

COPYRIGHTS, Part 1: WHAT'S RIGHT FOR CREATIVITY

INTRODUCTION: CAN'T GET NO SATISFACTION

Meet Ashley and Brian. They're both in 9th grade and have just started writing songs together. Recently they co-wrote a song called "Satisfaction" and made a simple recording of it on Brian's computer. They proudly sent an mp3 of their creation to a bunch of friends.

Two weeks later, Brian called Ashley saying, "Hey! Why did you send our song to Burger Bonanza?" "I didn't!" Ashley exclaimed. But, sure enough, when she went to the Burger Bonanza web site, there was "Satisfaction" playing loud and clear on the home page.

Ashley and Brian were mad—they didn't even like BB burgers! They wanted their song back, but they wondered if they even had a right to complain. Did they?

You bet they did. Ashley and Brian's story presents a lot of important lessons about **copyrights**, and understanding these lessons can help you to make the most of your own music.

WHAT IS A COPYRIGHT?

A copyright is a type of legal protection for creators of **intellectual property**. It gives those creators exclusive rights to control the use of their works for a period of time. Copyrighted intellectual property can be photographs, movies, novels, plays, paintings, songs, symphonies, architectural plans, and many other forms of creative expression—and the creator can be absolutely anyone, including Pink, Justin Timberlake, or *you*.

WHY DO COPYRIGHTS MATTER?

Artists, writers, and composers put a lot of work into their creations, practicing and revising for hours, weeks, or sometimes years to get the details exactly right. Just as a great meal in a restaurant or a beautiful dress in a store has a price, a creative work has financial worth as well. That's why books, paintings, and mp3s are sold, too.

Copyrights exist to ensure that creators have their say about who gets to use their works—and that they can get paid when those works are used. If they didn't get paid, many creative people could not afford to keep creating.

So, according to copyright law, Ashley and Brian were entitled to decide whether or not Burger Bonanza could stream their song on the company's web site. And guess what? Both the burger company and the friend who sent them the song broke that law.

And every time the mp3 of "Satisfaction" was copied and given to a new person, Ashley and Brian—the song's copyright owners—deserve to have been paid a fair price for their work.

That's why **copyrights have two types of power**: (1) they acknowledge the importance of creative people, by protecting their rights, and (2) they insure that creative people get paid money that they deserve.



COPYRIGHTS, Part 2: WHO, WHAT, WHEN & WHERE?

WHAT CAN BE COPYRIGHTED?

In order for something to be copyrighted, it has to meet two requirements: it must be an **original piece of work** and it must be fixed in a **tangible medium of expression**. So, a song playing in your head or a live performance of a song that hasn't yet been written down or recorded is not copyrighted—and neither are ideas and concepts for a musical project or a single word or phrase, such as a song or album title. (That's why Ashley and Brian's use of the title "Satisfaction," which was already the title of a famous Rolling Stones song did not violate copyright law.)

To be copyrightable, a song or other piece of music must be **transcribed on paper or recorded**.

MIND YOUR C'S & P'S

For songs, there are two kinds of copyright: one for a **musical composition** (indicated by ©) and one for a **sound recording** (indicated by ®). These two copyrights might be owned by the same person or by two different people. For example, if Jack Johnson recorded a song that he also wrote, then he would own the copyrights for both the composition and the sound recording. But if Ne-Yo recorded that song, then Johnson would still own the composition copyright but Ne-Yo would own the copyright for the new recording. When two people create a song together, they share the copyright. In Ashley and Brian's case, the two jointly owned both the © and the ®.

COMPANY'S COMING

When a musician or songwriter is represented by a record label or a music publisher, those companies participate in the copyright ownership. For example, when a record label provides the money for an artist to record a CD under a record deal, usually that label will own the master recording (the recording from which all duplicate copies are made). This means that the record label controls the sound recording copyright and receives a portion of the income that the recording earns.

Similarly, when a songwriter is signed to a music publisher under a publishing deal, the publisher is entitled to own a certain percentage of each of the writer's song composition copyrights. In return, the publisher finds ways

to make money from the writer's songs (in films and TV shows, on other recordings, etc.) and shares this income with the songwriter.

DOES A COPYRIGHT LAST FOREVER?

For anything created after 1978, both types of copyright last for the life of the creator plus 70 years. That means that the works of any currently living songwriters or composers—no matter what their age, genre, or level of success—can all be copyrighted. After the **term**, or period of copyright, is over, the work moves into the **public domain**, meaning that it is now owned by the public. Songs that were written long ago, like "The Star Spangled Banner" and "Twinkle, Twinkle, Little Star"—as well as many pieces of classical music—are all in the public domain so they may be used by anyone, anywhere, and in any way.

COPYRIGHTS & CAKE

There's one very old song, though, whose copyright is still current, and it is one of the most valuable copyrights in existence. It's a little tune you know very well called... "Happy Birthday to You!" Written by schoolteacher Mildred J. Hill and her sister, Dr. Patty Smith Hill, in 1893 as a classroom greeting song, the lyrics were originally "Good morning to you/Good morning to you/Good morning dear children/Good morning to all." The song went through a couple of revisions and was later published again in 1933 as "Happy Birthday." The song was used many times without crediting the Hills until 1935, when the sisters finally gained the copyright. While Mildred Hill had already passed away, Patty was able to benefit from the song's earnings until her death.

You might think that "Happy Birthday" is a silly little ditty that wouldn't be worth nearly as much as the latest Black Eyed Peas hit. But consider this: every time someone sings even one line of the song in a movie or TV show, or any time a greeting card or music box playing the song is sold, the estate of the Hill sisters earns a small royalty. In the United States alone, the song is used commercially millions of times per year, so those little payments really add up: the song earns over \$2 million each year. Now *that's* something to celebrate!



COPYRIGHTS, Part 3: PROOF & PAYMENTS

HOW TO COPYRIGHT A SONG

By law, a song or piece of music is copyrighted the moment it is written down on paper or recorded. However, to insure that you have proof that a copyright is yours, you can and should **register your copyrights** with the United States Copyright Office in Washington, D.C.

The simplest way to register your copyrights is by using the U.S. Copyright Office eCO Online System (you will need to pay registration fees with a credit card)—go to:

www.copyright.gov/eco

The advantages of registering online include:

- * Lower filing fee of \$35 for a basic claim (for online filings only)
- * Fastest processing time
- * Online status tracking
- * Secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- * The service is available 24 hours a day

You can alternatively register through the mail using fill-in form CO, available on the Copyright Office website.

Instructions for filing are detailed in Circular 50—available at:

www.copyright.gov/circs/circ50.pdf

If you have questions, you can call the Copyright Office from 8:30 am to 5:00 pm EST at:

(202) 707-3000

WHAT IF YOU DON'T REGISTER A COPYRIGHT?

If you don't register your copyrights with the U.S. Copyright Office, you will still be entitled to the rights and privileges provided by the copyright law, however, you might find yourself in a situation where it is difficult to **prove that you are the copyright holder** of those songs and you will be unable to take advantage of legal remedies. Ashley and Brian did not have their song copyright registered, but they got lucky: with the email to which they initially attached their mp3 for their friends, they could document that the song originated from them. However, you may not be as lucky, so it's a good idea to register your original songs.

HOW THE "PROs" HELP YOU GET PAID

Just as recording artists are paid royalties based on how many copies of their recordings are sold, songwriters are paid royalties when their copyrighted music is performed publicly—that is, when it is broadcast on radio or television or when it is played in restaurants, malls, or other public venues.

Here's how it works: Songwriters and music publishers with copyrighted works become members of a performing rights organization (PRO). The PROs ongoingly collect licensing fees from radio and television stations and other businesses that use music. Then each PRO distributes the money it collects to its songwriter and publisher members. There are three PROs in the United States: ASCAP, BMI, and SESAC.

For more information about PROs and how they help songwriters, visit www.ascap.com/about.



COPYRIGHTS, Part 4: 'RIGHTS & WRONGS

LEGAL LOW-DOWN

When a copyright holder's rights are violated—for example, when a song is distributed without the creator's permission—that is called **infringement**. Infringement could include unauthorized copying, selling, or downloading a recording. As you might expect, breaking the copyright laws in this way results in a penalty: those who infringe are required to pay fines and, depending on the severity of the infringement, might even face serving time in jail.

What you might not realize, though, is that those who *help* the infringers can also be subject to penalties. So, the friend who sent Ashley and Brian's song to Burger Bonanza was just as guilty of infringement as was the burger company.

BE A TEAM PLAYER

If sharing recordings helps the world get to know an artist's music, then why would it ever be bad? Consider this: songwriters and composers work very hard to create their artistic work and they often invest a significant amount of money in years of lessons, instruments and gear, studio time, and many other music-related expenses. Shouldn't they be able to earn money for the wonderful work they do?

In addition, a whole team of other people help to bring a recording to our attention—that team includes recording engineers, music publishers, record label staff, record store (or online store) employees, producers, music publicists, and more. When you acquire new music without paying for it, all of these people lose some of their well-deserved income. In fact, if they stopped earning money for the music they work on, many people on this big team would have to find other work, and songwriters and composers might not be able to create any new music—which would be very sad for all of us.

Remember, many songs that you know and love were written by someone—or a group of people—other than the recording artist, and they, as well as the entire team that helped to release the recording, deserve to get paid so that they can make a living and support their families.

MAY I, PLEASE?

The key to sorting the copyrights from the wrongs is to **get permission** from the creators. When in doubt, ask. Who do you contact? Look for the person or company listed after the © or ® on the sheet music, CD booklet, iTunes page, or online store page—that's who can give you approval

for the use of that music. The PROs also list the copyright owners for many songs on their websites. A database of songs can be found online at www.ascap.com/ace/.

And, when you request permission, you'll be in good company. When Kanye West sampled part of Michael Jackson's "PYT" for his recording of "Good Life," he had to pay money to Jackson's music publisher and record label, both of which represented Jackson and distributed income to him. And when director Drew Barrymore wanted to include "Pot Kettle Black" by indie-pop quintet Tilly and the Wall on the *Whip It* film soundtrack and soundtrack album, she had to pay a licensing fee and get approval, too.

FAIR IS FAIR

It might be confusing to determine when it's ok to share or use someone's music without paying for it, and when it's an instance of infringement. After all, aren't songs sampled all the time? And aren't song clips streamed on iTunes, Amazon.com, and many other web sites? What about just playing music for a friend, or performing it at a concert? That can't be wrong, can it?

Well, the copyright law sets out what is okay and what's not. In most cases, using copyrighted music you do not own for purposes other than your own private enjoyment requires permission. But not always. Your jam and listening sessions with your friends are perfectly allowed—and great!—to do. That's because the law only protects public performances. And, of course, if it's your own original music, you can do whatever you want with it—that's the power of copyright.

Also, there are some very specific exceptions to the restrictions of copyright law, where the distribution or inclusion of a copyrighted work may be considered **fair use**. These would include the use of music for news reporting, teaching (including multiple copies for classroom use), scholarship, or research—in these cases, permission from the copyright owner is not necessary. Using a short excerpt of a song or piece of instrumental music may at times be considered fair use as well. But not always: it depends on how you use the music. For example, online stores and web-based companies streaming those clips pay fees to copyright owners for the privilege to do so. And permission must be granted by the copyright holders to sample or otherwise incorporate a portion of a song (of any length) in a new musical work.

LESSON PLAN: MUSIC & COPYRIGHT

This lesson plan supports MENC National Standards 6 & 8

OBJECTIVES

- Understand the relationship between music & copyright (NS 6, 8)
- Understand music fair use and music copyright infringement (NS 8)
- Identify the copyright owners of various musical compositions (NS 8)
- Evaluate the consequences of free music downloading (NS 8)

MATERIALS

- “Copyrights: What’s Right for Creativity” handouts 1 through 4
- “Know Your ‘Rights” quiz

START

1. Begin class by going around the classroom and asking students to name any type of thing they have made or created. (This could include such diverse things as a cake, a photograph, a piece of jewelry, a drawing, a pet collar, a class presentation, a book report, a recital performance, etc.) . List students’ responses on the board.

ASK Who owns each of these creative works? (Answers will vary)
Point out that some of the works might be gone (e.g. the cake), some might be owned by a second person (a gift), and some might be owned by the respective creators.

2. Direct students to raise their hands if they have ever heard of copyright. Ask for a volunteer to define copyright for the class.

3. Invite students to consider which things listed on the board could be copyrighted. Place a check next to each item that students feel could carry a copyright.

DEVELOP

1. Invite students to read the “Copyrights” handouts either taking turns aloud, quietly aloud in pairs, or silently, depending on their abilities.

2. Review the highlighted vocabulary and terms as a class. Call on students to explain these terms in their own words:

copyright / intellectual property / “tangible medium of expression” / copyright registration / copyright holder / copyright term / public domain / fair use

3. Lead a discussion about the following real or proposed recordings. Challenge students to identify who the copyright holder(s) would be. Encourage students to research specific songwriters and/or record labels if time permits:

- Bruce Springsteen performing “Silent Night”
- Madonna performing “Don’t Cry for Me, Argentina”
- The mash-up of “Don’t Stand So Close to Me” and “Young Girl” from the *Glee* soundtrack

4. Remind students that the invention of the Web and the ability to download music have increased people’s awareness of music copyright issues.

ASK Have you downloaded music from the Web?

(Most if not all of your students have likely done this)

Did you pay for the music you downloaded?

Did you feel that the price you paid for the music was fair?

Were you aware of the music’s copyright owners when you downloaded the music?

5. Divide the class into two groups and tell them they are going to participate in an organized debate about music downloading. Have the first group assert that free music downloading is a good practice and should be permissible; direct the second group to assert that free music downloading is a bad practice and is against the (copyright) law. Allow time for the groups to discuss and organize the points that they will make to argue for their opinion. Encourage students to consider whether or not the following factors matter in this debate:

- How many songs someone wishes to download
- How the downloaded songs will be used
- How much money the downloader has
- How much money the songwriter or recording artist seems to have
- Whether the recording is released by a record label or by the songwriter/artist directly

Guide students in discussing varied and potentially dissenting views in a mature and respectful manner.

ASK Were you arguing your actual point of view or something you don’t agree with?

Did the points made in this debate change your point of view about downloading at all? (Accept various answers)

CLOSE

1. Distribute copies of the “Know Your ‘Rights” quiz. Allow time for students to complete the quiz. Discuss the answers as a class.

ASSESS

Did students participate in discussions?

Did they use music copyright terms properly?

Could they argue for or against free downloading?

Did they complete the quiz?

QUIZ: KNOW YOUR 'RIGHTS

How much have you learned about copyrights? Take this quiz and find out.

1. For how long does a copyright provide protection?

2. What does “©” signify?

3. Connor and Joey have put together a truly original musical number for their school talent show. Can they register a copyright for the performance in the show?

4. True or False: John Lennon is now dead, so songs he wrote are in the public domain.

5. When is performing someone else’s song an infringement of copyright and when is it OK?

6. Why is free downloading of a song unfair to the person or people who wrote it?

7. When do you technically become a copyright owner?

8. Elena wrote a song and wants to call it “The Way We Were” but found out there’s already a famous song with that name. Is she violating copyright law by using the title?

9. How could illegal downloading affect the amount of music available in the future?

10. You recorded a unique blues version of “Waiting for the World to Change” so you own the copyright of the new recording, not John Mayer—right?
