copyright holder alone determines willingness to participate. There is no law obligating anyone to ever use this type of agreement; it exists for purposes of good business and marketing. The *CCLI Church Music License* is a blanket license.

ABOUT THE “PUBLIC DOMAIN:”

The **Public Domain** is the protectionless limbo into which a work passes when a copyright expires or because copyright was never claimed. Because there is no legal “owner” of such works, they can be published or used in any way without compensation or restriction. Once something is in the public domain, it can never again be protected by copyright. However, newly formed derivative works can be.

THE CCLI LICENSING PROGRAMS

(Corporate motto: “Encouraging the spirit of worship”)

www.ccli.com

The **CCLI Church Music License** acts on your behalf to form a “blanket license” agreement between your church and the owners of music under copyright. For an annual fee, your church is granted specific, limited privileges. This is the main and most essential program offered by CCLI, but they offer others as well (more on this below).

When do you need to join CCLI? You wouldn’t need CCLI if your congregational music came exclusively from hymnals or songbooks that you’ve purchased and placed in each

pew. But most churches prefer to supplement their singing repertoire with new songs by either printing or projecting lyrics. At this point material must be reproduced. Doing so legally requires a copyright permission for each song (unless the church's musicians write and own the material). Plus, many churches want the complete service, including music, available on recordings for shut-ins and others in the church family. These and other common needs are covered together by the CCLI licenses.

Member catalogs: CCLI has made agreements with literally hundreds of member publishers and catalogs, with assets totaling more than 150,000 songs. (This is a good time to bear in mind that not all songs are great ones!)

Subscribers: Each church must join the program by agreeing to the terms of a relatively simple contract and paying an annual fee. The fee is determined by church size, as defined by the regular attendance at main services (1-24 \$49; 25-99 \$101; 500-999 \$312 etc.) and is remarkably modest compared to the benefits received. *Also, it is infinitesimally smaller than the legal and punitive costs of being prosecuted for infringement.*

Usage: With the exception of service recordings, the rights given under the **CCLI Church Music License** pertain, in *every* case, to **materials used for congregational use only**, not "performance" music. Copying music for a soloist, ensemble, or choir is *never* covered, nor is making a music CD for general distribution beyond the use of the church family. *Doing any of these without permission is tantamount to stealing.*

The specific rights granted under the CCLI Church Music License:

- 1 – **Print** reproduction of songs and lyrics for one-time congregational use.
- 2 – **Custom songbooks** or hymnals for "permanent" congregational use.
- 3 – **Projection** of lyrics for congregational use.
- 4 – **Custom arrangements** of songs for congregational use when no suitable published version is available.
- 5 – **Record** the full worship service so long as only live music is used and the recordings are for the exclusive use of a limited percentage of the church congregation. (Pre-recorded tracks are subject to mechanical licensing fees and therefore cannot ever be covered by a CCLI license.)

SEPARATE SERVICES, OPTIONAL AND ADDITIONAL:

SongSelect – Extended program with lyric databases, which are searchable and downloadable.

Songselect Plus – In addition to the above, music lead sheets may be downloaded.

Streaming License

CCLI Video License – An *unrelated* license that gives members the right to publicly show videos and clips included in the master catalog. This applies not only to the current fad of using movie clips for sermon illustrations, but also to the viewing of almost any video in the context of a church group. Ever read those warnings that everyone ignores after popping a DVD into the player? Nearly all purchased videos are licensed for private, home use only. Any church showing of these, whether in a main service, children's Sunday School class, or other meetings (youth group, AWANA, etc.) are public, non-home viewings – it is irrelevant whether admission is charged or not. Because the CCLI Video License alleviates this problem, most churches would be wise to subscribe to this service.