



## Copyright Basics for Barbershoppers

(Updated 12-18-2008)

Copyright laws exist to encourage and protect creativity and expression of ideas. In order to do this, Congress has granted certain exclusive rights. This, in a sense, is the only way to guarantee that if you create something, in this case a song, you are entitled to the benefits of your creation. These laws also encourage the creation of future works.

Remember that a song and/or arrangement covered by copyright is intellectual property. The owner has certain exclusive rights, and your chorus or quartet must get permission, usually involving the payment of a fee, to utilize it. In reality, the same guidelines apply as when you rent, lease, buy, borrow, adapt or enjoy any pieces of property owned by someone else.

The revised United States copyright law, which went into effect on 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.

We are concerned mostly with the first four rights.

### 1. Preparation of derivative works

If you plan to create an arrangement (a derivative work) of an existing copyrighted work you may do so only WITH PERMISSION from the copyright holder. The Barbershop Harmony Society provides a service through the Library and Licensing Coordinator at Harmony Hall for securing such permission. It involves the payment of a fee for the first five copies (one of the copies is retained by the international office for the publisher) plus a charge for additional copies. Arrangers must be certain to secure this consent before preparing an arrangement. However, in some cases the publisher may ask to review the arrangement prior to giving approval. To download the Permission to Arrange form please follow this link: <http://www.barbershop.org/PDF/Perm%20to%20Arrange.pdf>.

*It is important to know that an arrangement becomes the property of the copyright holder, not the arranger. In most cases the arrangement will be made available for others to purchase from the Harmony Marketplace.*

Violations could result in a substantial fine. Examples of violations include arranging, selling an arrangement, or photocopying without permission. Penalties can range from \$20,000 to \$100,000 per copy, so it behooves all Barbershoppers to abide by the copyright statutes.

Our quartets and choruses have an obligation to make certain that arrangements of protected songs have been made with the consent of the copyright owner. Check the source of an arrangement to be sure permission was secured to make the arrangement. Make certain the fees you have paid will go to the copyright owner, not just to the arranger. However, if the song is in the public domain (chiefly, those songs written in 1922 or before), the arranger may well be the copyright owner of the arrangement.

## **2. Reproduction of the work**

### **Printed material**

Any original work, be it a song, cartoon, arrangement, lyric or other creation, is considered copyrighted if it bears a copyright date and name. A simple rule: If you see a copyright notice, don't copy it without permission! The inverse is not necessarily true, however; you might occasionally obtain material that does not carry a copyright notice. That doesn't mean it's not copyrighted, or that it is legal to copy it. Always be sure – call the Society's Library and Licensing Coordinator about any music that does not carry a copyright notice.

The most reliable sources for legal arrangements are the Barbershop Harmony Society Music Catalog of published and unpublished arrangements and reputable music stores and catalogs. Purchase one copy for every member of the quartet or chorus, plus a few extras for your file. It's much easier to buy a few more than you need than go to the trouble of reordering or getting permission to copy. Every performer must have a legally purchased copy. It is illegal to learn an arrangement in any manner that would be in lieu of purchase of the music.

There is at least one occasion when it is permissible to make copies of music. You are permitted to make one or more emergency copies for an impending performance, if the copies are made from one that you obtained legally, so long as replacement copies are on order. You must destroy the emergency copies after the replacements are obtained. You may also copy short passages of up to about four measures for educational or study purposes for a class-room situation, provided that you credit the copyright holder.

### **Recorded material**

Unauthorized duplication of copyrighted recorded material is illegal, whether it is an LP, CD, cassette, DVD or video. The producers of these recordings (quartet, chorus, or the Barbershop Harmony Society) must pay royalties to publishers for the right to produce and sell their albums.

There are situations when you may do some duplicating of your own, however. Many chapters purchase learning CDs/tapes from the Society and find they only want to use one song from them. Rather than pay full price for 42 complete sets, you may, instead, copy

one or two songs yourself. To do this, you must pay 40¢ per track per song to the Barbershop Harmony Society, which partially covers the cost of producing the original learning CDs/tapes and from which the Society will pay the appropriate fees to the copyright holder. Please note that this method is intended for reproducing one or two songs from a Society-issued learning CD/tape; for more than two songs, it's usually easier and cheaper to buy from the Society.

Another simple, legal way to create a part-tape is to have your section leader or other strong singer sing directly into your hand-held recorder during a chorus rehearsal. Please note that you cannot duplicate that tape, but several individuals may record simultaneously.

It is also OK 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 of your annual show to members or offer them for public sale or for giving them away at no charge, you must first obtain a mechanical license for audio or synchronization license for DVD/video for each copyrighted song used on the recording, as explained in the next section.

### **Obtaining permission to produce audio recordings**

If you, your quartet, or your chorus does any audio recording, the law says you must have permission to produce a recording (in any form) of a copyrighted song or arrangement. For audio-only recordings you'll need a mechanical license.

We suggest you set up a spreadsheet for the following information: Song Title, Writers, Copyright Holder, Arranger, Harry Fox Payee (or another collecting agent), Other Payee, Length of Song.

Check out each song in the Public Search section of Songfile at the Harry Fox website, [www.harryfox.com](http://www.harryfox.com), or [www.songfile.com](http://www.songfile.com) to help complete and verify your song-information spreadsheet as well as to pay your license online. This will greatly simplify and speed up the licensing. You will need to pay by credit card. New upon the license-clearance scene are some competitors of the Harry Fox Agency. In particular, check out [www.easymusiclicensing.com](http://www.easymusiclicensing.com). You may find some "bargains."

If you need help with this process, contact the Society's Library and Licensing Coordinator at Harmony Hall. The current statutory rate (2007-2008) is \$.091 per entire song or \$.0175 per minute of playing time or fraction thereof, whichever is larger. You must pay for a minimum of 25 copies (\$2.76 per song), even if you make a smaller number of copies. A two-song medley would cost \$4.55. There is often a "processing fee" per song as well.

A word of caution here: The Harry Fox Agency, Easy Music Licensing and other collecting agencies don't represent all publishers. They can only grant you a mechanical license for those publishers that they do represent.

You'll need to research and contact any other publishers, on an individual basis, and request mechanical licenses from them. For research sources, please see the resource list

at the bottom of this article. The Society's Library and Licensing Coordinator can also help you locate these publishers.

Since the Harry Fox Agency does not represent the Barbershop Harmony Society, you must write directly to the Society for mechanical license for songs and arrangements controlled by it. Society members recording arrangements controlled by the Society are not required to pay for a minimum of 25 copies of those arrangements. Pay only for the number you make. Please note that the Society does not control the mechanical rights to all of its published arrangements. However, the Society can provide you with the address(es) of the copyright owner(s) so that you can pay the required mechanical license fee directly.

If you are making a recording of a contest or show, all of the above applies. In addition, you must secure written permission from each performing group (quartet, chorus, soloist, etc.). The reason for this is that some performers may not want their performance on someone else's recording.

### **Producing and packaging commercial audio recordings**

Many of the steps your quartet and/or chorus will need to go through in a recording project are the same regardless of the format(s) you choose. Your personal involvement will vary, depending on whether you are working with an organization that does most or all of the work for you, or if you are going to handle the details yourself.

#### *The recording*

The actual recording sessions are, of course, the first major step. The options range from first-rate major recording studios to "basement studios" to semi-professional "on location" individuals. Prices can, and do, range from \$30 per hour to more than \$300 per hour. A higher price does not always mean better end result. Many top-price studios do not understand the barbershop sound, and they may not be interested in the unique challenges it presents and how best to record and process it.

While most professional recording now uses digital format (a near necessity for high quality CDs), a good deal of very fine recording is still done on analog equipment. A knowledgeable and sympathetic recording engineer is more important than the latest equipment.

The second major step is referred to as "editing," "post" or "mix-down." Songs are put in final order, volume levels are adjusted, etc. During this time, "ambiance" (echo, reverb, etc.) may be added to "dry" studio recordings, or too much "ambiance" from live (show or contest) recordings may be processed to lessen the effect. Careful work here can make or break the final product.

The third major area is the actual production (mastering and duplication) of the product. You will likely receive a "proof" copy from your duplicator. This is your final chance to review the CD itself as well as any artwork for the finished project. Most duplicator companies will not begin the duplication process without final approval from you.

### *The packaging*

Design, copy, layout typesetting, artwork, photography, color separations and printing are the major concerns here. How plain or fancy you get depends on time, budget and taste, and can range from black and white to full color (four-color process), using foil or flocked papers and many other possibilities.

The CD “topside” label usually contains the songs in the order presented, and the performers, especially if chorus and quartet. Any more than this may begin to look cluttered, and in fact may cause the type size to be so small as to be unreadable. When the CD is actually playing, you normally can’t read the information anyway.

In addition to providing information about the performers, ASCAP has requested that recording producers include the names of the copyright holders on the cassette “J-card” or CD liner. You may also want to consider including the songwriters, as a matter of recognition for the efforts, and the performance times as a courtesy for broadcast or other applications, although neither of these is required.

### **Obtaining permission for DVD/video recordings**

The law says you may make one archival copy of a show or contest and one back-up copy may be made for security. Anything more than this requires a license from the copyright holder.

Permission to use songs in video recordings (and films), falls under an entirely different category called a “synchronization license.” Since there is no statutory (standardized) fee for these licenses, each song must be negotiated separately with individual owners. Fees can vary considerably, from as little as 15¢ per copy per song to \$300 or more just for use of a song. Most publishers will require a “Favored Nations” clause stating that you must pay everyone the highest negotiated rate. Also in the case of video recordings, the owner is under no obligation to respond to your request.

Some copyright owners are sympathetic to the typical needs Barbershoppers require and try to be flexible. For example, if a chapter wishes to make copies of the archival video of its annual show and give the copies (or sell them at cost) to its members for their own personal archives, a copyright owner might give permission for this without charge, but you **MUST** ask. Also, a copyright owner might be sympathetic to the use of a promotional tape of a chorus or quartet that uses clips of songs to show off the performing aspects of the group to potential clients. The Society will allow their copyrighted arrangements to be used as promotional materials on chapter or quartet websites, but you must ask first. Determine the copyright holder from the copyright notices at the bottom of the first page of music.

You can see that it is important to communicate complete information (intended audience, number of copies to be made, length, and territory of use, etc.) to the copyright owner. Remember that fees are completely negotiable and it is acceptable to ask for a waiver of fees. Of course, the copyright owner has the final decision to grant permission to use his or her work and any fee for that right. Therefore, it is very important to conclude negotiations before putting a lot of time or money into a project.

### **3. DISTRIBUTION RIGHTS**

#### **Recordings for sale**

Barbershoppers may distribute copies of audio (or video) recordings if mechanical (or synchronization) license fees have been paid. Through the facilities and personnel of the headquarters office, the Barbershop Harmony Society conducts an active recording program.

Use of the Barbershop Harmony Society logo is limited to recordings produced by the headquarters office for the Society. The Society recording program does not restrict Barbershop Harmony Society units from producing their own records or tapes for sale, however.

Recordings produced by quartets and choruses may be sold (distributed) by the Society. The recordings must be approved by Barbershop Harmony Society. An actual recording must be submitted and final approval will be determined by the merchandise committee. The Society must be able to purchase the recordings at dealer prices in order to distribute them at a retail price.

#### **Web and Internet Licenses**

New information, too much to express here, is now available from The Harry Fox Agency and ASCAP concerning digital media. See [www.harryfox.com](http://www.harryfox.com) and [www.ascap.com/weblicense](http://www.ascap.com/weblicense).

### **4. PERFORMANCE RIGHTS**

You have the right to perform a song/arrangement that has been legally obtained. None of the above precludes the necessity of an ASCAP (SOCAN in Canada) and BMI license for public performances. If you sing on someone else's show – a barbershop group, a service organization, etc. – responsibility for paying the fee is primarily theirs; however, you should ensure that your host is aware of this responsibility. Chapter show clearances are thoroughly explained in the Chapter Secretary manual.

Similar guidelines apply to singing in shopping malls, restaurants or around businesses where an ambiance is intentionally created to attract crowds for buying. This fee is usually the responsibility of the businesses involved, though it is possible that your group will be asked to pay it.

#### **Radio, TV and Cable**

Performance on radio and television is also governed by the fourth exclusive right granted to the copyright owner. Generally speaking, a barbershop performer does not have to worry about a live performance on broadcast radio or television, including public radio and television. Most broadcasters pay an annual performance fee/blanket license to ASCAP and BMI that covers all copyrighted music performed.

Cable television is another matter. Since many cable companies do not have annual, blanket agreements with ASCAP and BMI, it is the responsibility of the producer of the program to secure permission with the copyright owners. They may ask you to do the

clearances. If a producer asks you to sign a performer release; be sure to read it carefully so that you are aware of your responsibilities in regards to copyrighted material.

The use of copyrighted video (or portions thereof), such as the Society's international convention DVDs, is also restricted. The synchronization licenses for those productions are negotiated exclusively for home viewing and preclude broadcast, cablecast or other uses. The Society also owns the copyright of the actual video footage and special permission is needed for the use of that as well.

## **5. RESOURCES**

Barbershop Harmony Society (800-876-7464)

- Library and Licensing Coordinator. Ext. 4127, *library@barbershop.org*
- Harmony Marketplace. Ext. 4144, *marketplace@barbershop.org*

Other Online Resources:

- ASCAP. *www.ascap.com*
- BMI. *www.bmi.com*
- SOCAN. *www.socan.com*
- Harry Fox
  - *www.songfile.com*
  - *www.harryfox.com*
- Copyright Office-Library of Congress. *www.lcweb.loc.gov/copyright*
- Public Domain. *www.pdinfo.com*
- *www.easymusiclicensing.com*