

Copyright Issues for the Orthodox Church Musician

by Vladimir Morosan

The previous two articles in the present series on copyright (*PSALM Notes*, Vol. 3 No. 2 and Vol. 4 No. 1) had as their purpose to bring to the attention of church musicians the various issues surrounding musical copyright—issues that for many reasons have not been of paramount concern to many of our colleagues in the Orthodox Church. It is hoped that in time awareness of these issues will become the norm, as the Orthodox liturgical music scene in North America develops a degree of maturity and fullness. We have examined the basic legal concepts of copyright protection as they apply to creative aspects of church music and have attempted to define a common vocabulary by which the various stages of the creative process—composition, arrangement, adaptation, edition, and transcription—can be clearly identified.

This third and final article about copyright will examine the practical steps involved in actually preparing an Orthodox musical work for publication and dissemination, from the obtaining of the necessary permissions, through the various editorial steps, and culminating with properly identifying and documenting the creative process as it is manifested in the final published result. We will also address some of the practical hands-on aspects of the editing and publication process, particularly as they apply to the production of musical scores by means of computer software.

As mentioned before, the choir libraries of most churches are full of sheet music that was prepared without due consideration for or awareness of various copyright issues. Many adaptations into English made over the last fifty years were handwritten and were freely circulated by means of photocopies, without much regard for the authenticity of the sources or the accuracy of the notation. These pieces fulfilled an immediate need and purpose, as parishes moved to the use of English, but in many

instances they have outlived their usefulness or have become illegible through many generations of photocopying.

Today, computer technology allows the production of beautiful, newly typeset scores of liturgical settings, which are likely to be around even longer than their handwritten predecessors. Care must be taken, however, that these new versions adhere to the highest possible standards and do not perpetuate some of the glaring omissions and errors found in some of the earlier versions. In the ensuing discussion we will attempt to provide some guidelines that should be helpful in the process of creating new editions.

Identifying the Sources

The very first thing one must do before commencing to produce a new edition, whether by manuscript or by computer, is to examine critically the nature of the source and the stages of the creative process that went into it. In so doing, one must ask the following questions: If the piece is an original composition—be it in Greek, Church Slavonic, English, or some other language—was it originally composed in that language, and is the composer still living? If the work is an arrangement of a chant, the same questions must be asked: What is the language of the original chant, and is the arranger still living?

If it is determined that the composer or arranger is still alive, then every effort must be made to locate that person and to ask his or her permission to produce what amounts to a new publication of the work. This must be done even if there is no copyright notice visible on the original music, because the 1976 U.S. Copyright Law accords statutory copyright protection to all creative works, even if the copyright notice is not visibly present or registered with the U.S. Copyright Office.

In the case of settings in English that most likely were not originally composed in English, it is important to gather accurate information about the original-language

source from which the English adaptation was made. While this may be a challenge, it is important to compare the two and to establish just what changes were made in the course of the English adaptation, and who made them. Just as in the case of a composer or chant arranger, the work of the person who made the English adaptation is a creative act that is protected under the copyright law; he or she should be contacted for permission before one undertakes to republish his or her work.

Establishing and identifying the original source may be difficult, but it is not impossible. There are sizable collections of original source material, particularly from the Russian choral tradition, in various collections and libraries around the country, e. g.: the collection of Musica Russica, the Kolchin Collection at St. Vladimir's Seminary, the Tkaczenko Collection at Yale University, and the Gorokhoff Collection at the Boston Public Library, to name just a few.

When the original published version is compared to the English adaptation, it can be determined whether the English version accurately reflects the original source or distorts the original in some way, containing elements and markings that were not originally present or omitting them altogether. In the latter case, when preparing a newly typeset version one must differentiate between the original markings and those added later. This is customarily done by enclosing the changes in square brackets and/or describing the editorial changes in a footnote or a brief accompanying paragraph.

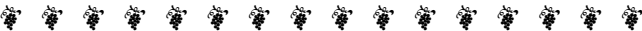
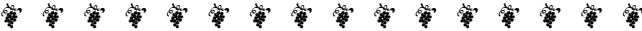
In some instances it may be difficult to establish the exact origins of a particular manuscript adaptation of an Orthodox church hymn. This being the case, however, it is all the more important when making a new edition to identify clearly and accurately whatever information is known. For example, if the setting appears to be a four-part choral arrangement for SATB of an unidentified chant melody, adapted into English by an unknown person, it would be appropriate to state this information as follows: "Unidentified chant/Author of arrangement and English adaptation unknown." Similarly, if some of the above information is known, this should be indicated on the music: for example, "Kievan Chant, Tone 6/ Arranged by _____/Author of English adaptation unknown," etc. (See the sample page of music opposite.)

The Publication Process

Once the appropriate research has been done identifying and authenticating the original sources of a particular setting, it becomes possible to determine whether (a) the original source material is in the public domain; (b) the original music is in the public domain, but some aspects of the particular adaptation, arrangement, or edition are under copyright; or (c) the entire work is still under copyright. In the latter two instances, permission must be obtained from the copyright holder before publication and dissemination can legally take place.

In the traditional publication scenario, a composer, arranger, or editor submits his or her work to a publisher for consideration. If the submission is an arrangement, adaptation, or edition (the nature of which should be described accurately in the submitted manuscript), the publisher will request appropriate documentation stating that the person making the derivative work has the right to do so and describing how that permission was obtained. The submitted work is then reviewed by the publisher and is either accepted for publication, returned to the submitter for revisions or modifications, or rejected.

The process of editorial review, among other things, ensures that the setting meets the standards of musical quality, notational accuracy, and consistency of format, as established by the publisher. While each publisher may have a specific preferred "style sheet," the notational standards are by no means arbitrary: rather, they adhere to such widely used reference manuals as Gardner Read's *Music Notation: A Manual of Modern Practice* (Taplinger Books). In Orthodox liturgical music in particular, there are many notational issues to be addressed: the manner in which unmeasured chant is handled; the indication of various rhythmic groupings and other proportional relationships between note values; and the addition of tempo and dynamic markings, which are often missing from chant transcriptions, but which are essential to singers and conductors who may be encountering this music for the first time. The importance of notational standards and consistency of appearance is all the greater nowadays, when a wide variety of computer software offers the possibility of producing music in a great variety of formats—some of which conform to accepted norms and some of which do not.


The very first thing one must do before commencing to produce a new edition is to examine critically the nature of the source and the stages of the creative process that went into it.


After the appropriate revisions have been made, and a work is accepted by the publisher, a publication agreement is executed, either transferring the copyright to the publisher or retaining the copyright with the composer or editor. Under the agreement, the publisher pays the composer, arranger, or editor a royalty on net sales (typically 5% for editions and 10% for compositions). The expenses for typesetting have traditionally been assumed by the publisher or deducted from the gross sales. In the case where a submission is already typeset on a computer program, the deduction of typesetting expenses may be adjusted or waived altogether.



A *s awareness of and respect for copyright issues grows among us all, we will undoubtedly find that the creative artists in our midst will be motivated all the more to share their talents with the entire Church.*



Economic Considerations

Selecting, arranging, reviewing, editing, and typesetting music is an expensive, labor-intensive process. In the music publishing industry, the going rate for computerized music typesetting alone ranges from \$20 to \$40 per page, depending on the complexity of the musical score. From a composer's or arranger's viewpoint, an important benefit of publication through an established publisher has traditionally been the publisher's ability to provide technical expertise in the matter of format and notation, as well as promotion, marketing, and wide dissemination. From the publisher's perspective, however, printing, promotion, and marketing are considerable expenses that must be covered by sales, in addition to the initial costs of selecting and preparing the musical scores for publication. This is why the royalties paid to composers, arrangers, and editors are, to all appearances, so small.

Self-Publishing

The production of newly typeset versions of music on computer is not qualitatively affected by the issue of whether the intended use is strictly within one's own

parish or for wider dissemination. In all cases, the copyright law is very clear: one may not adapt, arrange, reproduce, disseminate, or publish copyrighted material without permission of the copyright holder. Practically speaking, however, the existence of computers, laser printers, copy machines, and the Internet makes it extremely easy to disseminate copyrighted material illegally. It is conceivable that someone might produce a newly typeset piece of music within the confines of his own study solely for private use (which is technically permissible under the copyright law). The minute the music is used in a church service, however, this constitutes public use, and unless the appropriate permission is secured, would result in infringement of the copyright.

The advent of computerized typesetting, along with the possibility of distributing publications electronically over the Internet, is radically changing some aspects of music publishing. But other facets of the publishing process remain the same. Music still has to be carefully selected, edited, typeset, and proofread. Even with electronic distribution via the Internet, there are costs associated with setting up, maintaining, and promoting the web site. For private individuals acting as "self-publishers," some of these costs may appear to be minimal, but they nevertheless exist and may not be immediately apparent.

In addition to some of these hidden costs, electronic dissemination of musical scores, whereby a user downloads a file in .pdf (portable document format, using Adobe Acrobat freeware), still carries with it issues of copyright. The fact that it is possible to send someone a copy of a piece of music over the Internet at no cost does not make such an action legal, any more than photocopying a copyrighted piece of sheet music on paper and giving it to a friend or an associate is legal.

The Licensing Alternative

There are essentially two ways in which one may legally obtain the right to use musical material that is under copyright: (1) by purchasing the required number of copies from the publisher, or (2) if purchase is not possible (either because the piece is out of print or because it is part of a larger book or collection), by obtaining a "license to copy"—a statement from the owner of the copyright, customarily in writing, granting permission to copy for use under specific circumstances. The license may be general, such as "Permission to copy is granted for liturgical use only"; or limited, as in "Limited license to copy is granted for use at the _____ liturgical music workshop."

Whether a publication is obtained in printed form from the publisher or downloaded from a web site, by granting a "license to copy" the publisher grants the purchaser the

continued on page 21

sacrifice that is greater than all sacrifices of victims. This is as it should be. In such sacrifices the blood of irrational animals was shed, but from the soul and a good conscience rational praise is offered up. Rightly did the Lord say: "The sacrifice of praise shall glorify me, and there is the way by which I will show him the salvation of God" (Ps. 49:23). Praise, then, the Lord in your life, offer to Him the sacrifice of praise, and thus show in your soul the way by which you come to His salvation.

PRAISE ISSUING FROM A PURE CONSCIENCE delights the Lord, and so the same psalmist exhorts us: "Praise ye the Lord because a psalm is good; to our God be joyful and comely praise" (Ps 145:1). With this in mind, aware of how pleasing to God is this ministry, the psalmist again declares: "Seven times a day I have given praise to thee" (Ps. 118:164). To this he adds a further promise: "And my tongue shall meditate thy justice, thy praise all the day long" (Ps. 34:28). Without doubt, he had experience of the good to be derived from this work, for he reminds us: "Praising I will call upon the Lord, and I shall be saved from my enemies" (Ps. 17:4). It was with such a shield to

protect him that as a boy he destroyed the great power of the giant Goliath and, in many other instances, came out victorious over the invaders. †

Niceta of Remesiana was a fourth-century missionary bishop in what is now Yugoslavia. Niceta wrote several essays, which have survived, and a number of hymns, which unfortunately have not. This article was excerpted from "Liturgical Singing" (De Utilitate Hymnorum) from Volume 7 of the series Fathers of the Church, published by Catholic University of America Press, Washington, DC, and is used by permission. The conclusion will appear in the next issue.

Please note that Psalm references are given in the Hebrew numbering only, as in the original text. We apologize for any inconvenience this may cause.

- 1 . . . *de gratia et utilitate* . . . 2 *Laudum*, lit., "praises."
- 3 The Latin text of this paragraph as given by Burn (p. 68) has been rejected in favor of the text published by C. H. Turner in the *Journal of Theological Studies*, vol. 24.
- 4 . . . *non more tragoediae vocis modulamine garriendum*.
- 5 Niceta's title, *Inquisitio Abrahae*, may stand for *Análepsis Abraám* (Acceptance or, possibly, Ascension of Abraham), which is mentioned in Pseudo-Athanasius (Migne, PG 28.432b), or for an *Apokálupsis Abraám*, alluded to by Epiphanius (PG 41.671d). St. Jerome speaks of *fictas revelationes omnium patriarchum*. See note in A. E. Burn, *Niceta of Remesiana*, p. 70. *Acquisitio* would have been a Latin equivalent for *Análepsis*, and may have been the original reading.

Copyright continued from page 18

license to make a certain number of copies legally, in exchange for the appropriate payment. Customarily, the licensing fee is somewhat less than the cost of purchasing printed music, since the actual expenses for copying and multiplying are borne by the purchaser.

In the fledgling world of Orthodox music publishing, there are as yet few established precedents for licensing liturgical music. The music publishing concerns with which this writer has been affiliated—Holy Note Press, Musica Russica, PSALM Music Press—have tried to develop a licensing fee structure that is both reasonable and affordable, in making music available to liturgical music workshops, diocesan assemblies, and individual parishes. The fees at present amount to 10¢ per copy, per page, with the minimum license covering five copies (this assumes that a purchaser of a license will be needing to make at minimum a total of five copies to cover the basic requirements of a church choir). For example, a five-copy license for a two-page piece of music would cost 50¢ per page, or a total of \$1.00, with each additional license costing 20¢. Thus far, every organization and individual with whom the above publishers have dealt has found this fee structure to be reasonable and by no means excessive.

PSALM Music Press, the music publishing arm of PSALM, Inc., is currently in the process of exploring the feasibility of publishing and distributing liturgical music on the Internet by means of issuing licenses. In doing so,

however, it is essential that the artistic and economic rights of those who contribute to this effort be protected, as foreseen by the copyright law.

Conclusion

To most Orthodox church musicians, the area of copyright represents new and uncharted territory. The intent of the preceding three articles has been to identify some of the issues that are germane to this aspect of our liturgical music. Hopefully, these articles have succeeded in educating and raising the level of awareness among the readers of *PSALM Notes*. Now the word must be spread with the intention of making all Orthodox church musicians aware of these issues. This is an instance where, according to the motto of PSALM, "We must begin to learn from one another." If, after reading this series of articles you find yourself faced with specific issues or questions, you now have the resources and expertise of the entire PSALM community through the e-list (orthodoxpsalm@egroups.com) to voice your questions and concerns.

As awareness of and respect for copyright issues grows among us all, we will undoubtedly find that the creative artists in our midst—the composers, arrangers, editors and publishers—will find themselves encouraged and supported, and thus will be motivated all the more to share their talents with the entire Church. †