Copyright Basics for Musicians

Presenters: Amy Edmonds, Music Librarian
Perry Collins, Copyright and Scholarly Communications Manager
Perry: Music has become one of the most complicated—perhaps the most complicated—areas in U.S. Copyright Law. Today we will just scratch the surface of some of the things you need to know. Our presentation focuses on the two sides of copyright—on the one hand, how can you legally make use of the vast trove of copyrighted work that exists; and on the other hand, how can you manage your copyrights to determine how others can use your work. We aren’t attorneys, so we can’t offer any legal guidance, but we can help with some starting points as you think about these issues.

Amy: We will go through these terms in more depth, but here are a few of the topics we’ll discuss (terms from slide/handout)

Musicians Need to Know About:

- Copyright
- Performance Rights
- Derivative Works
- Fair Use

... As both content users and content creators
Perry: In the United States, copyright was originally spelled out in the Constitution, which summed up its purpose and articulated what we still struggle with today: incentivizing and rewarding creative work while ensuring that these rights are in the public’s interest. Amy mentioned several of the core rights given to copyright holders in the legislation crafted since then.

In the next few slides, we’ll go over several of these rights—reproduction, public performance, and derivatives. We’ll touch on another right, distribution, in a bit as well. The last right, public display, is less relevant here but can still come up in some contexts.
Amy: All of the rights of copyright holders have to do with copying in one form or another, but we most frequently think of reproduction—anything from copying sheet music for your choir to uploading a copy of a song to a file sharing site. (any other examples?)

Perry: Copyright only covers something that is fixed—meaning it has been written down or recorded. Today, you don’t legally have to do anything else to copyright a work except get it into that fixed form. So when we talk about reproduction in music, we have to consider both musical composition and sound recordings—this will come up a number of times today. If you’re humming a tune or playing your guitar but don’t record anything or write anything down, it can’t legally be copyrighted.

This doesn’t mean you necessarily have broken the law every time you’ve made a copy of a piece of music. We’ll cover some of the major exceptions to copyright law in a minute, but there are some limited ways to copy music legally. The most important question to ask yourself is whether or not you are copying something as a substitute for purchasing it—if yes, you’ve probably crossed over the line into copyright infringement. As a basic example, copying your own music files to compile them into a mix that you’re using yourself would present very little risk, but once you begin to distribute those files, you may be undermining the market for the work.
Perry: Whenever you’re planning to perform copyrighted music, you will need to confirm that the venue has secured any necessary license. We’ll talk in a minute about licensing your own work, but it’s a good idea to keep in mind that the reason you are allowed to cover songs in these venues is due to signed contracts with the major performing rights organizations, ASCAP, BMI, and SESAC. For instance, Ball State has these contracts in place, and this allows for live music to be played in concerts, at club events, on campus radio, etc. These agreements only cover “nondramatic” works, so they exclude, say, a performance of a song from a musical. Also, these licenses are limited simply to performance, not to distribution of copies of the song or its reuse.

There are some very narrow exceptions here that allow for public performance in nonprofit events and during religious services, and for small businesses to turn on the radio for their customers, but the vast majority of cases will require some kind of license.
Amy: Interpreting what is allowed when it comes to simply copying or performing copyrighted music can be complex, but derivative works bring up even more difficult copyright issues, and most of the most notable court cases in music have to do with derivatives (read or summarize definition)

Derivative Works

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.

Examples of Derivative Works:

- Arrangement for your instrument
- Piano reduction of orchestral work
- Orchestral work arranged for band
- Translation of opera and song texts
- International Phonetic Alphabet (IPA) transliteration
- Remixes
- Samples
- Adding a recording to a video

Amy: Here are some examples of derivative works (name a few specific examples)

Perry: Again, creating derivatives is a right of the copyright holder. In most cases, if you are doing any of these things you will need to secure a license or make sure your venue has secured one. Court decisions aren’t all consistent in this area, but in general have leaned toward requiring permission from rightsholders.
Perry: In some cases, you will even need to secure multiple licenses to copy, perform, or adapt a work. For instance, say you tweak an arrangement of a popular song, and you want to perform it here on campus, but you also want to record and sell copies of you performing it. The performance rights are taken care of for you, but to make and distribute copies of the song, you would need to secure what are known as mechanical rights in the underlying composition from an organization like the Harry Fox Agency. Now let’s say someone hears your recording, loves it, and wants to use it as part of a film soundtrack. They would need to secure the mechanical rights to that composition too, but they would also need to secure what are known as synchronization, or sync, rights to play the song in conjunction with a video. You would receive payment for the sync rights, but not for the mechanical rights.

Complexities of music licensing:

- **Print rights** → Copying or scanning sheet music
- **Mechanical rights** → Making “phonorecords” of underlying composition
- **Performance rights** → Live or recorded performance
- **Digital transmission rights** → Streaming services like Spotify
- **Synchronization rights** → Music with video
Perry: We’ve started by covering a lot of information for works that are in copyright, because in so many cases you can assume that’s the case. There are lots of helpful guides out there to help you determine whether or not something actually is in copyright—you can see several resources in my Intro to Copyright guide listed on your handout—but keep in mind that this is another complicated area for music. The underlying composition or published music follows the same rules we use for other items like books. So anything published before 1923 is no longer in copyright, but in most other cases scores and other music remains in copyright for 70 years after the life of the creator.

Copyright for sound recordings was governed by state law until the 1970s, so there are more complicated issues to consider. I’m happy to help navigate this for anyone who has specific cases, but I won’t go too in the weeds today.
Of course, a lot of music is in the public domain. One thing to watch out for—copying or performing newer editions or arrangements of public domain music. Sites like the IMSLP are good resources for finding public domain music, and sheet music is a favorite for archives and special collections scanning projects, with much of this published before 1923.

Another category is openly licensed music, often labeled “royalty free.” This may come with a specific license such as a Creative Commons license, or it may simply have language stating that it can be used in certain ways. Of course, check to see if there are any limitations—only noncommercial use, for instance.
Classroom Exception

- Section 110 gives specific rights to educators
- More leeway for face-to-face teaching
- Fair use gives flexibility for classroom use (including copying)
Perry: Fair use is a critically important area of U.S. Copyright Law. It gives us flexibility to use copyrighted materials for criticism and scholarship and for creative expression. Deciding whether or not your use is fair can seem intimidating, because the answer isn’t always cut and dry and even experts can disagree.

(go over each of the four factors)

I will note that legal interpretations of fair use in music have tended to be more conservative than for other kinds of works, in part because of the dependence of the industry on profit and in part because of the highly creative nature of musical expression.
(3-4 examples, with audience helping to decide whether or not case is fair use)
You don’t have to do anything to own your copyright. But it’s usually a good idea to do so if you want to document and enforce your rights.

Joint copyright is something that comes up constantly in music, since so many people may have a hand in creating something. Copyright law offers some parameters—the copyright belongs to everyone, and if one of the copyright holders makes money, they have to share it with the others. But the law isn’t too specific, so typically you will need to have an agreement in writing with your collaborators, your publisher, or your label to clarify who holds which rights and how royalties will be distributed.
Rights Management Organizations

These organizations handle royalties for performance and other uses of your works:

- ASCAP: [https://www.ascap.com/](https://www.ascap.com/)
- or BMI: [https://www.bmi.com/](https://www.bmi.com/)
- Harry Fox Agency: [https://www.harryfox.com/](https://www.harryfox.com/)
  - Issues licenses for the right to reproduce or distribute a composition (i.e., recording contract)
- SoundExchange: [https://www.soundexchange.com/](https://www.soundexchange.com/)
  - Licenses digital performance rights (e.g. for streaming)

(Play William & Mary video)

Good to note that these agencies usually have reciprocal agreements with other international agencies.
Over the last 10-20 years, numerous organizations like CD Baby and TuneCore have cropped up to support independent distribution through digital services.

While business models and licensing services have generally assumed that musicians are working with publishers and labels, other services have cropped up that allow you to independently release and promote your music, collect royalties, and even divide royalties among various rightsholders.
Questions?