

Copyright in a Changing Digital Landscape

The technology-driven explosion of methods for creating, storing, searching, and sharing music continues to create an aura of uncertainty for scholars and librarians. What used to be clear is now often murky. Imponderable questions appear much faster than the laws of any country evolve.

Extrinsic considerations—when and how a piece of music may be used—remain largely fixed but also easily verified. Although not always easily enforced, the law is clear on the traditional sequence of events: create, publish, perform, and record. Every step in this sequence now may be digital, which means that there is no necessary starting or ending point, nor is there necessarily an instantiation of the work in “fixed form” (a hallowed requirement for copyright protection in the US). Some differences in the duration of copyright from country to country remain the subject of vigorous debate. Yet within many music enclaves, an increasing number of new works, and new ways of composing, fall outside the boundaries of protection.

Intrinsic factors—themes, melodies, voicing and orchestration—issuing from the music itself can be expected to play an increasing role in discussions of music as intellectual property as our ability to create, control, alter, and morph digital musical content expands. Will the role of arbitrary analogies in legal judgments decline? Judges and advocates may be uncomfortable talking about music *per se*. It may be far too soon to say whether digital tools to evaluate musical similarity will be trusted sufficiently, but the discussion has already begun.

Meanwhile, the day-to-day fabric of decision-making required of librarians and scholars launching projects is constantly battered by recurrent questions concerning access and fair use, particularly to musical arts of the past century—recordings in general, film scores (both recorded and improvised), background music, and much else; also by ambiguities of fair use, uncertainties concerning performing rights, and many grey areas resulting from a multiplicity of new media contexts. Yet a growing acknowledgment of the importance of intellectual-property questions has prompted a number of recent studies of the evolution of conceptualizing copyright protection with respect to musicology and adjacent disciplines.

This panel examines a selection of these issues with the intent of viewing them in diverse musical and historical contexts. The larger issues of improved international understandings of music copyright, which are of common concern, can happily rely on the extensive work of IAML’s copyright committee, where past studies have underscored the contribution of cultural factors to apparent divergence of views.

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