Chapter 5: Copyright

Contents

The Law

What is copyright?

Copyright is the right to make copies of a legally protected work.

Organists must always respect copyright. Not only is this a legal requirement, but copyright income represents the income of writers and composers, many of whom are not wealthy. To deny someone their copyright royalty is not just against the law, in effect it is stealing from your fellow musicians.

An organist need not worry about copyright law if he does no more than buy music which he plays and the choir sings in the course of worship. When you buy the music, part of the price is passed by the publishers to the copyright owners. So you have discharged your duties under copyright law simply by paying for the music.

Copyright law becomes relevant for organists who wish to:

- compose music;
- photocopy music;
- transpose music;
- arrange music;
- perform music in a concert rather than in worship;
- set someone else's words to music; or
- record music.

Although the law on copyright can become complex, copyright need not be a huge problem in practice. Probably the commonest need for an organist to be involved in copyright is in taking copies of music. In practice, the use of Christian copyright licence (see page xxx) or a phone call to the publishers may be all that is needed.

The current law is Copyright, Designs and Patents Act 1988, but this only applies to works created from 1 August 1989. Works created previously are still governed by Copyright Act 1956, though many provisions are the same.

Penalties for breaches of copyright have been strengthened by the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002.

The Berne Convention provides a measure of international protection.

As this book is written for organists, it concentrates on copyright in music, and generally ignores specific provisions about art, drama, literature, typefaces and computer software. However you should note that copyright exists in all these areas, and be careful when using pictures, photographs or poems in programmes and posters. In practice, you avoid copyright problems in art, either by producing it yourself or by using copyright-free art, of which plenty is commercially available.

There is a separate but similar right of "performing right" which protects the performance of any work (regardless of whether the work is in copyright).

There are also "moral rights" to protect the reputation of composers, and "publication rights" for first publishers of copyright-expired material.

Many of the cases mentioned in this section relate to pop music. This is because that is where most of the big money is involved and where there has been most litigation. However, the principles behind these cases apply equally to any type of music.

What works are copyright?

Copyright exists in all original literary, artistic, dramatic or musical works. The work does not need any artistic value, so railway timetables and telephone directories are copyright.

The work must involve some labour, so a single note cannot be copyright. However a piece consisting of just four notes, a jingle for Channel 4, is copyright. An anthology, compilation or abridgment can be copyright in its own right.

In music there are certain standard patterns, such as scales, arpeggios, cadences, harmonic modulations, rhythms and riffs. These may be regarded as public property. There is no copyright in an arpeggio, but there can be copyright in how arpeggios are used in a piece of music.

There is no copyright in ideas, so copying someone's ideas in how they composed a work represents no breach of copyright if all the words and music are original. In 1989, Hughie Green failed to secure copyright for the format of his television programme Opportunity Knocks. There is no copyright in news or facts. The title of a work is not itself copyright (Dick v Yates [1881]). There are other forms of "intellectual property" such as scientific know-how and patents, but these are unlikely to be relevant to musicians.

There may be many copyrights in a single production of a musical work. For example, suppose you make a video of a group performing a French song translated into English. This may have these separate copyrights:

- the French words;
- the English translation;
- the music;
- the orchestration or arrangement of the music;
- the dance routine;
- the performance;
- the scenery; and
- the recording of the performance (both audio and video).

If you have a piece of sheet music, there can be separate copyrights in:

- the words;
- any translation of the words;
- the music;
- editing of the music;
- arranging the music; and
- the typesetting of the music.

Each of these copyrights may be held by more than a single person. Apparently it took seven people to write the words I'll tell you what I want, what I really really want for a song by the Spice Girls.

In some cases, some of these copyrights may have expired. For example a setting of a folksong may have no copyright in the words but still have copyright in the music.

Almost all copyright has a finite life. After that, the work is "out of copyright" or in the public domain, and anyone may do what they like with it without payment of any fee.

Copyright is a form of intellectual property. Other forms of intellectual property include patents, trade marks and know-how. Although copyright has no tangible form like a book, it has most of the attributes of tangible property. Copyright can be sold, given away or left in your will. You can give people rights to use it.

Moral rights cannot be disposed of and always remain with the creator of the work, except on death when it passes with the deceased's other property.

On death, copyright, performing rights and moral rights pass in accordance with your will, if you have one. If you do not, the rights pass in accordance with the laws of intestacy. This will be to any surviving husband or wife (but not any other type of partner), failing which to your children. Any dispute is settled by the

courts. In October 2002, Italian courts ruled that copyright in Puccini's work rests with the Italian government until it expires in 2022.

Unintended copying

It is sometimes suggested that there is only a finite number of notes available to a musician, so there will come a time when every tune possible will already have been written. Mathematically that is not so. There are 12 semitones in an octave. If we confine ourselves to using notes from one octave, a tune of just eight notes gives us 35,831,808 possibilities. (That is 12^7.) And that is before we even consider harmony or rhythm. We are far from having written every possible musical work.

However, it is still possible for a composer to find that something he has written is similar to something else that has been composed, even allowing for natural harmonic and melodic progressions.

The law is that there is no breach of copyright for creating something which someone else has also created; however, the burden of proof can be difficult. The court would consider not only the similarities between the two works, but what opportunities you had to hear the first work. It can be advisable to play your work to other musicians to see if any of them recognise any of it as being similar to an existing work. When Paul McCartney wrote Yesterday, he played it to several musicians, convinced that someone else must have already written it.

There have been many cases where successful songs have led to copyright cases, hence the expression in the music business "where there's a hit, there's a writ." George Harrison, another Beatle, lost a copyright case when his 1971 hit My Sweet Lord was held to be based on Sweet Talking Guy recorded by the Chiffons in 1963.

Both songs had a similar use of alternating minor and diminished chords and there was a passing similarity of melody. Harrison even performed both songs in court to explain the difference. At the end of the case, the judge said that he "really liked both songs". Harrison's lawyer unsuccessfully pointed out that if he liked both songs, he was admitting that there were two songs.

One of the most bizarre copyright cases concerned Mike Batt (who wrote songs for The Wombles). He included a track called Classical Graffiti on an album by The Planets. The track comprised pure silence, and was credited to Batt and the avant-garde composer John Cage, whose work 4'33" also comprises pure silence. Cage sued for breach of copyright. In 2002, a six-figure sum was paid in an out-of-court settlement. As silence is hardly original music, Batt's mistake was probably in crediting Cage. Artists as diverse as The Goons and John Lennon have issued albums with tracks of silence and not been sued.

Use of copyright or even breach of copyright can be a consideration in contract law (as explained in chapter 2). This means that when copyright has been breached, the parties can make their own arrangements as to how to settle the matter. John Lennon, yet another Beatle, was accused of copying one of Chuck Berry's songs in Come Together. They settled the matter by John Lennon agreeing to record some of Berry's songs on a rock and roll album.

How long does copyright last?

The general rule is that copyright lasts from creation to the end of the 70th year after the creator's death. So if a composer dies on 8 July 2011, his work remains copyright until 31 December 2081 (assuming there is no change in the law before then).

This limit was increased from 50 years on 1 January 1996. This meant that some composers went out of copyright then came back in. This is known as revived copyright. Elgar died in 1934, so his music was copyright until 1984, and then from 1996 to 2004. It was out of copyright for 11 years between 1985 and 1995, and is again from 2005. Music acquired during the out-of-copyright period may continue to be used. For revived copyright, a user may simply send a notice to the copyright holder saying what use is to be made of the work. The notice constitutes a licence though the copyright holder is entitled to a fee, which the Copyright Tribunal will set if not agreed.

Where a copyright is sold, given away or passes on death, the copyright life is still determined by when the original creator died. Where the copyright is owned by a company or other body, the copyright lasts for 70 years from its creation. Where a work was created by two or more people, the copyright lasts until 70 years after the last death.

Copyright lasts for ever in the Authorised Version of the Bible and the Book of Common Prayer, in the UK only (see page xx).

Other liturgical material, such as Common Worship and other bible translations are bound by the normal copyright rules. Common Worship was published in 2000. Its copyright is owned by the Archbishops' Council of the Church of England. Its copyright therefore expires in 2070. The use of copyright liturgy is examined later.

Sound recordings are copyright for 50 years. This means that all Glenn Miller's recordings are now in the public domain. However, in the UK, copyright in the music and words will probably still exist when the recording copyright expires.

Government publications, such as Acts of Parliament, are copyright for 50 years from the end of the year in which it received Royal Assent. This provision applies equally to Measures passed by General Synod of the Church of England. Crown copyright in other works lasts for 125 years.

Typesetting lasts for 25 years from publication. Photographs are copyright for 70 years (50 years before 1 January 1986). Industrial designs are copyright for 15 years.

You must always be careful that all copyright has expired before treating anything as in the public domain. Bach died in 1750, so his work is well outside the protection of copyright, but that does not mean that you can photocopy any music by Bach. Almost all Bach's published work is edited, and there is a separate copyright in the editing. This means that such work does not become public domain until the editor has been dead for over 70 years.

Do not forget that there is a separate copyright in the typography of the page which lasts for 25 years from publication. If you want to photocopy an out-of-copyright hymn tune, photocopy it from Hymns Ancient and Modern Revised or

English Hymnal. Do not photocopy it from Common Praise or New English Hymnal.

Note that public domain simply means that you may copy freely. It does not entitle you to access to the documents to copy them. If you do obtain access, the owner has no power to stop you copying it. Sometimes libraries or publishers suggest that you have a moral obligation not to copy. You should reply by asking what moral right they have to deny you what is already yours as a member of the public.

How do you copyright music?

There is no process for copyrighting anything. There are no forms to fill in and no fees to pay, as there are for patents. As you compose music, the copyright is automatically created and belongs to you. This right is given by section 9(1) of the 1988 Act.

Note that the copyright runs from when you "fix" the work, such as writing it down, recording or broadcasting it. There is no copyright for ideas in your head, even when you have performed them to others. If your work goes through several drafts, each draft has its own copyright. A later draft does not replace the copyright in a previous one.

There is an exception if you create a copyright work in the course of your employment, unless a prior agreement has been made between employer and employee that the employee owns copyright. In such cases, the copyright belongs to your employer and not to you. This is unlikely to affect organists. Although many organists do compose, it would be most unusual for this to be regarded as part of the job. However it may be advisable to include a clause in the contract of employment to make this clear.

Copyright law even states who owns the copyright in works created by a computer program written for that purpose (the programmer). And in 1978, paintings by the chimpanzee Yamasaki were the copyright of the circus which owned him.

It is normal for music to have at the bottom of the first page, the copyright symbol Ó, followed by the year the work was created, and the name and address of the copyright holder. This is not strictly necessary under UK law, but it does give the work a measure of international protection.

Although you own the copyright in music, you may need to prove it in any enforcement action. Any evidence may be produced, such as witnesses, concert programmes or reviews in magazines.

The two commonest methods used by composers, in order, are:

- sending a copy to himself by registered post; or
- depositing a copy at a bank.

Other methods include:

- depositing a copy with a solicitor who certifies the date it was deposited; or
- depositing a copy with Stationer's Hall, for which a modest fee is payable.

None of these actions is essential. Evidence from reliable musicians about when they performed the work is just as good. Also, the evidence suggested above simply proves that the work existed by a certain date. It does not necessarily prove that you wrote it.

Editions

Copyright represents the human endeavour in creating works. The leading High Court case of Sawkins v Hyperion Records [2004] EWHC 1530 (Ch) established that this includes creating performing editions of old manuscripts of music even though the editor creates no new music.

Dr Lionel Sawkins spent a year preparing an edition of music by Michel-Richard de Lalande (1657-1726) by studying manuscripts round the world. Sawkins transcribed composer's "shorthands" and made informed guesses about missing notes, among other tasks. Lalande wrote sacred motets for Louis XIV and Louis XV. Hyperion Records used this music on the CD recording Music for the Sun King by singers called Ex Cathedra led by Jeff Skidmore. Sawkins was paid an editing fee of £1,278 for use of his editions, but Hyperion refused to pay him copyright royalties, so Sawkins sued. Justice Patten said, "I am not persuaded that one can reject a claim to copyright in a new music work simply because the editorial composer has made no significant changes to the notes." Sawkins' claim was upheld for three of the four recorded works.

Hyperion was ordered to pay royalties plus costs estimated at £400,000. It immediately deleted the CD from its catalogue after sales of 3,332 copies had not recouped the recording costs. In May 2005, Hyperion Records lost their appeal against this decision.

This case means that copyright exists in many realisations of old manuscripts which were previously regarded as copyright-free.

Publication rights

There is a special copyright provision to protect the first publication of a work whose copyright has expired. All such works have copyright protection until 31 December 2039. Publication here includes exhibiting and lending copies; it is not necessary that the work is printed. This provision is contained in the 1988 Act Sch 1 para 12 and The Copyright and Related Rights Regulations SI 1996 No 2967 which implement EC directive 93/98/EEC.

This law refers to works "after the expiry of copyright". It is not clear what the position is for works which were never in copyright because they predate copyright law. Sheet music has been copyright in England since 1709, so this may be an issue for 17th-century and earlier manuscripts first published from 2040.

Rights of copyright holder

There are three sets of rights given to a copyright holder under the 1988 Act:

- the right to copy;
- secondary rights; and

- moral rights.

Anyone who wishes to exercise any of these rights for someone else's copyright work needs permission, which may require a payment. In some cases, permission may be refused. Mission Praise had to drop the song We are one in the Spirit for copyright reasons. You should therefore be careful before starting a major exercise such as orchestrating another composer's work. You could find that the composer refuses to allow you to perform it, or demands a very high fee to do so. Many composers will ask to see the finished work and demand the right to make changes.

A composer may ban all performance of his work during his lifetime. Saint-Saens did just that for Carnival of Animals. If a composer first destroys the work, it can never be heard, as happened to Sibelius' Symphony 8.

There are some exceptions where you do not need permission with regard to copyright works, as explained later. If you wish to use one of these exemptions, you must make sure that what you do is exactly within the scope of the exemption.

The first set of rights are called acts restricted by the copyright under s16 of the Act. There are five such rights:

- to copy the work;
- to issue copies to the public;
- to perform, show or play the work in public;
- to broadcast the work; and
- to adapt the work.

To copy a work means reproducing any or all of it in any form. It is not restricted to photocopying music. Copyright extends to copying out by hand. It includes photographing the music or storing it in a computer file. It includes forms of copying not even thought of when the music was created. In 2001, Walt Disney settled an eight-year court case with music publishers Boosey & Hawkes over the right to include Stravinsky's Rite of Spring in the video of Fantasia made in 1940 when videos were not invented. Ten years previously, there was a similar resolution to a dispute about the inclusion of Peggy Lee's recording of Fever on a video.

With a few exceptions, it does not matter why you copy the work. You can still breach copyright by making a copy just to play for your private enjoyment.

To issue copies includes any form of publishing or public hire or loan by any means. This includes putting a work on the Internet or distributing it as a computer file.

To perform or broadcast the work includes any mode of visual or aural presentation, including broadcast on television or radio.

To adapt a musical work includes making an arrangement or transcription of it (section 21(3)(b)). An adaptation of a literary work includes a translation of it. Section 21(2) makes clear that an adaptation need not be written or otherwise recorded in any way, so an improvisation of a copyright work is an adaptation.

Transposing a work to a different key or register is not regarded as an adaptation, but this exception only applies when transposing on the spot, because writing a piece out (whether in the original key or not) is within the scope of copyright.

An improvisation on a copyright work as the final organ voluntary is clearly an adaptation. However this is a hollow right. As the improvisation would have been performed by the time the copyright holder knew about it, his only remedy would be damages which would probably be a nominal amount.

Secondary rights

Secondary rights are designed to help protect the main rights by imposing penalties in respect of infringing copy. This is material generated which contravenes copyright law.

There are five secondary rights:

- importing infringing copy;
- possessing or dealing with infringing copy;
- providing means for making infringing copy;
- permitting use of premises for infringement; and
- providing apparatus for infringement.

In each case, an offence is only committed if the person knew, or should have known, that it was to be used to infringe copyright. Without this provision, every photocopier supplier would be guilty.

Moral rights

Moral rights were introduced by the 1988 Act and therefore only apply to works created from 1 August 1989. It should be noted that these rights belong to the creator of the work, who may no longer be the copyright holder. If you sell your copyright, you still retain your moral rights, unless you have separately given them up.

European countries have been much readier to recognise moral rights. For example, France codified moral rights in 1957, having already given such rights through case law.

There are four moral rights:

- to be identified as author, director or composer;
- protection from derogatory treatment;
- protection from false attribution; and
- privacy in films and photographs.

The right to be identified is contained in s77 of the Act. This is sometimes called the paternity right. It gives the composer the right to be identified whenever music is published commercially, recorded for sale to the public, or included in a film for the public. The same rights are enjoyed by someone who has written words set to music. This right only applies if the copyright holder has “asserted” the right. This means that the holder has shown his name on the work, and stated it in any assignment of right. This right does not apply in respect of any of the permitted exceptions to copyright law.

The right to object to derogatory treatment is contained in s80 of the Act. There is a “treatment” of a musical work if someone does something other than transposing it to another key or register. A treatment is “derogatory” if “it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director” (s80(2)(b)).

It should be noted that this involves much more than just not liking what someone has done to your work, such as parodying the words or producing a bad arrangement, though in such cases you may still have protection under other copyright provisions. For derogatory treatment, you must show that the treatment is likely to reflect badly on you, which is most likely when the person has not sufficiently identified himself as the arranger. One of the few cases on derogatory treatment of music was brought by the pop singer George Michael in 1993. Five songs he recorded as part of the duo Wham! were remixed and interspersed with music recorded by other musicians on the Bad Boys Megamix album. He demonstrated an arguable case and so was granted a temporary injunction.

The issue was raised again in the case Confetti Records v Warner Music UK Ltd [2003] where one of the issues was whether the inclusion of words from a song Burnin’ on a rap record was derogatory treatment because of rap’s association with violence and drugs. The answer is no, as derogatory treatment must reflect on the composer. The judge also questioned whether expressions such as “mish mash man” and “shizzle my nizzle” would be generally understood.

Other countries have applied moral rights more strictly. In Belgium, a band called Fortuna and Apotheosis made upbeat arrangements of Orff’s Carmina Burana which reached numbers 1 and 3 in the Dutch pop charts. Orff died in 1982 and so is copyright until 2052. His estate successfully sued and the records were withdrawn from sale.

France allowed the director of the film Asphalt Jungle, deliberately shot in black and white, to stop a colourised version being broadcast, even though he did not own moral rights in the US where the film was made. Italy held that it was a breach of moral rights to insert advertising breaks during the broadcast of a film. In Canada a sculptor successfully defended his moral rights to stop ribbons being draped round his sculpture at Christmas.

A person is protected from false attribution by someone saying that you wrote a work which you did not. The right is contained in s84. It is easy to see how an eminent composer could have his reputation damaged by having some poor work attributed to him. This right lasts until 20 years after the alleged composer’s death. A false attribution could also lead to a claim for libel or malicious falsehood. This right does not allow a composer to disown works which he has written but may now wish he had not. Alan Clark MP used this law to sue Associated Newspapers for publishing a diary which was falsely attributed to him.

There is a similar offence known as “passing off” which is widely used when a product is manufactured to look like another. This is a difficult case to prove, and many blatant examples seem to avoid action, as a stroll round the shelves of any supermarket will demonstrate. Passing off could apply in music, such as falsely describing your choir as Kings College, Cambridge to help sell recordings.

The right to privacy only applies to films and photographs taken for private and domestic purposes. The photographer owns the copyright and may prevent it from being used in any work issued to the public. The right is in s85 of the Act. It should be noted that a separate law of privacy is being developed under Human Rights Act 1998.

Except for false attribution, moral rights last for as long as the work is in copyright.

Permitted acts for copyright works (exemptions)

The 1988 Act allows you to do certain things which would otherwise be a breach of copyright law. However, you must be careful to ensure that you come exactly within the scope of the exemption. These exemptions were modified from 31 October 2003 by a statutory instrument SI 2003 No 2498. Much of this statutory instrument relates to broadcasts and computer files.

These rights are those which the law allows you to do, regardless of whether the copyright holder agrees. This law does not stop the copyright holder agreeing to let you do anything else you wish.

The main permitted acts are:

- research and private study;
- criticism, review and news reporting;
- incidental inclusion;
- education;
- librarianship; and
- public administration.

There are additional exceptions for non-musical copyright, such as for computer programs, statues, buildings, industrial designs and typefaces.

The exemption for research and private study is given in s29 of the 1988 Act. It allows a person to take one copy for research and study. This need not be as part of any formal education, but may be to help write a book or even for personal curiosity. Although the Act does not expressly say so, in practice this right is limited to a single copy which should be destroyed when the research or study has been completed.

An unsuccessful attempt was made in the case Ashdown v Telegraph Group Ltd (2001) to argue that freedom of expression under Human Rights Act 1998 provided an extension to this exemption. The case concerned The Sunday

Telegraph publishing a leaked memo of a meeting between Paddy Ashdown MP and the prime minister.

The exemption for criticism (s30) allows fair dealing with a work, such as quoting it. If you wish to review a piece of music, you may print a short quotation without bothering to get permission, but you must acknowledge the source. In practice this means identifying the work, composer and publisher. From 31 October 2003, the requirement to acknowledge the source may be dispensed with, if this is impractical.

It would appear that this section may permit short quotations of musical works in other works. However even short quotations have often got composers into trouble. In 1997 the group Verve had a hit with Bitter Sweet Symphony written by Richard Ashcroft. It included a sample from a 1965 recording by Andrew Oldham Orchestra of the Rolling Stones’ song The Last Time. Verve’s record company paid a fee to Decca Records for this sample, but this does not cover all the copyright owned in this brief extract. Ashcroft was sued twice and in effect lost all the copyright in the music.

If quoting someone else’s work, it is always advisable to get permission. Some record companies have adopted a three-second rule, that they will not take action if no more than three seconds of music is copied, such as when an extract is taken as a “sample” for a dance or rap record. However this is their own rule; it is not the law.

A more generous approach seems to be adopted for the printed word than for music. In the case Chappell v D C Thompson & Co Ltd [1928-35], a paper called Red Star Weekly got away with printing four lines of words from the song Her Name is Mary. In contrast, any performance of Happy Birthday to You attracts a demand for payment, which is why you never hear this song in a film.

In the United States, the case Campbell v Acuff-Rose [1994] held that there was fair use when the group 2 Live Crew copied the bass line from Roy Orbison’s song Oh Pretty Woman.

The exemption for incidental inclusion in s31 exempts such situations as where a few bars of a tune may be heard in the background during an item in a news bulletin. It does not apply in any instance where the inclusion of the work is deliberate. This could be relevant when a wedding video includes some of your organ music.

There are many exemptions in relation to education set out in sections 32 to 36 of the 1988 Act. These generally exempt performance and copying of short passages for the purposes of teaching or examining students. It does not extend to copying whole works or substantial passages, nor to performances in school concerts.

The exemptions for libraries are set out in sections 37 to 44. This allows a librarian to provide a copy for a permitted purpose, such as for private research and study. From 31 October 2003, the law is tightened up so that libraries need permission to provide copies for commercial purposes.

The exemptions for public administration are set out in sections 45 to 50. They allow copies to be made for court cases, statutory enquiries and in similar circumstances.

From 31 October 2003, a new section 28A exempts making a temporary copy as part of a permissible use of copyright. An example is preparing a master tape for a broadcast, provided the broadcast complies with copyright law.

There are also some minor exceptions which are mostly irrelevant for musical works. Section 61 allows folksongs to be recorded for an archive, if the performers agree. Section 63 allows extracts to be issued for promotion, such as including an extract of a work on a sampler recording. Section 64 allows a creator of a work to use his own material in a later work, even if he is no longer the copyright holder.

There are also some rules about implied permission for copyright such as when music is used in a video which is offered for hire. Section 71 allows someone to video-record a television programme to watch later.

Unknown copyright holder

Sometimes it is not possible to know who the copyright holder is. In church music this often happens with worship songs which may be composed in one fellowship and copied by others. It is almost a form of modern folk music in that no-one knows who actually composed the work. Common examples include A new commandment, Be still and know that I am God, Great is the Lord and greatly to be praised, Holy holy holy is the Lord, and Peace is flowing like a river.

Section 57 provides one measure of protection when it is not possible to identify the copyright holder by reasonable effort, and it is reasonable to assume that the copyright holder died more than 70 years ago.

Otherwise a work remains in copyright even though no-one knows who is the holder. In such cases, the work is indicated as “composer unknown”. It is often shown as Ó Copyright control. This means that the copyright is acknowledged and any fees are collected and payable should the copyright holder ever be identified.

Performing rights

Performing rights are separate from copyright, though similar in nature. Performing rights basically protect performers while copyright protects composers. Performing rights are now governed by Copyright, Designs and Patents Act 1988 sections 180 to 212.

This point should be clearly understood as the two rights are separate. There is some possible confusion in that the Performing Rights Society deals with copyright enforcement as well as performing rights.

A performance of copyright music attracts a copyright payment for the performance in addition to that paid when you bought the music. However, there is an exception for acts of worship. But you must remember to make a payment for any performance which is not an act of worship, such as a concert.

Illicit recordings

Otherwise, the main protection of performing rights is against illicit recordings. This may be directly, such as recording a concert, or indirectly such as copying a radio broadcast or another recording of a concert.

Illicit recording or copying is commonly known as bootlegging. This has been widely practised since the tape recorder became available, but has become much more common since the 1980s as recording equipment has become better technically and more affordable. Until the 1980s, fines for bootlegging were usually too small to be a deterrent, so bootleg albums were openly advertised in music magazines. In 1988 this changed when the estate of the late actor Peter Sellers sued a film company for £1 million for using out-takes from previous films to make a new Pink Panther film which neither the actor nor his estate had authorised (Rickless v United Artists Corporation [1988]).

The Internet provided new opportunities for good quality performances to be passed freely between millions of subscribers at no cost. The website operators derived their fees from advertisements. The main website Napster was shut down in 2000. Napster has now reopened with other websites operating a low-cost download service which complies with copyright law.

Own recordings

There is no law which stops you recording your own performance of any music, even of music in copyright. Restrictions only start to apply under s182(1) when you:

- wish to use the recording other than for “private and domestic use”; or
- do not get the consent of the performer.

Issues can arise if you record a concert or service and wish to make copies, such as for members of the choir to enjoy, or to raise funds for the church. Even though this is not a commercial activity, it is not for your private and domestic use, and so you need the permission of the performers, even if the performance is in an act of public worship. (There are other issues you must consider if recording an act of worship.)

Another issue is in defining the “performer”, such as when a choir, orchestra or ensemble is involved. Does permission need to come from the choirmaster, the vicar, or every member of the choir? The answer is probably all three.

In practice, the best course of action is to state in advance any intention to record the performance and what you intend to do with the recording.

There is a separate offence under s184 of importing, possessing or dealing with illicit recordings. Section 185 deals with issues concerning exclusive rights in recording contracts.

Performing rights last for 50 years from the date of performance.

Fees for wedding videos

Performers who take part in films, television programmes and even television advertisements acquire a right to repeat fees. This is because each showing of a film, programme or advertisement is a separate performance.

To avoid the administrative burden for broadcasters and uncertainty for performers, it has become common practice to buy out these rights, which is known as a pre-performance payment. The performer receives a lump sum for giving up his right to receive repeat fees.

There is an element of this payment when an organist is paid an additional fee when a wedding is video-recorded. The recommended rate is that an organist should be paid double the normal rate for a video recording, and 50% extra for an audio recording. One fee is for playing at the wedding; the other is the pre-performance payment when the video is subsequently shown. As a wedding video is only likely to be watched in private domestic circumstances, it is questionable whether the organist has any performing right for which to claim a fee. However the fee for an organist is a matter for contractual negotiation, so if the parties are content with the fee, that is the end of the matter.

The organist and any music group leader or soloist has a right to refuse to allow their performance to be recorded, or to ask for an additional fee for recording. This right is independent of whether the minister allows the service to be recorded. In practice, an organist or other musician should not refuse permission. An organist who is concerned about having his performance recorded should probably not be an organist at all. If the choir is paid for singing at a wedding, they may also be entitled to additional fees.

Once permission has been granted it cannot be retrospectively withdrawn, however bad your performance. But remember the recording is only for domestic use.

An issue can arise when a couple say that they will not record the wedding and so do not pay the additional fee to the organist, and then Uncle Fred turns up with his video camera anyway. Neither the couple nor the bride's father can be made vicariously liable for what an independently minded guest chooses to do. However, church authorities have the right to restrict all forms of photography and recording during a church service, which includes weddings. The minister is within his right to ban all photography and video-recording during the service, or (as is normal) to limit it to certain parts of the service such as processions and signing the register. A minister who does permit recording has full authority over where lights, cameras, microphones and personnel may be placed.

The best course of action is for the churchwarden, minister or verger (or someone acting in such capacity) to tell the guest to stop recording or pay the additional fee. Such a request can be enforced. Another alternative is simply to increase the organist's fee and give everyone the right to take whatever amateur video recordings they want.

The issue is different if the video is shown on television. This may happen if something funny happens at the wedding and is shown in a programme of short video clips. It could also happen if the wedding or a party to it became newsworthy for some reason. If your music is merely background to the bridesmaid fainting during the second hymn, or whatever else is deemed hilarious enough for public consumption, there is probably no copyright issue as this would be covered by the exception for incidental use, explained above.

For a professional recording, ie where the video recordist is paid or by a television company, there should always be a separate agreement between the company and the organist. The Incorporated Society of Musicians has a draft written contract for visiting organists.

These provisions apply to all audio and video recordings of church services; however, weddings are most recorded.

Copyright Tribunal

Disputes about performing rights are administered by a Copyright Tribunal. These tribunals were established under the 1956 Act under the name Performing Rights Tribunal. The 1988 Act renamed the tribunals and extended their jurisdiction. These tribunals hear disputes about licensing schemes, such as whether the terms offered are reasonable and fair to all users.

The tribunal also sets terms when a person has the right to use copyright material but the terms cannot be agreed. A common example is playing a recording. The 1956 Act allowed anyone to broadcast a recording once it had been issued to the public. The 1988 Act abolished this right, but it was reintroduced under Broadcasting Act 1990. This allows radio and television stations to broadcast publicly issued recordings, provided the broadcaster is willing to agree the terms subsequently set by the Copyright Tribunal.

Brief history

The first copyright law was an Act of 1709 which took effect from 10 April 1710, giving copyright in books. Before this, there was a measure of protection under common law, and by various licences granted by the king.

The next major step was the Berne Convention to provide a measure of international acceptance of copyrights. The UK ratified this convention on 5 December 1887. This has been periodically amended, most recently in Paris in 1971. The UK Act extended copyright to English translations of foreign works. There is also a United Nations Universal Copyright Convention.

The first major piece of copyright law was Copyright Act 1911. On 1 June 1957, Copyright Act 1956 became law. This consolidated previous Acts and allowed for copyright in new media, such as films and television.

On 1 August 1989, the current Copyright, Designs and Patents Act 1988 became law. This consolidated the 1956 Act and, again, reflected technological changes, such as computer programs and video recorders.

There have been several amendments since then, mostly prompted by European Union directives. There is a European Copyright Treaty designed to harmonise copyright laws between EU member states. This has largely been adopted in the UK, but its adoption have yet to be tested by the courts.

New regulations were introduced from 31 October 2003 under the Copyright and Related Rights Regulations SI 2003 No 2498.

United States law

Because so much church music comes from the United States where the law is different, some brief notes about US copyright law are included.

For music published from 1 January 1978, copyright lasts for the lifetime of the copyright holder plus 70 years, as for the UK and most of the rest of the world. For music published previously, copyright lasts for 95 years from publication.

Copyright is automatically created with the work, as in the UK. A work is said to become copyright when it is "fixed" in a copy or recording.

However there is a registration process with the United States Copyright Office. The filing fee is $30. The address is:

Library of Congress Copyright Office

101 Independence Avenue, SE

Washington DC 20559-6000.

Generally, it is necessary for a work to be registered to bring infringement proceedings.

The rights of the copyright holder are broadly similar though sometimes expressly differently. For example there is a specific right “to synchronise music to visual images”.

The rights to do anything with a copyright work may be given by the copyright holder, as in the UK, but there is a greater reliance on having it in writing, known as a licence (except the Americans spell it “license”).

To make recordings, a “mechanical license” must be obtained. The rate is set by statute as so much per song per recording:

Calendar years Statutory rate

2004 and 2005 8.5 cents

2006 and 2007 9.1 cents

There is a body called Church Music Publishers Association (CMPA) which combines copyright and similar concerns for church musicians.

CCLI operates a licensing system in the USA on a similar basis to that offered in the UK. Its American address is:

6130 NE 78th Court
Suite C-11
Portland, OR 97218.

Penalties have high statutory limits. A copyright holder may recover damages from $500 to $100,000 per copyright infringed. For wilful commercial infringement criminal fines of up to $250,000 and five years imprisonment may be imposed.

Isle of Man

The Isle of Man’s copyright law is governed by the Tynwald’s Copyright Act 1991. The main differences from UK law is that copyright lasts for the composer’s lifetime plus 50 years, not 70 years.

Other countries

Works created in other countries enjoy copyright protection in the UK for 70 years after the composer’s death unless the copyright expires earlier under the laws of the country of origin. All European Union countries have the same 70-year time limit.

European directive

In 2001, the European Union passed EC Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright.

The directive will give new powers to copyright holders, such as controlling the right to quote works, to restrict electronic provision, and to allow copyright holders to track on-line use of their works.

The Profits

Using someone else’s copyright

As copyright is a form of property, using someone else’s copyright is just like using someone else’s tangible property. If you want to use a piano belonging to someone else, you ask them. If they want to charge you for borrowing the piano, you must agree a price. So it is with copyright. If you want to use someone else’s copyright work, you must ask them and agree any price.

Not all copyright holders want payment to use their work. Many composers are only too delighted that you wish to perform their work and will happily let you do so freely. There are many Internet sites which offer free material for church use. Some of these sites allow free downloading for worship purposes only.

A person may agree subject to a condition. While Gilbert and Sullivan was copyright, D’Oyly Carte opera company had an effective monopoly on their operettas which they used to enforce their standards of production. Now that has expired, people are free to do what they like with their works — and have done.

Another example concerns the rap singer Coolio who wanted to “sample” part of a song by Stevie Wonder in Gangsters’ Paradise. (Sampling is taking a short extract from an old recording to be used in a new recording.) Wonder only agreed if the new words were cleaned up, as he did not want to be associated with the original violent lyrics. The words were cleaned up, and the result was the best selling record of 1995.

Whatever agreement you reach with the copyright holder, he can enforce under the normal law of contract (see chapter 3. For example, if he allows you to make 100 copies and perform it twice, he could sue you for making 101 copies or performing it three times. You must follow the agreed conditions in the same way as you must comply with agreed conditions when hiring a hall or a piano.

The commonest such arrangement is publishing right where the copyright holder allows someone the right to publish the work without owning the copyright. The publishers of this book have publishing rights but not copyright in the cartoon on the cover.

Liturgy and Scripture

Suppose you write your own Communion setting for a Common Worship service. You own the copyright in your music, but the copyright in the words rests with the Archbishops’ Council of the Church of England. If all you have done is to reproduce the words of the parts usually sung, there is unlikely to be any problem about getting agreement. No fee is likely to be requested.

Church House Publishing's third edition of A Brief Guide to Liturgical Copyright says that no prior permission is needed for a local music setting, provided:

- the words faithfully and accurately follow the text of Common Worship;
- the copies bear the name of the parish, cathedral or other church body;
- settings are not offered for sale; and
- there is an acknowledgment which reads "Common Worship, extracts from which are reproduced in this setting, is copyright Ó The Archbishops' Council 2000."

The same arrangement may be used for other copyright material owned by the Archbishops' Council

The Book of Common Prayer is still in copyright owned by the Crown. No permission is needed to reproduce up to 500 words. Otherwise, permission is needed from The Permissions Controller at Cambridge University Press.

The reference to "faithfully and accurately" means that a composer cannot drop text to fit the music (as Schubert did). However, there appears to be no objection to repeating words, such as changing "Glory to God in the highest", to "Glory, glory to God in the highest, in the highest". In practice, the reference to setting words includes reproducing "cue lines" as plain text, such as "Great is the mystery of faith" before the acclamation in the Communion service.

This concession does not apply when a setting is commercially published or otherwise offered for sale. In such cases, an agreement must be reached with the Copyright and Contracts Administrator at Church House.

The Church of England gives parishes a similar right to make their own service books using copyright material owned by the Archbishops' Council. The copies must give the name of the parish, and must include a statement of the copyright in the form as above. No charge is made for this, as parishes have already paid through the diocesan quota (also known as parish share). It is a requirement that the church must own at least one copy of Common Worship. These home-made service books must not be offered for sale, but may be given away. Similar provisions apply to liturgy available in electronic format, such as on CD or downloaded from a website.

The exemption from prior agreement also applies to:

- service sheets to be used for a single occasion, such as orders of service for weddings and funerals;
- overhead transparencies;
- reproductions in pew notices, service leaflets and prayer cards;
- large print versions for people with poor sight.

Where a service book contains material from several sources, an acknowledgment must be included for each source, and you must comply with the rules for each source. Ensuring compliance with copyright law does not mean that such a book is canonically acceptable as worship.

It should not be forgotten that translations of The Bible are copyright, and so permission may be needed when passages of scripture are set to music or included in service books. In practice, copyright owners allow a certain amount to be used without prior agreement or payment of a fee, but their copyright must still be acknowledged.

Table of Bible translations, copyright maximum and copyright holder

Translation Copyright- Copyright holder

free maximum

Authorised Version 500 verses Cambridge University Press

Contemporary English Version 50 verses Bible Society

Good News Bible 1000 verses Bible Society

Grail Psalter 5 psalms A P Watt Ltd

Jerusalem Bible 500 words Darton, Longman & Todd Ltd

Liturgical Psalter 5 psalms HarperCollins Religious

New English Bible 500 verses Cambridge University Press

New International Version 500 verses Hodder & Stoughton

New Revised Standard Version 500 verses RSV/NRSV Permissions, USA

Revised English Bible 500 verses Cambridge University Press

Revised Psalter 5 psalms Archbishops' Council

Revised Standard Version 500 verses RSV/NRSV Permissions, USA

Photocopying music

There is no law against photocopying music, only against photocopying it without permission. Permission to photocopy copyright music can often be obtained easily, sometimes by just a single telephone call to the publishers and asking for their copyright department.

Many modern Christian songs are covered by a music reproduction licence (MRL) issued by CCLI, as explained later. This allows you to pay a single annual fee and then freely photocopy music from a list provided by them.

Commercial publishers are not trying to stop you performing their music. They are trying to stop you avoiding payment for doing so. Publishers are usually co-operative when you seek permission and are willing to pay an agreed fee.

Several, but not all, leading music publishers have agreed that you may photocopy their music without getting their express permission or making a payment in these circumstances:

- to avoid a difficult page turn;
- to keep a record of bowing marks in parts for stringed instruments;
- as temporary copies when you have ordered copies and while you are waiting for them to arrive;

- to generate additional copies of orchestral parts, provided that the total number of parts generated does not exceed one quarter of the number of parts you have bought.

If music is out of print, most publishers will arrange either to produce authorised copies from an archive for you, or will allow you to make your own copies, possibly on payment of a fee.

You may wish to perform an anthem from a book containing 50 anthems without buying 30 copies of the whole book. In such cases, you should contact the publishers and ask permission to copy the one anthem or other extract. Permission is likely to be refused if the anthem or extract is published separately as the publishers will expect you to buy that copy. In other cases, the publisher is likely to agree to let you photocopy the music on payment of a fee. This is rarely a large amount, typically around 30p a copy, but the exact amount must be agreed with the publisher. The publisher will ensure that the composer receives the appropriate royalty. The publisher will usually give you a licence number to be written on each photocopy and will send you a bill for the amount. Sometimes the publisher will send you self-adhesive labels printed in red ink to stick on each copy. Once you have legally photocopied this music, it is your property to use in exactly the same way as any other printed anthem. You may sing the anthem as many times as you wish without payment of any further copyright sum.

Sometimes you may wish to photocopy music for convenience. For example, a carol service may involve several books with only short readings between carols to find the next place. You may wish to photocopy all the music in order to make life easier for the choir. Another example is in large anthologies. Many publishers produce collections of up to 100 anthems in a single book. These represent very good value for money. However such books can be heavy for some choristers who are happier with a photocopy. Yet another example is a chorister with poor sight who may wish to have an enlarged photocopy.

In all these cases, contact the publisher and ask if they are in agreement to what you wish. Publishers are more concerned about losing income than in being awkward to law-abiding musicians. In practice, most publishers agree, though they will often insist that you destroy the copy after first use. In other words, if you have 30 copies of an anthem book, the publisher may be willing to let you leave them in the cupboard and produce 30 photocopies of an anthem. They are not losing any profit or royalty by so agreeing.

When you have been given permission to take photocopies, always note the date and name of person who gave you permission. Always write on the copies the basis for your permission to photocopy. Sometimes music stands are inspected by representatives of publishers looking for illicit photocopies.

Some publishers now offer books on terms which permit the purchaser to make their own copies.

Remember that illegally photocopied music remains illegal. If you discover what appears to be illicit photocopies in a choir cupboard, you must throw them away or agree any payment with the copyright holder.

Licensing schemes

In reality, making a private agreement with a copyright holder may only be practical if you want to perform a work written by an organist you know. It is unlikely to be practical for a major composer or for any published work.

In such cases, there are various licensing schemes, which are legislated for in sections 116 to 125 of the 1988 Act. A licence may be granted to permit the holder to do anything protected by copyright law. Perhaps the most relevant for organists is the Christian Copyright Licence explained below.

CCLI licence

Christian Copyright Licensing International (CCLI) offers a simple solution to copying church music. By acquiring one of several licences, you can legally reproduce music in certain ways. You pay an annual fee for this licence.

The Church Copyright Licence, the most well-known, is for the reproduction and projection of words of Christian hymns and worship songs. This licence includes a Mechanical Copyright Protection Society (MCPS) licence allowing recording of music for non-commercial use, such as maintaining an archive or providing copies to housebound members of the congregation.

There is also a Music Reproduction Licence for the photocopying of music from authorised music publications. This licence also allows for small arrangements where no arrangement already exists, such as for brass ensemble.

When you buy the Licence, you are given a list of which works and composers are included. You should check that any music you wish to copy is on this list. This list contains 150,000 sets of words from 2,500 catalogues. If a work is not on the list, you must make separate arrangements with the copyright holder.

The different types of licence offered to churches are:

- Church copyright and music reproduction licence;
- Performing Rights Society (PRS) performing licence;
- Copyright Licensing Agency (CLA) church licence (for photocopying material from magazines and books);
- church event copyright licence; and
- church video licence, showing films and film clips.

A similar set of licences is offered to schools.

The church copyright licence (CCL) allows the church to:

- include words of hymns and songs on notice sheets or similar;
- produce your own hymn book or supplement;
- project words from an overhead acetate;
- store and retrieve words of hymns from computer files;
- make an audio or video recording for those who cannot attend.

The last of these is administered by CCLI as agent for the Mechanical Copyright Protection Society.

The music reproduction licence (MRL) is an addition to the CCL. It also allows the church to:

- photocopy music.

In all cases, the words or music must be on the list provided by CCLI Europe.

A requirement of a licence is that you complete an annual return of which songs you have actually reproduced, recorded or projected. This allows CCLI to apportion the copyright royalties to copyright holders in proportion to the use of their material.

The annual fee is based on the average size of your church's congregation. Current rates (in 2004) are:

Category	Church Size	Annual Fee
AH	0 - 14	£48
A	15 - 49	£72
B	50 - 99	£132
C	100 - 249	£216
D	250 - 499	£300
E	500 - 999	£393
F	1,000 - 1,499	£489
G	1,500 - 2,999	£603

These amounts include VAT.

A church event copyright licence is issued by CCLI for occasions of short duration, such as missions, rallies, conferences, weddings and funerals. The licence lasts for 14 days and costs about one third of the annual licence. This licence cannot be used for any event where admission is charged.

The address of CCLI is given in Appendix 1.

CCLI also operates in other parts of Europe, USA, South Africa, Australia and New Zealand.

CCLI provides other services, such as news updates, copies of articles and annual lists of the top 25 Christian songs.

Music outside CCLI licence

The CCLI licence covers a huge amount of Christian music, but does not cover it all. However some other leading publishers have made their own arrangements.

For Taizé chants, you can obtain a Calamus licence from Decani Music. For this they provide you with a copy of the chant, if not otherwise published, for which you acquire the licence. Its address is given in Appendix 1.

Calamus also covers other sources of music such as New Dawn Music, OCP Publications, GIA Publicatons Inc, World Library and McCrimmons Publishing Co Ltd, as well as its own Decani Music. They also license Bernadette Farrell (Christ be our light), Daniel Schutte (Here I am Lord), Sebastian Temple (Make me a channel of your peace) and Marty Haugen (All are welcome).

Iona songs are now covered by a CCLI copyright licence. Previous copyright permissions granted directly by Wild Goose Resource Group remain valid. One consequence of the change is that you need a licence to reproduce the words of an Iona song, such as in a service sheet. Previously, Wild Goose allowed free copying of words.

Enforcing copyright

Copyright is a civil law, not a criminal law. So if you breach a copyright you are more likely to receive an invoice than a summons.

A copyright holder may issue court proceedings for an action to recover damages. Under s 97(2) of the 1988 Act, these damages may be increased according to the flagrancy of the breach and the benefit accruing to the infringer.

Where there would have been no infringement of copyright had the infringer obtained a licence from the Copyright Tribunal and the infringer subsequently agrees to obtain such a licence, the maximum damage is twice the amount of the licence.

Damages

In all but the most serious cases, breach of copyright attracts compensatory damages under the 1988 Act s96(2). This is a sum of money designed to compensate the copyright holder for lost profits or the fee that could have been charged.

A court may award additional damages when:

- the infringement has been particularly flagrant; or
- the defendant's profit is so large that compensatory damages are an inadequate remedy.

Breach of moral rights is also actionable for damages, assessed as a sum to put the right-holder in the same position as if the moral right had not been infringed.

A court can order an infringer to provide an account of profits, and to deliver up copies of the offending works.

Before the 1988 Act, it was also possible to claim conversion damages equal to the value of the infringing article, which could be huge. This right is now abolished.

In practice, breaches of musical copyright usually attract only damages as a remedy, as a musician does not normally suffer other than financially when his copyright has been breached. However, other remedies are given below for the sake of completeness.

Injunctions and searches

An injunction may be granted by a court to prevent or remedy a breach of copyright. An injunction may not be granted if:

- the infringement is slight;
- there is unlikely to be any repetition; or
- there has been unreasonable delay in seeking the injunction.

Since 1976 the courts have been able to grant Anton Piller orders (from the name of the case where such an order was first granted). The order is usually made by a judge at a secret hearing to which the premises owner is not a part. These draconian orders allow a copyright holder to enter premises to look for, seize or copy material. Such orders are only allowed in extreme cases.

Destruction of infringing material

Musicians are sometimes fond of saying that if their copyright is infringed, they have the right to tear up the offending music or seize the illicit recording. This is rarely so. Any musician that does this is liable to prosecution for criminal damage under Criminal Damage Act 1971. This is an "arrestable offence" which means that you can make a citizen's arrest, in other words detain them while you wait for the police. Threats and attempts at damage are also offences.

If you find material that infringes your copyright, a strict seizure procedure is set out in section 100 of the 1998 Act. You, or someone acting for you, may seize material which breaches your copyright only if:

- you first give notice of the time and place of the proposed seizure to a local police station;
- you stay in areas open to the public (such as a shop's sales floor but not its stock room);
- the offending material is not in the possession of a person at work;
- you do not use force; and
- you leave a notice which states what has been seized, by whom, on whose authority, and for what reason.

An alternative and much safer procedure is to use the courts. Section 99 allows a copyright holder to get a court order requiring infringing material to be delivered to the copyright holder or someone else named by the court. Section 114 allows the court to order that infringing material be destroyed or delivered to the copyright holder.

The Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 allows the police to apply to the court for an order to seize copyright material.

Someone to whom a licence has been given in respect of a copyright work has similar rights to enforce the copyright to the extent that it breaches his licence.

An action may be brought for breach of moral rights. The court may grant an injunction on such terms as it thinks fit.

Criminal offences

It is not a criminal offence just to breach someone's copyright, but it becomes a criminal offence under s103 of the 1988 Act if you breach the copyright:

- on a commercial basis; or
- to an extent that prejudicially affects the copyright holder.

The enforcement of this criminal law is the responsibility of the local weights and measures authority.

The maximum penalty for a criminal conviction is an unlimited fine and ten years in prison when the Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 becomes law. Until then, the maximum penalty is a fine of £5,000 and two years in prison. If the offence is committed by a company or other corporate body, any officer of that body who acted or connived in the breach of copyright is also liable.

Goods which infringe copyright can be "prohibited goods". This means that Customs and Excise can stop them being imported into the UK. This provision is widely used to stop importation of pirated CDs.

Electronic enforcement

Technology now means that some equipment is fitted with electronic devices to make copying difficult or impossible. Section 296 of the 1988 Act gives these devices legal protection in that it is an offence to find ways of defeating the security feature or of making known how to do so.

From November 2002, some CDs have copyright control technology on them. A consequence of this is that the CD cannot play in some players, such as in computers. A CD must indicate that such a device has been put on.

There are similar protections for protecting computer software.