



Harmony, Inc.

International Organization of Women Barbershop Singers

Copyright 1-2-3 – Frequently Asked Questions about “Keeping it Legal”

The songs we perform are protected under U.S. and Canadian copyright law and are the “intellectual property” of the owner. In order to use the songs for any purpose, choruses and quartets must get permission (which may include fees) to do so.

The following Frequently Asked Questions (FAQs) cover some of the basic guidelines for various uses of songs and arrangements. Other documents provided by the Barbershop Harmony Society on their website, such as Copyright Basics for Barbershoppers and FACQ - Frequently Asked Copyright Questions, are excellent references.

Part 1 -- Licensing and Learning Tracks

Q1: I read that you need a mechanical license if you buy or create learning tracks? What is a mechanical license?

A1: The mechanical license gives permission for the “intellectual property” to be copied (reproduced) mechanically. It is the “fee” for use of the property. A mechanical license is required if you distribute copyrighted musical compositions on CDs, records, tapes, in electronic files, and in certain other digital configurations. This license is required whether or not you are selling the songs that you distribute.

There are several agencies that represent copyright holders for the purpose of obtaining mechanical licensing, with the most prevalent being the Harry Fox Agency (HFA) for U.S. copyrights. Harry Fox provides an online search system, Songfile at www.harryfox.com, which you can use to see if a song is represented by HFA and, if so, pay the licensing fees directly to HFA. They in turn will disburse them to the copyright holder(s).

In Canada, two companies represent most of the major music reproduction rights of publishers: the Society for Reproduction Rights of Authors, Composers, and Publishers in Canada (SODRAC) at www.socrac.ca/Accueil_EN.aspx, and the Canadian Musical Reproduction Rights Agency (CMRRA) at cmrra.ca.

The U.S. Copyright Office has a base royalty rate of 9.1 cents or 1.75 cents per minute of playing time or fraction thereof, whichever is greater, for all copies sold or otherwise distributed. Canadian rates vary according to the covered plan: “pay-as-you press” or “Mechanical License Agreement.” Pay-as-



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you-press licenses are currently 8.3 cents per minute for playing time of five minutes or less, with 1.66 cents for each additional minute. This is the most common plan used for licenses purchased in smaller quantities.

Be aware that there are minimum quantities for which mechanical licenses will be issued. In the U.S., the minimum quantity is 25 copies, or \$2.28 per song (five minutes or less). In Canada, the minimum quantity is 500 copies, for a license cost of \$41.50 per song (five minutes or less).

Some songs have more than one copyright holder, and they may not all be represented by the same agency. In this case you will pay a pro-rated licensing fee to each copyright holder. Also, most agencies will also add an administrative fee to the cost of the licenses. In the case of multiple copyright holders, you may have to also pay multiple administrative fees. Be sure to research in advance the cost of obtaining a mechanical license for each song you plan to reproduce, and each learning track you plan to purchase and distribute, so you are aware of the fees before making the commitment.

Remember: **EACH** song in a medley of songs must be individually licensed!

NOTE: Copyright fees are paid in the country in which the copyright is held, not where the purchaser resides.

Q2: We are using learning tracks for education purposes only – Do we still need a mechanical license?

A2: You can legally make a single audio recording for archival, educational, or study purposes. However, if you distribute the recordings, either for sale to the public or for free to your members for learning purposes, you must obtain a mechanical license for each copy distributed. And keep in mind that each single, part-predominant copy of a learning track is considered a separate copy. So if you buy all four parts and a full mix, this is considered five copies. Multiply each separate track times the number you will distribute to figure out your total licensing cost.

Q3: Does my mechanical license cover digital learning tracks?

A3: US and Canadian law differ on what is covered in a mechanical license. In the US, mechanical licenses are valid for physical and digital reproductions.

In Canada, there is a difference in the licensing for the reproduction of physical products, such as CDs, versus digital downloads. Mechanical licensing typically covers reproduction of songs on CDs, cassettes



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and similar "sound carrier" products. So if you distribute learning tracks on CDs only, then you need a standard mechanical license.

If you are distributing learning tracks digitally, e.g., via mp3 or other type of media file, then you need an online license, which covers reproduction of songs for distribution as permanent downloads (e.g., via iTunes), as limited downloads (from cloud sharing sites like Box.com, Members Only sections of our own web sites, or via email), or from on-demand streaming services.

Q4: What is "public domain" music and do I need a mechanical license to use those songs?

A4: Public domain means just that – no one owns the songs and they can be used by anyone. In the U.S., music and lyrics published before 1923 are in the Public Domain. Under Canadian law, a musical work is copyrighted if its author (composer or lyricist) is still living, or if the author died less than 50 years ago. If more than one author created the work, copyright extends until 50 years after the death of the last surviving author. If more than 50 years have passed, then the work is in the public domain.

There may be some works that are public in the U.S. and protected in Canada, so make sure you thoroughly research a work in both countries if it has both U.S. and Canadian origins.

(I made this its own paragraph – it's a very important point!) An arrangement of a public domain song is called a "derivative work." In this case, the copyright belongs to the arranger. You must contact the arranger to determine any fees involved in creating and distributing audio recordings of their arrangement of a public domain song. An extensive list of public domain songs can be found at www.pdinfo.com. Wikipedia.org is also a good source for identifying the origin year of a song.

Q5: If I purchase learning tracks from someone, do I need a mechanical license?

A5: You will need to contact the distributor of the tracks to find out if they secured the mechanical licensing (since some include the fee in the cost of their tracks), or if they require the purchaser to do so. For songs in the public domain, you may either be paying the arranger, or someone acting on behalf of the arranger. For non-public domain songs, you will typically pay a licensing agency, e.g., Harry Fox. In all cases, make sure that you fully understand who is responsible for securing the mechanical license.

Q6: What if the song we are using is a medley?

A6: You will need to purchase a separate mechanical license for each song in the medley. HFA charges a "license processing fee" per song for medleys (currently \$15 as of publication of this document).



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CMRRA requires a separate mechanical license application for each song in the medley; however, you indicate on the application that the song is part of a medley.

Q7: Do you have suggestions for keeping track of all these licenses?

A7: There are some ways to help make license tracking easy:

When you order sheet music for your chorus or quartet for which you plan to purchase learning tracks, secure mechanical licenses for the number of copies of the music you purchase. This will help make sure your sheet music and licensing are aligned.

Protect the distribution of learning tracks by storing them on a “Members Only” section of your chorus or quartet website or by using an online storage site that tracks the number of users authorized to download tracks. Sites such as Box.com (www.box.com) or Dropbox (www.dropbox.com) are some examples.

Q8: Why is this important? Would anyone really know how we are using these learning tracks?

A8: While it can be confusing, copyright law is designed to help protect songwriters, publishers and arrangers. These works are the livelihood of these professionals and make it possible to sing the songs that make our hobby great. These FAQs will hopefully help choruses and quartets “keep it legal” and avoid possible fines and penalties. There are well-known cases where music licensing agencies have pursued legal action against everyone from teenagers to non-profits and everyone in between.

These FAQs, while helpful, are by no means a comprehensive list of copyright requirements. We have enclosed a list of references and documents that provide more information. You may also want to seek legal advice from local attorneys familiar with copyright law, especially if you have songs that are licensed in both the U.S. and Canada.

Part 2 -- Licensing and Video Recordings

Q1: What kind of license is needed to make sure a chorus video is posted legally?

A1: A Synchronization License needs to be obtained in order to legally reproduce or display a video containing copyrighted music. This includes all videos on YouTube, or on a chorus or quartet web site or Facebook page, or distributed electronically in a file or on a medium such as a DVD.



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Q2: So are all those barbershop videos posted on YouTube illegally?

A2: Technically, yes, most of them are. Harmony, Incorporated and the other barbershop organizations take great pains to only post videos for which they have obtained mechanical licenses. But most videos posted by individuals are not properly licensed. This exposes all of our musical organizations, and the individuals who post the videos, to the potential of litigation.

Q3: Is this process for obtaining a synchronization license similar to obtaining a mechanical license as explained in Part 1 above?

A3: There are some similarities and some differences. As with mechanical licensing, the copyright holder or their representative needs to be identified. But the process of obtaining the license is different, and there is no standard pre-negotiated rate for sync licenses.

Q4: So what exactly is different about the process?

A4: A fellow barbershopper has written an article that provides an excellent example of the process of obtaining a sync license from start to finish at this link:

<http://www.voicesofgotham.org/getting-your-chorus-or-quartet-videos-up-on-the-web-legally>

As mentioned in the sidebar to this article, sometimes a video must be edited to meet the criteria of the copyright owner, and only then will they provide permission to post the video.

References

- Harry Fox Agency – www.harryfox.com
- Canadian Musical Reproduction Rights Agency Ltd. (CMRRA) - www.cmrra.ca
- CMRRA Mechanical Licensing FAQ - <http://www.cmrra.ca/faq/mechanical-licensing-faq/>
- Society for Reproduction Rights of Authors, Composers, and Publishers in Canada – www.sodrac.ca/Accueil_EN.aspx
- Harry Fox Mechanical Licensing FAQ - <http://www.harryfox.com/public/MechanicalLicenseslic.jsp>
- <http://www.cmrra.ca/cmrradocs/mlbe13.pdf>
- Public Domain Songs – www.pdinfo.com
- Barbershop Harmony Society – www.barbershop.org



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Acknowledgements

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<http://www.voicesofgotham.org/getting-your-chorus-or-quartet-videos-up-on-the-web-legally>

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<http://barbershop.org/document-center/category/8-copyright-legal.html>

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