

Copyright Issues for the Orthodox Church Musician

Part 1

Vladimir Morosan

As the Church in America grows and matures, the liturgical life of many Orthodox communities becomes richer and more complete. One of the ways this richness manifests itself is in more varied and more complex musical repertoire. Indeed, the full year-long Orthodox liturgical cycle includes many hundreds of hymns, all of which may be rendered to a number of different chant melodies and in a variety of vocal arrangements and voicings (unison, two-, three-, four-part, etc.)

To provide this vast amount of musical material to an ever-growing number of Orthodox missions and parishes is an enormous task, requiring the talents and efforts of many scholars, composers, arrangers, and publishers. The purpose of the present article is to examine some of the legal and ethical issues of copyright that church musicians need to become aware of, if the activities of the above individuals are to assume a legitimate place in the life of the Church.

It would be an understatement to say that the present situation in our parishes with respect to musical copyright is far from normative! A great deal of confusion and misconception exists among church musicians when it comes to matters of acquiring, photocopying, and adapting liturgical sheet music.

The causes for this are largely historical, stemming from the circumstances under which the typical choral repertoire, particularly in English, came into being. In most cases English settings and adaptations were made to fulfill the immediate needs of a particular local community. Those who made the adaptations often did not foresee these works ever “traveling” beyond their parish and were not concerned with copyright issues. At the same time, little effort was made on the national or diocesan level to review, systematize, or disseminate such adaptations.

Enter the photocopy machine! Right about the time the use of English was growing throughout the American Church, the copy machine became a ubiquitous piece of

A great deal of confusion and misconception exists among church musicians when it comes to matters of acquiring, photocopying, and adapting liturgical sheet music.

equipment in parishes, sometimes even in the choir loft. Needy choir directors, in their frantic search for English musical settings (which were not being provided by the respective central Church administrations), thought nothing of borrowing music wherever

they could find it and photocopying it—sometimes for their own reference, in single copies, and sometimes in multiple copies for each choir folder or notebook.

At the same time, numerous new adaptations and arrangements were being made, sometimes without any attribution and sometimes from sources of dubious authenticity—handwritten copies made by some choir-master from the “old country.” “What possible copyright issues could exist here?” people (innocently) thought. After all, the composers, if their names were even known, were long dead, and besides, don’t the traditional chant melodies belong to the whole Church?! Even some arrangers took the attitude that their work was being done “for the good of the Church,” and thus freely disseminated their adaptations in photocopies, usually without any ecclesiastical or musical evaluation. With the proliferation of computer software for music typesetting (e.g., Finale™, Encore™ (now Sibelius™), Score™, and others) even more material is now being produced without any regard for issues of copyright or intellectual property. As a result, a certain unfortunate precedent has been established, whereby the repertoire of Orthodox liturgical music is seen as an “open field,” where anyone feels free to enter and help himself to any piece of sheet music with the aid of a photocopy machine.

At this point it is appropriate to take a look at the United States Copyright Law (in its latest revision, dating from 1978) and see exactly what it says and how it applies to Orthodox liturgical music. On the facing page you will find “Answers to Common Copyright Questions.” The information addressed in those questions and answers applies to ALL church musicians in the United States. Those who are affiliated with Roman Catholic

Answers to Common Copyright Questions

compiled by the Church Music Publishers Association.

Adapted with permission.

What does “Copyright” mean?

- The U. S. founding fathers determined that it was in the public interest that the creative works of a person’s mind and spirit should belong, for a limited time, to the author or creator. The protection of these works is called “copyright.” The United States Copyright Law grants to the copyright owner the exclusive rights to original material for a term that is equal to the length of the life of the creator/author plus 50 years. The copyright owner is the only one who has the privilege of reproducing the work. If any other party wishes to reproduce the material in some manner, permission must be obtained from the copyright owner.
- Visible notice of copyright should appear on all copies of copyrighted music. Whether on the owner’s original works or on licensed copies, the notice should be visible and contain the word “copyright” or the symbol ©, the year of first publication, and the name of the copyright owner.

What are the rights of copyright owners?

- To reproduce the copyrighted work in printed copies or on records, tapes, video cassettes or any duplicating process now known or that later comes into being (e.g., CD-ROM, DVD, on-line.pdf files, etc.).
- To make arrangements and adaptations of the copyrighted work.
- To distribute and/or sell printed or recorded copies of the work or to license others to do so.

Who owns the legal right to make copies?

- The original creators (authors and composers) and/or publishers, their assigned agents, licensees, etc.

Is it permissible to perform copyrighted works in church?

- Yes, you may perform copyrighted religious works from legal editions in the course of services at places of worship or at religious assemblies. Legal editions, however, do not result from unauthorized (illegal) duplication of copyrighted religious works. (I.e., to purchase one copy of sheet music, then make 20 copies for the choir without permission and perform it in a worship service is not legal or ethical.)

Must I get permission to copy, print, photocopy, etc.?

- Yes, permission must be secured prior to any such uses and/or duplications.

If I can’t find the owner of a copyrighted piece of music, can I go ahead and use it without obtaining permission?

- No. Check the copyright notice on the work and/or check with the publisher of the collection in which the work appears. Once you know the name of the copyright owner, write or call the publisher for permission.

What if no copyright notice appears on the piece of music? Can I assume the piece is not protected and reproduce it without permission?

- Not necessarily. The statute protects the creative work even if a copyright notice doesn’t appear (statutory copyright). It is still necessary to obtain permission from the author or publisher.

But what about out-of-print items?

- Most publishers are agreeable, under special circumstances, to allow reprinting of out-of-print items, but again, permission must be secured from the copyright owner prior to any duplication, and a statement of permission should appear on the copies.

What is “Public Domain”?

- If a work is in the “public domain,” this means that the copyright protection for it has expired and the work is dedicated to the “public” for use as it sees fit, with no permission being required from anyone.

*In our “democratic” circumstances,
the responsibility of each individual choir director,
church singer and parish becomes that much greater
to respect and abide by the copyright laws of our nation.*

and Protestant parishes are likely at least to have been exposed to these issues at one time or another during their academic training or professional careers. Regardless of whether the laws and principles of copyright have been followed scrupulously in the past, there is, in fact, a host of composers, arrangers, and publishers who derive their main livelihood from serving the musical needs of these parishes. Educational and consciousness-raising efforts continue to be carried out by such trade organizations as the Music Publishers Association (MPA), the Church Music Publishers Association (CMPA), and Christian Copyright Licensing, Inc. (CCLI). But what can be said of the situation in Orthodox church music circles?

There is, to be sure, an age-old historical precedent of “anonymous creativity” in the Church. Until a certain point in time, neither iconographers nor hymnographers (or chant composers, who oftentimes were also the hymnographers) signed their names to their creations, because it was their understanding that the real Creator of all art and music, indeed all beauty, was the Lord God Himself. The liturgical artist merely “uncovered,” through the medium of pigments or musical tones, that which was created and revealed by God. To claim any “ownership” or “copyright” to an icon or a chant setting of a hymn would have been considered incongruous, if not downright repugnant. In this respect, all liturgical art was truly “public domain” in the sense that it belonged to the entire Church community for use as it saw fit.

At the same time, in those seemingly idyllic times, in societies that were primarily “Orthodox,” the economic realities for liturgical artists were considerably different from what they are today. Many liturgical artists were monastics, whose daily living requirements were taken care of by the monastic community. In Orthodox lands there was also an active system of patronage, whereby heads of state, church hierarchs, and other individuals of economic means provided economic support for the building, decorating, equipping, staffing, and maintaining of churches; this included the production of liturgical and musical books, initially by hand copying and later by printed means. Since the middle of the eighteenth century, in traditionally Orthodox countries such as Russia, the national Church (the Holy Synod) supplied the liturgical needs of parishes by publishing and distributing codified chant books containing all the necessary chants for the liturgical year.

Parallel to this, in these very same countries, a well-established tradition developed of individual composers and arrangers (including some in priestly and monastic

orders) who arranged chants polyphonically and freely composed new liturgical works. These works were all accorded copyright protection, and the publication and distribution of these works also supported a number of music publishers.

In the United States and elsewhere in the West, the Orthodox Church in general exists under very different circumstances than in Old World countries. And certainly the economics of church life are extremely different in every respect; there is no government or ecclesiastical sponsorship on the scale outlined above, although certainly there can be private support by individual members of the Church. Still, in our “democratic” circumstances, the responsibility of each individual choir director, church singer and parish becomes that much greater to respect and abide by the copyright laws of our nation.

The moral and ethical issues facing church musicians with respect to copying sheet music are sometimes brought into better focus by using other examples from church life. To build a church building, a church community would hire a competent professional architect and various contractors who are experts in their respective fields. Few buildings would be put up nowadays by volunteers; and no community would expect simply to “borrow” a building or space for holding services from a neighboring church for nothing. Similarly, to paint the icons or frescoes in the church, no community would simply put up posters of icons photographed in another church: the services of a highly skilled artist, versed in the iconographic art, would be retained. The same can be said for church vestments, sacred vessels, and other items connected with the temple.

Yet, when it comes to liturgical sheet music, in many cases this line of thinking breaks down. Choir directors and even members of the clergy, who are in every other respect honest, moral, and law-abiding Orthodox Christians, think nothing of going over to the copy machine and making dozens, hundreds, and in the long run, even thousands of music copies that are in every sense illegal and amount to robbing the copyright owner of the lawful proceeds of his or her creativity, talent, and honest labor.

One often hears the argument that if central Church administrations or diocesan music departments would make the necessary music available, the parish or the choir would gladly pay for it. But the sad reality is that the Church in America, as a whole, has relinquished its custody and “ownership” of its liturgical music heritage: with a few exceptions, central diocesan music

departments do not provide even a fraction of the necessary musical materials for a complete cycle of worship. At the same time, the wholesale photocopying of copyrighted material has produced an economic environment in which diocesan music departments, not to mention individual composers or publishers, cannot survive. (Some years ago, the Department of Liturgical Music of the Orthodox Church in America was essentially shut down due to a lack of funding.)

To look on the positive side, however, the present situation is such that there is nowhere to go but up. Orthodoxy in America has been blessed with a number of talented individuals—composers, arrangers, editors, and scholars—who are able and willing to do great things musically for the Church. We also have the technological tools—computers, laser printers, the Internet—the likes of which have never been available before to church musicians. With proper support and encouragement from the hierarchy, the clergy, and above all, church musicians, the vast riches of the Orthodox musical heritage can be “unlocked” and put to their proper use—to make beautiful, heavenly singing a reality in the

liturgy here on earth and thereby bring more and more people in this country to the full knowledge of the Truth of Christ. ✚

(The next installment of this article will take a closer look at the specific creative components that comprise a piece of liturgical music: what constitutes an arrangement, an adaptation, an edition, a composition; what may be considered to be in the “public domain”; what is and isn’t copyrightable under the law; and various issues connected with permission, licensing and publication.)

We recommend the following websites for further information about copyright issues:

Yesterday Service, Inc.:

<http://www.yesterdayservice.com>

Church Music Publishers Association:

<http://www.cmpamusic.org/copylink.html>

Music Publishers’ Association: Resource Center:

<http://www.mpa.org/crc.html>

The Copyright Website:

<http://www.benedict.com/>

Copyright: The Complete Guide for Music Educators

By Jay Althouse

Alfred Publishing Co., Inc. 2nd Edition, 1997, \$10.95

In a style that does not use complex or confusing legal terminology, Jay Althouse carefully articulates the history and development of copyright law and the “legal why’s and why not’s [as well as] the moral why’s and why not’s.” Although he does not write in depth about how to copyright your own works, in his description of the law and history much of what is necessary becomes clear. When I picked up this clear and concise book at the music store, little did I know just how much of what it said would apply to me and to other Orthodox church musicians. Except for a paragraph here and there which deals, very specifically, with educational uses, this book could have been called, “Copyright: The Complete Guide for Church Musicians”!

Mr. Althouse defines what the five exclusive rights of copyright owners are, of which only four really apply to music. They are: “1) The right to reproduce the copyrighted work in copies or phonorecords, 2) The right to perform the copyrighted work publicly, 3) The right to prepare derivative works [arrangements, transcriptions, translations, etc.] based on the copyrighted work, 4) The right of public distribution of a copyrighted work.” In subsequent chapters, he clearly delineates how these rights apply both to the copyright owner and to individuals, schools, churches, etc.

Why is copyright law important to us as church musicians? In answer to that question the author writes, “We, the public, are the main beneficiaries of copyright laws. And we have a moral and legal obligation to abide by those laws.” Continuing, he says, “Copyright makes publication—and the public dissemination of knowledge possible. Which brings us to a secondary purpose for copyright: rewarding the creators for their writings.” He also writes, “Without that right a writer or composer has no protection against the unlimited free use of his work by others. If everyone has free access to a writer’s work, it has no material value. No potential income. The only incentive to create, then, is personal satisfaction,” or, for many of us, to help the Church.

How many of our gifted musicians would create more works if such incentive existed, or if they could put food on the table by being a full-time composer? How many of us copy music without regard for or compensation to the composer or arranger? How many of us who compose or arrange attach all of the necessary information to our music, so people can contact us if they want to ask permission to make an arrangement or to make copies? How many of us change other people’s compositions and arrangements without first obtaining their permission? These are tough issues that must be addressed if we are to see growth and maturity in our liturgical music in North America. One way to begin to deal with these issues is to understand the law. I strongly encourage you to read this excellent book. ✚

—Reviewed by Alice Hughes, Managing Editor