



**THE CODE OF FAIR PRACTICE
AGREED BETWEEN
COMPOSERS, PUBLISHERS
AND USERS OF PRINTED MUSIC**

The Code of Fair Practice
agreed between composers, publishers and users of printed music
Revised edition April 2016

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This document was drawn up by the Music Publishers Association with the support of the following organisations, who have agreed to accept its contents, and recommend its observance by all music users:

ABRSM

Association of British Choral Directors

Association of British Orchestras

British Dyslexia Association

British Academy of Songwriters, Composers & Authors

British Association of Symphonic Bands & Wind Ensembles

British & International Federation of Festivals for Music, Dance & Speech

Conservatoires UK

Incorporated Society of Musicians

International Association of Music Libraries (UK and Ireland Branch)

Making Music

Music Publishers Association Ltd (representing those publishers in Appendix B and on the MPA website)

Musicians' Union

Music Mark – The UK Association of Music Education

National Association of Choirs

National Operatic & Dramatic Association

Royal Air Force Music Services Training Cell

Royal College of Organists

Royal Marines Band Service

Royal Military School of Music, Kneller Hall

Royal School of Church Music

Schools Music Association

Sing for Pleasure

Trinity College London

Tŷ Cerdd/Music Centre Wales (formerly the Welsh Amateur Music Federation)

This Code does not apply to all music; in particular

- i. it cannot be used or applied **UNLESS THE COPYRIGHT OWNER'S NAME IS LISTED IN APPENDIX B OR ON THE MPA WEBSITE;**
- ii. it can **NEVER** be used or applied to **IMPORTED** publications

The benefit of this Code is open to any music user and is not limited to members of the participating organisations.

Permission granted in this Code shall apply equally to organisations as to individuals and to others acting on behalf of the intending user.

The organisations that have accepted this document would like it to be disseminated, as widely as possible, and further copies will gladly be supplied by any of these organisations. Furthermore, no copyright is claimed in this document and it may be copied or downloaded if this will assist in its wider distribution.

Lastly, it should be noted that this Code may be revised or withdrawn at any time in the future, either because the organisations that have accepted it wish to do so, or because it may be necessary to do so if Copyright Law is revised.

Revised edition April 2016

I) PREFACE

The following is a brief overview of copyright noting that the Law of Copyright is a complex and evolving area, and there are still many issues to be decided by the courts. The following summary, therefore, should not be taken as either comprehensive or definitive. It does also not constitute legal advice

The concept of copyright has evolved within developed societies to protect the livelihoods of those members of the community who are gifted with original creativity, whether they are painters, writers, composers or any other type of creator. Copyright is a special type of right, akin to a piece of property, in that it can be bought, sold and licensed. It protects a fixed original work¹ and prevents others from using it without the creator's permission; for example by:-

- copying it
- distributing copies of it, whether free of charge or for sale;
- renting or lending copies of it
- performing, showing or playing your work in public;
- making an adaptation of the work;
- communicating the work to the public, e.g. by broadcasting or putting it on the internet

Although creativity takes many forms, this Code deals only with musical works.

An original musical work is copyright-protected during the life of the composer(s) and for 70 years after their death. In the case of a co-written work (which includes a work where one or more individuals wrote the lyrics and one or more individuals composed the music²), copyright subsists until 70 years from the end of the calendar years in which the last known living composer dies.³ Copyright also exists in adaptations of musical works. So, for example, the printed edition of a song for voice and keyboard may include several different copyrights: of the composer and the author for the joint musical composition; of the lyrics and the music if both consist of original works, separately from the integrated whole; of the authorised arranger (if any) for the keyboard version from the composer's original; of the editor in the case of an edition of a non-copyright work, and of the publisher who makes the printed image. Furthermore, any one of these copyrights can outlive the others.

If copies are made in breach of copyright, then the copyright owner can sue for damages. The person or institution having to pay damages will usually have to pay the costs of the legal action as well. In the case of a dispute being litigated in court, the latter can easily run into five figures or more. So, in many cases, the legal costs of taking action will far exceed the likely recovery in the event of success.⁴ Legal sanctions may, therefore, not be a real solution to day-to-day practicalities.

However, illegal copying remains widespread. It discourages creativity and investment by music publishers, and with advances in technology making copying easier and easier, it is something that has adversely affected many creators and copyright owners. They may be losing revenue and/or losing control over how their creations are being used. On the other hand, many of those who offend are minor infringers, do not know that they are in violation of the law, and are copying for very limited personal reasons. So, how do we strike the right balance between protection and pragmatism, and distinguish between those who violate the copyright in musical compositions for commercial gain or on a significant scale, and those who have more justification for what they do? The Code, set out below in Section III, is a common sense approach to answering that question. It attempts to achieve that balance by describing

¹ In deciding whether your work is original, the courts will decide whether a sufficient amount of skill and labour has been expended in its creation; in particular they consider whether the works have been copied from a pre existing work

² Where the two contributions can exist separately, then two separate copyrights may also exist in the lyrics (as a literary work) and the music (as a musical work).

³ This applies equally to the writers of lyrics and the composers of the musical composition.

⁴ In the UK, the starting point for a court to assess damages for copyright infringement is to try to put the rightsholder in the position they would have been in had the infringement not taken place. In most cases this is what the rightsholder would have earned had they exploited the work or authorised the exploitation themselves.

a small category of reasonable uses of musical works that most copyright owners will not treat as a violation of their rights.

II) INTRODUCTION TO THE CURRENT LAW AND COPYRIGHT EXCEPTIONS

This Code aims only to cover essential aspects of the copying and arranging of copyright musical works; it does not attempt to deal with recordings, broadcasts, films, videos or other types of creative product etc. The law on the subject is contained in the Copyright, Designs and Patents Act 1988.

If a musical work is in copyright (which it will be if any of the composers, editors or authors have not been dead for more than 70 years, or if a specific typographical arrangement of a work has been published in the last 25 years, whichever is the longer) then *copying the work and/or arranging it* are infringements of the copyright unless the person doing so has the specific permission (usually referred to as a "licence") from the copyright owner. However, there are certain exceptions under the Act, which allow limited copying to take place.

The UK has chosen to adopt detailed exceptions for specific situations (as opposed to the US's "fair use" approach) such as for backing up of computer programs and recordings of broadcasts for the purposes of timeshifting. Some exceptions are also subject to a test whether the Act constitutes "fair dealing".

(A) "FAIR DEALING" EXCEPTIONS:

The following defences require that the copier complies with "fair dealing" in relation to his/her use of the musical work. There is no statutory definition of "fair dealing". Fairness is generally assessed using the objective standard of whether "a fair-minded and honest person would have dealt with the copyright work in the manner in question." It will be a matter of context, degree and reasonableness in each case. Here are some factors considered by the courts when assessing fairness:-

- if the alleged fair dealing commercially competes with the exploitation of the musical work, a fair dealing defence will almost certainly fail.
- if the work has not already been published, especially if it has been obtained by breach of confidence, the defence will probably not succeed.
- if the portion of the work reproduced is excessive within the context, it will probably not be fair dealing.

1. Research and Private Study

You are allowed to copy limited extracts of a copyright work for the use of non-commercial work or private study, such as research as part of an academic course. It is considered to be "fair dealing" as long as you are not making any commercial gain (although a minimal revenue from the publication of an article would probably not alter the status of the use). As part of your reproduction of the work you must give sufficient copyright acknowledgement. (see Appendix A).

2. Criticism, Review, Quotation and News Reporting

Provided that the musical work has already been made available to the public⁵, it may be reproduced for the purpose of criticism or review of that or of another work, or of a performance of a work. It may also be used for the purpose of reporting current events. Recently, the exception has been extended to cover quotations from a publicly available work, where the use is fair dealing and the extent of the quotation is no more than required. The exact parameters of this new exception are yet uncertain and if in doubt, it might be prudent to obtain legal advice. In all cases, an acknowledgement is required, where the information is available, save in relation to the reporting of current events where this would be impossible for reasons of practicality or otherwise.

⁵ A work has been made available to the public for these purposes if, not taking into account any unauthorised acts, it has been made available by any means, including by issuing copies to the public, renting or lending copies to the public, making copies available by an electronic retrieval system, performing or playing the work in public or communicating it to the public.

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3. Parody, Caricature and Pastiche

Fair dealing with a copyright work is allowed for the purpose of parody, caricature and pastiche without the permission of the copyright owner. For these purposes, the essential characteristic of parody is that it evokes an existing work while being noticeably different from it, and constitutes an expression of humour or mockery. The exact parameters of this exception still need to be established. If in doubt, it would be sensible to get independent legal advice.

4. Minor Educational Uses

Teachers may also copy extracts of musical works in any medium in the course of their instruction (for example, on a whiteboard) provided it is solely to illustrate a point if they do not use it in such a way or to such a degree as to undermine the commercial market in teaching materials. This exception covers acts of instruction generally (i.e. not just schools).

(B) OTHER DEFENCES:

5. Text and Data Mining for Non-Commercial Research

Text and data mining use technological techniques, which involve the bulk copying of text and data, to sift through large amounts of material to find patterns and trends. Recent changes to Copyright Law permit the copying required for this computational analysis, provided that the researcher has authorisation to read the work, for example through an academic library permission. This exception only applies to non-commercial research and there should be sufficient acknowledgment of the works used. N.B. Publishers will need to accommodate this exception when establishing network security for their catalogues.

6. Educational Uses

In addition to Point 4 above:

- Performing, playing or showing musical works is permitted in an educational establishment as part of the internal educational activities (e.g. during lessons, assemblies etc). There are special rules for television and radio programmes broadcast, and we suggest contacting the Educational Recording Agency (www.era.org.uk) for details. However, this doesn't extend to concerts where parents are in the audience. Activities which involve an external audience require a licence which is available from PRS for Music (www.prsformusic.com).
- Making copies in educational establishment by using a photocopier or similar device is permitted on the basis of a licensing scheme. The licensing of musical works in the UK is done by Printed Music Licence Limited ("PMLL") which, through its agent the Copyright Licensing Agency (www.cla.co.uk), manages PMLL's Schools Printed Music Licence (<http://schools.cla.co.uk/about-your-licences/schools-printed-music-licence/faqs/>)

7. Examinations

The fair dealing exception for the purpose of illustration for instruction (see Point 4) also applies in relation to setting examination questions, communicating the questions to pupils and answering the questions.

8. Libraries and Archives

Librarians may make and supply to a person a single copy of *part* of a musical work for the purpose of research or private study and, at their discretion, may charge for the copy provided that the charge is in line with the cost of making the copy. Libraries, archives and cultural institutions such as museums and galleries may copy works for the purpose of preservation, and libraries and archives may make musical works available by means of dedicated terminals on their premises.

9. Disability

If accessible copies are not commercially available, people who have any disability that impedes them from accessing musical works may make an accessible copy for their personal use from a non-

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accessible copy of which they have lawful possession. Educational establishments and non-profit organisations may also make such copies for use by people with such disabilities if they comply with the relevant provisions (see Section 31A of the Copyright Designs and Patents Act).

10. Making of Temporary Copies

Copyright in a musical work is not infringed by making a temporary copy that is transient and incidental to a technological process where:-

- It is an integral and essential part of that process; and
- It has the sole purpose of enabling either (i) a transmission of the work in a network between third parties by an intermediary, or (ii) a lawful use of the work; and
- It has no independent economic significance.

This is essentially intended to enable the browsing or caching of copyright works by Internet service providers and only applies in cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rightsholder.

11. Licensing Schemes

In addition to the above statutory exceptions, permission to copy may be obtained through a licensing scheme, where one exists. This includes the Schools Printed Music Licence (SPML) which has been introduced by Printed Music Licensing Limited (PMLL) This licence is available to schools exclusively from CLA (<http://schools.cla.co.uk/about-your-licences/schools-printed-music-licence/>). There are also several licenses for the reproduction of hymns and hymn texts available from **CCLI** (see www.ccli.co.uk). Licensing schemes are subject to the review and control of the Copyright Tribunal established under the UK Copyright Act. In addition there are circumstances in which the Secretary of State for Business Innovation & Skills has power to extend an existing scheme or impose a new one.

III) CODE OF FAIR PRACTICE ON THE GRAPHIC COPYING OF MUSIC

General Principles

1. **Copyright owners (composers and their publishers) recognise that musicians and students need reasonable access to copyright material so that their music may be widely performed and studied.**
2. **At the same time, composers and their publishers must be properly compensated for their work so that the economic incentive for the creation and publication of music continues to exist. It follows that copying (whether by photocopying or by any other means) in order to evade hire or purchase will always be wrong.**

Permissions

The copyright owners listed in Appendix B and on the MPA website have agreed that they will not institute proceedings if copies are made in the following circumstances in respect of music both printed and published in the UK, notwithstanding the Copyright, Designs and Patents Act 1988.

The terms 'copy' or 'copies' cover any form of graphic reproduction of a printed music publication (i.e. photocopying, scanning and other methods of digital/photographic reproduction) as well as the transcribing of music notation by hand or using notation software. Note, however, that copies can only be made within the scope of the permissions given.

A copy made, for instance, to aid a performance due to a difficult page-turn (see Point 2 below) may not then be passed on or (in the context of an electronic copy) made available to someone else for a use not permitted under either the Code or the law. Users of this Code are therefore advised to password protect any electronic copies made under the Code or law if these copies are accessible to others.

Whenever a copy is made it must bear on the first page of the music the copyright line (e.g. © Copyright 1992 by XYZ Music Co Ltd London) that appears at the beginning of the work. This information should be written by hand where necessary on the original from which the copy is made. Please also note any additional notices required in respect of some permissions.

1. **Emergencies:** Music which has been lost or damaged when it is too late to replace it, either by purchase or hire, before a pre-arranged concert may be copied, without any application to the copyright owner, provided that:
 - a. if it is available on sale, a replacement is purchased as soon as possible thereafter when the copy made will be destroyed, or
 - b. if the work is on hire, the copy made is returned with the other hire material after the performance.

Each copy must be marked with the following: 'Emergency copy. Destroy after use'

2. **Performance Difficulties:** A performer who possesses a piece of music and who needs for his personal use a second copy of a page of the work for ease of performance due to a difficult page-turn, may make one copy of the relevant part for that purpose without any application to the copyright owner. Copying whole movements, or whole works is expressly forbidden under this section. When such a work has been hired, the copy made must be returned with the other hire material after the performance.

Each copy must be marked with the following: 'Copy made with permission'

3. **Study and Research:** Bona fide students or teachers, whether they are in an educational establishment or not, may without application to the copyright owner make copies of short excerpts of musical works provided that they are for study only (not performance). Copying whole movements or whole works is expressly forbidden under this permission.

Each copy must be marked with the following: 'Copy for study only'

4. **Orchestra and Band Parts, and Classroom Sets:** In the case of works published either for orchestra or for band (but not for smaller ensembles) or in classroom sets and where the publisher has expressly stated in writing extra parts are not sold individually but only in sets, copies of extra parts may be made provided that the number so made does not exceed a "quarter set" in quantity and provided that the person or organisation making the copies has already purchased one or more sets. Note: A "quarter set" is defined as a quarter of the total number of parts in the publisher's standard set. In this instance it is the number of parts and not the number of pages that is the relevant criterion.

Each copy must be marked with the following: 'Copy made with permission'

5. **Hired Orchestral Works:** If an orchestra is likely to hire a work again on a future occasion, a single copy of each of the scored string parts may be made for future reference in order to retain a record of the bowing and fingering marks used by that orchestra. Such copies may not be used for reproduction or performance.

Each copy must be marked with the following: 'Copy made to record markings only'

6. **Out of Print:** If a work appears to be out of print, any person or organisation wishing to obtain that work should give notice of this intention to the publisher⁶. The publisher shall then within 3 weeks inform that person or organisation of the terms on which the publisher is either able to supply it or will allow copies to be made.

Notes:

- a. If the publisher allows copies to be made a fee should be expected as the publisher will usually have an obligation to pay the composer a royalty.
 - b. It may occasionally happen that the publisher will refuse permission to reproduce because the work has been deliberately withdrawn either at the request of the composer or for copyright reasons; such refusal will not entitle a user to make copies.
7. **Non-Supply:** If a person or organisation has ordered music from a dealer or publisher and it has not been supplied within 1 month of the order date, that person or organisation must give notice to the publisher* requiring him/her to supply within 3 weeks or give permission to make the necessary copies on payment of a fee (see 6 above).

Notes:

- a. The "order date" requires firm evidence of the date on which it was given to a dealer or publisher; the date on which the purchaser makes a request to his/her own authority or supplies department is irrelevant for this purpose.
 - b. Difficulties over non-supply often arise because users programme works without first checking on their availability from the publishers. It is in the users' own interests to make such enquiries before setting programmes.
8. **Extracts from Complete Editions:** If a person or organisation wishes to use a whole work which is only published as a small part of a complete or collected edition and which is not published separately, notice must be given to the publisher who may either offer to provide such separate publication on given terms or allow copies to be made on payment of a fee.

Note:

⁶ A suitable form appears in Appendix A.

"Complete or collected editions" has a special and limited meaning; it refers only to multi-volume publications, usually supplied on subscription and which contain the entire output of one composer or school, e.g. Musica Britannica. It specifically does not refer to anthologies or small collections such as Schubert's Songs, or Beethoven's Piano Sonatas, or Bach's 48 Preludes and Fugues.

9. **Opera Choruses:** Where no separate chorus part for a dramatico musical work is available either on sale or for hire and the vocal score is not available on hire, the chorus material may be copied from the vocal score provided that it does not exceed 10% of the vocal score (measured by the number of pages) and is not intended for separate performance. A larger proportion than 10% requires the specific agreement of the copyright owner, for which a fee may be required.

Each copy must be marked with the following: 'Copy made with permission'

10. **Adjudicator or Examiner Copy:** A person performing a work in front of an examiner or adjudicator may make one copy per examiner/adjudicator provided that the participant or candidate has already purchased his/her own copy and that the copy/copies made is/are retained and destroyed by the adjudicator(s) or examiner(s) immediately after the event.

Each copy must be marked with the following: 'Adjudicator/examiner copy. Destroy after use.'

11. **Reading impairments:** A person with any kind of cognitive impairment or condition (such as, but not limited to, dyslexia) (whether diagnosed or not) resulting in a diminished or limited ability to read music or text as conventionally printed, may make copies in a format that enables them more easily to read a publication (such as, but not limited to, by enlarging it and/or by using coloured paper), provided that he/she has already legally acquired his/her own copy of the conventionally printed item.

Each copy must be marked with the following: 'Copy made with permission'.

(See page 7 for 'Visual Impairments')

12. **Audition and Rehearsal Material for Dramatico Musical Works:** If a performance agreement has been made, the copyright holder will, provided that the particular material required is not available on sale or for hire, permit the performing organisation, upon written request, to make copies of a vocal score, complete for rehearsal purposes only and in single extracts for audition purposes only. Such copies shall become the copyright holder's property free of charge and must be returned to them immediately after the performance.

Each copy must be marked with the following: 'Copy made with permission'

13. **Other Permissions:** The permissions given in this section are not exhaustive; publishers will often be willing to grant other permissions, but in all such cases specific application in writing must be made to the publisher.

Prohibitions

These are stated simply to emphasise that the "Permissions" do not extend to them.

1. Copying in order to evade the hire or purchase of music.
2. Copying works supplied on approval or for inspection.
3. Copying whole works or complete movements (except as allowed in Permissions 4, 5, 8, 9, 10 and 11).
4. Copying works which have been obtained on hire (except as allowed in Permissions 2, 5 and 11).
5. Copying from various publications to make anthologies.
6. Copying or making excerpts from publications which are clearly designed as "consumable" in the course of study such as work-books, tutors, methods, exercises, standard test and answer sheets, and similar material.

7. Selling or hiring any copies that have been made under the "Permissions" section.
8. Copying under any blanket licensing scheme.

IV) ARRANGING, ADAPTING AND MORAL RIGHTS

Under S.16 of the Copyright, Designs & Patents Act 1988, making an adaptation of a work is one of the acts restricted by copyright. In relation to musical works, an adaptation means an arrangement or transcription. An arrangement is a re-configuration of a melody or complete piece that adds or alters aspects such as lyrics, harmony, rhythm, texture and instrumentation. A transcription is an arrangement of a piece of music for a different instrument or instruments (including voice).

In many cases a composer may have no objection to an arrangement, but sometimes a composer will not want other people to make arrangements of a work that he or she has created and the law gives him/her or her the right to refuse. It is particularly significant that under the Act, a teacher in a school, or elsewhere, no longer has the right to make arrangements in the course of his or her work. This Code therefore permits it in certain well-defined circumstances. In addition to the general restriction on "adaptation" of works in S.16 of the Act, composers and authors are given a new right in S.80 (called a Moral Right) that their work should not be subjected to derogatory treatment. "Treatment" is defined as "any addition to, deletion from or alteration to or adaptation of the work, other than an arrangement or transcription of a musical work involving no more than a change of key or register". The treatment of a work is "derogatory" if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author.

The other Moral Rights granted by the Act are the right to be identified as the author and the right not to have a musical work falsely attributed. These Moral Rights belong to the composer/author and are inalienable. It is therefore advisable that where an arrangement is permitted, the arranger should take care to avoid derogatory treatment and ensure that the original composer is correctly credited.

Arrangements of copyright musical works may be made by teachers or students in the course of instruction for the purposes of an educational establishment, provided that all arrangements are the property of the original rights holder, the arrangements are not used in any public performance or outside the educational establishment in which they are made, and provided that any copy of an arrangement has the following warning label attached to it. UK law, however, does require a user to get a licence where a licensing scheme exists, so teachers and other education professionals wishing to make an arrangement for the purposes of their instruction of pupils, should ensure they are covered by the Schools Printed Music Licence, operated by the Copyright Licensing Agency, referred to below.

This arrangement is made for the sole purpose of use within

_____ *(educational establishment) and may not be used for any*

other purpose without the possibility of infringing copyright.

The original title of the work is _____

by _____ *(composer).*

In particular, it may not be PUBLICLY PERFORMED, RECORDED, REPRODUCED OR BROADCAST.

V) ARBITRATION

If a user and a copyright owner are unable to agree on the interpretation of any part of this Code, provision has been made for a small arbitration committee to settle the matter, provided that both parties in dispute agree to be bound by the committee's decision. Requests for arbitration should be addressed to the Music Publishers Association Ltd or either one of the following, as appropriate:

Incorporated Society of Musicians
10 Stratford Place
London
W1C 1AA

Making Music
2-4 Great Eastern Street
London
EC2A 3NW

APPENDIX A

Notice of Proposal to Copy Copyright Music under the Code of Fair Practice

To: The Copyright Department

[Publisher's name and address]

Date: _____

Please either supply copies of the following publication on stated terms or advise the terms under which copies may be made.

[Title of work]

[Composer (Editor/Arranger in brackets)]

[Title of complete edition if an extract]

[Number of copies required]

Reason for request:

Publication has not been supplied. Evidence of original order to dealer is enclosed herewith.

[Note: Elapsed time since order date must be at least one month]

Publication has been advised as being out of print by:

[Dealer's name and address]

This extract is from the complete edition and is not available separately

Name: _____

Signed: _____

Address: _____

Tel [during normal business/office hours]: _____

Publisher's Confirmation

This work/extract:

- is now available from: _____
on payment of £_____ per copy [*Cheque/PO payable to _____*]
- will be sent to you by return on payment of £_____per copy [*Pro forma invoice enclosed*]
- may be copied on payment of £_____ per copy [*Cheque/PO payable to _____*
_____]
- has been withdrawn from publication and may not be copied except within the strict provisions of the Copyright, Designs and Patents Act 1988. We are not able to give any permission.
- may not be copied; the circumstances are not within the code of Fair Practice for the following reason(s): _____

APPENDIX B

In addition to the members of the Music Publishers Association as listed on our website under our Directory of Members, the following entities have also agreed to adhere to the standards set out in this Code of Fair Practice:

[to be updated in a future edition]

It should be noted that the only person who can make any concession in respect of copyright is the copyright owner, who is not always the same person as the publisher; when checking to ascertain whether a work comes within the terms of this Code, please look at the copyright line (usually to be found at the bottom of the first page of music) which gives the name of the copyright owner.

Music users who are unable to establish the identity or address of the copyright owner of a particular piece of music are invited to contact the Music Publishers Association who will be pleased to assist.