

## 7/94 Copyright Licences for Parishes

(A report from the Standing Committee.)

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### Introduction

1. Synod resolution 7/94 reads -  
"This Synod requests Standing Committee to continue the investigation concerning the option of obtaining copyright licences which would make available to all parochial units in the Diocese a wide range of music to be used in conjunction with overhead projector equipment, and to report back to the Synod after such investigations (including likely costs and the desirability of this resource for parishes).".
2. Literary, dramatic or musical works are forms of property protected by the law of copyright. Under that law the owner of a work has the right to reproduce, publish, perform, broadcast, transmit or edit the work. Others may only use the work with the owner's permission and upon the payment of proper compensation. Unauthorised use of the work may amount to theft for which damages may be payable.
3. There are strong moral reasons for the law of copyright -
  - (a) Specialist authors and composers must be encouraged to give adequate time to their work by being paid by those who use it.
  - (b) The requirement for permission to reproduce a work enables the owner of the work to ensure a faithful reproduction.
  - (c) Publishers will not publish works if their investment is not protected.

### Copyright and Music

4. The performance or reproduction of music gives rise to the use

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of one or more items of property to which copyright may attach: the music, the lyrics which accompany the music, the published edition (being the marketable form in which the music or lyrics are produced, such as sheet music or song books) and the sound recording.

5. Copyright does not exist in perpetuity -
  - (a) Copyright in music usually lasts from the time the work is made public until 50 years after the year of the composer's death. If the music was not published in the lifetime of the composer, copyright lasts for 50 years after the year in which the work was first published, performed or broadcast. Similar rules apply for the copyright in lyrics.
  - (b) Copyright in a published edition expires 25 years after first publication of the edition and only exists in relation to editions first published after May 1969.
  - (c) Copyright in the sound recording lasts for 50 years after the year in which the sound recording was first published.

6. Where copyright has expired the work is in the "public domain". Care must be taken because while 1 form of copyright may have expired in relation to a piece of music another form of copyright may remain in existence. For example, a piece of music may be in the public domain because it was first published more than 50 years ago but recently written lyrics which accompany the music may be subject to copyright. In that case, the unauthorised performance of the lyrics will be a breach of copyright. Another example arises where both the music and the lyrics are in the public domain but the edition in which the music and lyrics is published is still subject to copyright. In this case, the unauthorised photocopying of the music and lyrics from the edition is a breach of copyright in the published edition.

### **Obtaining Authority**

7. If a work is in the "public domain" authority to perform or reproduce that work is not required. However if a work is subject to copyright, authority to use the work must be obtained. The process of obtaining copyright permission has been simplified to some extent by the establishment of collective agencies which can grant authorities (called licences) on behalf of the copyright owners they represent.

8. The remainder of this report considers the licences available from collective agencies in the context of the use of music by churches. The report also considers the feasibility of obtaining diocesan licences from the respective collective agencies.

### **Performance of Music**

9. The performance of music could involve 1 or both of the

following -

- (a) the live performance of music;
- (b) the playing of pre-recorded music.

*Live Performance*

10. The performance of music in public gives rise to questions concerning the copyright in the music. If lyrics are also to be performed questions about the copyright in the lyrics also arise.

11. The Australasian Performing Right Association (“APRA”) controls the public performance, broadcast and transmission rights on behalf of composers and publishers of most Australian and foreign music. APRA has granted an exemption from the licensing requirement for the public performance of music and lyrics during worship services. In this context “worship services” includes all services conducted in a church.

12. If music or lyrics are to be performed at a church related function such as a church fete, meeting or social event APRA can grant a licence to authorise that performance if the owner of the copyright is represented by APRA. Music and lyrics covered by the licence can then be performed during the currency of the licence without seeking permission on an occasion by occasion basis. For further information please contact APRA at Locked Bag 3665, St Leonards, NSW 2065 (Telephone (02) 9935 7900).

13. APRA only offers licences to individual churches. A diocesan licence is not available.

14. Holding an APRA licence does not give a church authority to perform all music or lyrics. If it is intended to perform music or lyrics for which the copyright is owned by a person who is not a member of APRA, permission must be obtained from that person.

*Playing Pre-recorded Music*

15. The playing of pre-recorded music in public gives rise to questions concerning copyright in the music and the lyrics and also copyright in the sound recording.

16. If pre-recorded music is to be played during a church service, no formal permission is required if the owner of the copyright in the music (and any accompanying lyrics) is a member of APRA. The use of the music and lyrics in these circumstances is authorised by APRA without the need for a formal licence (see item 11).

17. If the owner of the copyright in the music (and any accompanying lyrics) is not a member of APRA, permission must be obtained from that owner.

18. If the pre-recorded music is to be played at a church related

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function such as a church fete, meeting or social event an APRA licence should be obtained to authorise the use of the music and the lyrics if the owner of the copyright in the music and the lyrics is a member of APRA (see item 12). Otherwise the authority of that copyright owner is needed.

19. By section 106 of the Copyright Act permission from the owner of the copyright in the sound recording is not required if the sound recording is played as part of the activities of the church unless the sound recording is to be performed in a place where a charge is made for admission and the proceeds of the charge are not applied solely for church purposes. If a charge is made and the proceeds of the charge are not applied solely for church purposes, authority to play the pre-recorded music must be obtained.

20. The Phonographic Performance Company of Australia ("PPCA") generally controls the public performance of sound recordings. PPCA can issue blanket licences which enable sound recordings to be played during the currency of the licence without seeking permission on an occasion by occasion basis. PPCA may be contacted at 249 Pitt Street, Sydney, NSW 2000 (Telephone (02) 9267 7877).

21. The PPCA licence may be particularly relevant to churches with halls which are used by others for public entertainment. PPCA considers that the church should obtain a PPCA licence to permit the public performance of the sound recording during such use.

22. PPCA only offers licences to individual churches. A diocesan licence is not available.

#### **Reproduction of Music**

23. The reproduction of music could involve 1 or more of the following -

- (a) making photocopies of sheet music;
- (b) making photocopies or overhead transparencies of lyrics;
- (c) tape recording or videotaping live music;
- (d) tape recording or videotaping pre-recorded music.

#### *Making Photocopies of Sheet Music*

24. The photocopying of sheet music gives rise to questions concerning copyright in the music and copyright in the published edition.

25. Christian Copyright Licencing ("CCL") issues 2 licences (the "CCL Church Copyright Licence" and the "CCL Photocopy Licence"), each of which permits the limited photocopying of certain sheet music used in churches, although in different circumstances. Music of composers and publishers represented by CCL can be copied, within

the limits of a licence, during the currency of that licence without seeking permission on an occasion by occasion basis. For further information please contact CCL at PO Box 6644, Baulkham Hills Business Centre, NSW 2153 (Telephone 1-800-635-474).

26. Holding a CCL licence does not give a church authority to photocopy all sheet music. If it is desired to photocopy sheet music beyond the limits authorised by the CCL licence or to photocopy sheet music of copyright owners who are not represented by CCL, the permission of the relevant copyright owner is required.

27. Currently it is the responsibility for each church to take out a CCL licence. CCL has developed a denominational licence to which consideration has been given.

28. There are a number of arguments both for and against the Diocese taking out a CCL denominational licence. In favour are the arguments that a denominational licence gives each church the copyright protection provided by the licence and that, in taking out the licence, the Diocese is taking steps to ensure that its churches are complying with the law. Also, the licence fee payable for the denominational licence is substantially less than the total fees payable if all churches took out their own CCL license.

29. There are 2 main arguments against the Diocese taking out a CCL denominational licence. First, in covering all churches the licence would include those that may have no need for it because they do not reproduce material in the manner covered by the licence. To the extent to which the annual fee incorporates a payment for these churches, money is being paid unnecessarily. Secondly, the denominational licence requires administration by the Diocese although CCL has taken great care to ensure that the extent of that administration is minimised. Nevertheless Diocesan administration requires the use of staff resources and the cost of those resources adds to the total cost of the denominational licence.

30. In 1994 the Legal Officer surveyed 20 parishes in the Diocese to obtain information about the comprehensiveness of the CCL licence. The response was varied: some parishes indicated that the CCL licence covered most of the music they used whereas others said the licence was not of much benefit given the nature of the music they used. While the CCL repertoire has expanded since this survey the CCL licence is not comprehensive. Churches would need to contact individual copyright owners to reproduce material of composers and publishers not represented by CCL.

*Making Photocopies or Overhead Transparencies of Lyrics*

31. The photocopying of lyrics gives rise to questions concerning copyright in the lyrics and copyright in the published edition.

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32. Copyright Agency Limited ("CAL") issues a licence which permits, within limits, the photocopying of lyrics of authors and publishers who are represented by CAL. A CAL licence covers most printed material but not separately published sheet music. For further information please contact CAL at Level 19, 157 Liverpool Street, Sydney, NSW 2000 (Telephone (02) 9394 7600).

33. The CCL Photocopy Licence (see item 25) also allows the limited photocopying of lyrics in the circumstances to which the licence applies.

34. Holding a CAL licence or a CCL Photocopy Licence does not give a church authority to photocopy all lyrics. If it is intended to photocopy lyrics beyond the limits authorised by the CAL licence or the CCL Photocopy Licence, or to photocopy lyrics of copyright owners who are not represented by CAL or CCL, the permission of the relevant copyright owner is required.

35. CAL offers a group worship licence which the Diocese could take out on behalf of all churches. The arguments for and against a CAL group worship licence are generally similar to those applying to the CCL denominational licence subject to 2 additional considerations. First, the CAL group worship licence requires much more Diocesan administration than does the CCL denominational licence. Secondly, unlike the terms of the CCL denominational licence, if 1 church defaults in complying with the terms of the CAL group worship licence CAL could terminate the licence as it applies to all churches.

36. Rather than photocopy lyrics, a church may write or type out those lyrics and then photocopy or make overhead transparencies of what has been written or typed out. This gives rise to questions concerning copyright in the lyrics. If the owner of the copyright in the lyrics is represented by CCL, the CCL Church Copyright Licence (see item 25) permits the reproduction of lyrics in this way, within limits. The CCL Church Copyright Licence does not authorise the photocopying of the lyrics directly from the published edition.

37. Holding a CCL Church Copyright Licence does not give a church authority to write or type out all lyrics and then photocopy or make overhead transparencies of what has been written or typed out. If it is intended to reproduce lyrics in this way but the copyright owner is not represented by CCL, permission from the copyright owner is required.

### *Tape Recording or Videotaping Live Music*

38. The tape recording or videotaping of live music gives rise to questions concerning copyright in the music and in the lyrics.

39. The Australasian Mechanical Copyright Owners' Society ("AMCOS") issues a licence which permits the tape recording or video

recording of performances of music or lyrics of copyright owners who are represented by AMCOS. Music and lyrics of copyright owners who are represented by AMCOS can be recorded during the currency of the licence without seeking permission on an occasion by occasion basis. For further information please contact AMCOS at Private Bag 2135, North Sydney, NSW 2059 (Telephone (02) 9954 3655).

40. AMCOS only offers licences to individual churches. A diocesan licence is not available.

41. The CCL Church Copyright Licence (see item 22) allows the tape recording and video recording of music performed in a church service where the copyright owner of the music is represented by CCL. It does not permit the tape recording or video recording of pre-recorded music (see item 45).

42. Holding an AMCOS licence or a CCL Church Copyright Licence does not give a church authority to tape record or video tape all music which is performed live. If a church wishes to record a performance of music but the music is not within AMCOS's repertoire or the copyright owner is not represented by CCL, permission must be obtained from the owner of the copyright in the music and the copyright in the lyrics.

43. A person may wish to record, otherwise than on behalf of the church, a church service at which music is performed. An example is a professional photographer who videotapes a wedding for the purpose of selling copies to the wedding party or guests. If the music is within AMCOS's repertoire that person must hold the relevant AMCOS licence or otherwise have permission from the copyright owner. If the church permits that person to record the music when the person does not have authority, the church may have authorised the breach of copyright. Accordingly, if music in a church is to be taped the church authorities must ensure that the person taping the performance holds the relevant authority.

44. If a live performance of music in a church is to be recorded, permission must also be obtained from the performer.

*Tape Recording or Videotaping Pre-Recorded Music*

45. If pre-recorded music is to be recorded on either audio tape or video tape, permission is generally required from the producer of the pre-recorded music, generally a record company. There is no collective agency which can provide blanket approval.

**Concluding Comments**

46. The preceding material shows that the law of copyright is complex, particularly when it comes to the use of music by churches. Unfortunately there are no easy shortcuts. Each church must carefully consider the copyright issues which arise in relation to their use of music and, where appropriate, obtain the appropriate authorities. Each

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church should carefully consider whether it needs one or more of the APRA, PPCA, CCL, CAL or AMCOS licences.

47. While there are benefits in obtaining a denominational or group licence from CCL or CAL the Standing Committee believes, on balance, that, at present, the cost of obtaining and administering those licences outweighs their benefit. However the question of diocesan licences will be kept under review. The Standing Committee's decision not to pursue denominational or group licences does not diminish the Standing Committee's desire that all churches act in accordance with the law, particularly in relation to copyright. To this end a circular setting out the main points of this report has been sent to the ministers and churchwardens of each church.

For and on behalf of the Standing Committee

MARK PAYNE  
*Diocesan Secretary*

17 August 1998