

STEPPING OFF ON THE RIGHT FOOT TO PROTECT YOUR SQUAD WHEN ARRANGING FOR OR STREAMING YOUR BAND

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Cool, crisp fall nights under the lights; You may not be ready for it, but your students are likely putting together their wishlist for your marching band's setlist. Unless you plan on buying off-the-shelf arrangements that are commercially available, now is actually a good time to start planning your fall season. Competition bands should be very familiar with this process, as they often commission custom arrangements for their performances, and the adjudicating organizations often require them to submit the copyright permissions for their competitions.

But, other directors should not shy away from putting something other than a stock chart on the field. Beyond the cost for the arranger and the copyright, the benefits to your program can be great. What you do want to avoid is a nasty surprise when you (or your superintendent) receive a cease-and-desist letter (or email) and a bill from the copyright holder. This article will help you walk through the steps that you need to follow to secure the appropriate permissions to create custom arrangements for your band program to perform in public, along with the potential ramifications of not doing so. While we are focusing on marching bands, the same general steps apply for your pep, jazz, or concert band, with some differences that we will note. We hope that this article will encourage you to take the next step and consider custom arrangements for your ensemble.

This article is not intended to be a full legal treatise on copyright laws or to provide you with any legal advice. For example, we are not going to discuss public domain. There are several excellent resources available on the Internet that can provide you with more information and specific details.

WHY ARRANGE?

The major publishing houses have a wide range of arrangements available for purchase. These are commonly referred to as "stock charts." These companies will have already secured the appropriate permissions for you. Legally, you must play these charts "as is."

So when would you want a custom arrangement? Think of the following:

- There is no published chart or what may have been available is now permanently out of print.
- The only published chart is too difficult – or too easy – for your group or is too long – or too short – for what your group's needs.
- The published chart does not fit the strengths of, and the weaknesses in, your group's instrumentation.
- You would like to do a different setting of a song than what is commercially available.

Collegiate marching bands have relied on custom arrangements for a long time. Your band can also benefit from a custom arrangement for these same reasons. Your students will appreciate that they are playing something written just for them that no other band will play. They may even have helped to choose the selections. They can often come up with unusual combinations of songs that surprisingly work well together in a medley of one or more songs to fit a theme. For example, Vivaldi's Winter and the Bangles' version of Hazy Shade of Winter opened an "Ice Castle Mixtape" show by the YSU Marching Pride that focused on the school mascot (Pete the Penguin), the stadium's nickname (Ice Castle), and a common theme (cold).

Unless you are using music that is in the public domain, doing this correctly costs money. But it may not be as much as you think. The reason is because you are creating a “derivative work” of an existing work under the US copyright law (17 U.S.C. 101). (An arranger does not own an arrangement.) That requires you to get permission – and pay a fee called a royalty – to the person or entity that owns the copyright to the existing work. (That may or may not be the song’s writer. Bob Dylan, Bruce Springsteen, and Shakira are some popular artists that recently sold the rights to their catalogs.)

ARRANGERS

There are many professional arrangers who work with school groups. Many have websites where they tout their experience with well-known bands, drum corps, or other groups. Or you – or a student – may be the next Tom Wallace or Jay Dawson. Each often has their own style or “sound.”

While we do not endorse any particular arranger, be mindful of “you get what you pay for.” Some may charge by the measure or the composition’s length. Some may charge more for a more complex piece. Some may not prepare percussion parts. It all depends. And, so does their fee. While you could expect an arranger to charge \$3,500 to \$8,000 for a full-length competition show, the fee for a single chart, particularly a popular song, could be much less. A good rough estimate would be between \$300-\$500 per minute.

Keep in mind that paying arrangers for their work does not mean that you have the legal right to perform the arrangement they crafted for you. Some may take that extra step for you, and it may be worth the cost to have them take on that headache. Ultimately, the goal is for your ensemble to sound its best. That will only happen if your arranger knows the group for which they are writing. They will need to know the strengths and weaknesses of each section, including playable ranges and rhythms. The arranger may even be willing to make some adjustments for you. But let the arranger know what worked and what didn’t; the feedback can help with the next arrangement. And a positive long-term relationship with an arranger could lead to your ensemble to having its own signature “sound.” Purchasing an arrangement your band cannot play – whether stock or custom – is never a good return on investment.

LICENSING AND ROYALTIES

The fee that you will pay for the right to arrange a composition will give you the right to publicly perform that arrangement. The licensing and royalty costs generally depend on the song’s popularity and how recently it was written. Please know that some catalogs are not easy to secure, if not impossible.

You should expect a cost of at least a couple hundred dollars. Again, that all depends on the composer and the piece. For example, John Mackey’s Undertow will cost ~\$575 to arrange, while Taylor Swift’s Shake It Off can be ~\$420. But you won’t know until you inquire. Your license will be for a specific period of time. You will have the opportunity to renew your license when the initial period expires.

Contrary to what some may think, it is not impossible to secure a license for Disney music. The cost is, not surprisingly, higher than for other songs. And there are other restrictions. To end the “Ice Castle Mixtape” show, the YSU Marching Pride ended with Paula Abdul’s “Cold-Hearted” and “Let It Go” from *Frozen*...a pretty cool combination that could only be done with custom arrangements. There was no difficulty in securing the licensing for “Let It Go”, but there were some additional icicles attached. For example, the *Penguinettes* (majorettes) could not dress in Anna, Elsa, or any other character during the performance; that is a separate license.

VIDEOS AND STREAMING

We’re going to discuss the practical steps for securing custom arrangement and performance rights. But, unless you also obtain a license to synchronize your performance with the music for video recording and distribution, then you are not permitted to record the performance and make copies of it (i.e., DVD) or stream it on the Internet. Even if you bought a stock chart and did not need to purchase the permission-to-arrange license, you still must purchase the sync license to legally distribute content on YouTube, Facebook, Vimeo, or other streaming platform. In general, the starting cost for a sync license popular song for marching band, pep band, color guard, or dance team can be \$380 per chart.

WHY NOT RISK IT?

Unlicensed arrangements of popular songs likely went unchecked decades ago. But YouTube has changed all of that. The Internet and YouTube has

given many performing groups visibility that they would not have otherwise had. That is particularly true if a group is performing something unique or, in the case of an Ohio collegiate marching band more than a decade ago, a viral performance of “Party Rock Anthem” while it was still on the pop charts.

The songwriters and publishing companies do pay attention. You may not even have a channel or page on the major social media platforms, but nothing is stopping your students, parents, and fans from posting their videos. We do not claim any special knowledge of the algorithms that these platforms use or how they work or what motivates one copyright holder over another, but we do know that directors have received letters from copyright holders who sent letters demanding royalty payments and fees after-the-fact. That must be a difficult conversation to have with the principal, superintendent, and treasurer. It is much easier to get the permission before you put the piece on the field (or in the concert). And then you (and your school) won’t have to worry about or deal with the possibility of a copyright infringement lawsuit that could cost tens of thousands of dollars and possibly your job. Of course, if you are going to participate in an adjudicated competition, the organizer is likely to require you to provide proof of your licensing for your show.

HOW-TO

How to receive permission depends on from whom you are seeking that permission. But a good place to start is Tresóna Licensing Exchange™ (tresonamusic.com), an online service whose library includes works owned or managed by major studios or publishing companies. Some of these companies include EMI, Universal, Alfred, Sony/ATV, BMG, and Hal Leonard. You can also purchase sync licenses here. It is free to get an account, and there is no obligation to look around and see what may be available.

Not all composers are available on Tresóna. Many have their own websites and many composers provide the option of licensing directly through them. (John Mackey and Steven Bryant are two examples, although some of their compositions are available through Tresóna.)

The wait time can vary, from instantaneous to days to weeks. Some pieces may take longer. When your arranger is done, the final version will need to be uploaded and processed through Tresóna, which will

then review the arrangement before issuing you the final permission.

Putting it all together:

- (1) YSU paid:
 - (a) Its arranger to arrange “Cold Hearted” and “Let It Go”
 - (b) The copyright holders through Tresóna for the rights to arrange and perform his work.
- (2) When the arranger finished, he uploaded the arrangements to Tresóna.
- (3) Tresóna reviewed the arrangements, and, finding them in line with the rights that were secured, issued YSU the arrangement with the appropriate licenses. (The score and parts will contain the appropriate licensing language to let everyone know that you followed the law.)

CONCLUSION

Why go through all this trouble and expense? It comes down to the experience you want to, and can, provide your students. A single custom arrangement can make a show or a fall season. That is especially so when the arrangement is customized to your ensemble’s strengths, something you’re not likely to get with a stock arrangement. And that can make the difference for your students, prospective students, and your program.

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