

**April 21, 2020**

## **Sarasota-Manatee Chapter Member News**

**Dear Chapter Members,**

We hope you are keeping well and safe during this period of Stay-In-Place and that each one of you already has or will soon be receiving a personal phone call from one of our Board members this week. Since you, your parish and many other churches are now live streaming their services, we asked National AGO headquarters to provide us with guidelines, directions and resources that will protect your churches from copyright law infringement. You may know that not even all the hymns in your hymnal may be under public domain, and that the copyright law's exemption for music used in religious services currently does not apply to live or recorded online streaming.



We asked questions, and here are two responses from Eric Burk in the national AGO office. You may want to share this information with your church staff and clergy.

### **Legally Using Music Over the Internet for Church Musicians**

There are many sides to the issue of copyright, that word often suggesting to people one method of “copying,” like making printed paper copies. Because of sharing services like YouTube, most individuals are far-removed from the legal licensing that should be taking place each time a copyrighted work is **distributed, displayed, or broadcast** via any medium. The copyright law's exemption for music used in religious services does not currently apply to live or recorded online streaming. Copyrighted works must be presented online under a license with the copyright holder or its legally appointed representative, like a publisher, distributor, or rights administrator.

For each and every use of a work under copyright, the user should research what is under copyright (the entire piece as presented in the source? the text only? the altered version of the text? the tune? the arrangement? the performance in a recording?), and then apply for the license(s) appropriate to the type of use involved. Here are the main categories of licenses that intersect with online worship uses of works with potential copyright limitations:

**Mechanical License** – for recording music to CD or a digital file to be distributed to others

Examples: sending via email messages the mp3 files of pre-recorded services or musical selections that would normally be listened to in-person at a live service; posting on Facebook page for members recordings of music; posting digital files on a website or blog page for devotional use by online visitors

**Church Use License** – for printing or projecting music and/or text for a religious service

Examples: hymns under copyright (tune or text) included in a worship leaflet displayed either on a webpage or in the course of a worship service's pre-recorded video or livestream; projections on a screen that are captured in a livestream or prerecorded video

**Synchronization License** – for use of music in conjunction with images on video

This refers to the music itself – live or recorded, not the printed score

Examples: any piece of music in a service that would be accompanying actions in the service (instrumental offertory, choral music while images are displayed or activity in the service is going on); prelude or postlude while reflective texts or images (needing their own licensing if under copyright!) are displayed in a video

**Digital Internet Broadcast License** – for use of music to be broadcast online via recording or online via live webstream

This is fairly self-explanatory, but refers to the music itself, not display of scores online.

Most of the above licenses may be included in a blanket license with CCLI or OneLicense for certain works, but publishers or songs/works must be verified to be sure that the selection and the type of use is actually covered in the blanket license to comply with copyright law.

### **Works and performances in the public domain**

Works and performances in the public domain do not need to be licensed, but users have to be very careful about what in a performance or a work is actually public domain. Public domain could be claimed for something that contains material under copyright protection. Hymnbooks often have a copyright index for each and every selection, listing “public domain” when their own printing of the hymn contains no new or recent material, within the last 75-120 years, that could be under copyright. During the current pandemic situation with Covid-19, when copyright owners are well aware of the forced need by churches to go totally online, many publishers are waiving fees, but licenses (which may be free) should still be requested and obtained (before use) from the copyright owners, some of whom have streamlined this process online to help users; for example, Choristers Guild has a helpful page on their website – please see: [https://www.choristersguild.org/4DCGI/cms/review.html?Action=CMS\\_Document&DocID=22&MenuKey=upper](https://www.choristersguild.org/4DCGI/cms/review.html?Action=CMS_Document&DocID=22&MenuKey=upper).

Here are some articles and guidance online that support the above statements:

- How long does copyright protection last on a work before it is public domain? <https://www.copyright.gov/help/faq/faq-duration.html>

- Music Law 101: How Long Does Copyright Protection Last? <https://www.jdsupra.com/legalnews/music-law-101-how-long-does-copyright-57301/>
- Copyright and Livestreaming Considerations You Can't Ignore <https://churchtechtoday.com/2019/10/31/copyright-live-streaming-considerations/>
- Guide to Copyright Law from the Music Publishers' Association and YouTube <https://www.choristersguild.org/documents/mpacopyright20.pdf>

*Prepared by Eric Birk, Executive Assistant at AGO National Headquarters – April 13, 2020*

## The Law

Laws by their very character stipulate prohibitions, not possibilities. Therefore, we can naturally only be certain about the general descriptions in the law that provide prohibitions. What is detailed in the document is the necessity to determine:

1. Who owns the rights to a piece of music that is not in the public domain.
2. Who to contact for permission to web-stream.
3. What that owner or agent requires in order for permission to be granted.

Each and every piece of music is potentially a unique set of regulations and procedures, depending on the date of composition/copyright, the composer's year of death if not living, and the laws of the country under which the primary copyright laws treaty with the USA applies.

There is no one-step process for obtaining blanket permission for all the possible uses we might have in virtual services. Here are two paragraphs in a recent message I sent to another AGO member asking similar questions about copyright:

I would encourage you to ask your church's trustee board if they have legal counsel (ideally, *pro bono*) which could obtain help with this issue. In the meantime, I can reasonably suggest that for each and every piece of music that you want to web-stream or of which you want to post pre-recorded performances, please contact the copyright owner by locating the rights administrator for the publisher/copyright owner involved in each and every case. The MPA website is a really good resource for locating rights administrators: <https://www.mpa.org/all-publishers/>. To find the publisher in questions, you may need to use their search tool at <https://www.mpa.org/directory/>. For example, if you had a piece published by Gentry, that publisher imprint is not listed among "all publishers," but if you type Gentry into the search field, it will put you in touch with the Fred Bock Music Co. which owns that publisher imprint. If you are a member of the Church Music Institute ([churchmusicinstitute.org](http://churchmusicinstitute.org)), you may be able to search your titles in

their choral library of over 30,000 titles to determine the current publisher representative to contact for your pieces.

Above all, please remember that copying, display, recording, and broadcast are not prohibited *per se*. It is doing those things without permission that is the problem. Most copyright owners are smart enough to realize that if they have not met your needs for real-life challenges, such as [enlargements for] the visually impaired choir member, then they usually grant permission and will often do so for free. Many publishers are offering free licenses for web-stream, but to be operating legally and with honesty and respect toward those who create and provide the music we use, we have to ask and receive permission. In my personal experience, many publishers of hymnals will grant permission for free without a license for the works for which they control the copyright licenses, and they will put you in touch with copyright owners when necessary for those hymn tunes or texts which are not in the public domain.

At some point, we may either need the services of a copyright lawyer to understand what to do and how to do it in order to comply with the law, or we simply need to take the steps to attempt our due diligence in attempting to get permission, document that attempt, and then move forward with the plans to use the music. It will be a matter of opinion as to how long we wait to hear nothing before proceeding, but I would include a deadline in your requests (such as 14 days, 30 days, etc.) beyond which you will consider that the copyright owner does not expect to charge a fee for a license and that you can assume permission is granted without charge—that kind of communication usually gets a very prompt response from copyright administrators!