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# Copyright Permissions for Performance

The information below is guidance and should not be taken as legal advice. It is important to consult your legal counsel prior to taking action.

The primary permissions provider for a musical work is the copyright holder(s). In most circumstances, the music publisher holds the copyright for the work and can grant synchronization, mechanical, and public performance licenses. Public performance licenses may also be obtained from the appropriate Performance Rights Organization (PRO), such as ASCAP, BMI, or SESAC. It is important to identify all potential rights implicated on a per-use basis, and to secure the appropriate permissions.

Below are examples of different performance scenarios and the licenses required for each.

**In-classroom performance** - No permissions needed - 17 U.S. Code § 110 (1)

- **Situation:** Students perform their solo or ensemble contest selections for the rest of the class.
- **Situation:** Students or teacher performs a work in a closed virtual classroom (see TEACH Act guidance).

**In-person concert** - No permissions needed - 17 U.S. Code § 110 (4)

- **Situation:** Students perform a concert for the student body or for the general public. The event can be free or ticketed.
- **Not Covered:** Events that extend beyond normal classroom instruction, such as adjudicated assessments or competitions, out of school performances or public performances, performance for hire.

**In-person concert which is streamed live** – Live streaming on a website such as a school, or third-party website requires a public performance license. Certain streaming platforms are licensed to livestream, (e.g. YouTube, Facebook, Instagram) without additional licensing but performances cannot be archived on the platform. It is important to check the user agreements on streaming platforms for what performances are allowed.

- **Situation:** Students perform a concert without an in-person audience that is streamed live on the internet or through social media (e.g., YouTube, Facebook, Instagram, or Tik Tok).
- **Situation:** A typical concert with an in-person audience is also streamed live for viewers not in physical attendance.

**In-person concert video recorded for classroom review** - No permissions needed - 17 U.S. Code § 110 (2)(A)

- **Situation:** An in-person concert is recorded, and the recording is used in in-person class for instructional purposes. The recording may not be distributed live or through any other means.
- The referenced recording can also be an archival recording for the music program.
- Recordings should not be posted on publicly accessible social media (e.g. YouTube), but limited to password-protected school resources to prohibit unauthorized viewing or dissemination.

**In-person concert, recorded and streamed later** - For audiovisual recordings, a synchronization (sync) agreement from the copyright holder(s) is needed. An in-person concert, with or without an in-person audience, is recorded and that recording is then streamed at a later date, such as during a state music conference or a delayed concert performance.

- Synchronization of audio and video content requires an agreement from the copyright holder(s); this agreement should also include performance permissions as the livestream falls outside the exemptions set forth in 17 U.S. Code § 110 (4), as illustrated in the “In-person concert” section above.
- Unless the appropriate licenses are obtained, recordings should not be posted on publicly accessible websites (e.g. YouTube), but limited to password-protected school resources which conform to the TEACH Act.

**Virtual ensemble** - Synchronization agreement from the copyright holder(s) is required.

- **Situation:** Students record individual audio/video tracks that are subsequently edited together into a combined production.
- Public performance licenses are not required because the recording is considered its own product, not a performance. Mechanical rights are not required either as they are included in the sync agreement.

**Audio recording of an in-person concert for an archival purpose** - No permissions needed 17 U.S. Code § 110 (1)

- This recording cannot be distributed in any way.

**Audio recording of an in-person concert to distribute to parents** - Mechanical license required

**Outside of school performances** – Public Performance license required

- **Situation:** The Kiwanis club has requested the high school choir sing during their holiday meeting
- **Situation:** The middle school band performs at halftime, pep-rally, or the local shopping mall while operating a gift-wrapping station during the holiday season.

**Other considerations for school performances (not requiring separate permissions)**

- Any musical display or performance should be:
  - Directly related and of material assistance to the teaching content of the transmission;
  - Made either by an instructor, at the direction of an instructor, or under the actual supervision of an instructor;
    - Offered as a regular part of the normal instructional activities; and
    - Retained only during the class session.
  - Accessible only through limited means by the transmitting institution to prevent unauthorized access, use or dissemination for the duration of the class session.
  - Limited to the distribution or transmission of physical or digital materials which have been lawfully obtained, either through purchase, license, or use of public domain works.

**A note on requesting permissions:**

In the event that it is unclear what types of permissions may be required, the safest course of action is to contact the copyright holder(s) directly. As mentioned above, copyright holder(s) can grant all types of permissions to their works, including public performance licenses. The copyright holder(s) is most often the publisher; different publishers may approach the same methods of transmitting performances with varying licensing practices or legal interpretations. Once a copyright holder(s) has all the relevant information about a planned performance, they will be able to formulate a license agreement that covers all the necessary permission

**Below is a suggested outline of information to include in outreach to copyright/holder(s):**

- General project description
- Title of piece for which permissions are sought
- Nature of performance (e.g. livestreamed in real time, Pre-recorded and subsequently livestreamed, Recording archived online for asynchronous viewing, etc.)
- Purpose of project
- Educational attainment goals (the more detail here the better chances of being granted license and with lower fees)
- Event information
- Plans for distribution
- Scheduled livestream (if applicable) platform & day/time
- Recordings available after the event
  - Where are they housed
  - Who has access
  - For how long the recording will be available
- Anticipated audience size (assume X number of viewers per student)
- Any details regarding monetization (charging for tickets, recordings), including stating that the performance or recording will be accessible for free.

**Sources for permissions:**

- The Copyright Holder(s) - if the project includes a recording, permissions will need to be obtained from the copyright holder(s). This is the publisher in most cases.
  - Synchronization (sync): needed to combine audio and video
  - Mechanical: needed to distribute audio recordings
  - Public Performance: needed to hold performances not exempt under 17 U.S. Code § 110
- Public Performance Permissions: these can be obtained from the copyright holder(s) or from the appropriate Performance Rights Organization (PRO). It may be easier to go through the PRO if no other type of license is needed, such as livestreaming an in-person concert.
  - [ASCAP](#)
  - [BMI](#)
  - [SESAC](#)
  - [GMR](#)
- Mechanical Rights - needed to distribute audio recordings of a performance.
  - [Harry Fox Agency](#)
- General Information: The U.S. Copyright Office, which is part of the Library of Congress, can help you understand licensing needs as well as providing copyright ownership information on specific works
  - U.S. Copyright Office: 202-707-3000 or 1 (877) 476-0778 (toll free); [www.copyright.gov](http://www.copyright.gov)