

Copyright or Face The Consequences

Copyright International Songwriters' Association 2005, 2009

Do you always copyright your songs before promoting them and do you always obtain a certificate or proof of posting, before sending out your demos? No bluffing now! I see - just as I thought - like me, you think lightning never strikes you. Well, recently it struck a guy we know, and it has not turned out to be the most pleasant of experiences.

John writes prolifically. Most of what he writes gets discarded, but what survives is generally very good, and he has had some near misses. He does not have a current publishing agreement so when it comes to promotion he is on his own. When it comes to protecting his copyright, he is also on his own. Usually, gets around to it - eventually. John often saves his songs for a while, and then sends a batch of them to himself using the trusty old registered envelope, but usually weeks, if not months, after writing the material. It is an amateur method, used by countless generations of songwriters.

Some time back, John penned quite a clever piece, and duly posted it out to all and sundry. There was a flutter of interest from one or two of the contacts and no reply from the others. Some months went by and then one day John's sister heard part of his song on an album by a singer to whose management John was certain he had sent the demo. Needless to say, his name was not the one credited on the record, and so John sent the whole package to us. The similarity was significant, but amounted to less than a third of the new song.

John had indeed copyrighted the tune in question, but the date on his envelope happened to be some days after the album had been released, even though John was not aware of that album for several weeks. Anyway, he knew he had demoed the song six months before getting around to copyrighting it. The killer was that although he knew he had posted it to the singer's management company, he had no proof of posting, nor any reply from the firm acknowledging its receipt.

Naturally, he phoned the people in question, but they had no recollection of his song, and needless to say, were not terribly interested in listening to his complaint anyway. It was not totally hopeless, however. A musician who worked on the backing to the demo did recall recording it, but could not pinpoint when, and he also admitted that he never got to hear the full vocal. And while John's sister recalled hearing the song long before she heard the album, she also could not pinpoint the date.

One of the people who expressed some interest remembers John, but not the song. Nobody apart from John himself can back his claim that he ever posted it to the company concerned in the first place. In other words - it has the makings of a very expensive and probably unsuccessful legal shambles. It is not, to put it mildly, a satisfactory situation, somewhat akin to picking the winning lottery numbers, and then losing the ticket. And it all could have been avoided if the song had been copyrighted at least a week before promotion using two distinct methods (just in case one fails), and (equally important), if a certificate of posting on the promotion had been obtained.

I know it rarely happens, and anyway, when it does, it always happens to somebody else, but still - if it happened to you, then you might not be quite as pragmatic as John. He says it goes to prove he can write a good song. Lovely attitude, but I do not think I would be as calm. In case you think that only people like John fail to take care of business, Billboard Magazine recently checked the US copyright registrations of the Top 100 Albums, and discovered that over a third of them had no copyright registration as sound recordings with the Copyright Office. This

included albums by Backstreet Boys, Bob Dylan, the Verve, and even the soundtrack from the most recent "Austin Powers" movie. So John is in good company!

Of course, there is a common misconception that somewhere there is an international body which will protect your copyright and pursue anybody who infringes on it - a sort of copyright police force. There is not. You are responsible for protecting copyright yourself, unless you have assigned your song to a music publisher - whereupon it becomes his problem. As a result of there not being any statutory body willing to pursue wrongdoers on your behalf, various services have grown up which offer to register your work for a fee. Remember, irrespective of the official-sounding names they may use, these are in general *private businesses and not government or semi-government bodies*, and if you ask them, they will tell you that all they will do is take your song, give you a receipt, and cash your cheque. Which is fine - as long as they are still in business in ten years time, when you need them!

Writing a song is like making a piece of furniture. Once you write the song (or make the chair), you own it. You do not need to register it, post it to yourself, or whatever in order to own it. You own it. Of course, *proving that you own it is another matter*. At some stage you may be called upon to provide evidence that you wrote that song or made that chair - and that evidence should be such that it will stand up in court. Producing your mother before the judge to say she saw you write it may not be quite as good as producing the Archbishop of Canterbury - but at the end of the day, it is a matter of how believable your witness is.

In the UK, two major Copyright Acts, in 1911 and 1956, form the basis on which most of a songwriter's rights rest. By various international agreements, notably two events called the Berne Convention and the Universal Copyright Convention, your song, whether written in the UK or elsewhere, is protected to a greater or lesser extent in almost every other country of the world, although there are exceptions. Most of these countries have also passed various Copyright Acts, updating the law to cover new ways in which music could be used, such as records or CDs, radio, T.V., films, etc.

In Britain you don't have to do anything to officially copyright a song. As soon as it actually exists outside your mind in some "tangible form", that is once you have written it down or made a recording whether amateur or professional, then copyright begins from that moment. However, **proving this is another matter**.

The international symbol of copyright is a 'c' in a circle, and if you are sending or taking around manuscripts or lyrics with CDs of your songs, you should write at the foot of the first page of any manuscript or lyric "(c) copyright by..." (inserting your name and address where the dots are). In the UK, even if you sell your song to a publisher, you are the first owner of the copyright, and in some continental countries you always remain the owner and in effect you only license the publisher to do certain things for you (i.e., print, collect royalties, etc.). The only time in the UK when you may not be the first owner of a copyright is if you were employed by someone else to create it, as with a newspaper reporter writing an article. The exact time of creation of each song is not important in the UK, as copyright lasts for the whole of your lifetime and for many years after that. If two of you wrote the song together, then copyright continues for fifty years after the death of whoever dies last. This is not too likely to worry you, but might concern your heirs. Thanks to international agreements, the same position applies in the UK to foreign songs as well, and your song will in turn be protected for the same or roughly the same length of time in most other countries too, including (from 1st January 1978) the USA, where until then the rights only lasted for a total of fifty-six years.

How specifically can I protect my copyright?

Try not get too paranoid about being ripped off. Cases of songwriters being ripped off in the sense of having their entire song stolen are extremely rare in the music business. You are far more likely to have your royalties fiddled, or even not paid at all, than you are of having somebody do something as blatant as putting their name on your song but, of course, it pays to protect yourself, and you should do so.

Before outlining different methods, let me make one thing clear. Once you write a song, it is yours. You do not have to copyright it for it to be yours. It is yours because you wrote it. Of course, the question is **can you prove you wrote it?**

In the UK, protection of your copyright can be effected by any method which gives you a dated receipt for your material - preferably from a source independent of yourself.

The "Do-It-Yourself" method involves putting your song into an official Post Office Registered Envelope, and posting it to yourself. People selling copyright services, often insist that this is not a valid form of copyright, but in fact, it may or may not be. In the end, it is a question of credibility - in other words, who the judge believes. The main thing to remember if you do down this route is to always use an official Post Office envelope - and you should also make sure that you do not open it when you get it (it must remain sealed). It also helps if you stick the registration certificate or receipt onto the envelope when you get it, so that you can match the relevant receipt with the relevant envelope. Lyrics can be sent on their own, or (if a melody is also to be protected), a rough CD or manuscript can be enclosed. Normally, the letter "C" in a circle, followed by the year, is written on any copy.

What you are doing is using the post office to verify a date - a date on which you were obviously in possession of a certain song. Quite clearly, if that date is prior to the date on which the song was published, then the publisher will have a lot of explaining to do to show how he could claim to own a song which the Post Office demonstrates was clearly in your possession prior to it ever being published. So, barring that he claims you stole it, then the only way you could be in possession of it is if you had written it.

Alternatively, you can effect copyright protection by depositing your material with a bank or solicitor and obtaining from them a dated receipt. Banks rarely die, and although lawyers are not eternal, their legal practices are generally sold on to another lawyer. Alternatively, you can use the ISA service (International Songwriters Association), which is basically the same as this, or any of the other protection or deposit services. Remember, providing you with a receipt may not in itself be sufficient. A court may well wish to have some form of evidence from the protection source that what they have in their records is what you **say** they have - which means you may have to call them as witnesses (which in general means paying their expenses).

In America, it has long been the practice to register through the Register of Copyrights, Library Of Congress, Washington DC20599, USA. They will send you a form, called Form PA. There is a fee for each song copyrighted in this manner. The Library Of Congress Copyright Office is on the web at <http://lcweb.loc.gov/copyright/> and you can download forms from that site. However, although this is a government-run organisation, do remember that it does not "protect" your copyright, nor does it offer to pursue anybody on your behalf - it simply offers to register your copyright for a fee.

You stress not opening the envelope. Is this really so important?

Yes - there is a much-quoted story about the songwriter who had protected his song in this manner, and alleged that another composer working for a music publishing company had stolen

his tune. The story goes that the company invited him to turn up with his proof. He did so. They asked him to open the envelope to verify that it was the same song. He did, believe it or not, thus destroying his proof. Seems hard to believe that anybody could be so stupid.

Incidentally, it is a good idea to write the title of the song on the outside of the envelope before posting it. After a couple of years, you might have dozens of envelopes with dozens of songs inside, and if a dispute arises, the court will hardly be too impressed to see you arriving with a sackful of registered envelopes, one of which should contain the song in question, if only you knew which one.

It is likely that if you post it to yourself, your opponent will claim that having got it back, you tampered with the envelope and changed the contents. Some writers who use this method post the envelope to a third party - who is willing to accept it. Again, it all goes back to who the court believes and the reason why it is suggested that you use the official Post Office Registered Envelope is because tampering with them generally leave some evidence. In any event, as you may end up with a number of these envelopes, it is a good idea to write the name of the song on the rear of the envelope. It is also a good idea to put as few songs as possible into each envelope. Although they say that lightning does not strike twice, it would be a shame if separate copyright disputes arose at two different times, over two different songs, which had been copyrighted in the same envelope!

You mentioned several possible witnesses - who would you recommend?

Who you approach is a matter for yourself - technically you could ask anyone to act for you. It all depends on how much weight a court would give to their evidence if the matter should come to trial. Most people use lawyers, but I myself favour bank managers. Lawyers are mortal, and pass on to that great Courtroom In The Sky, but banks are (hopefully) eternal institutions whose managers may change, but who otherwise remain there through thick and thin. Banks, by the way, may make a small charge. Some may not since a few banks offer a certain amount of deposit facilities free of charge, but a lawyer will most certainly charge. In any event, it is going to cost more than using the Post Office facility.

Suppose you do not have a lawyer, or even a bank account?

Well, there are a number of commercial services available to you. In the USA for example, it is essential to file your songs with the Copyright Office in the Library of Congress. This costs around \$40 per song. In Britain, there is an organisation known as Stationers Hall. Apart from these, there are a number of commercial services provided in the USA by organisations like the SRS (Songwriters Resource Services of California), or the ASF (American Song Festival). Our own International Songwriters Association provides a service similar to the above, except that ours is free of charge to members. Really, it is unusual for an entire song to be stolen. What can happen, is that the best bits and pieces are stolen, and that unfortunately, is harder to prove.

So what happens if somebody steals my song?

I presume that you have taken the trouble of copyrighting the song or lyric in advance, in which case, you simply need a good lawyer. Of course, the chances are that it will not be as simple as that - nothing is. First off, you must prove that a similarity exists between your work and the work you claim is an imitation of your composition. If you (and your lawyer) are both satisfied that there is a clear case to answer, you must then examine the question of access.

What exactly do you mean by "access"?

This is a term which often baffles songwriters who presume that if they have copyrighted an item, and can prove the date on which they wrote it, that the courts will automatically award

damages if a song written subsequently by somebody else is very similar. However, this is not necessarily the case, unless the songwriter making the claim can also prove access. In other words, if you want to get substantial damages, you may have to show not only that the songs are similar, but that the person who allegedly copied your song, could have gotten hold of it. It is not enough to show similarity - after all the similarities could have been coincidental - there aren't all that many different notes on a piano!

But how can you prove that the person who copied your song actually heard it, apart from it being obvious that he must have?

Clearly, if your song has already been published, then it is obvious how this could have happened - the other writer has simply heard it on the radio, or bought a recording of it, or whatever.

Can you prove that another writer had access to your song, if your song has never been published?

If you have promoted the song, you can always prove access if you kept some acceptable record of where you sent the demo. Many songwriters ask us why is it that on the ISA Song Promotion Sheets, there are Certificates of Posting printed on each sheet. They point out that the Post Office does not compensate you for any item lost in the post if all you have is a Certificate of Posting. The answer is that we do not print those Certificates of Posting for compensation purposes but for purposes of protection. Take a situation where you send your song to the Rip-off Music Company who reject it, but three years later publish a song very similar to yours. Then if you can show that the similarity exists between their song and a song copyrighted by you some years earlier, and if you can produce your Certificate of Posting to prove that you sent them that song on a date some years prior to the plagiarism, then you certainly have a good case because you can prove both similarity and access. In other words, always obtain proof of posting, or proof of delivery, and keep the evidence. You never know when you will need it.

But surely if the songs are very similar, the courts will presume that there must have been access, even if you cannot prove it?

Possibly, but not necessarily. They may think that the similarities are pure coincidence, and it is then up to you to show that the similarities are too great to be just coincidence. But without being able to show access, similarities on their own may not be enough.

What happens if you have not copyrighted your own song?

Tough luck. If somebody has stolen your song, then you are going to have a hard job proving it, since thieves like these are professionals, and anybody who has taken the trouble to steal your song will certainly have taken the trouble to cover up all his tracks.

Suppose I accidentally copy part of somebody else's song, or use part of an old classical tune in my own melody, what will happen to me?

These are two different questions actually. First of all, if you accidentally or intentionally copy a song which is already published, then you will be in some trouble, the amount depending on just how much you have copied. Sometimes, you will lose half the royalties which would have accrued to you, the logic being that whereas you thought there was only one song on the record in dispute, there are in fact two distinct songs on the record - yours, and the one you copied, and so the royalties may simply be divided between the two "versions". If the plagiarism is particularly blatant, then you may lose a lot more than 50% of the royalties - indeed you may lose everything.

But suppose it is purely accidental?

It is impossible to avoid accidental similarities, and the courts will take this into account, and determine the extent and also the significance of the similarities. However, do beware of so-called experts who tell you that a similarity lasting let's say, four bars, or let's say, ten seconds is acceptable, because that is not the law.

Indeed, the law has never laid down that a particular length of similarity is permissible. What courts have considered is the significance of what is similar. Therefore, if you copied a particularly unusual melodic phrase, lasting just one bar, it could be judged as very significant, whereas if the song you copied had an eight bar passage comprising the scale of "C" in ascending order, your similarity might well be judged to be insignificant. It is not so much the quantity of the similarity as the quality - it is more the significance of what you copied in relation to its importance in both your own song, and the song you copied it from, that really counts.

How about copying classical music pieces?

For a start, if the piece is out of copyright -which usually (but not always) means that it was written by somebody who died more than fifty years ago, then you can probably use it without any difficulty. However, do make sure that it is out of copyright. A song could be written 100 years ago, and still be in copyright. For example, if a songwriter aged 20 wrote a song in 1920, and then he lived to be 90, dying in 2010, the song, even though it had been penned more than one hundred years ago, could still be in copyright well into 2060. Now that is an extreme and somewhat unlikely case, but you must make sure that the music is actually out of copyright before you use it. Saying to yourself that it is a very old song does not automatically make it out of copyright.

Also, remember to make sure that all of the people who wrote the song are dead more than fifty years. If a writer aged 65 had co-written a song with a 20 year old partner, then the copyright would not run out until fifty years had elapsed after the death of both partners, and that could conceivably be one hundred years after the death of the older of the two writers.

We have all sung "Happy Birthday To You" - but few of us have realised that it is still in copyright and that, technically, every time we perform it in public, we should be paying royalties to Warner Chappell Music.

Suppose I have found a very old song, written at least 200 years ago. Am I safe to copy it?

Even if you know that the song is out of copyright, for example, you are talking about a melody written two hundred years ago, it is only the original melody that is necessarily out of copyright, and not any specific arrangement of the tune. For example, although legend has it that Henry VIII wrote "Greensleeves" about 480 years ago, there could be any number of arrangements of that tune which are still copyright, and you cannot simply copy one of those. Adaptations or arrangements of tunes, as well as tunes themselves, can be copyrighted. Therefore, when a copyright on a tune is about to expire, I can easily change a few of the chords, or alter some lyrics, and copyright that new version. Very frequently, people singing songs that they think go back several decades before their own childhood, might be surprised to learn that the particular version they are singing dates only from their own youth, and that the version they know is still in copyright. Songs like "Tom Dooley", or "The Battle Of New Orleans" or "The Streets Of Laredo" or "La Bamba", may all have been written well over one hundred years ago, but in many cases, the versions which people sing nowadays are relatively recent versions of those songs, copyrighted by singers very much still alive.

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