



Copyright Issues

I. Copyright Registration for Musical Compositions — General Information

The copyright law of the United States (title 17 of the United States Code) provides for copyright of “musical works, including any accompanying words,” which are fixed in some tangible medium of expression. Musical works include both original compositions and original arrangements or other new versions of earlier compositions to which new copyrightable authorship has been added.

How Copyright is Secured

The Copyright Office registers claims to copyrights and issues certificates of registration, but does not “grant” or “issue” copyrights. Under the present statute, copyright protection begins at the time a work is created in a fixed form such as writing or recording.

Original musical works may be registered in published or unpublished form. For unpublished works and works published on or after January 1, 1978, registration in the Copyright Office is not a condition of protection; however, there are certain advantages. The following information will assist those who wish to register a claim to copyright in a musical composition.

Registration Procedure

If you choose to register a claim in your work, send the following materials to the Copyright Office:

- A properly completed application form
- A non-returnable deposit of the work to be registered
- A non-refundable filing fee of \$35 with each application ([see here for most up-to-date fees and instructions](#))

Depending on the work you wish to register, you may be able to complete the application through an electronic filing.

Application Forms

The appropriate form for registration of a musical work is [Form PA](#), which can be downloaded and submitted online by visiting the US Copyright Office website. The application for copyright registration must be accompanied by a deposit consisting of “copies” (lead sheet or sheet music) or “phonorecords” (audio recording) representing the entire work for which registration is made.

[Form SR](#) is for registration of “sound recordings.” [Download Circular R56](#) for detailed information about the registration of claims in sound recordings. A sound recording is a work that results from the fixation of a series of sounds. The *author* of a sound recording is the performer, or the record producer, or both.

Form SR may be used to register both a musical work and a sound recording fixed in a phonorecord, provided that the same person or organization owns the copyrights in both works. If both kinds of work are being registered, space 2 of Form SR must clearly account for the authorship of both the musical

composition (music, or words and music) and the sound recording (performance, sound recording, or both).

For more information and to download application forms, visit www.copyright.gov.

Duration of Copyright

Works created on or after January 1, 1978, that satisfy the copyright requirements are automatically protected from the moment of creation and remain active for the life of the author plus an additional 70 years after the death of the author. If the work was done by two or more authors, protection will remain active during the life of the authors plus an additional 70 years after the death of the last remaining author. Works that are made for hire or are done by anonymous authors (unless the author's identity becomes known in Copyright Office records), the duration of the copyright will be 95 years from publication or 120 years from creation, whichever one is shorter.

Works that were created before January 1, 1978, received protection either on the date the work was published with a copyright notice or on the date of registration if the work was registered in unpublished form. In either case, both works would receive protection for a period of 28 years from the date the copyright was secured. During the last year of protection (the 28th year), the copyright was eligible for renewal. The Copyright Act of 1976 extended the 28 year protection to 47 years for copyrights that were continuing on January 1, 1978, or for pre-1978 copyrights restored, making these works eligible for a total term of protection for 75 years. Public Law 105-298, further extended the renewal period for an additional 20 years, providing for a renewal term of 67 years and a total term of protection of 95 years. Public Law 102-307 amended the 1976 Copyright Act to provide for automatic renewal of the term of copyrights secured between January 1, 1964, and December 31, 1977. Thus, filing for renewal registration is no longer required to extend the original 28 year copyright term to the full 95 years.

Note: it's complicated to determine copyright status for works created before 1978, and I would not recommend to anyone that they take a shot at calculating and deciding for themselves whether or not something is in the public domain. The easier and safer option is to look up a work you'd like to use on the copyright website, which will tell you if it's registered, when, and whether it is in the public domain. If all else fails, you can pay the copyright office a fee to do the searching for you. At the copyright website, you go to "search records." There is also useful information in the FAQ section about determining if a work is protected by copyright.

--Brenda Ulrich, Volunteer Lawyers for the Arts, Massachusetts

II. Copyright Issues for Performers

The following information is adapted from *CMA Matters*, the technical bulletin of Chamber Music America, Volume 1, No. 4.

No License with Licenses

Composers (and their publishers) own all rights to the works they create. These rights include the right to publish the work in printed form, the right to have parts for a work that is not available for sale, the right to record the work and the right to perform the work in public (even if the performance is for free or not-for-profit). Each of these rights is separate, and may be administered separately. In order to use a piece of music that is protected by a copyright, an organization must obtain each of the appropriate rights from the composer or his or her agent.

Even if a performer has properly purchased or rented the parts to a composition that does not mean that the performer has the right to perform the work in public. Even if the ensemble has commissioned the work directly from the composer, that does not necessarily mean that the ensemble has the right to record or perform the work in public. Each of these rights must be explicitly obtained from the composer or his or her agent.

In many countries, composers have joined together to create organizations to license performances of their music. They have found that while it is mechanically difficult for each of them to police every use of their music, if they banded together in an organization that would enforce their rights against regular users of music, they could efficiently collect the license fees for public performances to which they were entitled. In the United States the major licensing organizations are the [American Society of Composers, Authors, and Publishers](#) (ASCAP) and [Broadcast Music Inc.](#) (BMI). Most American composers belong to either one or the other of these organizations.

Both organizations offer a number of ways to license music. The most efficient way for those who regularly perform or present copyright protected music is to obtain a “blanket” license. This license enables an ensemble or presenter to perform all of the works in each organization’s catalog for a single annual fee. The fee is calculated based on the number of performances involved, ticket prices and hall size. If a presenting or performing entity were to obtain a blanket license from each performing rights organization it would have secured the performing rights for just about any copyrighted work that might be performed in a season.

Also available is what is called the “per use” license, which on a per-concert basis is more expensive. This license is more appropriate for an infrequent presenter of copyright music. In this case the group sends a copy of its projected program to the relevant organization (ASCAP or BMI depending on the composer involved) and will be quoted a licensing fee for that particular performance. If you do not know which licensing organization represents a composer whose work you are interested in performing or presenting go to [ASCAP](#) or [BMI's](#) website to search their online archives. Finally, a license can be obtained directly from the composer. [Click here](#) to review the formula used by ASCAP to calculate royalties for a single musical work.

The most discussed issue for those involved in chamber music is who is responsible for obtaining the license. The answer is that the presenter, the ensemble and the owner of the hall where the concert takes place are all responsible for making sure that someone has obtained the proper license. The performing rights societies are legally able to demand that any one of these organizations makes the required payment. Without such payment, that organization is infringing the composer’s copyright under federal law.

Composers make their livings from the revenues generated by their work. The most important component of this money is performing rights income. In order to support the work of composers it is essential that all of us in the field make sure that proper licenses have been obtained and fees are paid for the performance of copyright music. It is equally important that programs from the concerts be sent to the performing rights organizations. This insures that composers get credit and payment for performances of their works.

III. Additional Resources

- ASCAP: www.ascap.com
- BMI: www.bmi.com
- The United States Copyright Office: www.copyright.gov
- [Circular 50: Copyright Registration for Musical Compositions](#)
- [Circular 56: Copyright Registration for Sound Recordings](#)