

Copyright and Related Rights:
A Guide for Performance Librarians



By: Chloe Geller

© Chloe Geller, 2020



This work is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International licence (<https://creativecommons.org/licenses/by-nc-sa/4.0/>).

For uses beyond the conditions of this licence, contact: chloemgeller@gmail.com

Cover art by GDJ on Pixabay: <https://pixabay.com/vectors/head-music-silhouette-avatar-5405115/>, under a Pixabay licence (<https://pixabay.com/service/license/>)

Disclaimer

This handbook does not constitute legal advice. For legal advice, please consult a lawyer. Most of the information presented in this document is centred on Canadian law and does not apply to other countries.

This work is a revised version of the final project submitted in MUS 4924 - Research Project I at the School of Music at the University of Ottawa, August 2020.

The project was supervised by Mélanie Brunet, Ph.D., Copyright Services Librarian, University of Ottawa.

Table of Contents

Introduction	4
A Brief History	5
The Canadian <i>Copyright Act</i> and International Agreements	7
<i>Canadian Copyright Act</i>	7
<i>The Berne Convention</i>	9
<i>The Rome Convention</i>	10
Moral Rights and ‘Derivative Works’	11
Performance Rights in Canada	14
Other Considerations	16
Conclusion	17
Resources for Further Investigation	18
Bibliography	19

Copyright and Related Rights: A Guide for Performance Librarians

In Canada, we are subject to the Canadian *Copyright Act* as well as several international agreements which protect both the economic and moral rights of composers, and therefore affect the performance of their works. These laws and agreements regulate the activities performance organisations every day, especially in the library. Although librarians are aware that some music is under copyright, what does ‘copyright’ mean, where do these rules come from, and what do performance licences allow users of copyrighted works to do with the music?

The purpose of this handbook is to provide a condensed, central source for information on copyright and related rights specifically pertinent to the performance library and to provide some background on the regulations we are subject to in Canada. This handbook summarises major international agreements on copyright as well as the domestic law of Canada to make copyright clearer to the average librarian, musician, or administrator. Legal documents can be dense and confusing, but these summaries are intended to simplify and highlight sections and articles most relevant to the library. The differences between moral and economic rights will be outlined in relation to operations within performance organisations and how each of these rights affect the performance, broadcasting, and recording of music. Other topics, such as the term of copyright in Canada, licensing, grand rights, and considerations for touring will also be explored and related back to the library, and performance organisations in general.

To further understand today’s copyright law, we will begin with a brief history of how music came to be protected by copyright. This history will provide some context for how our current copyright system came into being. From the beginnings of published music to the *Statute of Anne*, the *Berne Convention* to the current version of Canada’s *Copyright Act*, copyright law has been constantly evolving as creators advocate for further protection of their works. Starting with the early sheet music businesses of the 16th century, we will examine important stepping stones in the history of copyright protection.

A Brief History

The business of printed music began in the early 16th century with the first commercially printed music published by Ottaviano Petrucci in 1501. Soon after, partbooks of instrumental chansons, vernacular songs, and masses were widely available for the public to purchase for private use. This was the first time music was created in a physical form on a large scale rather than being limited to an art form learned primarily through oral tradition. Between Petrucci's artistic woodblock impressions, and later Pierre Attaignant's revolutionary typographic style for music printing, many other publishers popped up across Europe to try to make it in this new business.¹ Over the last 500 years the business of printed music has changed drastically due to advancement in printing technology and the consequent changes to copyright law.

One of the first examples of copyright law in music was Attaignant's monopoly on music publication in Paris until the mid-1500s. This was possible because of the royal patent he acquired for his business.² However, since then copyright law has evolved drastically. Modern copyright originated in England, and it was there that composers struggled for music to be protected to the same degree as literary works.³ Similar to what was happening in France, during the 16th and 17th centuries English publishers could receive royal printing privilege, or a royal licence, while authors of the works received no protection against the copying and distribution of their works. This unfortunately allowed publishers to take advantage of creators, and authors received little, if any, compensation for their work.⁴ Eventually, Parliament consolidated printing rights by granting a general charter to the Company of Stationers, made up of London book publishing guilds. Unfortunately for the guilds, their privilege ended near the end of the 17th century when Parliament faced hostility from citizens over censorship and control over trade.⁵ Members of the Company lobbied for legal protection, but their efforts had the opposite effect that they had intended and the results partially limited their rights. Their lobbying resulted in the *Statute of Anne* of 1710, giving authors of books the sole right to print or reprint their

¹ Richard Taruskin, "Chapter 13, Middle and Low," *Oxford History of Western Music* (Oxford: Oxford University Press, 2010), n.p.

² Richard Taruskin, "Chapter 17, Commercial and Literary Music," *Oxford History of Western Music* (Oxford: Oxford University Press, 2010), n.p.

³ Michael W. Carroll, "The Struggle for Music Copyright," *Florida Law Review* 57, no. 4 (2005): 920.

⁴ Carroll, "The Struggle for Music Copyright," 922.

⁵ Carroll, "The Struggle for Music Copyright," 922.

work if registered at the Stationers Hall, as well as the option to assign their rights to a publisher. These rights lasted a maximum of 28 years after first publication.

The matter of music was more complex than that of literary works. The status of printed music was in question for many years after the *Statute of Anne* was passed, as many argued that musical works were not ‘books’. Eventually, court rulings were made in the favour of composers and publishers, qualifying music as ‘books’ under the Statute. In the case of *Bach v. Longman*, Johann Christian Bach filed a lawsuit in 1777 alongside Karl Friedrich Abel against the publishing firm Longman & Lukey for publishing copies of their music without their consent. This case, after years of doubt about composers’ rights under the *Statute of Anne*, finally set a precedent affirming protection of musical compositions under this Statute. The ruling encouraged more registration of compositions at the Stationers’ Hall.⁶

The *Statute of Anne* was also responsible for the creation of the concept of the ‘public domain’.⁷ Now that copyright had a set duration and an expiry, publishers challenged composers’ copyright privileges on the basis of custom, claiming that old songs could now be reused in new works and freely republished since the new works were not entirely ‘original’.⁸ In this way, the Statute was very limited. It referred only to rights of copying and distribution of physical objects, but it did not include such things as the borrowing of melodies or other ideas.⁹ It was not until the creation of the *Berne Convention* in 1886 that ‘moral rights’ became protected or even defined, but ideas about this kind of protection had been circulating in France and Germany for many years before the Convention.¹⁰

The *Berne Convention for the Protection of Literary and Artistic Works* was the first international agreement regarding copyright. It provided a set of guidelines for signatory countries to follow and upon which domestic copyright law could be based. This created some consistency amongst signatory parties, and provided vast international protection for authors, not only in their economic rights, but also their moral rights. The Canadian *Copyright Act* itself is based on both the *Berne Convention* and the British imperial copyright laws to which Canada was subject before adopting its first *Copyright Act* in 1921.

⁶ Carroll, “The Struggle for Music Copyright,” 945-946.

⁷ Carroll, “The Struggle for Music Copyright,” 954.

⁸ Carroll, “The Struggle for Music Copyright,” 955.

⁹ Carroll, “The Struggle for Music Copyright,” 955.

¹⁰ Benedict Atkinson and Brian Fitzgerald, *A Short History of Copyright: The Genie of Information* (Cham, Switzerland: Springer International Publishing, 2014), 35-36.

The Canadian Copyright Act and International Agreements

Copyright in Canada is regulated through both national legislation and international agreements, and together they protect the rights of Canadian composers as well as the rights of international composers who publish their works in other countries participating in the same agreements. These agreements have begun to create international standards on what copyright covers and the term during which copyright and related rights must be upheld. Composers have benefitted from the level of protection that this offers them, and in the library it is very important to be aware of these rules so as not to infringe copyright.

*Canadian Copyright Act*¹¹

The *Copyright Act* is the most important piece of legislation regarding copyright and related rights in Canada. With almost 90 sections, the *Copyright Act* can seem daunting, but in reality there are a few main sections that apply more directly to the music library.

Section 3 of the Act defines what ‘copyright’ in Canada is and what rights the owner of said copyright has. These rights belong solely to the author, or, in the case of music, the composer, and they have the right to authorise any of the acts described in this section. This section affects permissions when performing music under copyright. Reproduction of physical copies, public performances, audio or video recordings, telecasting and any mechanical replication (ex. CDs) are all acts under **section 3** which require authorisation from the copyright owner(s). Generally these permissions are outlined in a rental agreement which is created based on the needs of the performers for a particular performance. In most cases, a publisher will provide authorisation on behalf of the composer.

Publishers gain the right to authorise any of the acts mentioned in **section 3** if granted by the composer in writing, with their signature. Assignment of these economic rights is outlined in **section 13(4)** of the Act, and the composer may choose to assign these rights to whomever they choose, either fully or partially. A partial assignment of these rights may be limited in either the number of rights granted, the period of time for which they are granted, or both. However, the moral rights that composers are entitled to are non-transferable.

¹¹ *Copyright Act*, RSC 1985, c C-42, <https://laws-lois.justice.gc.ca/eng/acts/C-42/>.

Moral rights belong solely to the composer of a work and may not be assigned to any other person or organisation until their death, in which case they can be transferred via the composer's will, as per **section 14.2(2)** of the Act. As stated in **section 14.1**, the moral rights connected to a work are protected for the entire term of copyright, but the composer may choose to waive their moral rights. Infringement of these rights is covered in **sections 28.1** and **28.2**, further defining the moral rights that the composer enjoys during their term of copyright, primarily the right to the integrity of their work, which means modifications generally require explicit permissions unless these rights have been waived. When applied to music, this may include modifications to works such as arrangements and reorchestrations, among other things.

When it comes to making copies, **section 29.24** provides information on the conditions which allow for copies to be made legally. In the music library it is essential to have backups and master copies for the music owned by the library; one never knows when someone will lose or damage an original part. This section of the Act not only allows for backup copies to be made, but can also allow for a backup to become a source-copy should the original become unusable for any reason.

These sections all apply to works under copyright, but once a work enters the public domain these restrictions on use are lifted. The term of copyright in Canada, according to **section 6** of the *Copyright Act* is, in general, until the end of the year during which the composer died plus an additional 50 years. Some exceptions apply, such as for sound recordings or when the composer is unknown. However, at the time of this writing, the general duration of copyright is expected to change in the next couple of years. The *Canada-United States-Mexico Agreement* (CUSMA)¹², the successor to the *North American Free Trade Agreement* (NAFTA), entered into force July 1, 2020. Although it is primarily a trade agreement, it also affects Canada's copyright term and it will soon be more aligned with American and European copyright duration. **Article 20.63** of the Agreement states that all parties must have a term of copyright which will not be less than the life of the author (composer) plus an additional 70 years; a 20-year extension of the current Canadian term. This will affect which music is in the public domain in Canada, but due to the fact that most North American publishers are based in the United States where the term is already life plus 70, acquisition of music for performance and rental conditions should not be greatly affected.

¹² *Canada-United States-Mexico Agreement* (CUSMA), 2018, Chapter 20: Intellectual Property Rights, <https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/r-cusma-20.pdf>.

The Berne Convention¹³

The *Berne Convention for the Protection of Literary and Artistic Works* is an international agreement to which Canada is signatory. Canadian copyright law is compliant with the conditions of this agreement, although the Convention is a much shorter document than Canada's legislation on copyright. According to **article 5**, the Convention guarantees rights to all authors (composers) who publish in signatory countries. Following the principle of "national treatment", these countries are required by this agreement to also guarantee these composers protection under their own laws as well as any additional terms of the Convention. Many of the articles in the Convention apply to the music library, but there are a few in particular that are more pertinent.

Article 6bis of the Convention details that the composer maintains their moral rights after the transfer of economic rights, a right which is reinforced by Canada's own laws. This part of the convention also states that the composer has the right to object to any modifications that may injure their reputation or that they believe to be a 'distortion' or 'mutilation', a statement which leaves room for a broad range of interpretations. In conjunction with **article 12**, which prohibits unauthorised arrangements or adaptations of any work, this article makes it clear that permission from the composer is always required when altering their music under copyright.

Another important part of the Convention for performance librarians to note is **article 9**, which states that reproductions, such as copies, are restricted. As previously stated, the *Canadian Copyright Act* makes exceptions for this rule for the creation of backup copies in the event that originals should be damaged, and takes precedence over this Convention. In addition, this article makes it clear that any audio or visual recording of the work/performance is considered a reproduction, which also requires permission from the copyright owner. The right to grant permission is often transferred to the publisher, in which case the terms of sale or rental may include extra fees if the performance will be recorded or broadcast.

Recording a performance, in either an audio or visual format, is not automatically permitted when broadcasting a live performance as per **article 11bis**. The composer may grant the right to do this, but it is a separate permission from audio or visual recordings as well as live performances of works. The right to grant these permissions, again, are often transferred to the publisher by the composer.

¹³ *Berne Convention for the Protection of Literary and Artistic Works*, World Intellectual Property Organization (WIPO), 1979, <https://wipolex.wipo.int/en/text/283698>.

The Rome Convention¹⁴

The *Rome Convention*, also known as the *International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations*, provides separate protection for recordings or broadcasts of performances, live or otherwise. Each of the parties involved in the recording or broadcasting of a performance are covered by individual sections of this agreement, but many of the articles work in conjunction to ensure maximum protection for all involved. Although permission from a composer or publisher is required before recording or broadcasting a performance, copyright on the ‘fixed’ or broadcast performance exists separately from the original copyright as per **article 1**. The minimum term of protection granted for these performances is 20 years after the year of recording/broadcasting, as stated in **article 14**, although the next article allows member states to make exceptions to the protection guaranteed by this agreement if they so choose. There are further protections within the *Copyright Act* which build on the protections granted by the *Rome Convention*, but these protections also contain some exceptions. This information may not be useful on a daily basis to all librarians, but some libraries are also joined with archives and may be required to track information on performances which have been recorded or broadcast.

Canada is a member state to other international agreements related to copyright such as the World Intellectual Property Organization (WIPO) *Copyright Treaty* and the *Trade-Related Aspects of Intellectual Property* (TRIPS) agreement from the World Trade Organization (WTO). These agreements reinforce international copyright recognition, but the main legal documents which affect Canadian organisations are the *Copyright Act* and the *Berne Convention* (on which the former is based). Following these will reduce the risk of copyright infringement, but when it comes to international touring be sure to check with international colleagues what the term of copyright is in their country. The *Berne Convention* only provides minimum requirements for member states, but they are free to enact additional conditions in their own copyright law.

¹⁴ *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, World Intellectual Property Organization (WIPO), 1961, <https://wipolex.wipo.int/en/text/289757>.

Moral Rights and 'Derivative Works'

Moral rights in Canada are granted by both the *Copyright Act* and the *Berne Convention* to creators who reside within countries signatory to the Convention, but what are 'moral rights' and what makes them different from economic rights? Definitions can be found in both the *Copyright Act* and *Berne Convention*, however, in Canadian law these rights have been disputed when it comes to musical compositions. The *Copyright Act* lists the author's rights in fairly clear terms in **section 3**, but musical arrangements or 'derivative works' are not mentioned, and no definition for what constitutes an 'adaptation' is provided.

Sections 14.1 and **28.2** of the *Copyright Act* and **article 6bis** of the *Berne Convention* each offer similar definitions of moral rights and descriptions of what they include. Both of these documents also provide exceptions to moral rights and have sections outlining special circumstances under which moral rights may not apply.

The *Berne Convention* **article 6bis(1)** states that the author will maintain the right to claim authorship of their work, and that no distortion, mutilation, or other modifications may be made to the work without permission from the author if it is deemed "prejudicial to his honour or reputation", a statement which is quite open to interpretation. What is considered to be prejudicial to the author's honour or reputation is determined on a case-by-case basis in Union countries (signatories to this agreement), but the *Berne Convention* has an article which addresses musical arrangements. **Article 2** indicates that musical compositions and dramatico-musical works are included in the term 'artistic works' and authors of both literary and artistic works are given the sole right to make or authorise adaptations, arrangements, and any other alterations to their work as per **article 12**. This article protects the composer from others making unauthorised changes to their work, however the *Copyright Act* does not have any provisions like this that apply to music in quite the same way.

The moral rights detailed in the *Copyright Act* are covered in two separate sections, **14.1** and **28.2**, with each covering different aspects of these rights in Canada. **Section 14.1(1)** deals with the right of association, and states that the author has the right to be associated with their work (claim authorship), but that they also have the right to remain anonymous or be known under a pseudonym if they so choose. In the library, attribution is not often forgotten, but the right to the integrity of the work can more deeply affect library activity, and this right is outlined more specifically in **section 28.2(1)** of the *Act*.

However, it still remains vague about when permissions are needed when it comes to making alterations. As stated in the *Berne Convention's* **article 6bis(1)** about distortion, mutilation, or any other modifications prejudicial to the author's honour or reputation being an infringement of their moral rights, it adds that the author must give permissions for their work to be used in association with a product, service, cause, or institution. Unfortunately what constitutes a prejudice to someone's honour or reputation is not specified and must be left to be interpreted on a case-by-case basis.

One of the most important cases concerning moral rights in Canada was *Snow v. The Eaton Centre Ltd.* in which Michael Snow sued Toronto's Eaton Centre for altering his sculpture "Flight Stop".¹⁵ The Eaton Centre, with the intention of adding some festive flare to the art, had placed red ribbons around the necks of the geese in the sculpture and Snow believed this made his art look ridiculous, comparing it to "dangling earrings from the Venus de Milo."¹⁶ The court, after hearing testimony from Snow and other artists, deemed that the ribbons were prejudicial to his honour or reputation and ordered that they be removed. This ruling enforced Snow's moral rights and demonstrated how after a transfer of economic rights the moral rights remain with the creator. The owner or licensee of the economic rights still needs permission from the creator to make alterations to a work.

The case led to the addition of **section 28.2(2)** in the *Copyright Act* for the further protection of paintings, sculptures, and engravings from any modification being made, meaning that any alteration of these kinds of works is automatically prejudicial. There is no such statement regarding musical works, so what is considered an infringement of the composer's moral rights would have to be determined in court. The composer would need to show that the changes made to their work are detrimental to their honour or reputation and may need to call other composers or musicologists as expert witnesses.

Performers are also protected in the *Copyright Act* by a separate section covering their moral rights, **section 17.1**. Performers' moral rights are maintained for the duration of their copyright, and they too have the right to the integrity of the performance and the right to association. As in **section 14.1(4)**, **section 17.1(4)** also specifies that moral rights may be waived, but not transferred other than by will or bequeathal.

¹⁵ *Snow v. The Eaton Centre Ltd.*, 70 CPR (2d) 105, [1982] OJ No 3645.

¹⁶ Lesley Ellen Harris, "Moral Rights in Canadian Copyright Law," *Copyrightlaws.com: Copyright Courses and Education in Plain English* (blog), January 2, 2019, <https://www.copyrightlaws.com/moral-rights-in-canadian-copyright-law/>.

Exceptions to moral rights infringement are also written into the Canadian *Copyright Act*, essentially covering non-commercial uses. Under fair dealing, using short excerpts of copyrighted materials for the purpose of research, private study, education, parody, satire, criticism, review, or news reporting is allowed and does not infringe on copyright or moral rights, as per **sections 29, 29.1 and 29.2**.

It should be noted that in the United States (where most music publishers are located), moral rights are not protected uniformly among all artforms, but are instead protected through several different bits and pieces of legislation. The U.S. signed onto the *Berne Convention* only in 1989 and, as a result, their copyright law had to be changed to accommodate moral rights, but they are rather restricted in definition and scope. The main (federal) legislation covering moral rights in the U.S. is the *Visual Artists Rights Act of 1990* (VARA).¹⁷ Similar to **section 28.2(2)** of the Canadian *Copyright Act*, it provides protection against modifications of certain works of visual art regardless of the effect on the reputation or honour of the creator.¹⁸ However, **section 106** of the U.S. copyright law grants authors the exclusive right of preparing or authorizing ‘derivative works’¹⁹. This statement behaves similarly to the restrictions on modifications to a work which in Canada would be associated with moral rights, but in the United States these kinds of modifications are regarded more as economic rights. As per **§101** of U.S. copyright law, the definition of derivative works is as follows: “A ‘derivative work’ is 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’.”²⁰ This is an exhaustive list of any alterations that would constitute a ‘derivative work’ in the United States, leaving little room for interpretation. In comparison, Canadian law is more ambiguous about whether or not some of these kinds of derivatives would infringe copyright.

¹⁷ *Copyright Law of the United States*, 17 U.S.C. § 106A (2020), <https://www.copyright.gov/title17/title17.pdf>, p. 18.

¹⁸ Leslie Ellen Harris, “Moral Rights in U.S. Copyright Law,” *CopyrightLaws.com: Copyright Courses and Education in Plain English* (blog), January 10, 2020, <https://www.copyrightlaws.com/moral-rights-in-u-s-copyright-law/>.

¹⁹ *Copyright Law of the United States*, 17 U.S.C. § 106 (2020), <https://www.copyright.gov/title17/title17.pdf>.

²⁰ *Copyright Law of the United States*, 17 U.S.C. § 101 (2020), <https://www.copyright.gov/title17/title17.pdf>.

Performance Rights in Canada

To perform live music, physical copies are not the only thing that is needed; licences must also be acquired from performing rights organisations (known as PROs). In Canada, SOCAN (The Society of Composers, Authors, and Music Publishers of Canada) is the organisation to which musicians and orchestras must report the program they are performing. SOCAN has created a centralized system for obtaining performance rights and simultaneously paying royalties to copyright holders, composers, and songwriters to make it easier for both creators and users of musical works. This organisation represents not only Canadians, but also international artists and publishers, and it exists to ensure fair compensation for creators and other copyright owners. Users of these works report their performance, what works were presented, and other pertinent details as requested, then are notified of the royalty fees they owe. However, SOCAN is responsible only for licensing ‘small rights’.

Small rights are a form of performance rights which are somewhat limited in scope. They include only performances of music and specifically exclude anything that would fall into the category of “dramatico-musical” works.²¹ The term “dramatico-musical” refers to almost any musical work that also tells a story either through verbal or visual components, works such as operas, oratorios, musicals, ballets, even plays with incidental music. Performance rights for this type of performance are called ‘grand rights’.

Grand rights²², rather than going through a PRO like SOCAN, must be licensed directly through the copyright owner, either the creator or their publisher. Fees are negotiated based on factors such as venue size or ticket price, but the licensee must also gain approval for their production from the creator or their representative. This relates back to moral rights and the author’s right to the integrity of their work. For example, if Beethoven were alive today he may object to a *Star Wars* themed production of his dramatic opera *Fidelio*, as he could consider it prejudicial to his reputation as a serious composer. Grand rights are also open to interpretation when it comes to defining their scope. With the addition of any staging, dialogue, costuming, props, choreography, or similar theatrical flourishes, a performance can fall under the category of grand rights

²¹ Steven Lakenau, “Untangling the Bundle: Grand Rights vs. Small Rights,” *Musical America*, June 3, 2014, <https://www.musicalamerica.com/news/newsstory.cfm?archived=0&storyid=31868&categoryid=7>.

²² Lakenau, “Untangling the Bundle: Grand Rights vs. Small Rights.”

regardless of the length of the excerpt. Essentially these rights represent the side of the performance which the music accompanies — the visual or narrative components.

When reporting performances to SOCAN, it may not be necessary to report concerts for which the program consists entirely of music in the public domain, but many organisations have ‘blanket licences’. This kind of licence is purchased on an annual basis and requires all performances to be reported whether or not they include music in SOCAN’s repertoire. The fees are calculated based on annual budget and the number of concerts to be performed during the calendar year. For smaller organisations which choose to report on the basis of individual concerts, if no copyrighted works are being performed then a report is not necessary.

Below is a chart outlining when permissions are required for different uses of music both under copyright and in the public domain for small rights performances. Fees are usually associated with the acquisition of licences.

	Works in the public domain		Works under copyright	
	<i>Purchase</i>	<i>Rental</i>	<i>Purchase</i>	<i>Rental</i>
Duplication	Allowed	Not allowed (if agreement prohibits copying)	Not allowed	Not allowed
Performance	Allowed	Allowed	Allowed with licence	Allowed with licence
Broadcast	Allowed	Allowed	Allowed with licence	Allowed with licence
Recording	Allowed	Allowed	Allowed with licence	Allowed with licence

Other Considerations

It is important to remember that while the *Berne Convention* provides a minimum standard for copyright in signatory countries, many have chosen to add extra protection within their domestic laws or are signatories to additional international agreements. When touring, orchestras and other performance organisations will likely be subject to laws which differ from their own, potentially affecting permissions or licences required. Generally, performance licences are expected to be acquired by the host, but it is good to research the laws of the host country and to be aware of major differences such as the term of copyright, or if a specific edition of public domain music has its own copyright.

For example, *Directive 2006/116/EC of the European Parliament and of the council of 12 December 2006 on the term of protection of copyright and certain related rights*, known in short form as the E.U.'s *Copyright Term Directive*, allows for the a maximum protection of 30 years after publication for critical or scientific editions of works in the public domain as per **article 5** of the Directive.²³ There is no equivalent to this in Canadian law, but this could affect permissions needed for use of previously acquired performance materials in European countries. Similar laws, distinctly different from those in Canada, exist in many countries, so due diligence before a tour is recommended.

²³ *Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights*, December 12, 2006, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116>.

Conclusion

Overall, copyright both in music and on the whole is very complex. After a long and complicated history, one can only assume that with ever-changing digital technologies copyright laws will continue to be changed and adapted to keep up with the times. With so many nuances and exceptions to rules within both domestic laws and international agreements, it can be difficult to keep track of what can or cannot be done when it comes to public performance. Hopefully this handbook has made clearer some of today's most pertinent sections and articles of laws and international agreements and explained them in a way both comprehensible to the average person and applicable to the performance librarian.

Resources for Further Investigation

To find out more about copyright and related rights, here are some useful online resources:

Berne Convention: <https://wipolex.wipo.int/en/treaties/textdetails/12214>

Canadian Copyright Act: <https://laws-lois.justice.gc.ca/eng/acts/C-42/page-1.html>

Canadian licensing and royalties:

<http://www.musicpublisher.ca/resources/canadian-rights-licensing-royalty-entities/>

Copyright Law of the United States: <https://www.copyright.gov/title17/title17.pdf>

E.U. Copyright Directive:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116>

Moral Rights in Canadian Copyright Law:

<https://www.copyrightlaws.com/moral-rights-in-canadian-copyright-law/>

Major Orchestra Librarians' Association: <https://mola-inc.org/p/education>

Rome Convention: <https://wipolex.wipo.int/en/text/289757>

TRIPS Agreement: https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

Small rights v. Grand rights:

<https://www.musicalamerica.com/news/newsstory.cfm?archived=0>

SOCAN: www.socan.com

WIPO Copyright Treaty: <https://wipolex.wipo.int/en/treaties/textdetails/12740>

Bibliography

- Association des professionnels de l'édition musicale (APEM). *Music Use Guide*. 2020.
<https://guide.apem.ca/en/>.
- Atkinson, Benedict, and Brian Fitzgerald. *A Short History of Copyright: The Genie of Information*. Cham, Switzerland: Springer International Publishing, 2014.
<https://books-scholarsportal-info.proxy.bib.uottawa.ca/uri/ebooks/ebooks3/springer/2014-02-13/1/9783319020754>.
- Berne Convention for the Protection of Literary and Artistic Works*, World Intellectual Property Organization (WIPO), 1979. <https://wipolex.wipo.int/en/text/283698>.
- Braithwaite, William J. "Derivative Works in Canadian Copyright Law." *Osgoode Hall Law Journal* 20, no. 2 (1982): 191–231.
<https://digitalcommons.osgoode.yorku.ca/ohlj/vol20/iss2/1>.
- Brunet, Mélanie. *Copyright and Music* (MUS 4924 lecture). July 15, 2020.
<https://drive.google.com/file/d/1MIüQBHvcEuDreKioLFKWa0tHhO3n9Wi/viiew?usp=sharing>.
- Canadian League of Composers (CLC). "Grant Rights." *Canadian League of Composers - Commissioning*. 2020.
<https://www.composition.org/commissioning/grand-rights/>.
- Canada-United States-Mexico Agreement* (CUSMA), Chapter 20: Intellectual Property Rights. 2018.
<https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/r-cusma-20.pdf>.
- Carroll, Michael W. "The Struggle for Music Copyright." *Florida Law Review* 57, no. 4 (2005): 907-961.
<https://login.proxy.bib.uottawa.ca/login?url=https://heinonline.org/HOL/P?h=hein.journals/uflr57&i=919>.
- Copyright Act*, RSC 1985, c C-42. <https://laws-lois.justice.gc.ca/eng/acts/C-42/>.
- Copyright Law of the United States*, 17 U.S.C. § 101. 2020.
<https://www.copyright.gov/title17/title17.pdf>.
- Copyright Law of the United States*, 17 U.S.C. § 106. 2020.
<https://www.copyright.gov/title17/title17.pdf>.
- Copyright Law of the United States*, 17 U.S.C. § 106A. 2020.
<https://www.copyright.gov/title17/title17.pdf>.

- Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights*, 12 December, 2006.
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116>.
- Harris, Lesley Ellen. "Moral Rights in Canadian Copyright Law." *Copyrightlaws.com: Copyright Courses and Education in Plain English* (blog). January 2, 2019.
<https://www.copyrightlaws.com/moral-rights-in-canadian-copyright-law/>.
- Harris, Leslie Ellen. "Moral Rights in U.S. Copyright Law." *Copyrightlaws.com: Copyright Courses and Education in Plain English* (blog). January 10, 2020.
<https://www.copyrightlaws.com/moral-rights-in-u-s-copyright-law/>.
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, World Intellectual Property Organization (WIPO), 1961. <https://wipolex.wipo.int/en/text/289757>.
- Lakenau, Steven. "Untangling the Bundle: Grand Rights vs. Small Rights." *Musical America*, June 3, 2014.
<https://www.musicalamerica.com/news/newsstory.cfm?archived=0&storyid=31868&categoryid=7>.
- Laroche, Guillaume. "Settling the Score: Copyright in Modern Editions of Public Domain Musical Works." *Intellectual Property Journal* 26, no. 1 (2013): 83–110.
<https://search-proquest-com.proxy.bib.uottawa.ca/docview/1470792384?accountid=14701>.
- Macklem, Lisa. "This Note's for You - Or Is It: Copyright, Music, and the Internet." *Journal of International Media and Entertainment Law* 4, no. 2. (2012): 249–76.
<https://login.proxy.bib.uottawa.ca/login?url=https://heinonline.org/HOL/P?h=hein.journals/jintmeel4&i=299>.
- Shelton, Michael, and Wendy J. Skoczen. "Copyright Primer: A Music Librarian's Perspective." Major Orchestra Librarians' Association (MOLA). 2020.
<https://mola-inc.s3.eu-west-1.amazonaws.com/files/yzBPiMZvfmu2ZF6VZcbnu2Z6dGVMUnnpjZMBQest.pdf>.
- Snow v. The Eaton Centre Ltd.*, 70 CPR (2d) 105, [1982] OJ No 3645.

Tarlow, Lawrence, and Robert Sutherland. "The Music We Perform: An Overview of Royalties, Rentals and Rights." Major Orchestra Librarians' Association (MOLA). 2004.

<https://mola-inc.s3.eu-west-1.amazonaws.com/files/bQ53PohFsSmln22P4ch5CcPPJJZWfCS0jvGFQrPC.pdf>.

Taruskin, Richard. *Oxford History of Western Music*. Oxford: Oxford University Press, 2010.

<https://www-oxfordwesternmusic-com.proxy.bib.uottawa.ca/>.

University of Alberta. "Berne and TRIPS Agreements." *Opening Up Copyright Instructional Modules*. 2019.

<https://sites.library.ualberta.ca/copyright/modules/berne-and-trips-agreements/>.

University of Alberta. "Moral Rights." *Opening Up Copyright Instructional Modules*.

2019. <https://sites.library.ualberta.ca/copyright/modules/moral-rights/>.