

Copyright Basics for Barbershoppers

[For extensive information on Canadian copyright law, visit www.socan.ca]

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.

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

For Barbershoppers, the prohibition against derivative works primarily means that an individual may not make an arrangement of a copyrighted work without permission of the copyright holder. The Barbershop Harmony Society provides a service through the Music Services Specialist 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 to supply a chorus. Arrangers must be certain to secure this consent before preparing an arrangement.

It is important to know that an arrangement becomes the property of the copyright holder, not the arranger. If another quartet or chorus wishes to obtain the arrangement, they must seek permission from and pay a fee to the copyright holder. The Music Services Specialist at Society headquarters can help you with the order process for unpublished arrangements. Call 800-876-7464, ext. 8476.

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.

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. 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

A. 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 Legal/Unpublished Department about any music that does not carry a copyright notice.*

The most reliable sources for legal arrangements are the Barbershop Harmony Society catalogs of published and unpublished songs 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 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.

It is not legal to make any kind of a "working copy" of purchased sheet music for marking up and/or learning purposes. The original piece(s) of sheet music must be used.

You may copy short passages of up to about four measures for educational or study purposes. However, copying tags or making up "tag sheets" are not covered under this exception.

B. Recorded material

Unauthorized duplication of copyrighted recorded material is illegal, whether it is an LP, CD, cassette 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.

A 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. So long as it is clearly a part-predominant tape, not a balanced, full-sounding recording, you need not pay a royalty. *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. 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 (audio) or synchronization license (video) for each copyrighted song used on the tape, as explained in the next section.

C. Obtaining permission to produce audio recordings

If you, your quartet or your chorus does any audio taping or recording (other than under the above exceptions), the following information should prove helpful. Remember, the law says you must have *permission* to produce a recording (in any form) of a copyrighted song or arrangement.

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

Harry Fox Agency
711 Third Avenue, 8th Floor
New York, NY 10017
(212) 370-5330
Fax (212) 953-2384

<http://www.harryfox.com> or <http://www.songfile.com>

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 as much information as possible: Correct title, composer, publisher, date, etc. If you need help with this process, contact the Music Services Specialist at Harmony Hall, 800-876-7464, ext. 8476, or email library@spebsqsa.org. You also will need to state the length of each song and how many recordings (records, cassettes, compact discs) you plan to produce. Send no money at this time. You may wish, instead, to use the websites above to obtain song information and/or acquire a mechanical license.

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 (2004-2005) 8.5¢ per song, per copy, or 1.65 cents per minute of playing time or fraction thereof, whichever is larger. (The next scheduled rate increase to 9.1 cents/1.75 cents per minute will take effect on January 1, 2006.) This contract is considered your bill. You must pay for a minimum of 500 copies (\$42.50 per song), even if you make a small number of copies. A two-song medley would cost \$85.00.

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 that they do represent. This will be made known to you in their reply.

You'll need to contact the other publishers on an individual basis and request mechanical licenses from them. Again, the Music Services Specialist can 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. The royalty rate set by statute is (as of 2004-2005) 8.5¢ per song, per copy—or 1.65 cents per minute of playing time or fraction thereof, whichever is larger—no matter which publisher controls the song. Society members recording arrangements controlled by the Society are not required to pay for a minimum of 500 copies of those arrangements. Pay only for the number you make.

In addition, some songs and arrangements published by the Society are written or owned by individuals, usually Barbershoppers, who permit the Society to print and distribute their work. 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 performer. The reason for this is that some performers may not want their performance on someone else's recording.

D. Obtaining permission for video recordings

Videotaping (and filmmaking) fall under an entirely different category called “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 10¢ per copy per song to \$300 or more just for use of a song. Most publishers will require a “Favored Nations” clause stating that if you must pay everyone the highest negotiated rate. 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. One back-up copy may be made for security.**

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. 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.

You can see that it is important to communicate complete information (intended audience, number of copies to be made, use of the tape, 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

Barbershoppers may distribute copies of audio (or video) recordings if mechanical (or synchronization) license fees have been paid.

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.

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 performance on broadcast radio or television, including public radio and television. Broadcasters pay an annual performance fee 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.

The use of copyrighted videotapes (or portions thereof), such as the Society's international convention videotapes, is also restricted. The synchronization licenses for those productions are negotiated exclusively for home viewing and preclude broadcast, cablecast or other uses.

5. References to Assist You

Althouse, Jay. Copyright: *The Complete Guide for Music Educators*. Van Nuys, CA: Alfred Publishing Co., Inc., 1997, available from Harmony Marketplace (stock #6072)
www.harmonymarketplace.com or 800-876-7464 x8410

Kohn, Al, Kohn, Bob. *Kohn on Music Licensing*. New York, NY: Aspen Law & Business, 2002.

www.ascap.com – American Society of Composers, Authors, and Publishers Very good website for title searches to find who owns the rights to a particular song.

www.barbershop.org – Copyright basics for Barbershoppers Gain some basic knowledge about copyright, including some examples specific to Barbershoppers.

www.bmi.com – BMI represents more than 300,000 songwriters, composers and publishers. Their search engine will also assist you in securing the copyright owner of a song.

www.copyright.gov – Copyright Office of the United States, Library of Congress, Washington, DC 20559, provides information about copyright protection and the laws pertaining to the topic in a booklet entitled *Public Law 94-533-10.19.76*

www.harryfox.com – Harry Fox Agency Excellent source for information related to royalties for recording CDs. It includes searchable databases of songs and publishers for confirming copyright owners.

www.pdinfo.com – Public Domain Information This website explains the conditions when a song would become public domain and lists about 3500 PD songs.

If you have further questions, you can write the Barbershop Harmony Society office:
Music Services Specialist library@spebsqsa.org
Barbershop Harmony Society
7930 Sheridan Road
Kenosha, WI 53143.

Remember that a song 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.

[Excerpted in part from BHS website]