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Copyright Basics for Barbershoppers

(Updated June 2016)

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. These laws also encourage the creation of future works.

A song and/or arrangement covered by copyright is intellectual property. The owner has certain exclusive rights, and your group 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.

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; and
- **DISPLAY** the work publicly.

We will discuss the first four rights in this article.

1. Preparation of *Derivative Works*

If you plan to create an arrangement (which is called a “derivative work”) of an existing copyrighted work you may do so only WITH PERMISSION from the copyright holder. The Barbershop Harmony Society provides a service through the Copyright & Licensing Manager at Harmony Hall (library@barbershop.org) for securing such permission. It

involves the payment of a fee for the permission to arrange and the first five copies. (One of the copies is retained by Harmony Hall for the copyright holder.) A per-copy fee is charged for additional copies. Arrangers must be certain to secure this consent before preparing an arrangement. However, in some cases the publisher may ask to review a draft of the arrangement prior to giving approval. To download the Society's ***Arrangement & Reproduction Request Form*** please refer to this web link:

<http://www.barbershop.org/resources/document-center/copyright-and-legal/>.

*It is important to know that an arrangement becomes the property of the copyright holder, **not** the arranger, group, or customer paying for the clearance.* In some cases the arrangement may eventually be offered for sale by the copyright holder, the Society, or other third party, as additional licenses are granted by the holder.

Violations of copyright law can result in a substantial fine in regards to arrangements. 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!

Our groups 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 create the arrangement. Make certain the fees you have paid will go to the copyright holder. Please note that if a song is in the public domain (chiefly, those songs published before 1923), the arranger may well be the copyright owner of the arrangement - refer to the copyright notice on your sheet music for this information.

2. Reproduction of the work

Printed Material

Any original work - be it a song, cartoon, arrangement, lyric or other creation - is considered under copyright if it bears a copyright date and name. A simple rule to follow: 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 Society's Copyright & Licensing Manager regarding any sheet music that does not carry a copyright notice.

Legal sheet music arrangements can be obtained/purchased from the Barbershop Harmony Society (shop.barbershop.org) and numerous other providers, such as:

- **Hal Leonard Corporation** (www.halleonard.com) (which partners with the Society on barbershop arrangement distribution throughout the world);
- **Alfred Music Publishing** (www.alfred.com);
- **Music Sales Corporation** (www.musicsales.com); and

- **Bourne Co.** (www.bournemusic.com) (which has numerous SPEBSQSA publications); and
- **J.W. Pepper** (www.jwpepper.com).

There are many independent distributors as well - use the keywords “barbershop arrangements” or “barbershop sheet music” in your online searches.

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 at the beginning than going to the trouble of reordering or getting permission to copy.) Every performer must have a legally purchased 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. You may also copy short passages of up to about four measures for educational or study purposes for a class-room situation, provided that you credit the copyright holder.

Recorded Material

Unauthorized duplication of copyrighted recorded material is illegal, whether it is an LP, CD, cassette, DVD video, or other medium. The producers of these recordings must pay royalties to copyright holders for the right to record their songs and duplicate to distribute and sell to others. Below are various scenarios to which this applies:

Learning Media (CD)

One full learning media CD purchased from the Barbershop Harmony Society (including 4 (part predominant only) or 5 (part predominant + full mix) tracks, depending on how the track was made) usually retails at \$16.00 or more. For each additional track you duplicate for your singers, you must secure a mechanical license from the Harry Fox Agency (www.harryfox.com) (“HFA”) for the total count of tracks multiplied by the number of CDs being made. The current mechanical license rate is \$0.091/unit (9.1 cents) for tracks under 5 minutes long.

- **Example 1:** Reproducing a CD with 4 tracks on it (one per voice part) with 100 CDs being made means a license for 400 units times \$0.091 / unit = \$36.40 owed to HFA, plus their applicable administration fees.
- **Example 2:** If you have 20 lead singers and want to provide them each with a CD including one full mix and one part-predominant track, each CD would contain 2 tracks, so 20 CDs (one CD per lead singer) x 2 tracks per CD = 40 units to be licensed times \$0.091 / unit = \$3.64 owed to HFA, plus their applicable administration fees.

To obtain mechanical licenses from HFA, begin by logging in to their *Songfile* online service on the Harry Fox Agency website (<http://www.songfile.com/>), register as a new user, and then follow their instructions.

NOTE - Songs are not always handled by HFA or may only be partially handled by them. For those songs you have to research who owns the copyright (or remaining portion) and contact that holder directly for a license. For additional information here, see “Obtaining Permission to Produce Audio Recordings” later in this article.

Other Learning Media Options

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. This does not require a mechanical license. Please note that you cannot duplicate that tape, but several individuals may record simultaneously.

Learning Media Distributed on Chapter Websites

The type of license you need to legally post to your website is a PDD (Permanent Digital Download) mechanical license. If you are making copies of learning tracks originally purchased from someone else (BHS, etc.), or are creating your own learning track recording:

- a. Visit the Harry Fox Agency website (www.harryfox.com) to see if they represent the song. If so, secure a PDD mechanical license through them. (For groups in Canada, contact CMRRA – www.cmrra.ca – for licensing.)
- b. If HFA does not represent the song, you will then need to research the ASCAP, BMI, and/or SESAC websites (SOCAN for groups in Canada) to locate the copyright holder information, then contact them directly for a PDD mechanical license.
- c. For Society-controlled songs (where © SPEBSQSA, Inc. or © Barbershop Harmony Society appears at the bottom of the sheet music), contact the Society music library at library@barbershop.org to request a PDD mechanical license.

PDD mechanical license fees are typically \$0.091 (9.1 cents) per copy for songs under 5 minutes, plus a processing/administration charge. Please note that some copyright holders will not grant PDD permissions, as these are not currently statutory (standard) under US copyright law.

For definitions of the various digital permissions, visit HFA’s web link at : <https://secure.harryfox.com/public/DigitalDefinitions.jsp#20> .

Once you have obtained the proper licensing you may post the song on a password-protected page on your website, and instruct each member to download ONE copy of it. The copies must not exceed the # you have paid for, and you should only keep one master copy on file. Your webmaster should use web analytics tools (usually available for free from Google and other providers) to monitor the number of downloads from your website, and

account/re-license accordingly to the copyright holder if you exceed the number you've licensed.

Recording audio of your Quartet or Chorus

If you, your quartet, or your chorus does any audio recording, the law says you must have permission to produce a recording (in any form) of a copyrighted song or arrangement. For audio-only recordings you'll need a mechanical license.

We suggest you set up a spreadsheet for the following information: *Song Title; Writers; Copyright Holder; Arranger; Harry Fox Payee (or another collecting agent); Other Payee; Length of Song; and Comments/Notes.*

Check out each song in the Public Search section of Songfile at the Harry Fox website, (<http://www.songfile.com/>) to help complete and verify your song-information spreadsheet, as well as to pay your license(s) online. This will greatly simplify and speed up the licensing. You will need to pay by credit card. As mentioned previously in this article, HFA and other agencies may not represent all shares of a particular song. They can only grant you a license for those shares that they do represent, and you will have to seek clearance for the remaining share. Songs must be licensed at 100% in order to be compliance with the law.

For research sources, please see the resource list at the bottom of this article. As always if you need assistance in locating a particular song's copyright holder, contact the Society's music library (library@barbershop.org). Since HFA (or CMRRA, groups in Canada) do not currently represent the songs controlled by the Barbershop Harmony Society, you must contact us directly for permissions (library@barbershop.org).

If a song is in the public domain (published before 1923) but is sung directly from an established barbershop arrangement, you must contact the arranger or the Society (if our controlled publication) and request a mechanical license. If you have created your own arrangement of a public domain song, there is no need to obtain a mechanical license.

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 performing group (quartet, chorus, soloist, etc.). The reason for this is that some performers may not want their performance on someone else's recording.

It is OK to make a single audio or video recording of a rehearsal or show for archival, educational, or study purposes and to make one back up copy for security. However, if you want to distribute copies to members or offer them to the public either for sale or for free, you must first obtain a mechanical license for audio (or synchronization license for DVD/video) for each copyrighted song used on the recording, as explained in the next section.

Tips for Producing and packaging commercial audio recordings

Many of the steps your quartet and/or chorus will need to go through in a recording project are the same regardless of the format(s) you choose. Your personal involvement will vary, depending on whether you are working with an organization that does most or all of the work for you, or if you are going to handle the details yourself.

The Recording

The actual recording sessions are, of course, the first major step. The options range from first-rate major recording studios to “basement studios” to semi-professional “on location” individuals. Prices can, and do, range from \$30 per hour to more than \$300 per hour. A higher price does not always mean better end result. Many top-price studios do not understand the barbershop sound, and they may not be interested in the unique challenges it presents and how best to record and process it.

While most professional recording now uses digital format (a near necessity for high quality CDs), a good deal of very fine recording is still done on analog equipment. A knowledgeable and sympathetic recording engineer is more important than the latest equipment.

The second major step is referred to as “editing,” “post” or “mix-down.” Songs are put in final order, volume levels are adjusted, etc. During this time, “ambiance” (echo, reverb, etc.) may be added to “dry” studio recordings, or too much “ambiance” from live (show or contest) recordings may be processed to lessen the effect. Careful work here can make or break the final product.

The third major area is the actual production (mastering and duplication) of the product. You will likely receive a “proof” copy from your duplicator. This is your final chance to review the recording itself as well as any artwork for the finished project. Most duplicator companies will not begin the duplication process without final approval from you.

The Packaging

Design, copy, layout typesetting, artwork, photography, color separations and printing are the major concerns here. How plain or fancy you get depends on time, budget and taste, and can range from black and white to full color (four-color process), using foil or flocked papers and many other possibilities.

The CD “topside” label usually contains the songs in the order presented, and the performers, especially if chorus and quartet. Any more than this may begin to look cluttered, and in fact may cause the type size to be so small as to be unreadable. When the CD is actually playing, you normally can’t read the information anyway.

In addition to providing information about the performers, copyright holders have requested that recording producers include the names of the copyright holders on the product’s “J-card,” CD liner, or burned onto the product itself. You may also want to consider including

the songwriters, as a matter of recognition for the efforts, as well as the performance times, as a courtesy for broadcast or other applications, although neither of these is required.

Obtaining permission for DVD/video recordings

The law says you may make one archival copy of a show or contest and one backup copy may be made for security. Anything more than this requires a license from the copyright holder.

Permission to use songs in video recordings (and films), falls under an entirely different category called a “synchronization license” or “videogram license”. Since there is no statutory (standardized) fee for these licenses, each song must be negotiated separately with individual copyright holders. Fees can vary considerably, from as little as 15¢ per copy per song to \$300 or more just for use of a song. Most publishers will require a “Most Favored Nations” clause stating that you must pay everyone the highest negotiated rate. Also in the case of video recordings, the owner is under no obligation to respond to your request.

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, but you **MUST** ask. 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. The Society will allow their copyrighted arrangements to be used as promotional materials on chapter or quartet websites, but you must ask first. Determine the copyright holder from the copyright notices at the bottom of the first page of music.

You can see that it is important to communicate complete information (intended audience, number of copies to be made, length, and territory of use, 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** investing a lot of time or money into your project.

3. Distribution Rights

Recordings for sale

Barbershoppers may distribute copies of audio (or video) recordings if mechanical (or synchronization) license fees have been paid. Through the facilities and personnel of the headquarters office, the Barbershop Harmony Society conducts an active recording program.

Use of the Barbershop Harmony Society logo is limited to recordings produced by the headquarters office for the Society. The Society recording program does not restrict Barbershop Harmony Society units from producing their own albums/videos for sale, however.

Recordings produced by quartets and choruses may be re-sold (distributed) by the Society. An actual recording must be submitted and final approval will be determined by the Society's Director of Merchandise & Retail Operations. The Society must be able to purchase the recordings at wholesale/dealer prices in order to distribute them at a retail price.

Website and Internet Licenses

Rates, terms, and procedures regarding these types of licenses are in constant flux due to ongoing legislative changes and holder policy changes. Visit these links for the latest updates and requirements:

USA:

<https://secure.harryfox.com/public/DigitalDefinitions.jsp#20> .

<http://www.ascap.com/licensing>

<http://www.bmi.com/licensing>

<https://www.sesac.com/Licensing/obtainlicense.aspx>

www.copyright.gov

Canada:

http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html

www.cmrra.ca

www.socan.ca

4. Performance Rights

You have the right to perform a song/arrangement that has been legally obtained. However, none of the above precludes the necessity of an ASCAP, BMI, SESAC license for public performances (SOCAN for our groups residing in Canada). If you sing on someone else's show – a barbershop group, a service organization, etc. – the show host/producer is responsible for paying the fee; however, you should ensure that your host is aware of this responsibility. Chapter show clearances are thoroughly explained in the Society's *Chapter Secretary Manual*.

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, & YouTube

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 *live* performance on broadcast radio or television, including public radio and television. Most broadcasters pay an annual performance fee/blanket license to ASCAP, BMI, and SESAC (SOCAN for Canada) that covers all copyrighted music performed.

Cable, Satellite, and Digital Television is another matter. Since many of these companies may not have annual/blanket agreements with ASCAP *et al*, it is the responsibility of the producer of the program to secure permission directly with the copyright owners. The television station, producer, program director, or other official may ask you to do the clearances. If a producer asks you to sign a performer release, be sure to read it carefully so that you are aware of your responsibilities in regards to copyrighted material.

The use of copyrighted video (or portions thereof) - such as the Society's international convention video footage - is also restricted. The synchronization licenses for those productions are negotiated exclusively for home viewing and may preclude broadcast, cablecast or other uses. The Society also owns the copyright of the actual video footage and special permission is needed for the use of that as well. Contact library@barbershop.org for assistance.

Regarding YouTube (www.youtube.com);

- You are welcome to embed BHS YouTube video links into your group's website – our YouTube channel name is **barbershopharmony38**. Your webmaster should know how to do this.
- You are also welcome to upload any of your group's performances singing BHS "Barberpole Cats" (from the first songbook only, *Barberpole Cat Songbook/209064*, available for sale on our website at <http://shop.barbershop.org/sheet-music/published/barberpole-cat-song-book/>) without the need of clearance, as well as any copyrighted arrangements of songs controlled by the Society [© SPEBSQSA, Inc., © Barbershop Harmony Society]. If possible, please indicate "*Courtesy of the Barbershop Harmony Society, www.barbershop.org*" in your video description, or embedded in the video itself.
- If the song being performed in your video is in the public domain (published before 1923), you do not usually have to seek permissions to upload the performance video to your website (called a "synchronization use") UNLESS the arrangement is copyrighted by the arranger or other party. You can usually find this information on your sheet music.
- Songs under copyright must either be pre-cleared (usually with a fee) with the copyright holder before uploading to YouTube, or you must allow the copyright holder to earn advertising revenue off of your video views, or sometimes both. More information about this is found on YouTube's website at the following link: <https://www.youtube.com/yt/copyright>.

***When in doubt, ASK FOR PERMISSION!***

5. Copyright/Research Resources

Barbershop Harmony Society (800-876-7464) – www.barbershop.org

- Copyright & Licensing Manager. Ext. 4127 or library@barbershop.org
- Customer Service - customerservice@barbershop.org

USA:

- ASCAP - www.ascap.com
- BMI - www.bmi.com
- SESAC – www.sesac.com
- Harry Fox Agency
 - www.songfile.com
 - www.harryfox.com
- The National Music Publishers Association (www.nmpa.org)
- Copyright Office (Library of Congress) – www.copyright.gov
- Public Domain Songs (Unofficial Listing) - www.pdinfo.com

Canada:

- Canadian Intellectual Property Office - http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html
- CMRRA - www.cmrra.ca
- SOCAN - www.socan.ca
- SODRAC - http://www.sodrac.ca/Accueil_EN.aspx