**Fact Series**

Performance regulations and copyright

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**PERFORMANCE REGULATIONS AND COPYRIGHT & FAQ’S**

COPYRIGHT

Copyright is the exclusive right of an author, composer etc. to do certain acts in relation to his/her work. If anyone else does any of those acts without permission, there is an infringement of copyright. This means that, when you sign a contract to do a show, you are agreeing to do it as written, and all you can do is give a live performance of the work. If you make any changes to the script, libretto or music without permission, you are breaking the law. And almost every song, musical or play which is performed in public is subject to the payment of royalties – and this includes excerpts although this is likely to be a PRS declaration and not the rightsholder.

The only exceptions are works which are no longer in copyright because the period of protection has expired. Copyright ceases 70 years after the death of the last surviving writer (for example Gilbert & Sullivan, who entered the public domain in 1960). If adapted scripts, updated libretti and/or musical arrangements by a living composer (or one whose death occurred less than 70 years ago) are publicly performed, then such works are protected and are subject to the payment of royalties.

If performing old songs that you think may be out of copyright, do remember that the lyrics may have been written recently or updated, so that copyright will now exist on the whole piece. In addition, the piece may be a modern arrangement of an out-of-copyright work. It is the musical arrangements that may cause a problem.

REQUIREMENT FOR A LICENCE

No public performance or public reading of a protected play or musical play, irrespective of whether an entrance fee is charged or not, may be given either in its entirety or in the form of excerpts without a licence to perform it having been obtained in advance from the copyright owner. It should also be remembered that any public performance for which admission is charged, even if for a charitable cause, requires a licence.

EXCERPTS FROM MUSICALS

It is normally permissible to perform excerpts from musical plays with a licence from the

Performing Rights Society (PRS) provided that:

* Public performances of all non-dramatic excerpts of grand rights works that are not longer than 25 minutes, and are not complete acts from, or potted versions of, the show.
* TV broadcasts of all non-dramatic excerpts of grand rights works that are not longer than 20 minutes, and are not complete acts from or potted versions of the show
* Radio broadcasts of all non-dramatic excerpts of grand rights works that are not longer than 25 minutes or 25% of the total duration of the work and are not complete acts from, or potted versions of, the show
* All ballet music where there is no dancing

In many cases theatres, halls and other venues may have a blanket licence from the PRS (a licence to perform all its repertoire). This should be ascertained beforehand and in the absence of such a licence, application should be made to the PRS. It must be understood that royalties are payable to the PRS on all copyright music performed in a concert format.

STAGED CONCERTS AND REVUES

If the intention is to stage (that is to say with costume and/or scenery and/or movement) a revue or compilation show, then if any of the content originates in a musical play, permission (which may or may not necessarily be forthcoming, depending on the circumstances pertaining to the individual show from which the excerpt comes) must be sought in advance from the copyright owner and, if permission is granted, an appropriate fee is likely to be payable. If the song(s) or music do not emanate from a musical play, then it is probable that their performance could be covered by a PRS licence. This should be checked in advance with the PRS.

Permission to perform revue sketches must be obtained in advance from the authors’ agents who, if the use is approved, will issue a licence upon payment of appropriate fees.

PHOTOCOPYING, ARRANGEMENTS AND ALTERATIONS

The making of photocopies is restricted under copyright law. There are ‘fair use’ provisions although it is unlikely that they would apply in the case of public performance. If copies of music or songs are required for rehearsal or performance purposes and they are unavailable either for purchase or rental, then permission to copy must be sought from the music publisher named on the music, not the owner of the stage rights nor the PRS. If permission to copy is granted, then this may be conditional upon payment of a reproduction fee and/or an undertaking to deliver all copies made to the publisher after use.

The making of musical arrangements of copyright works, changing the melody or words, or adding new words and choreography, all arguably constitute an adaptation and as such are a breach of copyright. Even if the dialogue of an older show is very dated, you cannot bring it up to date. You can sometimes get permission for minor adjustments to be made. If this permission is granted, however, it does not mean that wholesale re-writes will be allowed. All too often, when dialogue is altered, it is not for the better. If a producer does want to make major changes to a musical or play and, in so doing, alter the structure of this piece, the question should really be, “why are we bothering to do this work in the first place?”

Rightsholders do employ representatives to travel round the country to watch the shows that they have licensed. You may be certain that if you have altered the show in any way, or carried out any other breach of copyright, the show will be cancelled. If this should happen to your society, you will have no redress for any losses you may incur, nor will you be able to claim under the Abandonment section of the NODA Insurance policy.

AUDIO AND VIDEO RECORDING

In certain circumstances, a licence to make a sound recording may be obtained upon application from the Mechanical Copyright Protection Society (MCPS). However, the making of video recordings is prohibited almost without exception. Unlawful video recordings are viewed by copyright owners as a very serious breach of their right and are almost certainly actionable.

The licence which an agent issues to an amateur society covers only the stage production that the society is mounting. Indeed, often the agent has power to grant amateur stage licences only and cannot give permission to video-record the production. In those circumstances it would be necessary to refer the enquiry to another agent who may or may not be able to grant permission. Plays and musicals are often the subject of complex film and television contracts to which video-recording rights may be tied. In such cases it may be that no one can legally grant permission for an amateur society to record their production in this manner. In other cases (such as NODA Pantomimes, and plays that have not been produced on the professional stage) authority to video-record may be forthcoming and sometimes permission can even be obtained to sell copies of the tape.

In most cases, especially the American shows, the UK agents are literally only agent for the Grand Rights, which means for live performances of the entire show. They will not and do not handle the film/video copyright - thus permission cannot be granted by them. Instructions from their American principals have to be adhered to and usually these principals cannot grant permission as they do not hold the film rights either.

Even if the show is out of copyright, if you use hired orchestral parts you will need permission from the owners. If your MD arranges the music, and allows you to make a video or sound recording, you would have to check with any professional musicians, including all members of the Musicians Union, for they have the right to refuse you permission to record their performance or to charge for it.

This also all applies to pantomimes. For example, if the film rights to a pantomime have been allocated, you would have to get permission from whoever holds the film rights. If they haven’t been sold, you will have to get permission from the author. And then, of course, there are the same rules relating to professional musicians and there are the songs you put in your pantomime – you would have to trace all the lyricists and composers and get their permission.

Video-recording rights should be applied for on a case-by-case basis, the preliminary enquiry being directed to the agent from whom the stage performing licence has been obtained. As the clearance of these rights can be a time-consuming process (and this is especially so if the applicant has to be referred to other agents in this country or overseas) applications should be made long before the date of the actual production. All too often groups decide to video-record their production at the dress rehearsal and, therefore, cannot obtain the requisite permission in time. It should also always be borne in mind that, in many instances, recording rights may, quite simply, be unavailable.

Sometimes companies advertise or contact societies directly offering to video shows. They will probably tell you they have a licence to video shows, but what they actually have is a Private Function Licence. This is issued by the MCPS and covers events such as weddings, presentations etc. and allows copyright material to be included on the soundtrack. It does not allow filming of shows or public functions. So don’t be fooled – this is not a legitimate way of getting round the copyright rules.

RECORDING AND REPRODUCTION OF MUSICAL WORKS

The recording and mechanical reproduction of all protected musical works needs to be licensed by the copyright owner irrespective of the manner or purpose for which the recording is made.

The 1911 Copyright Act recognised that a sound recording (including film) is a work itself protected by copyright. This right is conditional on a work having been previously recorded with the copyright owner’s consent, or by notice of the intended recording being given to the copyright owner. Film rights are also known as synchronisation rights for the reproduction of musical works in the soundtrack of films. Most often, but not invariably, a publisher, by terms of the publishing agreement, acquires all rights of copyright in a work, except the rights of public performance and broadcasting.

One scheme administered by the MCPS covers licences required for the recording of works by independent users where recordings are not for sale but for specialist purposes. It is not the practice of the MCPS to license complete dramatico-musical works or excerpts from such works unless the excerpt does not exceed 25 minutes, does not involve a complete act, is not a “potted version” of the complete work and the excerpt is not presented in a dramatic form.

USING BACKGROUND MUSIC

PRS offers an annual licence for performances of Overture, Entr’acte and Exit Music. No prior clearance of individual works is necessary. ‘Incidental’ or ‘curtain’ music to stage plays, which is music heard by the theatre audience as an accompaniment to the play – where the music is not performed by, or intended to be audible to, any of the characters in the play – is similarly licensed by PRS. A PRS licence is also needed for background or featured music in areas such as foyers, bars or restaurants.

PPL (Phonographic Performance Ltd.) is the UK record industry’s collecting society and licenses the public performance and broadcasting of sound recordings. It has an online licensing facility which allows new users to see which licences are relevant to their own area of business and to apply for a public performance licence online. It also contains full details of tariff rates and the conditions that apply to different types of users. There is a special flat-rate tariff for amateur operatic and dramatic societies using recorded background music during the entry and exit of audiences, during intervals and during the action of performances when required. Anybody requiring a public performance licence can apply at www.ppluk.com or alternatively call the Licensing Helpline on 020 7534 1030.

NODA is frequently asked if there is a difference between PPL and PRS. Indeed there is; although they are both collecting agencies licensing similar types of music users, they work on behalf of different rights owners. PPL represents record companies and performers, while PRS represents writers and publishers.

We are also asked why societies need a PPL licence when it already has a PRS licence. This is because there are two separate copyrights in each sound recording. The songwriter or composer owns the copyright in the song, and their licence fees are collected by the PRS. The copyright in the recording is owned by the record company that has financed and produced it, and their licence fees are collected by PPL.

**Update**

In February 2016 a PRS & PPL merger took place. Later that year, competition clearance from the Competition and Markets Authority was given and PPL and PRS for Music were able to sign a shareholder’s agreement that set out how the joint venture company would be owned and operated. The Board of the new company will comprise PPL PRS senior management team members as well as representatives from both PPL and PRS for Music.

PPL and PRS for Music continue to operate separately in the other areas of their businesses, including representing their members, collecting royalties from international societies, developing, setting and consulting on their respective tariffs and licensing schemes, and licensing broadcast, online and recorded media customers.

ADAPTATIONS OF COPYRIGHT WORKS

Writers thinking of adapting non-dramatic works for the stage in order to mount productions with amateur societies should bear in mind that intellectual property rights extend not only to stage plays but also to other created works including novels, non-fiction, poetry, film screenplays, lyrics, songs and other musical compositions. Consequently, if a work is in copyright, it is essential to establish that the owner of the rights is prepared to allow an adaptation to be made and a royalty must be agreed.

An author or an author’s literary estate is probably most easily contacted via a letter to the publisher of the book, who should pass it to their client or his/her literary agent. Any such application should give details of the adapter’s experience and the purposes to which such an adaptation would be put. An author may be prepared to grant non-exclusive rights for a play or musical to be made and presented in a single amateur production, but may not be happy about the play or musical being published or presented widely, or produced in the professional theatre.

One should also be prepared for the fact, of course, that the owner of the rights may not wish the work to be dramatized or that the exclusive dramatisation or musicalisation rights may already have been granted to someone else. It is unlikely, for example, that the rights would be available to make a new musical version of Shaw’s Pygmalion – for obvious reasons!

**FREQUENTLY ASKED QUESTIONS**

We want to record our next show. Are we allowed to do this?

The short answer is “No”. There are very few shows where you will be granted permission to film.

We don’t want to sell the recording commercially, so why not?

Because the rightsholders with whom you have a contract to perform the show often only hold what are called ‘Grand Rights’, which means the right to license live performances. The film rights, which include videoing, are almost always controlled by a different organisation altogether, and the rightsholders with whom you have a contract simply do not have the power to give you permission.

So, who has the film rights?

For most American shows, the film rights are held by American film or TV companies, and even if you were able to trace the film rights, they would almost certainly be likely to refuse.

I have heard of commercial companies who say they have a licence to video any show. Can they do this?

In short, no. They will probably tell you that they have licence from the MCPS, but this is a Private Function Licence only, covering events such as weddings, presentations etc., which allows copyright material to be included on the soundtrack. It does not allow filming of shows or other public entertainment events.

So, can we never video a show?

If the show is owned outright by the rightsholders – and this a rare possibility – they may give permission for just one archive copy to be made on payment of a fee. We advise that you check with the rightsholder the situation pertaining to the show you want to video.

What about sound recordings of our shows?

Exactly the same laws apply. Without permission from each individual copyright owner or his/her agents, you may be liable to legal action.

What about shows that are out of copyright, such as Gilbert & Sullivan?

That’s fine, if they are genuinely out of copyright. But if you use hired orchestral parts, you would have to ask the owners whether copyright applies. If your own MD arranges the music, and allows you to make a recording, you would have to check with any professional musicians you are using, including all members of the Musicians Union, for they have the right to refuse you permission to record their performance and the right to charge for it.

Does all this apply to pantomimes?

Probably not all of it – but you would have to get permission from whoever holds the film rights. If they haven’t been sold, then you would have to get permission from the author

– and remember, all the rules about seeking permission from professional musicians apply and then, of course, there are the songs you put in your pantomime: you would have to trace all the lyricists and composers to get their permission. You can video NODA Pantomimes on payment of a modest fee, but remember, this gives you permission to video the script only.

Are there any shows we might be able to get permission to video?

You might be able to get permission to video a show that has not received a professional production, if you cleared it with the composer, lyricist, arranger etc. and with any professional musicians performing on the video.

What exactly is copyright?

Copyright is the exclusive right of an author, composer etc. to do certain acts in relation to his or her work. If anyone else does any of those acts without permission, there is an infringement of copyright. This means that, when you sign a contract to do a show, you are agreeing to do it as written, and all you can do is give a live performance of it. If you make any changes to the script, libretto or music, you are breaking the law. Copyright lasts until 70 years after the death of all those involved in the creation of the play or musical. Even then, copyright can be extended by Act of Parliament (as is the case with *Peter Pan*).

What is the legal position when we do excerpts from a show, in a concert, for example? You may perform “Songs from the Shows” without permission under certain conditions, and performing rights in such cases should be sought from the rights holder, which is usually the music publisher.

* You may not perform more than 25 minutes of songs from any one show.
* You may not wear the costumes associated with the show – that means that if you want, for example, to do ‘The Farmer and the Cowman’ from *Oklahoma!*, you may not wear Western-type clothes.
* You must perform the whole or most of the concert on a fixed set, which is not the set appropriate to the show(s).
* scenic effects must be limited to the use of either a single prop and/or a backcloth or a piece of scenery, or lighting effects, that are not based on the work from which the songs are taken.

What about old songs that are very old and almost certainly out of copyright?

On the whole this should be no problem but do remember that the music may be out of copyright but the lyrics may have been written recently or updated, so that copyright will now exist on the whole piece. In addition, the piece may be a modern arrangement of an out of copyright work.

What about songs from Disney films? Can we use these in our pantomime?

In most cases, no. Disney songs cannot be used under any circumstances except for songs from Snow White and Pinocchio, which cannot be used in the context of a pantomime of the same name but can be used out of context. This means, for example, that the dwarfs in Snow White cannot sing ‘Hi Ho’.

The dialogue of some of the older shows is very dated. Is it OK to bring it up to date? The short answer is, no. You are under a contractual obligation to perform the show as written. You can sometimes get permission for minor adjustments to be made. If this is granted, however, it does not mean you can make wholesale alterations. If a producer does want to make major changes to a musical or play, and in so doing alters its structure, you should ask yourself why you want to do the work in the first place.

What would happen if we were to alter dialogue or music without permission? Remember that rightsholders do employ representatives to travel round the country to watch the shows they have licensed. You may be certain that if you have altered, in any way, the show that you have been licensed to perform, that show will be cancelled, and you will have no redress for any losses you incur. And your society will not be granted a licence to perform any other show in that rightsholder’s catalogue for some time to come.

Hiring band parts, scores and libs seems very expensive. Can’t we just photocopy them? No. Photocopying is restricted under copyright law, and the rightsholders will come down extremely hard on anyone who breaches this rule. If copies of music or songs prove to be unavailable, then permission to copy may be sought from the music publisher named on the music, not the owner of the stage rights nor the PRS, but you may have to pay a fee and/or deliver all copies made to the publisher after use.

**Note:** This factsheet offers preliminary guidance on performance regulations and copyright and is not intended to act as a definitive guide to this topic and the law. For specific advice on any issues arising from this factsheet please seek independent legal advice.