

FACQ – “Frequently Asked Copyright Questions”

Questions and answers, as they relate to copyright, legal affairs, and licensing for Barbershoppers

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1. QUESTION: So, I want to sing a song, but the arrangement doesn’t exist. How can I make that happen? How can I legally arrange a song?

ANSWER: There are many arrangers for hire who are willing to take on commissions to create new arrangements for a fee, and you would need to get in touch with one of them directly to make such a request. When an arrangement is created, the appropriate licenses must be in place from the copyright-holding music publishers in order for the arrangement to be legally created and distributed. The Society (me) can help in this process, as this is a service we can provide. You or your group would need to sponsor the cost of obtaining a license (check in with me for a quote based on your song). It usually takes 30-60 days for me to turn around that paperwork, depending on the publisher and song involved. If you would like to request that we secure permission to arrange on your behalf, you will need to complete the Arrangement and Reproduction Request form (which can be downloaded from barbershop.org under Resources → Document Center → Copyright and Legal) and return it to my attention, which will authorize me to move forward.

2. QUESTION: What is a mechanical license, and why do I even need one?

ANSWER: A mechanical license must be in place if you want to create an audio recording (CD or song for download [DPD]). Per Circular 73 from the Copyright Office, “Section 115 of the Copyright Act provides a compulsory license to make and distribute phonorecords once a phonorecord of a work has been distributed to the public in the United States under the authority of the copyright owner...”. That just means once a song has been recorded with permission of the copyright owner, anyone may then create another recording or cover, if they follow some rules.

The Copyright Office has set a statutory rate of \$0.091 (this changes from time to time) due to the copyright holder for each time a song is recorded. In order for you to obtain a mechanical license, you must pay this amount for each copy of each song you create. The easiest way to obtain such a license is to use the Songfile system on harryfox.com. The Harry Fox Agency is the largest agent representing the majority of copyright holders for processing mechanical licenses. Once a payment of \$0.091/unit is collected and accepted by this agent or the copyright holder directly, the license is in place. A Notice of Intention To Obtain a Compulsory License must accompany your payment, although this is not necessary when you purchase your licenses through Harry Fox. For more information on this, please refer to the Harry Fox web site, to Circular 73, available from the copyright.gov web site, or to the Copyright Basics for Barbershoppers article which can be downloaded from barbershop.org under Resources → Document Center → Copyright and Legal.

3. QUESTION: A new member has joined my group, and our old guy quit. Can we give the new guy his old music?

ANSWER: Certainly. Just be sure to not make any NEW copies. Any new copies made must be paid for and purchased legally from an authorized distributor. If the music is in our catalog, you can purchase new copies from the Harmony Marketplace. To place an order with them, send an e-mail to Marketplace@barbershop.org or call them at the 800-876-SING. To give you the most accurate pricing, you'll need to provide them with your mailing address and payment info., the number of copies you desire of each arrangement, and the shipment method of your choice (via e-mail, US Mail, or UPS).

4. QUESTION: How can I make audio recordings or videos of my performance without breaking copyright law? What if I am doing this for educational purposes only? What about for sheet music?

ANSWER: It is legal to make a single audio or video recording of a rehearsal or show for archival, educational, or study purposes and to make one back up copy for security. However, if you want to distribute copies to members or offer them to the public either for sale or at no charge, you must first obtain a mechanical license for audio only or synchronization license for DVD/video for each copyrighted song used on the recording. If the DVD of the concert will not be distributed, and only one or two copies will be made for educational purposes, there is no need for legal clearance, but if additional copies would be made and distributed, you would be responsible for obtaining the necessary clearances. You would need to submit requests in writing to obtain synchronization licenses, or at least obtain informal approval in writing from each publisher of songs included in the video, regardless of length of use. Here is a list of some of the information the publishers will require prior to considering a request:

- Description of program and your organization.
- Territory – Where you will distribute the material (worldwide if posted on the web)
- Term – How long will the video be posted or distributed?
- Media – Online streaming video? DVD, CD? (if DVD or CD, how many copies will be distributed?)
- Length of use – timing can usually be approximate (up to 0:30, etc.) but some want exact timing
- Type of use: background/vocal, (under picture) or visual/vocal (performers are seen singing)

You can propose gratis (approval with no license fee) clearance and see if they will agree. You can use the repertory search functions on the bmi.com, ascap.com, and sesac.com web sites to help you identify the publishers and how to contact them.

Distributing sheet music for educational purposes may fall under an area of copyright law called fair use, on which the Society staff does not advise, as this area can be interpreted in many ways. We leave that decision up to our chapters, and they must decide whether or not they feel they can rely on that. This area of the law has been interpreted very thoroughly by the Stanford University Library and their guidelines may be very useful to our chapters, and can be found online here:

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/7-b.html

The MENC (The National Association for Music Education), has also provided some guidelines on this topic on their web site here:

<http://www.menc.org/resources/view/united-states-copyright-law-a-guide-for-music-educators-part-1#use>

5. QUESTION: What is the difference between the Society's published and unpublished catalogs?

ANSWER: The arrangements in the Society's published catalog are "BHS/SPEBSQSA-approved" and are thought to be the best arrangements in the catalog, though this does not necessarily mean these songs are contestable. Questions about the contest suitability of this or any other song/arrangement should be directed to the judging community and measured against current contest rules (ask *before* you sing). These arrangements are also not quite as expensive as the titles in our unpublished catalog and are not subject to any arranger fees. Published arrangements generally cost \$1.65 (members) or \$2.20 (non-members) vs. \$2.65 or \$3.20. Many times we have learning media available.

Unpublished titles have been licensed and approved by the music publishers, so we make them available to our membership, but the Society does not officially recommend them. These arrangements may become published in the future, which is a decision made by the Music Publications Committee. We do not have learning media available for these arrangements, although it may be available through other independent sources outside of the Society. If none exist, you can have learning tracks commissioned. Check out a listing of those who are making them here:

<http://www.barbershop.org/who-is-making-learning-cds.html>

Arranger fees may also apply (usually \$20-\$65) for orders of more than 1 preview copy, and per copy fees may vary. The Harmony Marketplace is available to answer any questions regarding pricing. You can contact the Marketplace via e-mail to Marketplace@barbershop.org or by calling 800-876-SING (7464).

6. QUESTION: When does something become public domain? What does that mean for me when I want to arrange or distribute sheet music? What if I want to record something in the public domain?

ANSWER: Music and lyrics published in 1922 or earlier are in the Public Domain in the United States, and the copyright law in other countries varies. No one owns songs in the public domain, therefore they may be used by anyone. When a song in the public domain is arranged, the resulting work, called a derivative work, and its corresponding copyright belong to the arranger, and that work is then protected by copyright. Once a new work is fixed in a tangible medium of expression, it has a copyright and is protected under federal law – there is no longer a requirement or need to register works with the Copyright Office in order for an official copyright to be in place.

The copyrights in and to musical recordings, however, are copyright protected separately from their underlying musical compositions. There are no sound recordings in the Public Domain in the US.

There is a handy list (though not totally complete) of public domain songs available on pdinfo.com.

7. QUESTION: When do I turn in my BMI/SESAC and ASCAP forms? Where do I send them? Is my performance exempt?

ANSWER: Since there really isn't a quick and dirty answer to this, I will just direct you to the Secretary Manual which can be downloaded from barbershop.org under Resource → Document Center → Chapter Secretary Documents. Should you have questions after reviewing this document, please feel free to contact me.

8. QUESTION: Can someone legally gift their sheet music to me? Is that legal? Can I buy someone else's original and legally distributed music?

ANSWER: As long as your copies of the music were purchased legally, yes you may gift those copies to anyone you like. There is no problem with them using this music in competition or for any performances as long as you can state that the music was obtained legally. To prove that is the case, a copy of the receipt/Purchase Record and a note indicating the transfer should come along with the gift, should the new performing group be faced with the task of proving those copies were purchased legally.

The copyright owners/music publishers require payment each time a new copy is produced of any of their songs, so if you are making any copies you must be sure to purchase them from whomever distributes that music, be it the Society or arrangers distributing the music independently.

9. QUESTION: My chorus has provided me an arrangement to sing with them that I'd like to use to sing with my quartet. Is that OK? Do I have to buy more copies just to sing it with a different group?

ANSWER: No way! You can sing them with any group you like, as often as you like, as long as your chorus has no problem with you taking the music with you and using it in this way. You do not have to purchase more copies of your music unless you are...making more copies. Each time a copy is made, payment is due to the copyright holder. When you purchase music from the Society, we deliver these payments to these copyright holders, per our license agreements with them. This also applies to music and learning tracks legally acquired from a Harmony Brigade, Harmony University, a district HEP school or any other legal source. Once you legally own music and/or learning tracks for a particular song, you may sing (or compete with) that song as often as you like without paying any additional fees.

10. QUESTION: So, someone has told me I need to legalize my copies because we're going to compete or perform this song. If I bought my music from the Marketplace, is it legalized? Is it copyright cleared?

ANSWER: Yes. If you have purchased your music from us, the appropriate licenses are in place allowing us to distribute that music, and we are taking care of the necessary payments due to the copyright holders which are the result of those sales. If you purchase music directly from an arranger distributing

independently, you will need to ensure that they are operating in this same way, or if they will require you to do anything on your own to make your copies legal.

11. QUESTION: If I can't buy learning tracks the Harmony Marketplace, can I create my own or hire someone else to do that for me? How do I do that legally?

ANSWER: You can certainly hire someone to create tracks for you or record them yourself – you'll just need to secure the appropriate mechanical licenses discussed above. Check out a listing of those who are available for hire to make new learning tracks here:

<http://www.barbershop.org/who-is-making-learning-cds.html>

If you are purchasing learning tracks from someone who distributes them independently, they may ask you to obtain your own mechanical licenses, so be sure to ask them about this process when you make your purchase.

If you are wanting to make copies of Society learning tracks, check in with the Harmony Marketplace, and also review the Learning CD Duplication Policy, available for download from barbershop.org under Resources → Document Center → Copyright and Legal.

12. QUESTION: I want to use background music on my web site or post a video on YouTube. Do I have to do anything to make sure this is legal?

ANSWER: Posting videos online, on YouTube, or even on a password-protected site cannot be done legally without the appropriate web synchronization license from the copyright owner/publisher. If a copyright holder notices a song being used in combination with a video posted on YouTube without a license, they have every right to ask that user to remove the video – this happens frequently, and sometimes, based on the number of views, these users can be fined with hefty penalties.

To determine who the publishers are that hold the rights to the compositions you would like to use in combination with the videos you would like to post, you can conduct repertory searches on the ASCAP and BMI web sites – ascap.com and bmi.com. Once you have that information, you must send them a written request, outlining the details of the license you'd like to secure, including the territory (worldwide), term (how long you intend to post it), description of your project and its intent, and media (web/YouTube). For songs in the public domain, those written in 1922 or before, once arranged, they become property of the arranger, so you will need to contact them for permission, as well. All of this is totally possible! I do it all the time. This information is not in any way meant to discourage you.

The videos the Society has posted on YouTube were licensed, and we have paid corresponding licensing fees.

13. QUESTION: How much does a preview/single copy of an arrangement in your catalog cost? Do I have to pay an arranger fee?

ANSWER: Check in with our Harmony Marketplace (Marketplace@barbershop.org) for exact pricing, as these prices vary, but you will pay for just one copy and an arranger fee will not be due.

14. QUESTION: I'm going to be on TV or on the radio. What do I need to do to make sure I'm not breaking copyright law?

ANSWER: United States copyright law, as of January 1, 1978, gives certain exclusive rights to the copyright owner, who may be the writer of a song or someone who has been assigned ownership, such as a publisher or an estate, through contractual agreements. These rights are to:

- PREPARE derivative works based upon the copyrighted work;
- REPRODUCE the copyrighted work in copies or recordings;
- DISTRIBUTE copies;
- PERFORM the work publicly;
- DISPLAY the work publicly.

As this relates to TV and the radio, we are concerned about the performing and derivative work aspect of these situations. When music is paired with video footage, a derivative work is then created, which would require a music synchronization license. If you are going to be on a television program, the party producing the show is responsible for obtaining these licenses, not the performing group, unless the group signs a contract stating that they are to be responsible for securing them. Your only responsibility to them may be providing the information on the copyright holders, including composer information for the songs currently under copyright (those written 1923 and later), and the arranger information if the original compositions were written 1922 or before.

For a performance on the radio, no synchronization licenses need to be in place, unless the show is to be syndicated and sold (again, not your responsibility to get those licenses unless you sign your life away). Most radio and television stations have blanket broadcasting licenses in place from ASCAP/BMI/SESAC, which would cover you for not breaking copyright law as it relates to performance rights, but it is the broadcaster's responsibility and not the performer's responsibility to ensure those are in place, unless, again, the group signs something indicating that they will make themselves responsible (I can't say this enough!). In essence, it is the responsibility of the station to make sure what they are airing is legal, but performers must make sure they don't sign anything indicating they will secure the necessary licenses and/or pay for them, unless that is something they want to do.

In order to use copyrighted music in any type of commercial, you'll need to secure the appropriate license from the music publisher holding the rights in and to the composition.

You will need to submit your request in writing, detailing the timeframe for which you wish to air it, in what territory, and what media (what type of station, be it radio, cable TV, etc.). There will likely be a fee involved, and those can range from a few hundred dollars to several thousand.

If the commercial is to promote your own group, you will be required to secure this permission - if this is for another company or product, the company producing the spot will be required to do so.

15. QUESTION: Is there some kind of 30-second rule? Would such a rule excuse me from having to get a license for using a song in a video or on my web site?

ANSWER: There isn't such a rule. Even 30-second samples on music distribution web sites are "cleared" through individual licenses with the copyright holder, performance licenses, and with SoundScan in some cases. Some argue that such a rule exists and is considered fair use, but the Society does not advise or lean on that. Again, it is up to our chapters to decide if they want to rely on that. In general, the rule of thumb is, when in doubt, ask for permission.

16. QUESTION: Our chapter has a bunch of music that doesn't identify the arrangers, and we don't have any receipts documenting our purchases. Should we keep it?

ANSWER: If you cannot identify the arranger, you won't be able to determine if a license has ever been secured authorizing the creation and distribution of that arrangement. If you can conduct research and find out who the arranger is, I can help you figure out if it has been licensed. If your research leaves you with no answers, it is best to destroy that music, unfortunately. Unlicensed material is not a good thing to hold on to.

17. QUESTION: How do I submit my arrangement for publication by the Society in the Premiere Series?

ANSWER: Check in with our music editor, Adam Scott (ascott@barbershop.org) for thorough information as it relates to the timeline for this, but once a year the Publications Committee gets together and decides which arrangements will be included in that year's Premiere Series, which is a collection of arrangements that comes out twice a year that is "Society-approved".

18. QUESTION: I'd like to sing a song at a funeral. Do I need to worry about copyright in this case?

ANSWER: Not really. Just be sure to have purchased legal copies of your music. The funeral home will be responsible for having the appropriate performance licenses in place with BMI/ASCAP/SESAC. The "religious services exemption" in the Copyright Law permits for the performance of copyrighted religious works in the course of services at places of worship or at religious assemblies.

19. QUESTION: You work at such a cool place. Can I come visit you? Can I come and check out the Old Songs Library?

ANSWER: Of course you can! Our collection of sheet music rivals the Library of Congress, and it's really something to see. We're happy to give you a tour during our office hours.

20. QUESTION: So, what if I'm woodshedding...is that legal? Do I have to get permission? What if I want to record a woodshedded performance?

ANSWER: It's perfectly legal to sing on the spot without music. However, you must follow the rules discussed above and in the Copyright Basics for Barbershoppers article as it relates to performance licenses and completing your necessary forms for BMI/SESAC and ASCAP, should your performance not be exempt, per the Chapter Secretary Manual also mentioned above. If you want to record the audio or video woodshedded performance, that's OK, too, as long as you obtain the appropriate mechanical or synchronization licenses, as discussed above.

21. QUESTION: I don't know where this copy of my music came from. Did someone in my chapter actually buy it?

ANSWER: If you can't track down a receipt, chances are the music wasn't actually purchased (not good), and you should destroy it and purchase new copies. If you're pretty sure you know who purchased it, they can look up their payment history on the eBiz portion of our web site. If you don't know how to use that, check in with our Membership team (membership@barbershop.org). If you don't like the Internet, check in with the Harmony Marketplace (Marketplace@barbershop.org) or me (library@barbershop.org), and we'll try to track down some orders.

22. QUESTION: I don't like copyright and I'm inclined to ignore it altogether. Why is it a good thing? Are you just trying to drive me crazy?

ANSWER: Certainly not, and copyright is in place to help us all! Copyright law is set to promote the creation of new works and ideas. If these laws didn't exist then the incentive to create and share would not exist. I'm not trying to drive you crazy by enforcing lots of silly rules – our policies are in place to keep you and your chapter and the Society out of hot water. If you use someone else's intellectual property without permission, you could be faced with having to pay hefty fines.

23. QUESTION: How accurate is all of this information? Can I take this to the bank?

ANSWER: The Society doesn't offer official legal advice, but I am offering the Society's teachings of copyright law as it's been given to us through legal counsel and from my experience throughout all of my work experience, copyright seminars, etc. If you'd like to seek out further legal advice on your own then please feel free to consult a local copyright attorney. Chapters do this all the time for many chapter business issues, so it's not uncommon. There are likely associated legal costs, however, for which the chapter would be responsible.