

From Harmony, Inc. Corporate Manual
Section 10
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Copyright Laws

The new copyright law, which went into effect on January 1, 1978, clearly states the rights of a copyright owner. The copyright owner could be the writer of a song or someone who has been assigned ownership, such as a publisher or an estate, through contractual agreements.

The purpose of the law is to encourage and protect creativity and expression of ideas. In order to do this, Congress has created 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.

The law gives the following **EXCLUSIVE** rights to the copyright owner (Sec. 106):

1. To reproduce the copyrighted work in copies or recordings;
2. To prepare derivative works based upon the copyrighted work;
3. To distribute copies;
4. To perform the work publicly;
5. To display the work publicly.

We are concerned mostly with rights 1-4.

- No. 1 is self-explanatory. No one can make a copy, or give permission to make a copy, except the copyright owner. Under the provisions of the law known as Fair Use, however, one audio and/or video recording of a performance of your chorus or quartet may be made for evaluation, rehearsal or archival purposes. This information is found under Section 107 of the copyright statutes.
- No. 2 means simply that an individual may not make a barbershop arrangement of a copyrighted work without permission of the copyright holder. Harmony, Inc. has a form, approved by the National Music Publishers Association, for securing such permission (with the assistance of Harmony Foundation, Kenosha, WI). It involves the payment of a fee for the first five copies (one of the copies is retained by the Harmony Foundation for the publisher) plus a charge for additional copies to supply a chorus. Arrangers must be certain to secure this consent before preparing an arrangement. Contact the Music Coordinator of Harmony, Inc. for the proper forms and fee information.

It is important to know that an arrangement becomes the property of the copyright holder, **NOT** the arranger. After receiving permission to do an arrangement for a quartet or chorus, the arranger is permitted to charge a fee for her or his service. If another quartet or chorus wishes to obtain the arrangement, they must seek permission from and pay a fee to the owner. The Music Coordinator of Harmony, Inc. can help you with this simple process.

Violations - for example, arranging, selling an arrangement, or photocopying without permission - could result in a substantial fine. Penalties, ranging from \$20,000 to \$100,000 **PER COPY**, may be incurred, 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 a derivative work. Make certain the fees you have paid will go to the copyright owner, not just to the arranger. This restriction does not apply to songs in "Public Domain," chiefly those songs written over 95 years ago.

- No. 3 is self-explanatory. Barbershoppers may, however, distribute copies of audio recordings if mechanical license fees have been paid.
- Under No. 4, you have the right to perform a song/arrangement that has been legally obtained.

None of the above precludes the necessity of an ASCAP (in the U.S.) or 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 aforementioned fee is primarily theirs.

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

An infringement of copyright occurs when someone assumes the exclusive rights of the copyright owner without securing permission. For example:

- You must not take (that is, write out) an arrangement from a recording. It is probably also an infringement to do so even without writing the arrangement down, though this is a gray area of the law. In either case, making copies for a quartet or chorus only multiplies the wrongdoing. (Public performance of a woodshedded song may well be a similar matter.)
- You must not make a copy of a recording of a song.
- You must not make extra copies of arrangements you have purchased without paying the appropriate fee.
- You must not make copies of photocopied arrangements you have received from someone. 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 short, the same guidelines apply as when you rent, lease, buy, borrow, adapt or enjoy any other piece of property owned by someone else.

Further information is available: **Copyright Laws and Information.**

Summary Of Things You Can Do As A Barbershopper

1. You can buy a published arrangement of a song in the barbershop style (copyrighted by the owner).
2. You can obtain handwritten arrangements listed in "Legal Arrangements On File With Harmony Foundation." Contact the **Music Coordinator** of Harmony, Inc. for details.
3. If no arrangement is available and the song will adapt to the barbershop style, the **Music Coordinator** of Harmony, Inc. will assist an arranger in getting permission from the publisher.
4. If a legal, unpublished arrangement is performed by another group and you wish to have copies of it, permission must be obtained from the copyright owner. This can usually be done by contacting the **Music Coordinator** of Harmony, Inc. At the very least, she may be able to help you locate the publisher. Remember, the arranger has no control over the music. The owner of the song owns the arrangement.
5. You can arrange, or have arranged for you, a song in the public domain. A song is in public domain if it was composed more than 95 years ago, its copyright protection has expired or it was not properly protected initially. (Arrangements of public domain songs can be copyrighted and are thus protected.)
6. You can compose and copyright your own song.
7. Emergency copying may be done to temporarily replace mail-ordered copies which for any reason are not available for an imminent performance. As soon as your music arrives, you must destroy the emergency copies. (Copying without including the copyright notice or copying to avoid purchase is an infringement.)
8. Purchased copies may be edited or altered provided the fundamental character of the work is not distorted. Just don't make new copies. Do your editing on the music or teach the changes by rote.
9. A parody is a derivative work, so permission must be obtained from the copyright owner. In most cases, the owner will ask to see a copy of the parody lyrics before granting permission for their use. As a reminder, you cannot make additional copies of the music portion without permission.
10. In school and workshop situations, the instructor can make one copy per student of up to 10% of a song for class study, as long as that 10% does not constitute a performable unit. In our barbershop music, this means approximately 4-8 measures.
11. One audio and one video recording can be made of a performance for study and archival purposes. If the performers are recorded at a show or contest, each quartet or chorus may be given a recording of their segment. Since the recording cannot legally be sold for a profit, any fee charged must cover only the actual cost. If you wish to make copies to distribute (sell or give away), permission must be acquired and the proper fees paid. This involves obtaining mechanical license for audio recordings and synchronization license for video recordings.

Chorus Cassette Learning Tapes

Learning Tapes

It has become common practice in many chapters to shorten the time it takes to learn new music by asking the members of the chorus to work with cassette learning tapes at home. This practice is understandable for a number of reasons. It enables the chorus director to account for differences in the amount of time it takes various individuals to learn new music. If the deadline for knowing a new song is, for example, 3 weeks, one person might have to use the tape only three times while another might require 7 or 8 rehearsals. Additionally, this does not penalize the members who learn music quickly, by requiring them to sit through long, tedious learning sessions where notes and words are the prime objective.

Here, then, are some guidelines for making chorus learning cassettes. They are provided so we may use "legal" methods to make tapes, and avoid copyright violations.

1. **There must be a legal copy of the music for every chorus member.** Cassettes cannot be made in order to avoid the purchase of music.
2. **No copies of tapes can be made for distribution.** A learning tape cannot be copied and distributed without paying the \$.0755 per song per copy to the owner of the song. This is usually handled through the Harry Fox Agency. It is treated just like a recording made for sale. If you decide to copy and distribute a medley, you must pay \$.0755 per song, not \$.0755 for the entire medley. Thus, a 3-song medley would cost \$.0755 x 3 x the number of copies.

NOTE: The charge of \$.0755 is effective January 1, 2000.

To avoid the hassle of paying royalties, a bit of a stretch in "fair use" appears to be acceptable by most publishers. That is, each individual must bring her own recorder and make her own individual recording. It must definitely be a "part learning" tape. A recording of a balanced, full four-part harmony tape puts it in a different class of recording. (A Director can make a rehearsal tape for study - this is a different matter.)

An individual could make her learning cassette in one or more of the following ways:

- A. She could record while someone "demonstrates" the part for her for her section. This could be done by using the quartet teaching method, where one or more singers could sing the music for her while she makes the recording. Or a barbershopper, who knows the part which is to be recorded, could sing it off in a corner somewhere. The singer needing the learning tape could make the recording. **JUST DON'T MAKE COPIES.**
- B. When the music is pretty well learned, she can turn on her tape recorder within her section and record herself as well as those around her. Again, this must be predominantly her own part so that the tape cannot be construed to be a recording simply for enjoyment. No copies of these individual tapes can be made and distributed to anyone else. **Thus, the method of having a quartet make master tapes and providing copies from them is a violation of the copyright law.** (Emphasis added by JN, Area 1 Web Manager for clarity purposes! These words are not highlighted in the HI-CM. The point is: if you want 4-part tapes, with or without part predominant/missing made by your teaching quartet, or purchased, you need a mechanical license to reproduce them for chorus members. Go to: <http://www.cdmanufacturing.ca/newheader/documents/mechanicals.pdf> for information on obtaining a mechanical license.)

Guidelines For Barbershop Recordings and Learning Tapes

If you, your quartet or your chorus does any taping or recording (other than a single copy for study or archival purposes), the following information should prove helpful. The law says you must have permission to record (in any form) a copyrighted song or arrangement.

To receive this permission, you must pay a fee called a "mechanical license" or "compulsory license." Most publishers collect this fee through a central agent:

Harry Fox Agency
711 Third Avenue, 8th Floor
New York, NY 10017
(212) 370-5330

CMRRA
56 Wellesley Street, Suite 320
Toronto, ON M5S 2S3
Canada

Here is the procedure. Determine which of the songs on your recording are copyrighted and send a list of the titles to the Harry Fox Agency requesting a mechanical license. Provide them with as much information as possible: correct title, composer, publisher, date, etc. (If you need help with this process, contact the Music Coordinator of Harmony, Inc.) You will also need to state how many recordings (records, cassettes, CD's) you plan to produce. Send no money at this time. (Aug 04)

You will hear from the Harry Fox Agency in the form of a contract granting you a mechanical license at the statutory rate, which is currently \$.0755 per song per record. This contract is considered your bill.

A word of caution here: The Harry Fox Agency does not represent all publishers. They can only grant you a mechanical license for those publishers whom they do represent. This will be made known to you in their reply. You will need to contact the other publishers on an individual basis and request mechanical license from them. The royalty rate set by statute is still \$.0755 per song per record, no matter which publisher controls the song. If you are making a recording of a contest or show (a "live" performance recording), all of the above applies. In addition, you must secure written permission from each performer. The reason for this is that some performers may not want their performance on someone else's record.

Note: Videotaping and film-making fall under an entirely different category called "synchronization license." Since there is no standard fee, each song must be negotiated separately with individual owners. Fees can vary considerably, from as little as \$.15 per copy per song to \$100 or more just for use of a song. Until a standard rate is set, we recommend you not copy any video or film. You may, however, make one archival copy of a show or contest.

Any group within our organization which plans to make a recording and wishes to use the words "HARMONY, INC." on the jacket or record label, or wishes to offer this recording for sale to our members, must first furnish proof that copyright and mechanical licensing obligations have been met for all songs before the International Music Services Administrator will grant permission for the above. (Aug 04)

Transposing Music

The Society for the Preservation and Encouragement of Barber Shop Quartet Singing in America, Inc. (SPEBSQSA, Inc.) (Now known as the **Barbershop Harmony Society**) is an extensive and frequently utilized source of barbershop music arrangements for members of Harmony, Inc. Naturally, since the Society is a Men's Society, the arrangements are written and published in a key suitable for male voices. (Aug 04)

Harmony, Inc. members who purchase and sing arrangements from the Society are encouraged to pitch the songs in a key that is higher than written, thus singing the same intervals and note values as the music suggests, merely in a vocal range more suitable for female voices.

If the occasion arises, however, that your Chorus or Quartet is unable to comfortably adapt to the vocal range of an arrangement from the Society, you may seek permission to transpose the arrangement to a different key. Harmony, Inc. has an authorized agreement with the Society: (Aug 04)

If Harmony, Inc. purchases music from the Society that is **owned and copyrighted and published by the Society**, the Society will give permission to a transposition and reproduction of the **same number of copies as purchased**.

Some of the music publishers whose music **the Society publishes** may, when approached, give permission for a similar agreement, providing that an **equal number of copies were purchased through the Society**.

Some music publishers may prefer to treat a transposition as an entirely new arrangement and will expect to be asked permission to make this "new" arrangement, charge the usual fees for arranging music, etc.

There may be some confusion as to what constitutes an arrangement **owned and copyrighted and published by the Society**. The confusion may lie in the use of the word "published." The Society "publishes" (as in "prints") hundreds of songs, but the Society does not **OWN** all of the rights to the words, music and arrangement of all songs they "publish." Others **OWN** them, such as well known publishing companies: Bourne Co./New York; Warner Bros. Publications Inc; Shapiro, Bernstein & Co. Inc.; MCA Music; Belwin Mills, and an endless list of other publishing companies. How do you determine which songs are covered under the agreement Harmony, Inc. has with the Society? For which songs you must seek permission to transpose and make copies?

Caution! Better to be **safe** and **legal**. Contact the **Music Coordinator** of Harmony, Inc. who can help. (Aug 04)