



# Music Use in Shortgrass Libraries

## An Information Guide

*Note: The information included in this document does not constitute legal advice. Copyright, fair dealing, and public performance rights are complex and subject to change as new judgements and rulings are issued. This document will be reviewed and updated as necessary.*

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## Music in the Library

Are you planning to use music in an upcoming library event? Do you play music during story time? Just as you are required to obtain a public performance license to show films in any public setting, you may be required to obtain a public performance license if you are using music.

There are two societies you should be aware of when considering the use of music in your library:

- The Society of Composers, Authors and Music Publishers of Canada (SOCAN),
- and
- Re:Sound Music Licensing Company (Re:Sound).

SOCAN administers the public performance right in musical compositions and collects fees on behalf of composers, authors and music publishers. Re:Sound administers the public performance right in sound recordings and collects fees on behalf of the performers and makers. In July 2019, Re:Sound and SOCAN announced that licensing would now be handled by Entandem, a joint venture designed to simplify the licensing process.

A musical composition consists of music, including any accompanying words. It is normally registered as a work of performing arts. The author(s) of a musical composition is generally the composer and the lyricist, if any. A musical composition may take the form of a notated copy (e.g., sheet music) or a recording (e.g., CD or MP3 file). A sound recording refers to the fixation of a series of musical, spoken, or other sounds. The author of a sound recording is the performer(s) whose performance is fixed, or the record producer who processes the sounds and fixes them in the final recording, or both. Copyright in a sound recording is not the same as, or a substitute for, copyright in the underlying musical composition. SOCAN and Re:Sound ensure that all of the authors receive compensation for their creation.

If your library is planning an event featuring “live entertainment” in public (such as a concert for children where the “entertainment” involves music) ask yourself:

- Will there be live performers playing music at the event?
  - If yes, a license may be required from SO:CAN or Re:Sound.
- Will recorded music be played to the public at this event?
  - If yes, you may need a joint license from Entandem.

There are times you will not require a license, such as when you use music available in the public domain. Be sure to discuss licensing fees with performers when you are planning an event to avoid surprises or fines!

## How do I Know if Music is in the Public Domain?

It can be difficult to determine if a musical work is in the public domain; you will need to do your homework.

- If it is a recording, was it recorded more than 50<sup>1</sup> years ago?
- If it is a live performance, is the arrangement<sup>2</sup> dated more than 50 years ago?
- Is the composer deceased more than 50 years?
- If there was a separate lyricist, is that person deceased more than 50 years?

Just because a song is old, doesn't mean it resides in the public domain. Even classical works might still be under copyright if you are using sheet music or a recording that is less than 50 years old.

If you are seeking sheet music for an event and want to make sure it is in the public domain, check out the following:

- The University of Alberta has a [Public Domain Flowchart](#) available.
- There are numerous databanks that could be helpful in locating compositions and arrangements in the public domain. One of these is the [Lester S. Levy](#) collection at Johns Hopkins.
- The University of British Columbia has an excellent [Lib Guide](#) with multiple resources on it.
- Lifewire has [a list of useful pages](#) as well. However, these refer to the US term on Copyright, 95 years after first publication or 120 years from creation.

## Licensing your library's musical events

There are several tariffs that may be applicable to library events. To obtain a license, or if you are unsure what license(s) you need, please contact [Entandem](#).

## Must we obtain a license? Are there exceptions?

Exceptions in Canadian Copyright are covered under Fair Dealing (s. 29 of the Copyright Act).

To qualify under the fair dealing exception in Canada, the dealing must be for a purpose listed in the Copyright Act. Sections 29, 29.1 and 29.2 of the Act create the fair dealing exception and outline the purposes as:

- Research, private study, etc.
- s.29 Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.
- Criticism or review

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<sup>1</sup> Canada is currently in the process of updating the Copyright Act to comply with the USMCA treaty. After this, the copyright period will increase to 70 years.

<sup>2</sup> An original treatment of an existing work, for example Joe Cocker's treatment of the Beatles' "With a Little Help From My Friends".

- s.29.1 Fair dealing for the purpose of criticism or review does not infringe copyright if the following are mentioned:
- the source; and
- if given in the source, the name of the
- author, in the case of a work,
  - a) *performer, in the case of a performer's performance,*
  - b) *maker, in the case of a sound recording, or*
  - c) *broadcaster, in the case of a communication signal.*

## News reporting

*s.29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:*

- a) *the source; and*
- b) *if given in the source, the name of the*
- c) *author, in the case of a work,*
- d) *performer, in the case of a performer's performance,*
- e) *maker, in the case of a sound recording, or*
- f) *broadcaster, in the case of a communication signal.*

The education exception in Section 29 is significant. Under this section it appears that library programming for education is permitted without a license if that use is considered “fair dealing”. Libraries located in schools have an added advantage because they are physically connected to an educational institution.

The United States follow the “fair use” model, which considers that any, use may be “fair” as long as it falls within “reasonable limits”.

In Canada we follow a different model: the “fair dealing” model. A Supreme Court of Canada ruling in 2012 introduced what is referred to as the “Copyright Pentalogy”, which greatly expanded the scope of fair dealing.

“Fairness” is not defined in the *Copyright Act*, but depends on different factors. These factors, as named in the 2012 ruling<sup>3</sup>, include, but are not limited to:

- the purpose of the dealing
- the character of the dealing
- the amount of the dealing
- alternatives to the dealing
- the nature of the work
- effect of the dealing on the work

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<sup>3</sup> CCH Canadian Limited v. Law Society of Upper Canada 24 SCC 13.

If in doubt when planning children's or other educational programming that uses unlicensed music, err on the side of caution and do everything A Capella (without music). This practice also benefits your audience, because you can control the pace/tempo and can add some modifications to it, such as an extra verse, etc.

## **Charitable objects s. 32.2(3) of the Copyright Act**

s. 32.2(3) of the Copyright Act contains an exception that applies to charitable organizations. To take advantage of this exception your library or Friends group must be registered as a charitable organization with the Canadian Revenue Agency.

### **32.2(3) Further permitted acts**

No religious organization or institution, educational institution and no charitable or fraternal organization shall be held liable to pay any compensation for doing any of the following acts in furtherance of a religious, educational or charitable object:

- the live performance in public of a musical work;
- the performance in public of a sound recording embodying a musical work or a performer's performance of a musical work; or
- the performance in public of a communication signal carrying
- the live performance in public of a musical work, or
- a sound recording embodying a musical work or a performer's performance of a musical work.

It would be important that such a performance be given without private profit for religious, educational or charitable purposes. The terms "charitable organization" and "charitable object" are not defined in the Copyright Act, making their precise legal definition unclear.

If your library or Friends group is a registered charitable organization with the Canada Revenue Agency, then all activities undertaken by the organization are in furtherance of a charitable object. A number of public libraries have become registered charities, allowing them to issue official donation receipts for income tax purposes. If you would like more information on becoming a registered charity, look at the [Canada Revenue Agency's website](#).

## Reference chart

While this chart covers many of the issues that you will run into, it is not exhaustive. If in doubt, confirm details with [Entandem](#).

<b>Activity</b>	<b>Further details</b>	<b>License requirements</b>
<i>Public events in libraries involving music</i>	Paid musical performers brought in as part of a special event (e.g. Ernestine Hatpin). No recorded music used.	SOCAN Tariff 4A1 or 4A2 (Popular music concerts.) Minimum of \$35 per concert or \$60 annual fee.
	Recorded songs still under copyright protection played at event.	SOCAN – Tariff 21; ReSound: Tariff 5
	Library staff perform “sing-along” for children, no recording used.	No license required.
	Performers or recording featuring music in the public domain.	No license required.
<i>Recorded background music used</i>	Music under copyright protection used as background to an event (e.g. a library anniversary, seniors’ tea, guitar club)	SOCAN – Tariff 15A; Re:Sound – Tariff 3B
<i>Music played in staff rooms</i>	Playing music from a traditional radio receiving set, in any place other than a theatre for which admission is paid (s. 69(3) of the Copyright Act.)	No license required
	Internet or other types of radio where the broadcaster does not pay royalties directly	License may be necessary
<i>Equipment provided which allows library users to listen individually to music</i>	On a one to one basis, library user listens to music in a private room or using headphones	No license required