



Christian Copyright Licensing  
International

CCLI

# **COPYRIGHT ISSUES:**

## **Sifting Through the Legal Mumbo Jumbo**

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### **I CHURCHES & WORSHIP – WHAT THE CHURCHES SAY**

In October 2008, over 11,000 churches responded to a variety of questions regarding worship in their church. These churches represented over 20 denominations and sizes ranging from 100 – 20,000. Here is what they had to say:

- 59% of the churches report using a blended format of worship music. Over 13% hold separate Contemporary and Traditional services.
- 46% say their average time for worship music is 11-20 minutes.
- 62% report using Chord Charts by the Worship Team, 58% use Lead Sheets, and 46% use Song Books.
- 46% of the churches reported that they use Hymnals as one form of a worship assist for the congregation. 22% use Bulletin Inserts.
- 78% report using Computer Projection as a worship assist tool. Churches reporting the use of computer projection has grown from 5% to 78% in the last eight years.

This survey indicates that changes in worship styles and methods of assisting the congregation in worship is taking place across all denominations and congregation sizes.

### **II THE COPYRIGHT LAW AND THE CHURCH**

As the survey indicates, worship in the church today provides each individual the opportunity to be involved, to be a participant in worship. The church today uses a variety of ways to assist the congregation in worship and technology plays a major role in assisting the congregation through the use of photocopied song sheets, bulletin inserts, customized songbooks, computer projection and distribution of recorded worship songs. Unfortunately, because technology has become affordable and easy for the church to use, many churches have come in conflict with the copyright law.

Mark Twain once stated “only one thing is impossible for God – to find any sense in any copyright law on this planet”. I am sure that just spending a few minutes trying to understand the copyright law can lead each of us to nod our heads in agreement with that statement. But it is important that the church has a good understanding of what can and can not be done as it relates to copyrighted works.

### **III TWO MINUTE DRILL – HISTORY OF COPYRIGHT**

#### **A. 1909 U.S. Copyright Law**

1. Based largely on British Law
2. 28 years of copyright protection, plus 28 year renewal option
3. Quickly became inadequate to govern rights of technology
  - a. Recording and broadcasting didn't exist
  - b. Mid-1970's bootlegging of records estimated at \$500 million per year

#### **B. Copyright Act of 1976**

1. Signed into law October 19, 1976
2. Became effective on January 1, 1978
3. The Two-Fold Purpose of the Copyright Act of 1976
  - a. To promote the progress of... the useful arts...
  - b. To grant authors the exclusive right to the fruits of their respective works
4. The Essential Provisions of the Copyright Act of 1976
  - a. The preemption of nearly all other copyright laws, federal, state, and common law
  - b. The extension of copyright duration to “life of author plus 70 years”
  - c. The clarification, strengthening and extension of the exclusive rights of copyright owners
  - d. The clarification and extension of protection for copyright owners in sound recordings
  - e. The requirement of public (educational) broadcasters, CATV companies, schools and colleges to pay for the use of copyrighted music
  - f. The definition and extension of the “Fair Use” of copyrighted material

#### **C. The Berne Convention**

U.S. joined the “Berne Union” March 1, 1989, entering an International agreement for the protection of copyrights.

1. To develop copyright laws in favor of authors in all countries
2. To end discrimination in copyright protection against foreign authors
3. Copyrights from other countries will have protection in the United States and United States copyrights will receive protection in other countries
4. Joining eliminated formalities required for copyright protection
5. Prior to 1989 copyright notice was required. Since 1989 the requirement has been eliminated

6. Infringement penalties and statutory damages increased substantially
  - a. Infringement penalties up to \$150,000
  - b. Statutory damages up to \$30,000

**D. The Sonny Bono Copyright Terms Extension Act - 1998**

1. Extending the term of copyright protection an additional 20 years
2. Effective January 1, 1999

**IV FOUR KEY TERMS AND DEFINITIONS**

**A. Copyright**

An exclusive right given to an author, composer, playwright, publisher or distributor of an original created work.

- A copyright is an asset – a legal interest – a transferable property

**B. Copyright Owner**

The owner of any one of the exclusive rights to a work of authorship which gives him the exclusive authority to publish, produce, sell or distribute a literary, musical, dramatic or artistic work.

- Permission must be granted for anyone other than the copyright owner to participate in any of the exclusive rights of a copyright

**C. Copyright Protection**

Copyright is a form of protection granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works for a limited time.

- Works created on or after January 1, 1978 generally receive copyright protection of “life of the author plus 70 years”
- Generally, works that were created prior to January 1, 1978 and had copyright protection on that date will have copyright protection of 95 years from registration date or date of first publication

**D. Public Domain**

Works that have lost their copyright protection or never had copyright protection. May be copied, performed, or used without anyone’s authorization.

- A work does not have to be registered to activate copyright protection
- A published work without a copyright notice does not guarantee the work is in public domain

## V **THE EIGHT KEYS OF THE COPYRIGHT LAW**

### A. **What is covered – The Eight Works Of Authorship**

1. Literary works (books, periodicals, manuscripts, phonorecords, film tapes, disks, cards)
2. Musical works (including any accompanying words)
3. Dramatic works (including any accompanying music)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works
7. Sound recordings
8. Architectural works

### B. **Copyright Owner Exclusive Right - REPRODUCTION**

The right to reproduce the copyrighted work in copies or phonorecords.

- Includes photocopying as well as written
- Violation not based on quantity
- Intent is not a factor
- Can be just a portion of a song

Examples of Reproduction: photocopying, song sheet creation, making transparencies, creating computer files, recording the worship service.

#### **Entering songs on the computer**

Creating song files on the computer is not exempt from the exclusive right of Reproduction. Whenever you enter a song into the computer, you are creating a copy, just as you would if you were photocopying the song, handwriting the song, or making an audio or video recording of the song.

### C. **Copyright Owner Exclusive Right - ADAPTATION**

The right to prepare derivative works based upon the copyrighted work.

Examples of Adaptation: translations, musical arrangements.

### D. **Copyright Owner Exclusive Right - DISTRIBUTION**

The right to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.

Examples of Distribution: church tape/cd/dvd ministries.

**E. Copyright Owner Exclusive Right - PERFORMANCE**

The right to perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

- Radio and TV transmission is a performance
- Churches have a Performance exemption

Examples of Performance: Congregational singing, choir singing, soloist.

**F. Copyright Owner Exclusive Right - DISPLAY**

The right to display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, including the individual images of a motion picture or other audiovisual work.

- Churches have a Display exemption

Examples of Display: Projecting songs from a video projector, overhead, slide projector

**G. Copyright Owner Exclusive Right – SOUND RECORDINGS, To Perform The Work Publicly By Means Of A Digital Audio Transmission**

The Digital Performance Right in Sound Recordings Act of 1995 (DPRA) created an exclusive right for copyright owners of sound recordings by means of certain digital audio transmissions (downloading, webcasting, etc.). This right applies to Reproduction, Adaptation and Distribution. The DPRA was impacted by the Digital Millennium Copyright Act of 1998 (DMCA), which contains critical provisions relating to the licensing of music on the Internet and amends the DPRA.

- The DPRA allows copyright owners of sound recordings the right to authorize certain digital transmissions of their works such as interactive services, digital cable audio services, satellite music services, and commercial online music providers
- Exempt from DPRA are traditional radio and television broadcasts and subscription transmissions to businesses
- Existing mechanical rights apply to digital transmissions that result in a specifically identifiable reproduction by, or, for the transmission recipient (downloads)
- The DMCA amends certain elements of the DPRA providing a simplified licensing system for digital performances of sound recordings, such as those on the internet (webcasting) and through satellite delivery. This is in the form of a statutory license for non-interactive non-subscription digital audio services with the primary purpose of entertainment

### **A Word About Webcasting (streaming)**

Webcasting generally refers to non-interactive broadcasting or transmitting of audio/video on the internet and licenses (permissions) are required to webcast music. Webcasting is considered a performance and there must be permission to perform a musical work. Performance is an exclusive right of the copyright owner. Permission (licensing) to perform the musical work can be obtained from organizations that represent the songwriter/publisher. For example, songwriters and publishers usually work with one of three performance rights organizations – ASCAP., BMI, and SEASAC. These agencies have web site licenses available.

## **H. The Limitations on Exclusive Rights**

### 1. Exemption of Certain Performances and Displays (section 110)

#### a. Religious Service

*Performance of a nondramatic literary or musical work or of a dramatic-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.*

#### (1) Key Elements of Privileges

- (a) It is in the course of service
- (b) Does not grant reproduction or duplication privileges

#### b. Nonprofit Concert

*Performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers.*

#### (1) Key Elements of Privileges

- (a) The purpose is no direct or indirect commercial advantage and without payment of fee to performers, promoters, or organizers
- (b) No direct or indirect admission charge - or - net proceeds are used for educational, religious, or charitable purposes

### 2. Ephemeral Recordings (section 112)

#### a. Religious Broadcast Copies

- (1) Exemptions – 1 copy per broadcast station

- (2) Qualifications
  - (a) No direct or indirect charge for making or distributing any such copies or phonorecords – and –
  - (b) Single transmission to public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer to the copyright – and –
  - (c) Except for one copy or phonorecord that may be preserved exclusively for archival purpose, the copies of phonorecords are all destroyed within one year of first transmission
  
3. Effect of Transfer of Particular Copy or Phonorecord (section 109)
  - a. The Two Privileges of Effect of Transfer
    - (1) The right to sell or otherwise dispose of the possession of that copy or phonorecord
    - (2) The right to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located
  - b. The Two Requirements for Privileges of Effect of Transfer
    - (1) Must be the owner of a particular copy or phonorecord lawfully made under this title  
OR
    - (2) Must be a person authorized by such owner
  - c. The Restrictions to Privileges of Effect of Transfer
    - (1) The privileges prescribed above do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy of phonorecord from the copyright owner by rental, lease, loan, or otherwise, without acquiring ownership of it
  
4. Fair Use (section 107)
  - a. The Six Purposes Of Fair Use
    - (1) Criticism
    - (2) Comment
    - (3) News reporting
    - (4) Teaching (including multiple copies for classroom use)
    - (5) Scholarship
    - (6) Research

- b. The Four Determining Factors of Fair Use
  - (1) The PURPOSE and character of the use, including whether such use is of a commercial nature or is for non profit 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
  - (4) The effect of the use upon the potential market for or value of the copyrighted work
- 5. Reproductions by Libraries and Archives (section 108)
- 6. Secondary Transmissions (section 111)

## VI QUESTION AND ANSWERS

### A. Question One

Is it an infringement of the copyright law to have your worship band record copyrighted songs and distribute copies without permission as long as no fee is being charged?

**Answer:** Yes.

*Fee is not a factor to determine if permission is required. Copying and/or distribution of a copyrighted work must have proper permission.*

### B. Question Two

Is it an infringement of the copyright law to create an arrangement of a copyrighted song without permission?

**Answer:** Yes.

*Adaptations (arrangements) are an exclusive right of the Copyright Owner.*

### C. Question Three

If a legal publication of a copyrighted song does not have a copyright notice attached, can you assume that the song is in Public Domain?

**Answer:** No.

*Upon joining the Berne convention on March 1, 1989 it no longer became a requirement for the copyright notice to be attached to a published work.*

**D. Question Four**

If a song was copyrighted June 1, 1989 when would the copyright expire?

**Answer:** *Don't know yet!*

*Works created on or after January 1, 1978 have copyright protection of life of the author plus 70 years...*

**E. Question Five**

If you purchase a CD from the music store and later sell the CD to a friend charging either over 10% more or over 10% less than what you paid, is it an infringement of the copyright law?

**Answer** *No.*

*One of the limitations of the Copyright Owner's exclusive rights involves the "effect of transfer of a Particular Copy". You have the right to sell or otherwise dispose of the possession of that copy or phonorecord (and price has no bearing).*

**VII COPYRIGHT SCENARIOS**

**A. Scenario One**

Worship leader Sam decides to add a song to sing in the worship service and quickly writes the lyrics on a blank overhead transparency, being careful not to photocopy the song from a songbook. Additionally, it was only the first half of the songs' chorus. Has Sam committed copyright infringement?

**Answer:** *If Sam did not have authorization from the copyright owner, the making of the transparency infringes upon the copyright owner's exclusive right of reproduction. It does not matter that only lyrics were copied or that it was copied by hand, (or that it was just part of the chorus), this is still a substantial reproduction of the copyrighted song. The activity in this particular example would be covered by a Church Copyright License.*

**B. Scenario Two**

Worship leader Terry purchases ten congregational songbooks for his worship team. He then makes 100 photocopies of one song out of the purchased songbooks to put in the bulletin to assist the congregation in worship next Sunday. Is this legal, or a copyright law infringement?

**Answer:** *Reproduction (copying) of a copyrighted song is an exclusive right of the copyright owner. It does not matter that one or a few songbooks were purchased. Copying of a copyrighted song without permission from the copyright owner is a copyright infringement. The activity in this particular example would be covered by a Church Copyright License.*

**C. Scenario Three**

Mary performs a copyrighted song (of a religious nature) during a morning worship service. Is this an infringement of copyright?

**Answer:** *This scenario would not be an infringement. Performance is an exclusive right of the copyright owner and Mary would have been infringing if permission had not been given, except for the exemption provided by the religious service exemption. This exemption states that performance of a musical work of a religious nature in the course of services at a place of worship or other religious assembly is exempt from copyright infringement.*

**D. Scenario Four**

The church choir director makes 30 copies of a choral arrangement for the choir. The director is careful to purchase one arrangement and only make as many copies as there are choir members. Additionally they make sure to collect and destroy the copies after they were used. Is this permitted?

**Answer:** *If permission has not been secured this is a violation of the copyright law. Creating a copy of a copyrighted song is an exclusive right of the copyright owner (reproduction). It does not matter if the copies were collected and destroyed after use. The activity in this particular example would NOT be covered by a Church Copyright License.*

**E. Scenario Five**

The music minister of a local church recently started using the computer and data projector to project songs as an assist to the congregation. After installing a music projection software program on the church computer, the music minister entered into the computer database the lyrics to 100 songs regularly used during worship. Is this permissible or a potential infringement of copyright?

**Answer:** *If the music minister did not have authorization from the copyright owner, entering lyrics on a computer database is a creation of a copy of the song and infringes upon the copyright*

*owner's exclusive right of reproduction. The activity in this particular example would be covered by a Church Copyright License.*

## **VIII FINDING THE SOLUTION – ETHICAL CHOICE OF COMPLIANCE**

- A. Purchase all Music
- B. Obtain Prior Written Permission from Copyright Owners for Any and All Copying Activity
- C. Purchase a License That Provides Blanket Permission to Copy A Specified Library of Songs
- D. **Christian Copyright Licensing International, Inc. (CCLI)**  
CCLI serves over 210,000 churches in Australia, Brazil, Canada, New Zealand, South Africa, Europe and USA, providing a variety of copyright permission licenses and services to the church. CCLI can be contacted at 1-800-234-2446. Licenses and services include:

1. The Church Copyright License  
Provides permission to copy from over 200,000 songs for congregational use. Enables the church to make overhead transparencies, song sheets and songbooks, project lyrics from computer, record worship services, and make arrangements of the music.
2. SongSelect Basic  
Internet worship resources providing over 90,000 songs with full lyrics, complete copyright information, worship resource links and thousands of original sound samples of the top worship songs being sung in churches today.
3. SongSelect Advanced Melody  
Along with all the features of Basic, Advanced Melody provides thousands of **transposable** lead sheets available for the church to download. **And over 1,500 transposable Chord Sheets have been added**, representing the top worship songs being used by churches.
4. SongSelect Advanced Harmony  
New internet service providing hundreds of **transposable multi-part vocal sheets** available for the church to download, representing the top worship songs being used by churches.

5. SongSelect Advanced Premium  
All the features of SongSelect Basic, Advanced Melody and Advanced Harmony rolled into one incredible new internet service providing thousands of lyrics, lead sheets, chord sheets and hymn/4 part vocal sheets. All transposable and available for the church to download. The most comprehensive service of this type on the internet, representing the top worship songs being used by churches.
  
6. The Church Video License (CVLI)  
The Church Video License is one of the most cost effective and convenient ways for churches and other ministry organizations to legally show home videocassettes and videodiscs of motion pictures for a variety of church activities. Through an agreement with over 90 producers, the CVLI Church Video License provides legal coverage for Pastors to use portions of movies to illustrate sermon points, for Sunday schools and Youth Groups to view the latest videos, and educational classes to use videos for teaching and training. As of May 2008, the Church Video license now includes a free ScreenVue Standard subscription.
  
7. ScreenVue Services  
ScreenVue provides the ideal companion tool along with your Church Video License. Your ScreenVue Standard subscription gives you access to a comprehensive online guide of movie scene ideas for sermon and classroom teaching illustrations...from major movies by Universal, Warner Brothers, Paramount, Disney, MGM, Fox, New Line Cinema and more. With a ScreenVue PLUS subscription, you receive all the features of a Standard subscription plus online video downloads.

**For more information, please contact CCLI:**

Phone: 1-800-234-2446

Office Hours: 7 AM – 4 PM, PST, Mon. – Fri.

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