

Copyright**No. 17, October 1989**

The history of liturgy is a story of creativity and borrowing. Great liturgical innovators composed texts for their own communities and others imitated them. Liturgical copyists exercised great influence and even control. Contributing to the formation of a richly textured pattern of worship (eventually too textured, Cranmer would argue). It is more difficult today.

Early and medieval copyists worked without the restrictions of the laws of copyright. Today most liturgical texts are published under copyright, and most hymns are protected, for a period of time at least by copyright on the words, copyright on the music, and copyright on the collection in which they appear.

Copyright made a relatively recent arrival on the legal scene and did not win immediate acceptance. The great eighteenth century jurist Blackstone noted that there had not, until recently, been any final determination upon the rights of authors at the common law. But the laws of copyright prevailed, as an understandable reaction to the widespread abuse of original work made possible by the invention of printing, and today they are the concern of every church organist, worship committee and parish priest.

What is copyright? Copyright is a form of ownership, invested in the author of every original work of literature, music, drama, choreography scientific publication, etc. Copyright exists in a work from the moment it is created--in other words, copyright exists even though the work is not yet published or has not been registered in the Copyright Office. Just as the owner of a car is protected in law against joyriders and thieves, so the owner of a copyright is protected against the misuse of his or her property. The owner of a copyright may allow someone else to use the property, with or without a fee and may even give or sell the copyright to someone else. But, apart from such an arrangement, the owner of the copyright has the sole right to reproduce the work, whether in print, or on stage, or even in translation.

Unlike the ownership of cars, copyright does not last for ever. Copyright, with some exceptions, lasts for fifty years from the death of the author. After that the book or hymn, or engraving, or whatever, may be copied with impunity.

What is infringement of copyright? Copyright is infringed when someone does anything that only the owner of the copyright has a right to do (e.g., sell or hire the work for use, distribute it, exhibit it for purposes of trade, import it for sale or hire in Canada). This principle is so sweeping that the law has hedged it with a list of exceptions, but the exceptions do not dilute the gravity of the principle. For instance, it is permitted to copy material, in a fair way, for purposes of study, research, criticism, review, and summary in a newspaper article. It is permitted to make a single backup copy of a computer program, if you are able to prove you destroyed it when you ceased to own the program. It is permitted to quote in public a reasonable extract from a published work (e.g., you may quote T.S. Eliot or Margaret Atwood in a sermon). And it is permitted (this point is of the greatest importance if we are to understand the sweeping nature of the law) for a congregation to sing a hymn in church from books they have purchased, without being liable to pay compensation, so long as the occasion is in furtherance of a religious, educational, or charitable object. In other words, even the copyrighted material in a hymn book is for personal use only, except insofar as it is covered by this exception.

What penalties does the law provide for infringement? The law provides both civil and criminal remedies. In civil actions those who infringe copyrights are liable to pay such damages as the owners may have suffered as well as such profits (if any) they may have made. If they claim that they did not know that there was copyright on the work, they may be subject only to an injunction to stop using it. If, however, the copyright was registered, they shall be considered to have had reasonable grounds for suspecting that copyright existed. In criminal actions the new consolidated Copyright Act provides for maximum penalties or \$25,000 fine or six months in prison on summary convictions, and \$1,000,000 fine or five years in prison on conviction or indictment.

What, specifically, are the regulations which are likely to affect organists, worship committees, and clergy? Here is a partial list.

Hymns. The words of copyrighted hymns may be copied only with the permission of the author or of some other person or body to whom the copyright has been granted or bequeathed. If you cannot find the author of a hymn, or the present owner of copyright on a hymn whose author has been dead for less than 50 years, check with the publisher. It is also possible that copyright on a hymn whose author has been dead for more than 50 years may be owned by a music society, publisher, or institution. Check the copyright notice in the hymn book or sheet music.

The same procedure applies to music and permission must be sought separately. Even if the music is no longer subject to copyright you may not photocopy it from a copyrighted hymn book without permission. If you receive permission to copy the words and music of a hymn you must not alter them without permission. E.g., to make the language inclusive or the harmony more attractive. Some authors and composers will give permission: some will not. You may be able to buy acetate transparencies of hymns for use in an overhead projector, but it is an infringement to make your own without permission.

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A recent (August 1989) Anglican Liturgical Consultation passed a resolution calling on provincial churches to be tolerant and generous in relation to other national churches which wish to use their work. The resolution also noted with understanding that copyright is often imposed to ensure that legitimate sale of books, but urged publishers to avoid restrictions and royalties which might impede the free sharing of prayer. This may, in the long run, make it easier for congregations to copy liturgical texts for appropriate occasions and special circumstances, but it is not likely to affect the stringent rules which apply in relation to hymns and music. In any case, the copyright laws are in force and should be observed.

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(An insert in the United Church Observer, June 1989, produced by the Toronto Conference of United Church of Canada, was helpful in producing the above article.)

The Faculty of Theology of St. Paul University is sponsoring a national conference on Liturgy, Music and Ministry with Joseph Gelineau S.J., 29 April to 3 May 1990. Brochure and registration information available from Faculty of Theology, St. Paul University, 223 main Street, Ottawa, ON K1S 1C4. (613) 236-1393.