

SOME COPYRIGHT QUESTIONS AND ANSWERS

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for the Unitarian Universalist Musicians Network

I. Copying

- Are instrumentalists allowed to copy pages of music to avoid and/or ease page turns without obtaining permission from the copyright holder(s)?
- When teaching a song by rote, can one distribute lyric sheets for review outside of rehearsal without obtaining permission from the copyright holder(s)?
- Can one copy a song and take it home for review without obtaining permission, if the copy is made from a legal copy owned by the church?
- Is it legal to print lyrics in Orders of Service without obtaining permission, if the church owns an equal number of copies?
- Since hymnbooks are frequently shared, can the church print lyrics in the Order of Service for twice the number of legal copies owned by the church?
- For UUA gatherings where legal copies of music are not present, can lyrics and/or music be printed or copied without permission?

According to lawyers advising the UUA, for each of the above, the short answer is “no.” In order for any UUA church to engage in the activities envisioned above, the church will need to obtain permission because a copy is being made in each instance. Copying is not within the church music exemption. It is also important to note, contrary to the belief held by both laypeople and lawyers not conversant with copyright law, that neither the religious nor not-for-profit elements of a performance will protect a religious institution from copyright infringement. For example, religious music copyright owners “can prevent congregations from copying or publishing [those owners’] copyrighted works, even if the churches only intend to use the copies or publications at not-for-profit religious services.” A church that distributes copies of copyrighted songs to its members must request permission to do so prior to such copying and distribution. This advice is virtually identical to that given on the website of the Church Music Publishers Association, a link to which can be found on the UUMN website.

Special Note: With respect to making a copy for page turns, this issue seems to fall within the ‘fair use’ exemption in section 107 of the copyright law, but it can be argued both ways, especially if one is talking about the amount of the piece copied. A few measures would probably be no problem, but to copy the whole piece to set it up accordion style might be an issue. It is one of those gray areas that has not been tested.

II. Displaying/Projecting

- If the church owns enough legal copies of the song for every congregant to have one, can they project lyrics and/or music on a screen during a worship service without obtaining permission?
- For UUA gatherings where legal copies of music are not present, can lyrics and/or music be projected without permission?

Assuming that the UUA or congregation has one legal version of the song and that is the image being projected, then projection of the words and music during a worship services is not a problem pursuant to the church music exemption. If there are no legal copies of the words and music then projection is not

permitted. To project a copy of lyrics and/or music on a screen during a worship service does not constitute infringement since there is no transmittal of that display to members of the public not located at the place where the actual copy is located.

III. Performing

- Is it necessary to own a legal copy of the song in order to teach it by rote to others?
- Is it necessary to obtain permission from the copyright holder(s) to teach a song by rote that the teacher has learned from a recording?

Either teaching by rote or such performance does not constitute copyright infringement if it is in the course of a service within a place of worship. Unfortunately, if the song is performed outside of those two limitations, then the performance might be prohibited depending on what constitutes a “service” and a place of worship. There is no infringement of a copyright owner’s exclusive rights where there is a “performance of a ... musical work or of a dramatico-musical work of a religious nature ... *in the course of services at a place of worship or other religious assembly.*” Performing a hymn from rote at a religious institution fits within the religious exemption. This presumes that this music is either performed from legal copies or “from memory.”

With respect to performance it should also be noted, in the words of the UUA consultant lawyer, that there is no violation where there is “performance of a ... musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers.”

IV. Recording and Distribution

- What are the copyright issues in regards to distribution of worship services via cassette, CD, DVD, web streaming, cable, TV, and podcasting? What permissions, if any, are needed to distribute sermons, readings, recorded music, original music, hymns, anthems, and instrumental selections?

Without a complete set of permissions, distribution of worship services via cassette, CD, DVD, web streaming, cable TV, or podcasting would violate the copyright owner’s exclusive rights. The religious exemption is inapplicable.

Religious institutions can address these issues in a number of ways: First, they can obtain approval from copyright owners, in advance, to make and distribute recordings of or web-stream services where copyrighted works are performed. Second, they can avoid the use of copyrighted music in recorded or streamed services. Third, they can turn off the recording or web-streaming device when copyrighted music is performed during the service. Fourth, they can enter into a blanket license agreement with copyright owners. Finally, they can obtain a compulsory license. (A compulsory license is the right of cable systems and certain other delivery media to retransmit copyrighted material in broadcast signals without the consent of the copyright owner.)

THE ABOVE INFORMATION HAS BEEN PREPARED IN THE HOPE THAT IT WILL HELP CONGREGATIONS AND CHURCH LEADERS TO DEAL WITH BOTH THE ETHICS OF MAKING MUSIC IN OUR CHURCHES AND THE COMPLEXITY OF COPYRIGHT LAW.

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