

To: U.S. Copyright Office, Library of Congress
Re: Music Licensing Study Comments

I am an amateur singer with no involvement in the commercial music industry. I am providing comments from the point of view of a member of the public who is a user of copyrighted materials, namely the printed scores of recently published songs. I have no comments for Inquiry topics 1-9.

Inquiry 10: Please identify any other pertinent issues that the Copyright Office may wish to consider in evaluating the music licensing landscape.

As a small community chorus (a 501c3 charitable organization) our members are struggling to reconcile advances in audio technology with the copyright concepts. Like most community choruses, we do not sing to make money; we are not part of the music industry and have no resources to interact with the large-scale corporate entities and processes that are designed to create wealth from musical activities.

We are simply in it for the joy of singing and for the joy that we bring to our audience members who are mostly our family, friends and community members who hear our music through our non-profit outreach programs. There is nothing about our amateur activities that cause a reduction in revenue for the professional musicians and producers who are creating musical products for consumption in the commercial market.

What I propose is a change to Section 107 that creates a general fair-use copyright exemption for materials that are used as rehearsal aids when created for non-profit use.

Non-commercial musical groups struggle with copyright issues and try to figure out how to do the right thing. It is almost impossible for such groups to be copyright compliant because of the complexity of a system that is designed for huge markets with no consideration for the millions of non-profit amateur music performers because we have no one to lobby for our rights to engage in a most basic human endeavor of singing without concern for making money.

What I am asking is to make it clear in the copyright law that it is a reasonable and fair expectation that when a singing group purchases music to perform they need to make various intermediate and temporary copies of the music as part of the learning process.

You undoubtedly have family members or friends who sing in church choirs, school choirs or community choruses. Ask them how important these rehearsal aids are to amateur singers when trying to learn their music. Let your singing spouse, parent or

child sleep soundly knowing that they are not being classified as infringers by the musical industry. Please change the law to embrace this obvious fair use of the song.

Details:

What is a rehearsal aid? This is any musical related materials or tools that assist the singers in learning their assigned parts in preparation for performing the music. It could also include musical materials or recordings that provide feedback for a singer regarding his/her progress in perfecting the performance.

The fair use Section 107 of the copyright law should be expanded to consider it a reasonable expectation that a singing group needs to rehearse in order to perform and that the music industry should not have a right to charge the singers for materials they create for their personal use in order to learn the music, no matter if this results in a mechanical copy that is going to soon be discarded (after the performance).

Inherent in this proposal is the premise that it is sufficient compensation for the music industry that we pay for licensed musical scores and that we pay performance license fees where applicable. We should not have to pay copyright fees every time we record ourselves singing to check our note accuracy or when we create mechanical recordings designed to assist us in home study.

With advances in technology, even amateur groups have access to devices that can be used to create mechanical copies of songs either by recording the human voice or using musical and voice synthesizers to produce teaching aides. This process started in the early days with the reel-to-reel recorders used by a chorus director to record individual parts and has evolved to digital recording methods available at very accessible prices by almost any singer, even available in common smart phone devices.

Of course I am not talking about using this technology to record and/or distribute commercial musical products in order to circumvent paying legitimate fees for acquisition of professional recordings, even if these recordings might assist in the learning process.

In this discussion, I am talking about rehearsal aids we create for ourselves. I am specifically speaking about using advances in audio technology to aid in the learning process that we singers go through to prepare our group to sing for our audience. I call materials that achieve this goal "rehearsal aids" and they include tools like:

- Recordings of individual singing parts (Soprano, Alto, Tenor, Bass) that allow a singer to hear and learn their parts.

- MIDI files with individual parts isolated so that the parts can be emphasized (or in some cases muted).
- Graphical representations of difficult musical passages with annotations or visual highlighting to assist in the learning process.
- Recordings of individuals singing a song to be played between rehearsals so the singer can practice at home in preparation for the group rehearsals.
- Website pages that aid in the distribution of such audio and visual tools where care is taken to restrict the usage to members of the non-profit group.
- Copies of such audio and visual tools distributed on other media (CDs, DVDs, memory sticks).

None of the above activities would harm the commercial revenue stream. Realistically, who is going to prefer my community chorus' rehearsal materials as a substitute for the professionally produced commercial music product? How could a synthesized rendition of a popular song with a single part (like the Tenor part) played loudly be considered a pleasurable or desirable listening experience?

You can put various caveats on the fair-use wording that may appease the musical industry if it is afraid of losing revenue. For example, this fair use exemption on rehearsal aids could be restricted as follows:

- The rehearsal aid must be used in a non-profit manner, for example any money collected by selling the material must go only to cover the cost (time and materials) of creating the aid and not to create a profit for any individual or corporation.
- The rehearsal material must have characteristics that clearly make it unsuitable as a substitute for the commercially available recording. For example unnatural volume levels, instrument selections, metronome sounds, absent voices and other characteristics that would make the recording only suitable for instructional purposes.

Comment on Section 110 - Exemption of certain performances and displays

There needs to be a clarification of performance copyright exemption Section 110, Subsection 4 to make it clear that paid musicians whose role is to accompany the unpaid performing singers of a non-profit organization are not considered to be paid performers that would invalidate the exemption. I believe case law may have already established this principle, but it would be better to have it stated explicitly.

This primarily applies to:

- Music directors/conductors who have been part of the learning process for a singing group and are not brought in as featured performers.
- Accompanists (pianist, flautist, percussionist, etc) who are playing to assist the uncompensated singers.
- Stage or audio crewmembers who provide services for the uncompensated performers.

Payments to such “performers” should be considered part of the production costs and not compensation for the musical performance in the context of the exemption.