Untangling Rights for Performing Arts

(Only) Some of the Lingo

Performance Rights – From US Copyright Law: A public performance is one that occurs "in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." A public performance also occurs when the performance is transmitted by means of any device or process (for example, via broadcast, telephone wire, or other means) to the public. In order to perform a copyrighted work publicly, the user must obtain performance rights from the copyright owner or his representative.

Performing Rights Organization (PRO), aka Performing Rights Society – An association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works.
- ASCAP, BMI, and SESAC = the original three PROs in the US
- Global Music Rights = a fourth US PRO founded in 2013 with a growing catalog

Performance License – Permission to offer music to the public in a live performance, in a public setting such as retail store, coffeeshop, etc., by broadcasters airing songs withing programming, or similar. This is for audio-only, non-interactive stream or non-dramatic performance.
- Application to web = Standard venue and presenter performance licenses do not include websites
- YouTube and Facebook have their own blanket performance licenses with the PROs
- Private websites need to secure their own licenses

Blanket License – Permission to use any music from a specific catalog. A blanket license usually is used in a situation where issuing individual music licenses for each piece or each use would be cumbersome.
- Penn has blanket university PRO licenses from ASCAP, BMI and SESAC; the Office of General Counsel is looking into adding a license with GMR in the future, but does not currently have one

Mechanical License – Permission to distribute/sell a recording of a song that you did not compose, physically or digitally. This is audio only, and also applies to interactive (on-demand) stream.

Synchronization License – The right to record a musical work in timed relation to visual images, in other words, permission from the writer or publisher (owner of the composition) for use of the musical composition in a video.

Master Use License / Master Recording License – Permission from the artist or label (owner of the recording, aka “master”) for use of the recording in video (examples: dance accompaniment and pre-recorded vocal accompaniment tracks).
Dramatic Rights, aka Grand Rights, aka Theatrical License – Permission to use a work of music in a play, musical, dance, opera, narration or other dramatic performance. A dramatic performance usually means that the work is being used to tell a story or is being used as part of a story or plot.

Right to Produce – Permission (usually from play publishing house) to stage a production of a play or musical. Negotiated/approved limitations on location, dates, capacity, number of performances, production size, non/union production, ticket pricing, and other terms apply. Script changes, cuts, revisions are not allowed, and archival or other recordings of productions are against copyright.

Underlying Rights – Permission from the owner of the original copyrighted material granted to a writer or producer to make an adaptation based on the original underlying work (a play based on a children’s book).

Derivative Work – A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a “derivative work.”

Public Domain – Uncopyrighted or previously copyrighted material that is freely available to all. Generally, copyright lasts 95 years (since 1978 corporate-owned copyrights last 120 years). In general works published or registered with the Copyright Office before 1925 is in the public domain, and work published or registered between 1925 and 1963 may or may not still be subject to copyright, depending on whether a renewal registration was filed.

Fair Use or Classroom Use – Legal exceptions to copyright law that allow for use of copyrighted material.

Other Implications

- Sheet music – learn how to make physical and digital copies and share it within copyright law
- Arrangements – music arrangements may be copyrighted in addition to the underlying composition
- Video Recordings – standard performance rights for music and rights to produce a play or musical do not cover recording the live performance, and especially do not cover rebroadcasting recordings
- Photo, Video, Media Releases – permission from participants to define how you may use their image and video as part of the performance now and in the future (for professional artists these terms would be part of the contract). Usually important to get from non-professional performers and incidental people brought into an interactive work.
- Professional Unions – have their own rules about how performances involving their members may and may not be performed, recorded, broadcast, etc.
  - The Big Ones = Actors’ Equity Association (Equity), American Federation of Musicians (AFM), American Guild of Musical Artists (AGMA), Directors Guild of America (DGA), International Alliance of Theatrical Stage Employees (IATSE), Screen Actors Guild-Artists and American Federation of Television (SAG-AFTRA), Stage Directors and Choreographers Society (SDC), Writers Guild of America East (WGAE).
Learn more...

JW Pepper Webinar: Copyright for Virtual Concerts: What You Can and Cannot Do, October 1, 2020
https://www.youtube.com/watch?v=mLOLpPFpQc&feature=youtu.be

Folk Alliance International White Paper: Understanding Copyright, Royalties and Practical Application in Folk Music, September 23, 2020

Folk Alliance International Webinar: The Mechanics of Mechanical Licensing

Folk Alliance International Webinar: Licensing and Permissions Requirements for Livestream and Rebroadcast: Deeper Dive, July 23, 2020

Folk Alliance International Webinar: The Legal Landscape of Livestreaming, April 21, 2020

Copyright Crash Course
https://guides.lib.utexas.edu/copyright
https://wikis.utexas.edu/display/TPA/Music+Rights
https://guides.lib.utexas.edu/copyright/permission
  ➢ Resource on this page: “Obtaining rights to produce a play or musical or use live music in performances,” Created by: Rachel Durkin, Manager of Performing Arts Center, College of Fine Arts - University of Texas at Austin

+ Stay up to speed on current events in the field, because these practices can change! The field has only just begun to grapple with the implications of the web and digital on copyright regarding music, theatre, dance and live/recorded performance. The COVID-19 pandemic is pushing this forward.

Also, BC (Before COVID) the US Justice Department in 2019 launched a new review of music licensing policies that PROs, venues, agents and artists had been following closely and advocating on various sides of:
  • https://mic-coalition.org/

+ For future lawyers...
Copyright Law of the United States (Title 17 of the United States Code)
https://www.copyright.gov/title17/title17.pdf
  ➢ Section 101: Definitions, pp. 2-8
  ➢ Section 106: Exclusive rights in copyrighted works, pp. 17-19
  ➢ Section 107: Limitations on exclusivity: Fair Use, pp. 19-20
  ➢ Section 110: Limitations on exclusive rights: Exemption of certain performances and displays, pp. 25-30
  ➢ Appendix A: The Copyright Act of 1976, pp. 335-339
This reference was assembled by Caroline Leipf from many of the references listed above. Full disclosure...Caroline is NOT a lawyer or expert in copyright law. This reference was assembled for the student workshop:

PAC Con 2020
Session: Untangling Rights
with James Grant, Kushol Gupta and Caroline Leipf
October 10, 2020, 3:45 – 4:30 PM

James Macon Grant (he/him), Program Coordinator, Platt Student Performing Arts House. James, who holds acting degrees from the University of Wisconsin and the University of Maryland, Baltimore County, just celebrated his 2nd year as part of the Platt House team. His areas of expertise for student groups include: rights and licensing procurement, engagement with Platt House’s Community Ticketing Program, and guest artist hiring practices. Please feel free to contact him with any questions you may have at jamgrant@upenn.edu!

Kushol Gupta (he/him/his) is a Penn alum (CAS 97, BGS 03) and is currently a faculty member in the School of Medicine and Assistant Director of the Penn Band. He majored in Biochemistry and Music as an undergraduate and has been with the Penn Band for 27 years. He is an avid arranger, as well as a tuba and trombone player, and leads the Band’s regular outreach efforts, including its high school summer camp. As an undergraduate, he was involved with Penn Band, Orchestra and Wind Ensemble, and pit orchestras with Penn Players, Penn Singers, and Quadramics. He currently serves on the board of the local nonprofit Rock to the Future. He has accumulated extensive experience navigating the licensing realm with the day-to-day activities of the Penn Band, including album production, arranging, and social media.

Caroline Leipf (she/her/hers) is Assistant Director for Education & Engagement at the Annenberg Center for the Performing Arts. In this role, she enjoys creating programs that engage K-12 students, Penn students, and Annenberg Center audiences. She is responsible for dance masterclasses, artist residences, student matinees, and the annual Philadelphia Children’s Festival. Caroline’s oversight also includes management of artist contracts, administration of the Office of the Executive & Artistic Director, Chris Gruits, as well as the Annenberg Center Executive & Artistic Director’s Student Advisory Council. In seven years at Penn, Caroline has also served on both the development and marketing teams of the Annenberg Center. She holds a Master of Arts in Arts Administration from Goucher College, BFA in Theatre and a BA in Communications from the University of Rhode Island.

Information provided here is for educational purposes—for student performing arts groups to learn more about the copyright context and implications of their art and choices. Students seeking rights and permissions to perform works and deliver them via live in-person, live streamed and recorded performances for their student-governed performing arts groups should

ALWAYS CONSULT JAMES MACON GRANT (jamgrant@upenn.edu) at Platt House for guidance about performance rights.