

# Copyright, Licensing, Music, and You

MUS 1331 | Spring 2018 | Clayton Crenshaw



“Empty Bulb and Exclamation Mark” by [George Hodan](#). Public Domain image.

# Where? Why?

U.S. Constitution, Article I, Section 8:

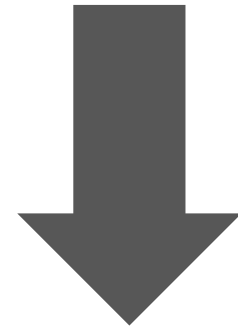
“The Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries . . . .”

# Mystery Box Exercise

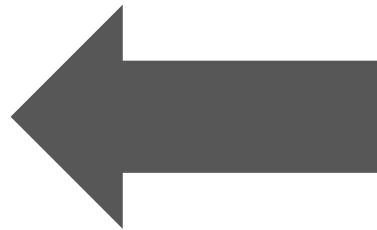
Is this work in the  
Public Domain?



Is the planned use covered  
by a specific exemption?



What type of permission  
or license do I need?



Is it covered by the  
Fair Use exemption?

# Public Domain

In the U.S., printed works published **before 1923**

**Does apply** to modern **reprint** editions

**Does not apply** to arrangements, transcriptions, piano reductions, etc.

**Does not apply** to most sound recordings

# Performance Exemption for Teaching

In a non-profit educational institution;

A part of face-to-face teaching activities;\*

In a classroom or similar place;

Using a copy that was lawfully made.

\* For distance education, look at the TEACH Act provisions and requirements.

# Performance Exemption for Concerts

No fees paid to performers or organizers;

No admission charge **OR** all profits are used for educational, religious, or charitable purposes;

No direct or indirect commercial advantage.



# Performance Exemption for Worship

Limited to worship services;

Covers non-dramatic musical and literary works;

Also covers dramatic works that are of a religious nature.

# Fair Use

From Section 107:

“Notwithstanding the provisions of sections 106 and 106A, the **fair use** of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, **teaching (including multiple copies for classroom use), scholarship, or research**, is **not** an infringement of copyright.”

# Fair Use Analysis

1. the purpose and character of the use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion used
4. the effect of the use on the potential market for, or value of, the copyrighted work

# Fair Use Analysis

Did you act in good faith?

Is the use transformative?

# Fair Use Analysis

## Case Study:

For an assigned project in your music history course, you build a presentation that uses excerpts from copyrighted recordings and music scores. The amounts range from 10-30% of the works. You give the presentation in class, then upload it to Canvas so the students who were on a tour and missed the class can view it later.

# Fair Use Guidelines

Guidelines ≠ Law

State the minimum boundaries of Fair Use, not the maximum.

# Fair Use Guidelines

## Guidelines for Educational Uses of Music (1976)

- Print copies: excerpts, editing parts, emergency copying, etc.
- Permits single copy of student performance recordings--for study and archival purposes
- Permits single copy of a published recording used in aural exercises and exams

# Codes of Best Practices

Describe what professionals in a single discipline agree is Fair Use.



The image shows a resource card with an orange and yellow geometric pattern background. At the top, a yellow banner contains the text "Code of Best Practices in Fair Use for Online Video". Below this, the word "Resource" is written in a smaller font. On the right side, there is a circular logo with the letters "FJ" inside. The main title of the resource is "Fair Use in Online Video Discussion Clips", followed by the date "October 13, 2014". The text below the date reads: "For each video, consider the following questions: Why is this video fair use? What specific categories of fair use does...". At the bottom left, there is a teal button with the text "Read More".

**Code of Best Practices in Fair Use for Online Video**

*Resource*

**FJ**

**Fair Use in Online Video Discussion Clips**

October 13, 2014

For each video, consider the following questions: Why is this video fair use? What specific categories of fair use does...

[Read More](#)



# True, False, or . . . ?

I'm not charging, so it's okay.

I can copy anything if it's for a school music group.

If it was never published or registered, it must be public domain.

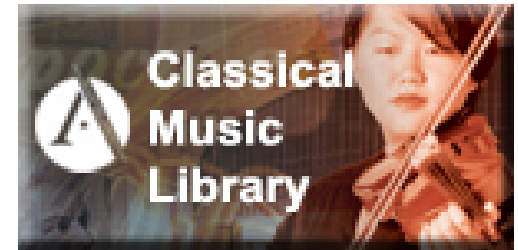
Copyright and plagiarism are the same thing.

It's out of print, so it's fair game.

# Licensing

A type of contract

contract law > copyright law



# PRO = Performing Rights Organization

- ASCAP
- BMI
- SESAC

“blanket license” is commonly used

## Licensing for a Musical Composition

Live performance Radio/TV broadcast Live or interactive streaming ( <i>but not downloading</i> )	performing rights organization (ASCAP, BMI, or SESAC)
Make a derivative work (arrangement, excerpt book, etc.)	publisher
Copying, distributing notated music (beyond exemptions or Fair Use)	publisher

## Licensing for an Audio Recording

Make and release the <u>first</u> recording of the work	publisher of the musical composition
Make <u>subsequent</u> recordings and release (physical, digital download, or on-demand streaming)	compulsory mechanical license from HFA (Harry Fox Agency) Songfile service -- or publisher

Musical Composition

# Compulsory Mechanical License

Distribution Rates: the **larger** of 9.1¢ OR 1.75¢ X minutes of playing time

EXAMPLES:

5 minutes X 1.75 = 8.75      So, rate is 9.1¢ per unit

12 minutes X 1.75 = 21.0¢ per unit X 1,000 CDs or downloads = \$210

60 minutes of music ≈ \$1.05 per unit

# Compulsory Mechanical License

Interactive Streaming Rate (on-demand streaming): 1¢ each

HFA license covers 100-10,000 streams for one year

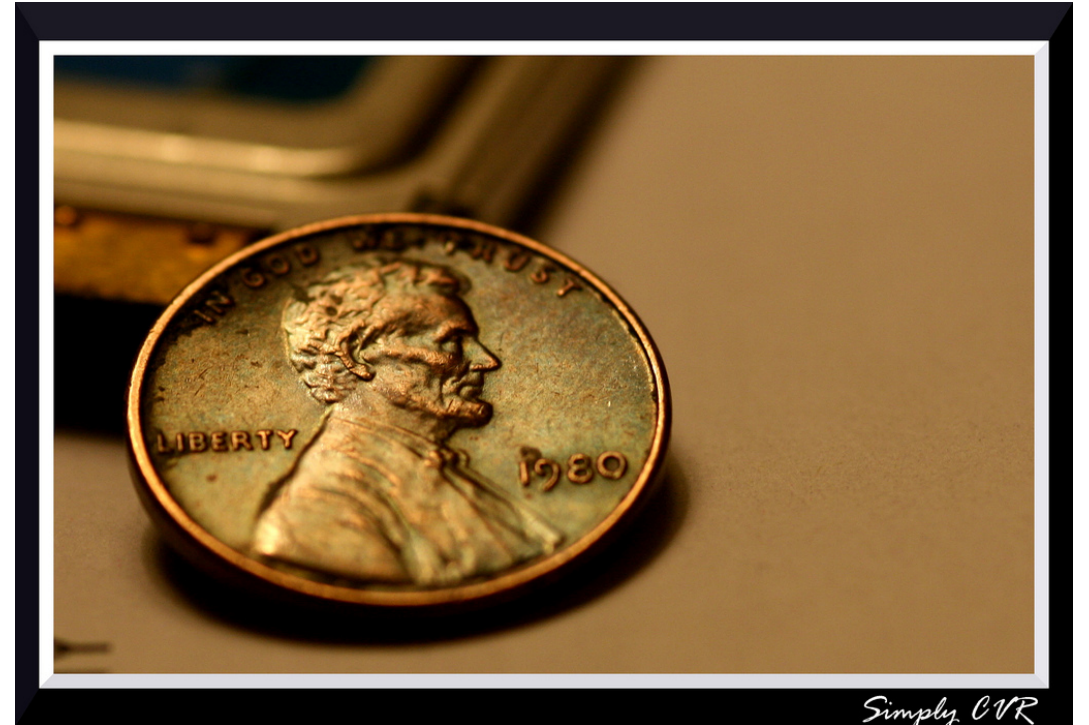


Photo by Simply CVR on Flickr

# Licensing for an Audio Recording

Make and release the <u>first</u> recording of the work	publisher of the musical composition
Make subsequent recordings and release in physical format or digital download or on-demand streaming	compulsory mechanical license from HFA (Harry Fox Agency) Songfile service -- or publisher
Copy/distribute someone else's recording	two licenses--for musical composition AND audio recording

Musical Composition



# Licensing for a Video Recording or Film

Including a new recording of someone else's music	synchronization license from publisher of the musical composition
Including someone else's audio recording	synchronization license from publisher of the musical composition AND a master use license from the publisher of the audio recording (record label)

Audio Recording

Musical Composition

# Likely scenarios . . . and questions

Arrange someone else's song for performance

To what extent?

Provide access to a published recording

Where and how?

To whom?

How much?

Copy and distribute a concert recording

What music?

Copied and delivered how?

To whom?

# After class

- Download the Copyright & Licensing Resources list
- Watch for an e-mail and evaluate the class

Quick Questions?