

# Understanding copyrights for Sheet Music

---

“A copyright is a legal right created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution. Copyright owners have the right to make public, in whole or in part, the original work; reproduce or have reproduced, adapt or have adapted the original work, in whole or in part, by any means or process; perform and authorize the public performance of their works by any means or process; make an adaptation of the original work; distribute and market the original work – authorizing any communication to the public of the performance of the original work. In other words, a copyrighted work prevents others from copying and communicating that particular creative work. There are two main types of rights to take into consideration: **Legal copyrights**, called authors’ copyrights, which automatically arise from the creation of the original work; and **contractual rights**, including the publication rights, which arise from the contractual agreement between the author and a third-party publisher”. – by Master Yaël Cohen-Hadria

*This article was written by Yaël Cohen-Hadria, Lawyer specialized in Intellectual Property, from the Marvell Law Firm, Paris. We are very grateful for her contribution.*

## 1. Legal Copyrights

---

*Under what circumstances are **Authors’ Copyrights** applicable?*

### Who owns the legal copyright?

---

The author is the creator. He’s the person who puts an intellectual, creative and original contribution into a work. Following this definition, for sheet music works, the creator can either be:

- **The Composer:** The person who created the musical work from scratch.
- **The Arranger:** The person who arranges the musical work. The arranger may in some cases be considered as the creator if his arrangements are proved to be a creative property, as described above. For example, this includes piano reductions and choral arrangements.
- **The Librettist:** The person who created the text used in a musical work, mostly in the case of vocal or choral pieces.

### Duration of authors’ copyrights

---

**The Berne Convention** stipulates that the minimum duration of the term for copyright protection is the life of the author plus at least 50 years after their death.

A number of countries, including the US, France, and Germany, have extended this duration up to 70 years after the author's death. To make matters even more complicated, each country has their own copyright specificities.

*If the author is anonymous, collective or pseudonymous:*

An anonymous, collective or pseudonymous work is protected by copyright for a period of 50 to 70 years from the date of the work's first publication. In the case of an anonymous work, should the author reveal his true identity, the copyright protection period will be extended for an additional 25 years.

## What happens after the period of copyright protection expires?

---

After the period of copyright protection has expired, the work is said to be "in the public domain", meaning that anyone can use the work without obtaining permission.

To understand whether an original work is in the public domain, chronological, material and geographical parameters have to be taken into account. These vary depending on each country's jurisdiction.

- **Chronological parameters:** The duration of copyright protection depends on the date of a work's creation or publication.
- **Material parameters:** Different versions of a particular sheet music may be protected by separate copyrights. So if one version is in the public domain this does not necessarily mean that the other versions will be too.
- **Geographical parameters:** In the US, works published before 1923 are in the public domain as their copyright has expired. But even if a work is in the public domain in the US, it could be protected in other countries.

*Example – the "Urtext" edition:* In Germany, publishers use the term to refer to a specific edition of sheet music that – according to copyright law – should be in the public domain but is so valuable that the editor/publisher could still be granted a copyright. This applies to (1) sheet music handwritten by the author, or with annotations in the author's own words; and (2) sheet music publication that is a significant creation from a previous publication of the same sheet music.

As a general rule, it is always important to do a thorough background check before using or distributing an original work that appears to be in the public domain.

To sum-up, we can distinguish 2 main types of works:

- **Public domain:** free of author copyrights AND free of publication rights.
- **Not public domain:** author copyrights protected AND/OR publication rights protected.

## Is this work public domain?

---

*Summary valid for 2017*

### Canada (China, Korea, Japan, South Africa)

---

- Last surviving Composer/ Arranger/ Editor/ Librettist:
  - Died before 1967: Yes
  - Died after 1966: No
- In the event the author died later than 1949 and the work was first published after his death, the work might be protected by copyright for a duration of 50 years from the date of publication.

### United States

---

Anything by anyone:

- Published before 1923: Yes
- Published after 1922: No

### European Union

---

- Last surviving Composer/ Arranger/ Editor/ Librettist:
  - Died before 1947: Yes
  - Died after 1946: No
- If the work was first published more than 70 years after the author's death it might be protected by copyright for a duration of 25 years from the date of publication.

## 2. Legal Copyrights

---

The author is entitled to sell his author's rights to a third-party editor or publisher.

For example, Kaija Saariaho sold his publishing rights to Chester Music, Matthias Pintscher to Bärenreiter, Thomas Adès to Faber Music, etc...

In that case, contractual rights for an original work arise from the contractual agreement between the author (the copyright's first owner) and the third-party publisher or editor.

The editor/publisher receives the owner's rights if the owner sells him his property rights or grants him a license.

The editor/publisher is then entitled to the – all or part of – economic rights to the work and can license it in his turn, within the limits set by the provisions of the license agreement. This does not include the moral rights to the work – if applicable – which will always belong to the creator. It is therefore imperative to carefully draft those license agreements.

## 3. The Case of Digital Copyrights

---

Copyright protections apply irrespective of the sheet music format (digital or paper). In practice, in a publishing or sub-publishing agreement, specific provisions related to the digital format and printed format may be relevant so as to protect the copyright owner.

Therefore, scanning an original paper work or copying an original digital work are both governed by the copyrights' legal or contractual restrictions.

- For works under copyright protection, an official authorization/license must be provided by the publisher and/or the author. This authorization should be provided by a specific agreement.
  - For works in the public domain, the scanning process is allowed since the work is not protected by copyright. Any type of reproduction is allowed.
-