

# Intellectual Property Rights in Musical Works

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## Abstract

### 1. Intellectual Property Rights in Musical Works

Our nation's Founding Fathers incorporated copyright principles into the U.S. Constitution in order to foster the creation and dissemination of intellectual works for the public good.<sup>1</sup> The federal copyright law supports these goals by permitting authors to reap rewards from their creative efforts for limited periods of time, while also benefitting subsequent creators by allowing them to use and build on prior works under certain circumstances. Thus, in order to stimulate originality and creativity, creators and owners of musical works are granted an exclusive bundle of rights in their copyrighted musical works for the enrichment of our society. Awareness of these rights is essential for all potential users, even for academics and scholars who wish to use these musical works for educational or other research purposes. Many musical works, especially those embodied in phonorecords, CD-ROMs and other audio-visual formats, have multiple layers of intellectual property rights involved.<sup>2</sup> Scholars and institutions must respect these rights when digitizing, transmitting, retrieving or otherwise using copyrighted musical works in electronic formats. Even when underlying musical compositions are in the public domain, the version being used may include new copyrightable authorship that must be considered. Such authorship could include new arrangements, revised lyrics or music, other editorial revisions of the musical work itself, or—where the work is fixed as a series of sounds—it could include all or some new sounds, a remix of sounds, and so forth.

Understanding concepts such as (1) the whole range of rightsholders' exclusive rights in musical works,<sup>3</sup> (2) the statutory limitations on these rights,<sup>4</sup> including how the *Fair Use*<sup>5</sup> doctrine can be applied reasonably for educational and scholarly purposes, (3) when authorization is needed, (4) who the rightsholders are,<sup>6</sup> and (5) how to secure required permissions efficiently and easily,<sup>7</sup> have all become increasingly important

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<sup>1</sup> U.S. Constitution, Article 1, Section 8.

<sup>2</sup> Layers of rights in musical works include reproduction/print, distribution, mechanical, synchronization, performance, dramatic adaptation and others.

<sup>3</sup> Exclusive rights of creators, 17 U.S.C. § 106.

<sup>4</sup> Limitations on exclusive rights of copyright creators/owners (17 U.S.C. § 107-121).

<sup>5</sup> Fair Use (17 U.S.C. § 107) — four statutory factors.

<sup>6</sup> U.S. Copyright Office records in machine-readable form cataloged from 1978 to the present, including registration and renewal information and recorded documents, are available for searching on the Internet through LOCIS (Library of Congress Information System); connect to LOCIS through the Web <[www.loc.gov/copyright/rb.html](http://www.loc.gov/copyright/rb.html)> or directly by using Telnet to <[locis.loc.gov](telnet://locis.loc.gov)>.

<sup>7</sup> Collective rights organizations that manage and license rights in musical works include:

- ASCAP, BMI, SESAC: performing rights societies
- Harry Fox Agency: music publishers' licensing

for scholars and educational users in this age of new online works, mushrooming digital distance education, and ever-expanding networked access to resources in digital form.

## 2. Copyright and Digital Library Issues for Music

**Fair Use.** Fair use is the broadest and most general limitation on the exclusive rights of copyright owners. Codified in the copyright law since 1978, fair use is a flexible, technology-neutral doctrine, allowing reasonable and socially desirable uses of copyrighted works, even when they are not authorized by the copyright owner. Although flexibility is a major benefit of the fair-use doctrine, the corollary is a degree of uncertainty, giving rise to many controversies over the years and supporting the need for negotiated *fair-use guidelines* to give practical guidance for day-to-day decision-making in the educational context. Fair-use guidelines involving musical works include the classroom guidelines for music negotiated in the late 1970's<sup>8</sup> and guidelines for creation of multimedia works agreed on in 1996,<sup>9</sup> in an effort parallel to the 1994-97 CONFU (Conference on Fair Use) initiative.

**Other Digital Library Issues.** Earlier fair-use guidelines do not translate easily to new technological uses of copyrighted works in digital form, nor do they give practical guidance for the novel applications emerging for digital works that can be so easily accessed and transmitted over campus networks and global communications networks. Many rightsholders and educational organizations participating in CONFU recognized the growing need for fair-use guidelines in the context of higher education, addressing such new capabilities as electronic reserves, electronic course packs, distance education, and digital archives. But CONFU participants were unable to achieve a general consensus in these areas, though electronic preservation (converting older analog collections to digital form for preservation purposes) was addressed in CONFU and those concerned were referred to the U.S. Congress for relief. Digital preservation did receive Congressional approval in the Digital Millennium Copyright Act of 1998.

**Digital Rights Management vs. Access Management.** One major challenge in the area of digital rights management is understanding the distinction and relationship between managing "rights" in copyrighted works and managing "access" consistent with those rights. Managing rights in online copyrighted works is the right and responsibility of rightsholders and their agents, e.g., authors, publishers, and others in the distribution chain; managing "access" to those works in a way that consistently respects rightsholders' rights, and is also responsive to the needs and privileges of scholars and other users, is the responsibility of digital libraries and archives who store online copyrighted works and provide users with access to them. Managing access is more challenging in the online world than in the analog world.

## 3. Digital Library Initiatives at U.S. Copyright Office and Library of Congress

**U.S. Copyright Office.** The U.S. Copyright Office is a national office of public record, where claims to copyright are registered and documents pertaining to copyright (such as assignments, transfers, exclusive licenses, and so forth) are recorded. Over 600,000 claims to copyright are received and processed by the Office annually, along with more than a million copyright deposits, including thousands of works in the performing arts. The U.S. Copyright Office's innovative new CORDS system (Copyright Office Electronic Registration, Recordation & Deposit System) enables fully automated copyright registration and deposit by

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<sup>8</sup> U.S. Copyright Office. *Reproduction of Copyrighted Works by Educators and Librarians*. Circular 21, <<http://lcweb.loc.gov/copyright/circs/>>.

<sup>9</sup> *Fair Use Guidelines for Educational Multimedia*. Nonlegislative Report of the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives. September 27, 1996. <<http://www.indiana.edu/~ccumc/mmfairuse.html>>.

claimants. Through CORDS, rightsholders can register their copyrighted works (including musical works) in digital form faster and more easily, making copyright catalog records about registered works quickly and easily accessible online. Copyright records on all copyright registrations and recordings, containing millions of records about copyrighted works, are available in the Office's national databases, available online since 1978 and over the Internet since 1993.

Copyright deposits of musical works received in the Copyright Office as part of the copyright registration process are one of the Library's primary sources of new musical works. Working with the National Music Publishers Association (over 20,000 music publishers) and its licensing subsidiary, the Harry Fox Agency, and cooperating music publishers, the Copyright Office has opened its CORDS electronic registration and deposit system to new claims for musical works with accompanying digital deposits in MP3 format. The system is in production with several major music publishers already cooperating and is growing. New musical deposits received in electronic form will be included in the Library's digital repository. Technical issues facing CORDS system developers include:

- authentication and security
- metadata (structural, administrative, and descriptive)
- digital object models (including complex digital objects)
- unique persistent identifiers

**Library of Congress.** As part of its multi-faceted Digital Futures Project, the Library is currently developing a digital repository prototype (2000-01) for different types of works in its digital research collections; this includes musical works digitized as part of the Library's American Memory Project as well as new musical works received in digital audio format through copyright deposit. The project is a collaborative activity that prototypes new approaches for the acquisition, storage, maintenance, preservation and retrieval of various categories of digitally formatted works. The Library's digital repository prototype is testing Artesia's TEAMS software for digital asset management purposes to help determine what is needed for long-term storage and preservation, and access controls for authorized retrieval of copyrighted works by researchers and other users. Stored digital works are uniquely identified by "handles" (a technology developed by CNRI<sup>10</sup>) and managed by the Library's Local Handle Management System.

The Library is also building an innovative National Audio-Visual Conservation Center at Culpeper, Virginia, projected to be operational in 2003, under the Management of the Motion Picture, Broadcasting and Recorded Sound Division (MBRS). The new center will be experimenting with new ways to store, retrieve and deliver these works in a secure manner to researchers at the Library's main campus in Washington, D.C. Goals of the A-V prototype project (1999-2002) include advancing the Library's understanding of acquiring, maintaining and preserving audio-visual collections in digital formats and serving readers needs effectively and innovatively with these digitized works. The prototype is focusing on data structure, system architecture, and human administration, with content persisting through many cycles of obsolescence. Defining, capturing and storing appropriate metadata along with complex digital objects is of paramount importance, including essential structural, administrative, and descriptive metadata for each stored digital object.

### Suggested Readings

[WWW.loc.gov/copyright/cords/](http://WWW.loc.gov/copyright/cords/)

[WWW.loc.gov/standards/metadata.html](http://WWW.loc.gov/standards/metadata.html)

[WWW.loc.gov/rr/mopic/avprot/avprhome.html](http://WWW.loc.gov/rr/mopic/avprot/avprhome.html)

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<sup>10</sup> The Corporation for National Research Initiatives' Handle System, <[www.cnri.reston.va.us/](http://www.cnri.reston.va.us/)>.