

Copyright Issues for the Orthodox Church Musician

Part 2

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In our previous article on music copyright (*PSALM Notes*, Spring 1999), we examined the all-embracing nature of copyright law in the United States and the need for Orthodox church musicians (as well as everyone else) to adhere to its tenets and principles.

It is undoubtedly true that the overwhelming majority of church musicians are honest and ethical people, whose every intention is to stay within the letter and the spirit of copyright law. It is probably also true, however, that the great majority of musicians working in the Church may not be aware of the law's general provisions, particularly as they apply to some of the specific circumstances of Orthodox church music. In this second installment of our article, we will focus on some of those particulars and their practical application to our daily work as church musicians. We will also endeavor to identify and to define accurately the terminology that will help us make the appropriate decisions and take the proper actions that will, ultimately, help to support the work of composers, editors, and publishers in the field of Orthodox church music.

New Compositions

Perhaps the clearest example of copyright protection is that which applies in the case of a newly written composition of liturgical music by a living composer. Copyright law clearly and unambiguously protects that individual's creative work from the moment it is set down in some medium, be it a manuscript score or a score typeset on a computer, or even if it is initially recorded onto some type of recording device without being set down in written notation. In a provision known as "statutory copyright," copyright protection extends to a given creative work, whether or not there is actually a copyright notice upon it. To make the issue absolutely clear, however, composers are encouraged to include a copyright notice, which consists of the word "Copy-

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right," the copyright symbol ©, the year of composition, and the name of the copyright claimant, which may be the composer himself or the publisher to whom the composer has assigned the rights to his piece. As an additional measure of protection, the composer or publisher may elect to reg-

ister the copyright of the particular work with the United States Copyright Office by filling out the appropriate form and paying a \$20 registration fee. Registration of the copyright is particularly useful if there is a chance that the copyright will be challenged and a legal paper trail is needed to establish the specifics of that particular copyright. The U.S. Copyright Law of 1976 accords protection to all works created by composers presently living and for 75 years after their death.

The first and most obvious application of this provision for church musicians is that, in the case of a work by a currently living composer or a composer who has died within the last 75 years, it is illegal and improper to duplicate, disseminate, adapt, arrange, or record such a work without the express permission of the composer or copyright holder. Period! If a need arises to do any of those things (i.e., duplicate, disseminate, arrange, record, etc.), it is imperative to contact the composer or the publisher, preferably in writing, with the specific request, and to arrange for the appropriate monetary compensation to the holder of the copyright. Copyright law does permit the performance of musical works at worship services without any infringement upon performance rights. Such permission implies, however, that the appropriate number of copies have been legally acquired, either through purchase or through licensing.

In the eye of copyright law, composition is the most obvious creative act that is accorded copyright protection. But there are other creative acts that are also protected by copyright law. These include: (a) arranging (adapting), (b) editing, and (c) transcription. Let us examine and define each of these concepts more closely.

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Arrangements

The act of “arranging,” in musical terms, means taking a musical composition scored for a particular complement of voices and rendering the same music for a different complement of voices. For example, one might take a unison chant melody and arrange it for four-part chorus, SATB. Or one might take a four-part composition or an existing arrangement scored for mixed voices and arrange it for a two-part children’s chorus: Soprano and Alto. If this type of arranging is to be applied to a work by a living composer (as described above), it is imperative to obtain that composer’s permission. Usually, a legal agreement is drawn up, under which the composer and the arranger share in the proceeds from the sales of the arrangement. It is also possible to arrange a piece of music that is “in the public domain,” which means that the time of its protection under copyright law has expired: this is the case with ancient chants drawn from chant books or works composed by eighteenth- or nineteenth-century composers. While the basic source material is in the public domain, copyright law protects the creative arrangement of that material. Thus, if a living composer takes a unison chant melody and arranges it for mixed chorus, SATB, copyright law protects that arrangement, just as if it were an original composition. Others may take the same source material (i.e., the chant melody, which is in the public domain) and make a different arrangement of it without infringing on the first arranger’s copyright. There is a clear understanding, however, that a creative act must be involved in making the second arrangement.

A particular type of arrangement that occurs frequently in the realm of Orthodox church music is “adaptation” from one language into another. This, too, is considered a creative act that is protected by copyright law. Thus, one might take a unison melody from a Church Slavonic chant book (public domain) and adapt that melody into English. That specific English adaptation, then, is accorded copyright protection. Other individuals may also make adaptations of the same basic material without infringing on the copyright of the first. Similarly, one might take a composition written by a nineteenth-century composer, such as Tchaikovsky, for example (which is in the public domain), and make an English-language adaptation of it; the English adaptation is copyrightable. But if the original work was composed in another language, say, Church Slavonic or Greek, by a living composer, or was still under copyright in some fashion, appropriate permission would have to be obtained before making an English adaptation.

The Use of Translations

In the case of English adaptations, there is the additional aspect of the translation which must be considered. The English translation of a liturgical text is also accorded copyright protection under the same terms as a musical composition; i.e., the work of living translators and poets is protected during their lifetime and for 75 years after their death. Thus, before making either an original musical setting of an English translation of a liturgical text or an adaptation of a previously existing musical work, it is important to check the copyright status of the translation and to obtain the permission of the copyright owner.

Liturgical texts clearly present some specific instances in which their copyright status may be difficult to discern. For many common prayers and brief responses, such as “Lord, have mercy” or “And with your spirit,” etc., to identify the owner of the copyright would be difficult, if not impossible. A translation of poetic hymnography, however, particularly if it is new and recently published under the name of a particular translator, clearly represents a creative act under copyright law. Similarly, copyright protection extends to various translations of the Holy Scriptures. Before setting such texts to music or using them in English adaptations, every effort should be made to obtain the copyright holder’s permission.

Editions

The next type of creative musical act that must be considered is the “edition.” Essentially, an edition consists of a presentation of musical material composed earlier in a new and improved manner, in a new format that somehow improves its usefulness to the end user. The process of creating an edition is most commonly applied to source material in the public domain. Because of the way musical notation and performance practice developed historically, many original works have come down to us in notation that is not complete or does not contain all the information that a performer needs to perform the music. The function of the editor, then, is to add material to the original work that will enhance its “performability” by present-day performers. An example might be taking a work composed in an earlier century which has no tempo markings or dynamic markings, and adding such markings for the benefit of the modern-day performer, based on the editor’s scholarly knowledge of the original work’s style and performance practice. An editor might also add performance indications that were left incomplete by the original composer, or reconcile incon-

sistencies in the composer's manuscript or in the first edition. When this is done, it becomes essential for the editor to differentiate the added markings from the markings in the original source; usually this is done by enclosing editorial additions in square brackets.

Finally, an editor might enhance the modern-day performer's understanding of a piece by supplying scholarly notes or annotations as part of an accompanying critical apparatus to the edition. Copyright law recognizes the creative work of the editor and accords it copyright protection; the copyright thus extends to the edition of a particular work. If the work is in the public domain, another editor is free to make his or her own edition of that work without infringing upon the work of the first editor; as in the cases already mentioned, however, there must be a clear component of original, scholarly creativity involved in making such an edition.

In the area of Orthodox church music, scholarly editions are not encountered as often as original compositions, arrangements, or adaptations. An exception would be the currently ongoing series *Monuments of Russian Sacred Music*, published by Musica Russica—new editions of sacred choral works by the great Russian composers. These editions are copyrighted and may not be duplicated, disseminated, or arranged without permission from the publisher.

Transcriptions

A final category of copyrightable creative musical work that must be considered is the "transcription," which is defined as the rendering of a particular piece of music in a notation type different from the one in which it was originally composed. Transcriptions are particularly applicable in the case of archaic neumatic or "staffless" notations, such as early Byzantine or Znamenny, the musical meaning of which is open to some debate. Scholars spend entire lifetimes learning to interpret and transcribe these ancient notations into modern-day notation, and the results of their work are accorded protection under copyright law. Again, it is possible for several different scholars, working from the same original source, to produce several different transcriptions, all of which are copyrightable.

With the advent of computer music-typesetting software, the process of creating newly notated versions of various preexisting musical settings has become extremely widespread. Whereas in earlier eras, the process of publication and dissemination was concentrated in the hands of specialized music publishers, who understood the various legal rights and procedures, nowadays every choir director with a computer has become a "publisher" of sorts. Within the context of this discussion it is essential to reiterate the importance of obtaining the appropriate permission from the holder of the original copyright and of giving appropriate and accurate credits on the newly produced version. At the same time, it is important to note that certain aspects of such re-notation by computer are not copyrightable. For

example, if one takes a work by a nineteenth-century composer, originally published in modern-day notation by P. Jurgenson of Moscow, and simply re-typesets it on a computer program such as Finale™ without adding any editorial markings or changing the original Church Slavonic text, there are no grounds to call such a computerized transcription an "edition" that would be copyrightable under the law: the computer transcriber in this case has not added anything original or creative in the process. By producing a newly typeset version of material in the public domain that may be difficult to obtain otherwise, the transcriber is essentially performing a public service, and he or she may legitimately do so, but it would be inaccurate to term such a transcription an edition or to copyright it.

Summary

From the preceding discussion we see that a given piece of music sung at a service in an Orthodox church may be the end result of several stages in the creative process. A chant scholar may have transcribed a hymn originally notated in neume notation into modern-day notation. A composer may have arranged that chant melody for four-part mixed chorus (SATB); this arrangement may have been adapted into English; and yet another individual may have arranged that adaptation for male chorus (TTBB). At each stage, copyright law protects various aspects of the creative process, and appropriate permission must be obtained before undertaking any of those additional creative steps.

The number of combinations in the above scenario that one might imagine is really quite numerous, and it is impossible to list all of them here. One fundamental principle remains in operation, however: the intent of the U.S. Copyright Law to protect the legitimate, creative work of composers, arrangers, editors, and scholars. This writer believes that, as church musicians, we have the moral and ethical obligation to respect the letter and the intent of copyright law. To the extent that any financial gain might be realized from the publication and recording of Orthodox musical transcriptions, editions, arrangements, and compositions, by adhering to the law the Orthodox Church community can begin to support materially the work of the creative musical artists in its midst. But ultimately, financial gain is not the issue: it is very unlikely that an Orthodox church composer will ever see the same benefits that might be realized by a pop or rock star. Rather, it is simply the principle of giving credit where credit is due and respecting the result of the God-given creative impulse, which provides a source of encouragement to the creator and a sense of moral satisfaction to the consumer. ✚

(The final installment of this article will take a closer, hands-on look at the actual process of researching and preparing a piece of Orthodox church music for publication.)