

COPYRIGHT — The Spirit and Letter of the Law

by David Winkler

Several years ago, a friend of mine decided to play a trick on a fellow music director at a large and musically prominent church in the South. Walking into the main office of the church, he announced that he was an agent from ASCAP (the American Society of Composers, Authors, and Publishers) who had come to inspect the music department of the church for possible copyright violations. The receptionist buzzed back to the music office to inform them of the gentleman's presence. Alarmed, the music director hurriedly gathered his troops together and instigated a frenzied “search and destroy” drill. Several trash cans were quickly filled and rushed out of sight. When my friend walked into the music office and revealed his prank, the frazzled music staff breathed a sigh of relief and shared a good laugh. However, the incident caused a lot of soul-searching on the part of the music director, and led to a new commitment to understanding and obeying the copyright laws as they apply to church music.

Psalm 15: 1, 2 says, “*O LORD, who may abide in Thy tent? Who may dwell on Thy holy hill? He who walks with integrity, and works righteousness, and speaks truth in his heart.*” All of us want to see the anointing of God on our ministries, but sometimes we don’t realize that the way we conduct the business of our ministries is just as important as the music we produce or the lives we touch. It’s not enough to be doing the right thing; we must also do it in the right way. And in music, part of the “business” of how we run our ministries has to do with the issue of copyright.

Over the past few years, I've had the opportunity to view this issue from several different angles — from being a published arranger/composer, to owning a small publishing firm, to leading a music ministry from week to week like most of you. Here are some of the things I've learned which can aid in our understanding of this subject.

THE ORIGINS OF COPYRIGHT

The eighth commandment says simply, “Thou shalt not steal.” In this short phrase (and the Mosaic laws which follow), the right of personal property was confirmed. Our nation’s laws have been greatly influenced by the biblical concept of ownership rights, and it’s one of the things which distinguishes our form of government from socialist or communist models.

The right to intellectual property was recognized by the founders of our nation. Indeed, in the U. S. Constitution, Article 1, Section 8, one of the powers of Congress is listed as the right

... 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 ...

In other words, the inventors of ideas should have the right to control the use of their creations and benefit from the exploitation and development of their creative work. Though the Founders could hardly have imagined the modern implications of this law in terms of the ever-new technologies around us, the basic concept still applies that, for what a person creates, he should be rewarded.

COPYRIGHT DEFINED

The term “copyright” means simply “the right to copy.” This is a very simple definition which, if kept in mind, would answer most of the questions we all have about copyright. The owner of the copyright (i.e., the creator of the work, or a party which has obtained ownership of copyright by a contract with the writer) possesses a number of exclusive rights, including (but not limited to) the following:

REPRODUCTION RIGHTS - the right to copy the work (whether it be printed music, recordings, or other forms of fixation)

DISTRIBUTION RIGHTS - the right to sell or distribute copies of the work

DERIVATIVE RIGHTS - the right to transform or revise the work (changing the lyrics, translating the lyrics into another language, making a musical arrangement of the work, etc.)

MECHANICAL RIGHTS - the right to record the work

PERFORMANCE RIGHTS - the right to perform the work publicly, such as in live concerts or recorded performance (such radio or television broadcasts, use of background music in a place of business, or even juke boxes)

Thus, if you are not the owner of the copyright of a work, you do not possess the right to use the work in any of these ways without first obtaining permission from the owner of the copyright. For a more complete definition of copyright, check out Circular 1, “Copyright Basics,” at the Library of Congress web site, www.copyright.gov.

WHY WE SHOULD OBEY THE COPYRIGHT LAWS

Scripture teaches that government is God’s established authority to maintain civil order and to protect the lives and property of its citizens. God commands us to obey the laws of government, except in rare cases where we’re being asked to do something immoral or to deny our faith. This is “the letter of the law.”

Obeying the copyright laws benefits the creators of the music we enjoy using. This is “the spirit of the law.” If we want to continue to have good music to enjoy, we must support composers and publishers so they can continue to supply what we need.

Most publishers and composers I’ve met in the Christian music industry are truly ministry-minded. However, they have a business to run, bills to pay, and families to care for just like everyone else. The product you hold in your hand (a recording or a choral book) may have costs tens of thousands of dollars to produce and promote. Just to break even, a publisher must sell a considerable number of units. This is the reality of the music business, one which we should all respect.

COPYRIGHT TERMINOLOGY

The issue of copyright involves many business and legal terms which need to be understood. Here are a few:

COMPOSER/SONGWRITER - the creator of the song. This person owns the copyright to his song unless he transfers his right of ownership to another party.

COPYRIGHT OWNER - the actual owner of the rights to the song. In some cases, two or more copyright owners may share ownership (common in cases where there is more than one writer of the song). The copyright owner is often called the “publisher” even if the company doesn’t actually sell printed copies of the music.

COPYRIGHT ADMINISTRATOR - Some copyright owners hire another company which specializes in copyright management to keep track of the administrative work of licensing, handling contracts, royalties, etc. An example would be Music Services in Brentwood, Tennessee, which handles copyright contracts for several companies, including EMI Christian Music and Mercy/Vineyard (see www.musicservices.org for more info).

PRINT PUBLISHER - the publisher of the printed copy of the music. The “print publisher” may or may not be the copyright owner of the song. In cases where the print publisher is not the copyright owner, a contract exists between the two concerning the use of the music. This is very common, particularly in collections of songs.

IMPRINT - a division of a publishing house, usually formed to accentuate a distinction between musical styles. An example would be Allegis Publications, an imprint of Lillenas Publishing Company, or Church Street Press, an imprint of Genevox Music Group (a division of Lifeway Christian Resources).

DISTRIBUTOR - Many print publishers contract with another company to help with the marketing, warehousing, and order fulfillment of their product. In some cases, the distributor is also a publisher. An example would be Word Music, which distributes for Maranatha Music in addition to their own publications.

DEALER - your local bookstore, music store, or volume dealer (such as Pine Lake Music).

COPYRIGHT NOTICE - Found at the bottom of the first page of a piece of music, this notice lists the owner of the copyright and the year in which the copyright was first registered. Sometimes copyright notices change as songs change ownership.

COPYRIGHT LICENSE - a contract regarding specific uses of a copyrighted work. A print license, for example, would give authorization to create printed copies of a piece of music, while a mechanical license would outline the terms of an agreement to record a song.

BLANKET LICENSE - a license covering multiple copyright uses of more than one song (such as the Church Copyright License offered by CCLI, Inc.).

PERFORMANCE RIGHTS ORGANIZATION - A group, such as ASCAP, BMI, or SESAC, which collects royalties for public performances of musical works. Church worship services are exempt from paying performance royalties. However, some other uses of music by a church group may not be exempt.

PUBLIC DOMAIN - abbreviated P.D., this term refers to “traditional” songs where the composer is anonymous (such as “He is Lord” or “What a Mighty God We Serve”), or to older songs for which copyright protection has expired.

WHY WE DON'T OBEY THE COPYRIGHT LAWS

Often we are ignorant of the laws and how they apply to our situation, but as the saying goes, "Ignorance of the law is no excuse." Indeed, ignorance is not a justifiable legal defense. Therefore, we who are involved in music must accept the responsibility to inform ourselves of the laws concerning music use and to check our own compliance, just as other businesses and industries must be careful to follow certain regulations.

Sometimes we willfully violate what we know is right. If this is the case, we must ask ourselves how we can expect God to bless our ministries if we are deliberately skirting the law in this area.

SEVEN COMMON EXCUSES FOR NON-COMPLIANCE

1. "The law is too confusing." This is pleading ignorance. Like the household rule we teach our children, we must remember, "If you do not know what to do, ASK."
2. "We can't afford to buy what we need." This is bad reasoning. Would you go into a grocery store and steal food off the shelf just because it was the end of the month and you had run out of money? You may not have as much money in your music budget as you would like, but this isn't sufficient reason to justify illegal copying. (By the way, a great verse to share with your finance committee when budget time rolls around is Psalm 96:1 - "Sing to the Lord a new song ...").
3. "It's too much trouble." Another lame excuse. Usually copyright issues can be handled by a phone call, a fax, or an e-mail to the copyright owner.
4. "I asked permission to use a piece in a particular way, but was denied by the publisher." As owner of the song, the publisher has a right to say "yea" or "nay" to requests for copyright usage. Sometimes their reasons may seem fickle, but usually a copyright owner will have a legitimate business reason for denying a request.
5. "We need it now." Call the copyright owner. Sometimes a temporary plan can be worked out until you have a contract. But don't let your lack of planning be a rationalization for using music without permission.
6. "We aren't planning to sell the product." This is one of the most common excuses for copyright violation. While you may not intend to profit from using the work, you are still stealing from someone else if you use their music without paying for it.
7. "We won't get caught." I'm going to pray for you. You need a good dose of "the fear of the Lord," realizing that He sees all and is the ultimate Judge!

PERFORMANCE ROYALTIES

Performance royalties are collected by performance rights organizations (ASCAP, BMI, and SESAC) for public performance of musical works. For example, ASCAP licenses TV, radio, and concert hall performances. ASCAP also licenses restaurants and other businesses where music is played as part of creating an atmosphere for customers. Fees are assessed, and the proceeds distributed to the publishers and songwriters.

Fortunately, churches are exempt from performance royalties for music used in worship services. This applies to any type of religious assembly, whether you're meeting in a church building, or in another location. The only time you may have to worry about performance royalties is when you're charging for performances or doing a type of program which would not be defined as a worship service, such as a pops concert or a secular musical performance.

CCLI, INC.

CCLI, Inc. (Christian Copyright Licensing, Inc.), has been a great help to thousands of churches in helping them to comply with copyright laws and actually expand their own usage of copyright in a legitimate fashion. CCLI has been around for a number of years now, and I can tell you, there's nothing like it in the secular music industry. It's the result of an extraordinary level of trust and cooperation from virtually every major copyright owner in gospel music, and hopefully, if we all follow the rules and make sure the system keeps working, it will be around for a long time.

CCLI offers a blanket license which covers a multitude of copyright uses. I'll not list them all here, since you can obtain a copy of the license directly from CCLI (call 1-800-234-2446 or go to www.ccli.com). Basically, the license grants rights which are useful for congregational singing (such as reproducing song lyrics in various forms) and for limited recording and sale of tapes or videos of worship services. The copying of printed music itself is NOT covered, except for "Congregational Single Songsheets" (single songs from a chorus book or hymn book). There are specific rules in the CCLI Terms of Agreement which you should study carefully in order to insure that you don't become sloppy in what you allow to be done in your department and in your church as a whole. The rules concerning the recording of services using accompaniment tracks, for example, are very specific and should be studied carefully. Also, note that only songs owned by copyright owners affiliated with CCLI are covered. For any songs you may want to use which are not covered by CCLI, you must obtain a separate license from the copyright owner. "God Bless America," by Irving Berlin, would be an example of this type of song.

CCLI also offers other services, such as the Lyric Search and copyright research. In addition, CCLI has recently partnered with Motion Picture Licensing Corporation to form CVLI (Christian Video Licensing International) to provide churches with a license to use videos in a variety of ways including worship services, youth meetings, and Sunday School classes. More information on this service can be obtained by calling 1-888-771-2854, or accessing the web site, www.cvli.org.

WE MUST BE AN EXAMPLE

If we who are leaders of our music ministries know little about copyright, our people know even less. We need to show them, by instruction and by example, what is proper in this regard. For example, when someone comes by your office and wants “a copy” of a chorus, encourage them to invest in a good songbook. Our choir members need to know that any copied materials they see in our department have been “copied by permission” (include this phrase on your copied materials along with any other wording required by the copyright owner). Other ministries within the church need to be informed of these issues as well, because modern photocopiers, CD burners, and the like, have made it so easy to create unauthorized copies in a variety of ways.

HOW TO GO ABOUT MAKING THINGS RIGHT

OK, you admit that you’ve been slack about this issue for too long, and you’re determined to set your house in order. What do you do now?

1. **Destroy all unauthorized copies of music in your department.** Make a thorough search and throw out anything which is questionable.
2. **Purpose to stop all illegal copying.** Let those on your staff and music leadership know of your intention to follow the law.
3. **Join CCLI.** Become familiar with the CCLI license agreement and follow their rules carefully.
4. **Set up a process to deal with special needs.** Learn how to contact copyright owners concerning any copyright uses not covered by CCLI (the CCLI web site, www.ccli.com, provides information on all CCLI-affiliated copyright owners).

IN CONCLUSION

Many needs we have for music which seem at first to be copyright problems can be solved by just doing a little homework and advance planning. Let’s say you like one particular song in a collection, but don’t want to buy the whole book for your choir. Check the publisher web site (or ask your music dealer to help), as you may be able to find the song published as an octavo. Or, maybe you need multiple copies of the recording of a collection for your choir to take home and practice. Many publishers have anticipated this need and offer multiple demo CDs at a minimal cost.

As we all work together — dealer, publisher, and church musicians, we will continue to see the Christian music industry grow and be able to provide the tools we need for effective ministry.

This article was originally published in 1996 in The Communicator, a magazine published by J&J Music (which closed in 2008). Since that time, copyright issues have become even more complicated as internet use has greatly expanded. File-sharing technologies and easy access to free downloads have caused many to become lax in copyright awareness. Thank you for helping those of us involved in the creation and production of new music preserve our livelihood so that we can continue to produce more new music!