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Each article in this issue is also found on our website, MusicalAmerica.com, in the [Special Reports](#) section.

Introduction



"You won't believe how few people in the business really understand the concept of copyright."

In speaking to a number of music publishing executives about the content of this special report that was the comment that grabbed my attention. After all, the proper and approved use of artistic works is one of the bedrocks of performing arts and helps to drive future creativity. It also keeps everyone on the right side of the law. *Music Publishing: Copyright Demystified* is designed to untangle the many components of the "bundle of rights" that protect and foster the very core of the arts world: The Work.

The concept of intellectual property is the easy part. The difficulty—and the devil, of course—is in the details.

Creative work is intellectual property, which is protected by law, just as any other property is. But there is a sense among its users—from the public to practitioners—that creative property is somehow less valuable than other property. That symphonic movement that you just heard, whether over the airwaves, in your living room, or in the concert hall, is a piece of property. Performing, recording, and/or broadcasting it without permission to do so is—as legal eagle Brian Goldstein points out in [Busted! The Top 10 Myths of Copyright](#)—stealing. Property is property: you use it, you pay for it.

Each of these uses—or any other for that matter—requires specific usage rights—grand rights, small rights, synchronization rights, mechanical rights, etc.—from the copyright owner, be it a publisher or the composer him- or herself. In [Music Publishing Rights: Untangling the Bundle](#), we've turned to the experts to determine what rights go with what usages. Boosey & Hawkes Promotion Director Steven Lankenau explains the subtle differences between grand rights and small rights, while lawyer Katie Baron focuses in on synchronization and mechanical rights, among many others. Baron, a specialist in drafting commissioning agreements, together with Schott Music's Norman Ryan explains the many nooks and crannies of [Commissioning a New Work](#). Interesting factoid: just because an organization commissions a piece doesn't mean it has the right to perform it beyond its premiere.

Composer Christian Carey addresses the [Pros and Cons of Self-Publishing](#), both from his own experience and from those of composer colleagues who have tried both the corporate and the DIY (do-it-yourself) models.

Schirmer executives Peggy Monastra and Robert Thompson's [Predicting the Future in 2025](#) offers a peek at a number of concepts in development, from music stands-cum-terminals that deliver score changes in real time to smart phones that know where and when the next performance of Mahler's Eighth Symphony is, to measurement tools that read audience's emotional reactions to a piece of music.

Finally, we have an article from *Musical America* published in July of 1924 that addresses how music will look in 2024AD. Among other projections, the author sees super-sopranos, mezzo-baritones, quarter-tone keyboards, virtual concert tours, and a new notation system. Add a little of today's technology to the mix and the possibilities seem endless. We'll check in again in ten years to see if we fulfilled our own Great Expectations.

Regards,
Susan Elliott, Editor, Special Reports

The **PROS** and **CONS** of SELF-Publishing

If you're a do-it-yourself type, this may be the route for you; just be sure you know the down sides

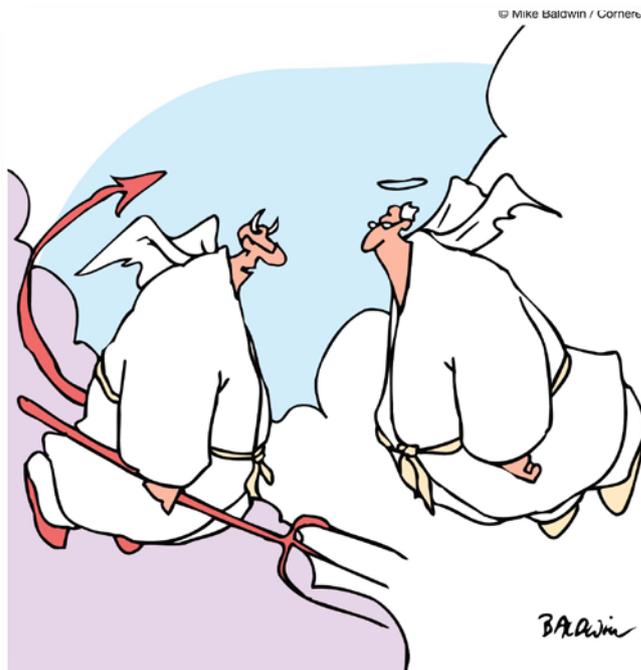
By Christian B. Carey

Publishing your own music was once viewed as a last resort, something akin to hiring a vanity press for your novel. But the Internet has changed that. Increasing numbers of composers are joining the DIY (do-it-yourself) crowd, for reasons both remunerative and artistic. The Big Name music publishers may be able to help a lesser-known composer get his foot in the door, but in exchange they'll take 50 percent or more of pretty much everything—performance earnings, rental fees, CD and DVD royalties, and licensing fees. Plus, more often than not, they own the copyright. Don't want your music used in a commercial for dishwashing liquid? If you've given up the copyright, you may have little or no say in the matter. Plus, you'll only get a percentage of whatever revenue it generates.



CHRISTIAN B. CAREY

Composer Christian B. Carey contributes the [New Classical](#) blog to [Musical America](#). He is associate professor of music composition, history, and theory at Westminster Choir College in Princeton, NJ.



“Sold my soul to the devil, but held on to the intellectual property rights.”

SELF-PUBLISHING

The main reason to self-publish is money: your piece, your rules, your royalties. Here are a few basics of the DIY model.

Protect your work

1. Establish membership as both composer and publisher in one of the performing rights organizations (PROs)—[ASCAP](#), [BMI](#), or [SESAC](#). They collect royalties for their members whenever their work is performed, live or otherwise.

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2. Register your work for copyright with the [Library of Congress](#) (optional).

Promote your work

1. Build yourself an attractive web site. Record excerpts of your work(s) for streamable sound samples. Be sure to include contact information, a biography, high-resolution headshots, any performances of your work (past or scheduled), links to purchase or rent a score, and anything else to make your music look and sound appealing.
2. Join [SoundCloud](#) or [BandCamp](#), which are online communities with embedded players that enable composers to share and sell their work.
3. Jump onto social media, if you haven't already.
4. Hire a publicist. If you're willing to make the investment, they can really help get your name, and your work, into the pipeline. [Christina Jensen](#), [Sarah Baird Knight](#), [Peter Robles](#), and [Alanna Maharajh](#) are a few of the New York-based publicists who work with composers.
5. Join (and participate in) a composer organization such as [The Society of Composers](#) (SCI); [Vox Novus](#), which specializes in new work; [New Music USA](#); [National Association of Composers USA](#) (NACUSA).
6. Connect in person. Go to composer and performer colleagues' concerts: supporting their work may make them more interested in yours. [See sidebar Making that Connection]

Print, sell, or rent your work

There are a number of sites on which you can sell your music while still retaining all the rights (some charge a flat fee to participate). Consumers can download samples and/or scores, listen to MP3 files, search by genre, instrumentation, level of difficulty, and other categories.

1. [Sheet Music Plus](#)
2. [Subito Music](#)
3. [Score Street](#)
4. [Score Exchange](#)
5. [New Music Shelf](#)
6. [Publish Yourself](#)
7. [Create Space](#)

8. [International Music Score Library Project](#)
9. [My Score](#)
10. [Digital Print Publishing](#)

Similarly, on sites such as the [International Music Score Library Project](#) and [New Music USA's Online Library](#) you can upload your scores for free download. By sharing your work, you increase the chances of people discovering it while browsing through the thousands registered.

There are also sites that specialize by genre:

1. [FJH Music](#) for pedagogical music
2. [Barnhouse](#) for concert band
3. [Bachovich Music Publications](#) for percussion
4. [Fat Rock Ink](#) for chamber music
5. [Hinshaw Music](#) for choral music

MAKING THAT CONNECTION

The days of the composer as aloof genius are long over. Today, everybody is an entrepreneur.



"The most successful DIY artists I know are establishing and nurturing communities," says publicist Sarah Baird Knight. "If your music doesn't suit established institutions, then start your own venture. Enlist colleagues and friends to play your music, start a series, found an ensemble, hold a bake sale. Forge alliances with local institutions and be generous with your skills. Barter Sibelius [a music notation software] tutoring, web site designing, composition lessons with performers. Develop a strong identity within the new-music community. Once established, you may start to gain attention from larger institutions, bypassing the need for promotion from a publisher."

Further reading

1. [Music Publishing](#) by composer John Mackey; a must-read for anyone considering self-publishing.
2. [Publishing, Self-Publishing, and the Internet](#) on New Music Box
3. [Music Publishing 101](#) American Composers Forum
4. [Fair Trade for Sheet Music](#) on NewMusicBox.
5. [Surviving Your First Composing Gig](#)

CORPORATE PUBLISHING

The big publishing companies that handle contemporary music include [Boosey & Hawkes](#), [G. Schirmer](#), [Schott](#), [Carl Fischer](#), [Theodore Presser](#), [Universal Music Publishing Classical](#), [Ricordi](#), and [Peer Music](#).

Each works with composers who write in a variety of genres. But they make most of their income from the exploitation of their catalogs via performance royalties, sales, score and part rentals, etc.

A HYBRID CAN WORK, TOO

Some composers use both publishing models. Composer David Post says, "I've had a publisher for several of my chamber works, but have found that larger orchestral works are best handled by me. My sense is that self-publishing will become more and more the norm, as established publishers are experiencing hard times and are often reluctant to take on new people. I do on some level feel that being published is part of one's bona fides as a composer."



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What do flying an airplane, owning a dog and covering someone else's song all have in common?

They all require a license.



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GIVE AND YE SHALL RECEIVE

Composer James Romig says, “I’ve been self-publishing exclusively for the past few years (it took a long while to get all my publishing rights back). My business model is to give music away and diligently check for performances, ask for programs, etc., to submit to ASCAP for royalties. This way, instead of asking performers to pay for scores up front, I can ask them to ‘pay’ me in the form of PDF concert programs. I find that this is a more collegial way to collaborate. So far, it’s been working well, and I’m making far more money than I ever did with a publisher.”



The pros and cons of going the publisher route match pretty directly with cons and pros of self-publishing.

Pros

In exchange for owning the copyright and taking 50 percent of the proceeds from performances of your work, the corporate publisher handles:

1. Promotion and advocacy within its network of contacts, from retailers to conductors/artistic directors (especially important for unknown composers)
2. Preparation, production, and distribution of scores
3. Sales/rentals/performances and collecting proceeds therefrom
4. Passing on performance information to PROs
5. Contract negotiations, both for commissions and performances

Cons

In exchange for all of the above, the publisher will:

1. Own the copyright and take 50 percent of all royalties
2. Own the copyright and take as much as 90 percent of retail score sales
3. Own the copyright and license it to the highest bidder, with or without your approval

THE INDIE ROUTE

Independent publishers carry out the same functions as the corporate publishers, and for the same trade-offs in copyright ownership and sales splits. In some circles, particularly academe, having your piece “with a publisher,” large or small, still carries a certain cachet. Plus, some composers need a hand with the business aspects.

Some indies, like the specialists listed above, can help to get a piece out there better than a composer might do on his or her own. Mileage varies. But the reputation and resources of the Big Names will always beat the Little Guys. 

TEN WAYS COMPOSERS GET PAID FOR THEIR MUSIC

1. Commissions of new music
2. Sales of sheet music
3. Rentals of scores and parts
4. Performance royalties for non-dramatic public performances, as collected by [ASCAP](#) or [BMI](#). (Many performers/organizations send concert programs to ASCAP and BMI. Some don’t; it is incumbent upon the publisher or the composer to do so.)
5. Royalties from radio airplay and streaming media ([Spotify](#), [Pandora](#), etc.), also (usually) collected by a PRO
6. Licensing fees for use in film, TV, games, recordings, commercials, etc.
7. Licensing fees from reproductions in anthologies, textbooks, etc.
8. Licensing fees for dramatic public performances
9. Competition awards
10. CD and download sales

BUSTED!

The **TOP TEN** Myths of Music Copyright

If you use a copyrighted piece of music and don't bother to get permission, it's called stealing.



By Brian Taylor Goldstein

A copyright is “owned property” just like all types of property—cars, jewelry, boats, houses, coffee makers, etc. Copyrights protect original creative materials such as musical compositions and/or recordings of them. Many people presume that creative property is somehow less valuable or less “property” than other types of property, and so feel free to use it without permission.

Presuming that you are free to use a copyrighted piece of music without permission is like presuming that you are free to take someone’s car without permission—otherwise known as stealing. Permission to use a copyright is granted (or not) by the owner in the form of a license. Licensing the “rights” to use a piece of music means you have the permission of the owner to do so.

Confusion surrounding music copyright is rampant, not only among copyright users but among creators as well. A considerable amount of anecdotal information has been accepted as fact. In no particular order, here’s a list of the most cherished, but incorrect, myths about music copyrights.

BRIAN TAYLOR GOLDSTEIN



Brian Taylor Goldstein is a partner in the law firm of [GG Arts Law](#) and a Managing Director of Goldstein Guilliams International Artist Management. He writes the weekly blog [Law and Disorder: Performing Arts Division](#) for [Musical America](#).

MYTH I

No new is good news; besides, it's easier to get forgiveness than permission.

If you send a licensing request to a publisher or copyright owner and don't get an objection or any response at all, despite a “good faith” effort, do not assume that you have permission. In addition to being legally wrong, you are assuming that creative property doesn't have the same value as tangible goods and services. It does.

Similarly, it may be easier, but it's hardly worth the cost of a lawsuit to assume you can get forgiveness rather than get permission. And that applies to non-commercial and break-even projects as well. If you take a piece of jewelry that you don't intend to re-sell and later apologize, you still stole it.

Bottom line: If you request a license, and don't get a response, assume the answer is “no” and select different music. Silence is never golden when it comes to licensing.

MYTH II

My commission, my property.

When a composer is commissioned to create a new work, the mere act of paying for the piece does not automatically convey

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“Presuming that you are free to use a copyrighted piece of music without permission is like presuming that you are free to take someone’s car without permission.”

rights, ownership, or control (unless the composer is also your employee). The right to perform or record the work, even the right to present its premiere, must be negotiated and specified in the commissioning agreement. Otherwise, all rights are exclusively owned and controlled by the composer—including the rights to modify, amend, re-arrange, re-configure, re-orchestrate, and anything else the composer chooses to do. Similarly, paying rental fees for a score and parts does not give the renter the right to perform it.

MYTH III

Mailing my music to myself is the same as copyright registration.

Also known as a “poor man’s copyright,” mailing a score or a recording of your piece to yourself—and then not opening the envelope to prove the date from the postmark—does not give you de facto copyright registration; it just gives you more mail. Copyright registration only occurs through the [U.S. Copyright Office](#). However, more significantly, you do not need to register a work with the U.S.

Copyright Office in order to have an enforceable copyright. A creative work is considered “copyrighted” and, thus, protected, the moment it is fixed in any reproducible format. Nor do you need a © symbol to protect a copyright. Conversely, do not assume that material without a © symbol is free to use!



MYTH IV

No money exchanged, no worries.

“Commercial use” of a copyright is not limited to sales or making money, nor does it apply to for-profit organizations only. Any use of copyrighted material that promotes an artist, performance, venue, presenter, product, or service is a “commercial use,” including marketing, promotion, advertising, and even materials used for fund-raising purposes. Truly “non-commercial” use is limited to study, reflection, inspiration, or archival purposes, and does not involve any reproduction in any manner that makes the material accessible to the public. The lack of commercial success or profit is not the touchstone of “non-commercial use.” If it were otherwise, any business venture would be able to use creative material in any manner it wanted so long as they failed miserably.

MYTH V

It’s up to the presenter/venue to collect the proper licenses.

Wrong; it’s up to everyone involved. If an unlicensed song is performed at a venue, the [U.S. Copyright Act](#) allows all the parties involved in the performance—the venue/presenter, the artist, the artist’s agent or manager, the producer, the promoter, and anyone else—to be sued by the publisher or copyright owner. Stealing a song is like robbing a bank—the entire gang is arrested regardless of who broke open the safe, who drove the get-away car, or who simply served as look out; they all participated in the robbery. All parties are responsible for the proper licensing. Who obtains which license and bears the cost is all a matter of negotiation. There is no industry standard!

MYTH VI

An ASCAP license gives me permission to perform, reproduce, record, and/or broadcast a work.

In order for music to be “performed” (either live or via a recording) in a public place, there needs to be a “performance license.” Most often, these are obtained from one of the Performance Rights Organizations: ([ASCAP](#), [BMI](#), or [SESAC](#)). But an ASCAP license only covers ASCAP composers, and BMI and licenses only cover BMI or

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SESAC composers. So, depending upon how many works you want to perform, you may need licenses from all three. However, a performance license only gives you the right to perform the composition. A composition being used as an integral part of a story or plot, or interpreted with movement, costumes, or props—also requires a “dramatic license,” usually granted from the composer or publisher to the producer of the dramatic work.



In sum, you always need a performance license to “perform” a composition. Whether or not you also need a dramatic license depends on the context in which you use the composition. Put another way, if you stand still and perform you only need a performance license. If your performance involves sets and costumes, tells a story, develops a character, or interprets the composition, you will need both dramatic and performance licenses. [For more detail on [grand rights](#), see page 12]

There are other licenses you may need as well: if you plan to make an audio recording of your performance, you will need a “mechanical license.” If you plan on making an audio-visual recording of your performance, you will need a “synchronization license.” If you plan to permit a broadcast of your performance, you will need a “broadcast license.”

“If an unlicensed song is performed at a venue, the U.S. Copyright Act allows all the parties involved in the performance—the venue/presenter, the artist, the artist’s agent or manager, the producer, the promoter, and anyone else—to be sued by the publisher or copyright owner. All parties are responsible for the proper licensing.”

MYTH VII

If it’s on the Internet, it’s free.

Just because someone uploaded a video or audio clip (or any other creative material), does not mean they had the right to do so. And even if they did, that doesn’t give you the right to copy and use it as you wish. Digital materials carry all of the same copyright laws and protections as their traditional, hard-copy counterparts. The Internet is publically accessible, but that doesn’t mean everything on it is free or in the public domain.



“I didn’t write the book report. I downloaded and printed it directly from the Internet, but I did collate and staple it myself.”

MYTH VIII

If I have permission to use a piece, I can re-arrange or creatively reinterpret it too.

Regardless of whether you have a performance license, a dramatic license, a mechanical license, or a synchronization license, you only can use creative property as written. While you can perform the work in your own style, artistry, expression, etc., you may not re-orchestrate or re-arrange it in a way that changes its fundamental nature. A license granted by ASCAP, BMI, or SESAC to perform a string quartet does not give you the right to rearrange it for banjo, bagpipe, saxophone, and zither (tempting as that may be), nor does a mechanical or synchronization license give you the

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right to write new lyrics to a song licensed by ASCAP. If you want to make changes, you need, as always, permission and you need to specify your plans.

MYTH IX

“Fair Use” means making any use which is fair.

Wrong. “Fair Use” is a legal doctrine that allows you to use a small amount of a copyrighted material only for specific, limited purposes. It is a defense to a claim of copyright infringement and is determined on a case-by-case basis. There is no “minimum” amount of music, words, recordings, footage, or anything else that automatically constitutes fair use. If there is ever a dispute, it is a judge who gets to decide what is fair, not you.

Just because you will not be making any money, really-really-really need it for a really-really-really great artistic concept, can't afford to pay for it, are a nonprofit organization that needs it for a children's education project, does not make your use of copyrighted material “fair” or even permissible.

MYTH X

If a composer gives me a recording of the work, that implies permission to use it.

Any time you want to use an existing recording of a work, whether on your web site or as a soundtrack, you will need a license from the composer/publisher as well as a license from the owner of the recording (which is often a record label). That's right—two separate licenses. The copyright law creates a copyright in compositions and a separate copyright for the recording of it. If the composer owns both the composition and the recording,

then you're in luck. Otherwise, if you plan to do anything other than listen to it, there are many hoops through which to jump.

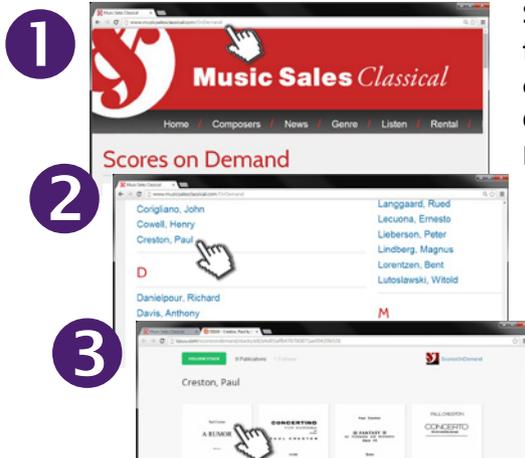
When it comes to music licensing there are really only three basic rules:

1. Always ask permission
2. Know whom to ask and for what
3. Never assume

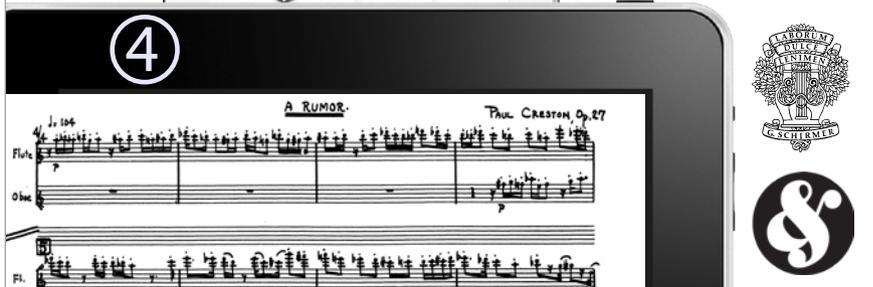
It may seem like a lot of legwork, but keep in mind that, more often than not, you will be able to get the licenses you need, provided you request them properly and far enough in advance. Never leave licensing requests to the last minute and do not assign such an important task to a volunteer or an intern helping out at your office. Also, bear in mind that the same rules that may seem to thwart your ability to use the music you want also protect your creative endeavors.

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Music **UNTANGLING THE BUNDLE** **PUBLISHING** Rights

GRAND Rights **vs.** **SMALL** Rights

In [Busted: the Top 10 Myths of Copyright](#), lawyer Brian Goldstein writes, “Permission to use a copyright is granted (or not) by the owner in the form of a license. Licensing the ‘rights’ to use a piece of music means you have the permission of the owner to do so.”

But what kind of rights? Grand rights, small rights, sync rights, rental rights...? Small wonder that, in music-publishing jargon, the different categories of rights are often referred to as one “bundle.” The following two articles should help untangle a few of the knots.

By **Steven Lankenau**

Question: Which of these requires a license for grand rights? Which requires one for small rights?

A gala evening of arias from different American operas in concert.

An orchestra opens its season with a semi-staging of *Sweeney Todd*.

A play on Broadway includes a couple dancing to an Astor Piazzolla tango.

A young choreographer creates a solo to Beyoncé’s new CD performed in a tiny downtown loft.

If you had to guess at the right answer, you are not alone. Ascertaining the difference can get complicated, especially since there is no statutory definition of grand rights, just broad definitions understood (or misunderstood) by the industry. Incidentally, the only one of the four scenarios above that is not grand rights is the first. What follows is should help explain why.

Small Rights

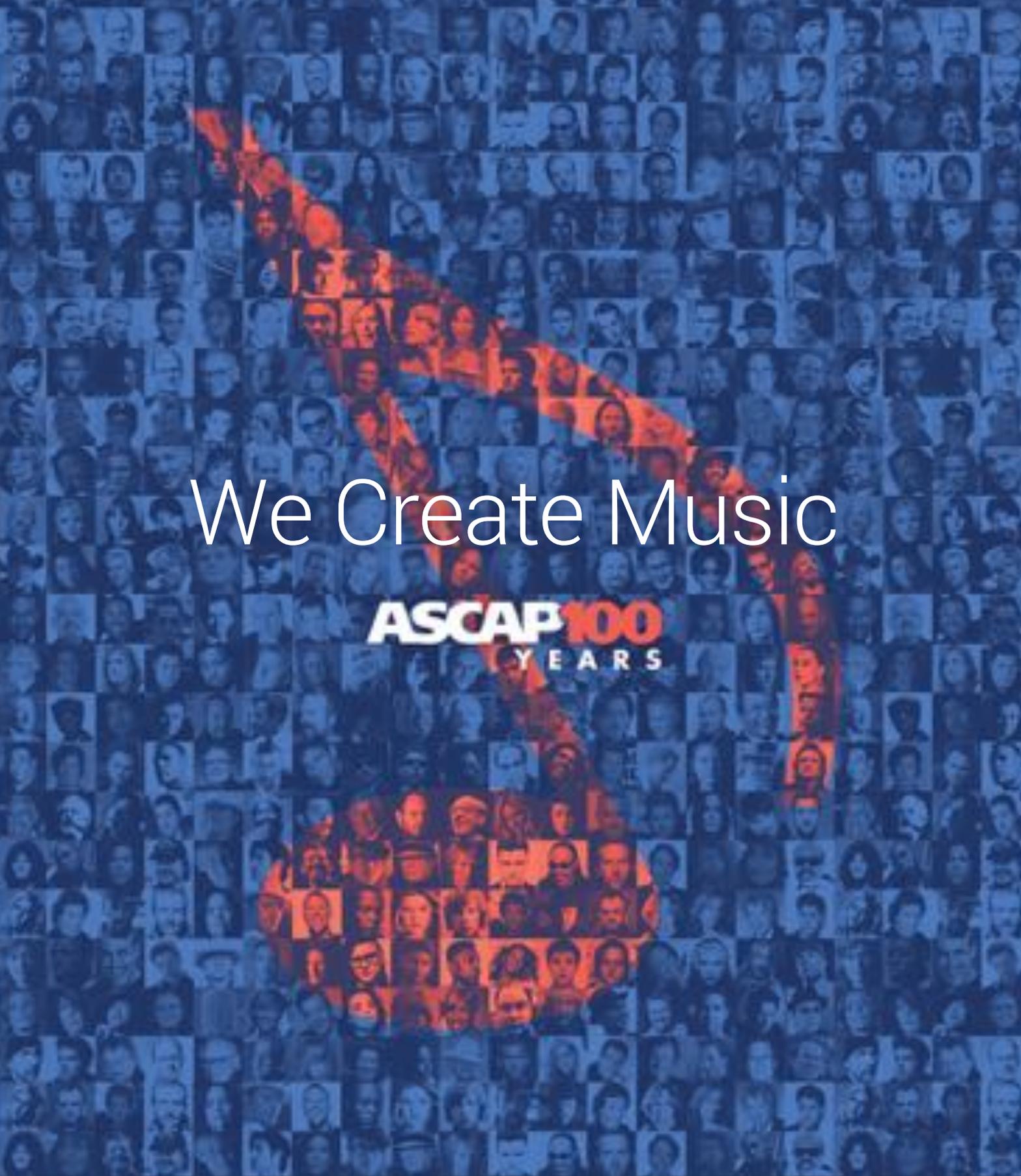
Stephen Foster is generally considered America’s first hit-maker, having penned such classics as *Oh! Susanna*, *Camptown Races*, and *My Old Kentucky Home*. But he died penniless because, in his day, anyone could perform any music without ever acknowledging—

STEVEN LANKENAU



Steven Lankenau is the senior director of promotion at the New York offices of Boosey & Hawkes, where he oversees composer management and repertoire-promotion strategy throughout North and South America. Previously he worked in programming at the Brooklyn Philharmonic and at Lincoln Center.

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Stephen Foster

much less compensating—the composer.

Enter Victor Herbert, Irving Berlin, and a number of other prominent songwriters who, in 1913, banded together to form the [American Society of Composers, Authors and Publishers](#) (ASCAP) to create a system in the United States for collecting money from live

performances. A second major Performing Rights Organization (PRO), [Broadcast Music Inc.](#) (BMI), emerged about 20 years later, and today we understand that when a piece of music—from a pop song to a symphony—is performed or broadcast, the person who wrote it should be compensated. Most composers belong to either ASCAP or BMI; it is those PROs that collect fees from music users and distribute royalties to the composers and appropriate publishers.



ASCAP was founded on Feb. 13, 1914, at the Hotel Claridge in New York, by a group of prominent music professionals. Pictured here, a few years later, are ASCAP's charter members, all composers/songwriters: composer Victor Herbert (seated), Gustave Kerker, Raymond Hubbell, Harry Tierney, Louis A. Hirsch, Rudolf Friml, Robert Hood Bowers, Silvio Hein, Alfred Baldwin Sloane, and Irving Berlin. ASCAP's first president was publisher George Maxwell.

Grand Rights

PROs are only responsible for licensing the performance of nondramatic works, a.k.a. small rights. Authorization for

“dramatico-musical” works—operas, musicals, oratorios, revues, ballets, and other works that tell a story—can only be authorized and licensed for use by the copyright holder, which is generally either the creator or the creator's publisher. These are “grand performing rights,” usually shortened to “grand rights.”

Grand rights works can be put into two general categories:

- 1. Works conceived to tell a story with words and music such as musicals, operas, and oratorios.** Rodgers and Hammerstein's *South Pacific*, Berg's *Wozzeck*, and Stravinsky's *Oedipus Rex* are examples.
- 2. Existing or commissioned works that are used in certain extra-musical contexts,** such as with choreography, stage action, or as part of a play.

The fee for grand rights performances is determined by variables such as the size of the piece, the number of performances, and the scope of the presentation; this is all generally a matter of negotiation between the user and the rights holder. In addition to compensation for grand rights use, the licensee must also get approval. You might think that setting *Billy Budd* on an intergalactic spacecraft is a genius idea, but the Britten estate might not be quite so enthusiastic; it is always best to seek approval sooner rather than later in the process.

Works conceived to tell a story, such as operas, musicals, or oratorios

Musicals, operas, oratorios, and other similar works that are written to tell a story (even if the story is fairly abstract) are treated as grand-rights works when performed in their entirety or when enough of the piece is performed to convey a section of the story, for example an act, a scene, or a significant excerpt. This means that regardless of the nature of the performance—staged, semi-staged, or in concert—the dramatic nature of the work is being put across to the audience. Examples:

A concert performance of *Sweeney Todd*, without costumes, dialogue, or movement

A performance of a song or a selection of songs from *Porgy and Bess*, with the singers in costume and in character

A performance of *Amahl and the Night Visitors* backed by piano



In an example of grand rights, the recent New York Philharmonic concert staging of *Sweeney Todd* starred Emma Thompson as Mrs. Lovett, shown here center stage being harassed by Jeff Blumenkrantz as Beadle Bamford. PHOTO: Chris Lee.

In contrast, standalone arias and numbers can be treated as small rights, as would instrumental excerpts of operas and musicals. Examples:

An orchestral performance of Symphonic Dances from *West Side Story*

A performance of a song or selection of songs from the opera *Dead Man Walking* with the singers in concert dress, but with no dialogue or stage action

That gala evening of American arias mentioned above

Existing or commissioned music that is used in certain extra-musical contexts

This is the other side of the dramatico-musical coin. Here, an explicit narrative or story is less important than the fact that a choreographer, director, or other artist is adding another layer to the copyrighted piece of music. It is safe to say that if you are taking a song or concert work of any sort and creating a dramatico-musical work,

you should contact the copyright owner to obtain permission to use the music in the proposed context and to determine the appropriate fee for its use. Examples:

Choreographing Aaron Copland's *Rodeo* (though a concert performance of the complete score or the Four Dance Episodes from *Rodeo* is not a grand rights performance)

Using recordings of Stravinsky excerpts in a play about George Balanchine (or anyone else, for that matter)

Creating a one-woman show about the life of Judy Garland and singing *Over the Rainbow*

Grand Rights Aren't Always That Grand

A grand rights license is required regardless of how the music was created or is being performed. Even if you stage an opera using piano-vocal scores purchased from sheetmusicplus or dance to music purchased on iTunes, you must acquire a grand rights license (you also have to get permission to use the specific recording from the label or whoever owns the master, but that's another story altogether).

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Music **UNTANGLING THE BUNDLE** **PUBLISHING**

SYNCHRONIZATION Rights, **MECHANICAL** Rights (and quite a few more)

By Katie Baron

Now that you have your [small rights and grand rights](#) straight, here are a few more rights to think about. Typically, a composer will assign some or all of these rights to a music publisher. It is the publisher's job then to license the work for use by a third party, collect the applicable fee from that use, and, after deducting a previously agreed-upon percentage, pay the balance to the composer. Remember, these are the channels through which composers earn a living. Using a composition in a way that encroaches upon any of these rights without securing the necessary license deprives composers of the income they are due by law.

KATIE BARON



Katie Baron is an attorney at the firm of [Alter & Kendrick, LLP](#). Katie's practice is focused in the area of copyright law with an emphasis on the music industry. She handles transactional and licensing matters for a number of prominent musical estates, songwriters, music publishers, and performing artists. Katie has a bachelor's degree from the University of Texas at Austin and law degree from Fordham University.

Synchronization Rights

Synchronization ("synch") rights are the rights to include a composition in an audio-visual work, such as a film, television, commercials, or YouTube videos. Fees for synch licenses are generally in the form of one-time payments, unless it's a "stepped" deal with, for example, one fee for motion-picture use and additional fees for video rights should the film be released in that medium. Traditionally, the publisher grants synch licenses, although these days it is increasingly common for composers to have a right to approve (or not) synch licenses for certain types of works such as TV commercials promoting products like alcohol, tobacco, feminine hygiene, or political or religious beliefs.

Mechanical Rights

Mechanical rights are the rights to reproduce a composition in an audio-only recording such as a CD, MP3 file, vinyl record, cassette, USB drive, music box, instrument pre-loaded with audio, or consumer products with a sound chip (e.g. children's toy, stuffed animal, greeting card, toothbrush, or talking fish mounted on a plaque). They may also apply to digital-media transmissions including satellite radio, web-based television, video on demand, and Internet subscription services, including on-demand streaming. Historically, mechanical rights are licensed by a mechanical rights organization (an "MRO"), which collects the income from the licensee (such as

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WHO IS HARRY FOX?

Founded in 1927 by the Music Publishers' Protective Association—now known as the National Music Publishers' Association, or NMPA—the [Harry Fox Agency](#) licenses copyrighted musical works for reproduction and distribution to the public. "Reproduction" can range from a CD or tape to digital formats such as downloads to ringtones. HFA is not to be confused with a Performing Rights Organization (PRO) such as ASCAP, BMI, or SESAC, which administer performance, print, and broadcast rights.



HFA represents publishers only, not composers—unless the composer also is his or her own publisher. It issues [mechanical licenses](#) to users (licensees) and collects royalties from them on behalf of the publisher (licensors). Along the way, it takes a percentage of those royalties for its services.

Harry Fox himself was a clerk—a Russian immigrant, we're told—in the NMPA office whose job it was to issue licenses on behalf of the Association's publishers. Over time, his office came to be known as the Harry Fox office. As he worked his way up the corporate ladder and his duties broadened to include collection as well as licensing, Fox was named general manager. Fox remained the boss until he died, in 1969, after which the Harry Fox Agency was officially incorporated by the NMPA as a wholly owned subsidiary. It has been an independent agency since the year 2000.

the record label), deducts its own fee, and remits the balance to the publisher. Harry Fox is the largest MRO in the U.S.

Print Rights

The rights to distribute printed editions of a work either on paper or digitally—from a single song to a folio to a symphonic, opera, or musical score—form another part of the exclusive rights bundle. Some publishers print the works in their catalogs themselves; others may do so through a third party. The fees payable to the composer for print rights are typically based on a percentage of retail list price (10% to 12.5% is customary). If the publisher sub-licenses the print rights to a third party, the composer is often paid anywhere from 15% to 50% of the publisher's receipts.

Concert Rental Rights

Concert rental rights are the rights to rent a score of a work in connection with a live performance. (Generally the rental fee is based on the number of performances.) Performance materials often include many parts (full/conductor's score, individual instrument parts, etc.) and scores can run into hundreds if not thousands of pages. Since the costs of printing, binding, and delivery are very high, publishers generally rent these materials to organizations rather than require that they be purchased. (Larger organizations have their own score libraries, although they are never all-inclusive.) Concert rental rights do not include the rights to actually perform the work—that requires a separate license from the applicable PRO or, in the case of dramatic performances such as opera or musical theater, a license from the publisher directly. Typically, score rentals are handled through a concert rental agent, who retains between 25% and 50% of the rental fees and remits the balance to the publisher.

Rights to Create Derivative Works

A derivative work is one that alters an extant work, such as a new orchestration or arrangement, a vocal work with new lyrics, or a work that "samples" portions of an existing composition. The fees publishers charge for the right to create a derivative work vary widely, but typically the publisher receives an ownership interest in the copyright to the new work. The composer of the source material receives a writer credit and a share of the derivative work's performance income. 

COMMISSIONING A NEW WORK

Navigating the Rights

The world premiere is the light at the end of a very long and winding tunnel

By Katie Baron and Norman Ryan

KATIE BARON



Katie Baron is an attorney at the firm of [Alter & Kendrick, LLP](#). Katie's practice is focused in the area of copyright law with an emphasis on the music industry. She handles transactional and licensing matters for a number of prominent musical estates, songwriters, music publishers, and performing artists. Katie has a bachelor's degree from the University of Texas at Austin and law degree from Fordham University.

NORMAN RYAN



Norman Ryan is vice president at Schott Music Corporation & European American Music in New York. He was previously with the New York City Opera, The Public Theater, Lincoln Center, and G. Schirmer, Inc. He has worked with many of the world's leading composers and collaborated on projects with the Metropolitan Opera, San Francisco Opera, Royal Opera House, and American Opera Projects, among many others.

A world-premiere performance can be exciting—often it forms the centerpiece of a glamorous fundraiser or has been commissioned by the presenter for a world-famous soloist (think any major American orchestra for Yo-yo Ma.)

But long before the conductor strides onstage and mounts the podium, [a complex series of rights](#) (there's that "bundle" again) needs to be addressed. The following illustrates the series of transactions that can take place when an opera company commissions a new work from a composer and librettist.

Commissioning a completely new work

A composer and librettist of a new opera may enter into a commission agreement with a presenter who wants to engage them to create an opera in exchange for certain rights.

The commission agreement will spell out the ways in which the presenter may use the opera, which typically includes the right to present the world premiere performance of the opera as well as a number of additional performances.

The agreement may also provide the presenter with rights to make certain limited audiovisual recordings of its performances of the opera.

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COMMISSIONING A NEW WORK

Navigating the Rights

The agreement may also include the right to add one or more co-commissioners (such as another opera company). In exchange for bearing some of the financial burden of the commission fees and production costs, co-commissioners are typically entitled to present a certain number of performances at a reduced royalty.

When a composer and a librettist decide to write an opera together, either before they are commissioned by an opera company or afterwards, it is a good idea for the two of them to enter into a collaboration agreement concerning how they will handle the exploitation of the opera and the income generated from it.

They may also decide to assign their rights in the opera to a music publisher for purposes of licensing future performances and other uses of the opera. If the composer and librettist have entered into a collaboration agreement at the outset, the procedure for choosing a publisher may be pre-determined in their agreement.

Commissioning a work based on an existing work

If the work being commissioned is to be based on an existing work, such as a novel, film, or both, this will likely require one or more agreements with the owners of the underlying rights, something best done well in advance. The underlying rights holders may not only be the author of the original work, but also any party to which the author has granted exclusive rights. For example, if the author of a novel granted motion-picture rights to a film company, the grant may also include the exclusive right to further adaptations of the work. In that case, the third-party rights holder (which in this instance is the film company) can grant the necessary rights to either:

The publisher of the opera, which can in turn grant the rights to present the world-premiere performance run to the commissioning opera company (either as part of the commission agreement or in a side letter)

The commissioning opera company, which can in turn grant the right to the publisher for future exploitation, or

The composer and/or librettist, who can then grant the applicable rights to present the world premiere to the commissioning opera company and the rights to future exploitation thereafter to the music publisher. 



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Predicting the FUTURE

Music PUBLISHING

in 2025

By Peggy Monastra and Robert Thompson

You might have noticed the violinist at the chamber concert you attended last night didn't have any music on her stand. Instead, she was reading Beethoven's Opus 131 on her iPad. Music publishing has changed dramatically since [Ottaviano Petrucci](#) invented music printing in the 16th century, and the last two decades in particular have seen major advances in engraving and delivery systems. Now, technology is seeping into the concert hall, and has profound implications for how we compose, rehearse, perform, and listen to live music. Here's what we think the year 2025 might look like.

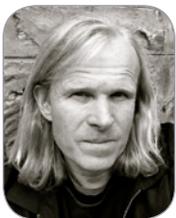
Technology will change every aspect of the cycle, from conception to composition to delivery

PEGGY MONASTRA



Peggy Monastra is artistic director, G. Schirmer/AMP – Music Sales Classical. She been the staff of G. Schirmer for over 20 years, previously as director of promotion. With a background in piano performance, pedagogy and musicology, her greatest interest has always been in working with contemporary music in all areas of the performing arts.

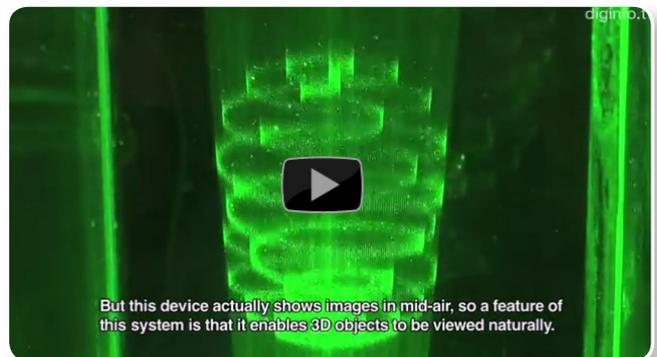
ROBERT THOMPSON



Robert Thompson is vice president, Music Sales Corporation/G. Schirmer, Inc./AMP. A two-time Grammy-nominated producer and musician, he was previously the managing director of Universal Edition in Vienna, a co-founder of ArtistShare, and the dean of music at SUNY Purchase College.

Where's my music stand!?

Printed music will still survive, but innovations in digital delivery systems will render the conventional music stand nearly obsolete. Musicians are already practicing, rehearsing, and performing on iPads, but by 2025, we envision an array of devices from which they can access "printed" music, such as [Google Glass](#) (or its descendent), [roll-up screens](#), [fold-up screens](#), and perhaps even no screens at all. [See video below] Yes, it's now possible to project a musical score simply by aiming a laser light into thin air, which enables oxygen and nitrogen molecules to become a virtual screen in front of the musician. As advances in holography unfold, the notion of a musical score as being two-dimensional may change as well, and thus could inspire new ways of composing, conceptualizing, and notating music, incorporating holography and [gestural software](#).



But this device actually shows images in mid-air, so a feature of this system is that it enables 3D objects to be viewed naturally.

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I need Mahler's Sixth and I need it now!

Imagine the New York Philharmonic has just announced its new season, and within minutes, every musician in the orchestra has his or her part for the entire season, digitally delivered to their iPads, Google Glass, and roll-up screens. The concept of a digital orchestral rental library is just down the road, as more and more publishers develop technology that allows the seamless digital rental, licensing, and distribution of orchestral music. Imagine the day when packing and shipping scores and parts will be mostly a remnant from the past. There's already a major push to develop digital rental libraries for orchestras and other presenters that will enable players to mark up their parts, make changes and edits, and store, save, and share these edits with less effort than using a pencil.

Any score. Any time!

By 2025 there will likely be a critical mass of digital scores, whereby the majority of them and their individual parts, published or unpublished, will be available for sale, rent, or (in the case of public domain works) free. Music publishers are busy rethinking how to deliver this digital content. Digital sheet music is already widely available for [sale](#) and for [on-demand perusal](#), but as more and more schools and universities create online courses, music publishers will need to develop efficient and innovative ways to license their digital content.

We envision a future where a professor teaching a 20th-century music history course will be able to seamlessly license all the relevant scores for the course and make those materials available to students digitally. And those scores won't just be flat PDF files, but interactive files, embedded with a treasure trove of metadata that allows for a much more highly developed, interactive experience with a musical score. Imagine studying Beethoven's Eroica, and not only viewing the score, but also the original manuscript alongside various conductors' markings and annotations



The future: your score, fresh from the roll up screen.

via digital overlays. Want to compare Von Karajan's score to Bernstein's? It will be a mouse-click away.

Settling scores in real time.

A composer's score, as we know it, will become an interactive tool that facilitates inspired collaboration. Currently, music notation software is still based upon the same notational principals developed by Petrucci in 1501...but that will soon change. A composer will be able to work in real time to make changes to his score in rehearsal, which immediately updates all the musicians'

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parts. A composer and a choreographer will be able to collaborate with more spontaneity and fluidity between them. The act of composing will evolve, and composers will be liberated from traditional forms of notation. We are already seeing this among artists who have grown up with computers and creative software at their fingertips.

Your brain on music.

Music notation's technological advances will provide us with an immense cache of metadata (think orchestration, tempi, style, genre, etc.) that will allow presenters to make better-informed cognitive programming decisions (in much the same way as the [Music Genome Project](#) functions for audio recordings). Music publishers will serve an important role in developing this metadata. More importantly, in performances, there might be metrics used to gather audience responses to a new work, by using [aggregate emotional response data](#) that gives insight into the emotional mood of a group by measuring facial expressions, body movements, etc. Currently, it's being developed in the security community to gauge the mood of a crowd in potential riot situations, but this technology could logically be extended to audiences to find out how they "really" felt about a performance by measuring real data. It does raise privacy issues (do we really want the composer and performers know that we didn't like that new piece?). But used judiciously, this data could enable composer and performer to "know" their audience on a level that goes far beyond tastes and preferences and to better grasp how to keep the live music experience vital and relevant.

Plugging into education.

It's imperative that music publishers integrate technology into music education by developing tools that enable us to build an educated audience to listen to the composers we publish. Publishers will seek to provide relevant and meaningful interactive

content for teachers and students to learn about music in new and engaging ways, and to connect this viral learning experience to live performances. Imagine a [cloud-based music-education program](#) that allows students to learn music history, theory, and composition in a way that fosters integration, in real-time, with what's happening live in their community. A Seattle student's lesson on Mozart on his computer could be integrated with a streamed performance of a Mozart symphony by the Seattle Symphony, for example. The cloud could enable performance organizations and arts presenters to expand their education programs far beyond their current reach and create global virtual outreach education programs. When the New York Philharmonic premieres a new work by John Adams or John Corigliano, a student in a remote village in China will be able to learn and listen.

Siri, Where's the nearest gamelan concert?

When you take out your iPhone and ask Siri for all the romantic comedies playing in movie theaters near you, within seconds, she'll list them all. But if you ask her to list all the Zydeco concerts in Milwaukee that are happening this month, she'll be stumped. Unlike the airline and film industries, there is no central connected database for all live music on this planet that links concerts, artists, songs/compositions, venues, and audiences. That will change, as presenters, artist managers, booking agents, music publishers, musicians, and audiences all move toward a centralized, global music calendar. It won't just be a flat listing of dates and times, but an immense database of works, styles, artists, genres, and other information that will change how, when, and where we interact with live music. 

What Will the Music of 2024 A. D. Be Like?

Recent Advances Suggest Startling Possibilities for the Future—When Transmission of Pictures by Telegraphy Is Perfected Opera in Every Home Will Be Feasible—Single Keyboard Piano May Be Scrapped—Revolutionary Murmurs Threaten Present Notation System and Top-Heavy Orchestra



TEN DECADES from now—in 2024 A. D.—what sort of music will people be playing? How will melody be delivered to your home—in the form of scores, records, rolls or in that intangible form, the long-distance radio wave? What new instruments of the orchestra will have been invented? How many keys and keyboards will the piano of that day have? Will key signatures have been forgotten and the musical staff increased in size, to make room for eighth-tones? And will major and minor be as dead as the modes of the Greeks?—How many divisions of the human voice will be in style? Will our great-great-grandchildren listen to mezzo-tenors and super-sopranos? What forms of outrage and violent death will be the subject of librettos? And will there be nightly photo-music-drama broadcast to every village?

These possibilities occur to most folk who speculate on the future. If any of Beethoven's contemporaries were to come back exactly a century later and listen to a concert by one of the "modern" groups, what would be his impressions? We are not so sure that Beethoven himself would be so startled, for he was a modern in his day—and one that stood alone, speaking his own language. But ideas have changed enormously from Brahms to Scriabin.

We can picture Schubert sauntering into a recital of Schönberg's music, peering jovially through his glasses, his stock disarranged. After a moment of confusion, he would doubtless say: "But, of course, the players are tuning up! These modern conductors are so exact that they beat time for this process." Mendelssohn would never recognize some of the modern "songs without words." And as he listened to a radio recital, the Beethoven that once frightened Bonn with his gigantic and temperamental humors would pound his knee and roar: "They used to call my Rasumovsky Quartets advanced!"

Ether-Tones of the Future

This contrast is sharp, but a great change has come within the last score of years. Is it too much to expect a greater one in five times that period? A hundred years from now the salons of magnificent private houses will be flooded by the touch of a button with divine tones. The marvels of that time will include very probably the mass performance of some great choral work by groups of singers and instrumentalists in many cities. Europe and America may join in the "Missa Solemnis" or the Mozart Requiem. The clumsy beginnings of the telegraphed photograph promise a future development for the sending of visual opera along with the music over the wires or through the air.

Will all this, if it comes to pass, lessen the demand for the services of artists? We do not believe it will prove a substitute for the musician and dancer in the flesh—rather it will demand his cooperation. The result will be very likely a great gain in the profits of a performance. The limits of space will be broken down, and the artist will perform to a vast body of millions of hearers!

Many inconveniences which the touring artist now has to suffer will no doubt be eliminated. It will not be necessary to travel great distances: the strain of the concert tour will be dispensed with. The changes in living habits and daily regimen that make these trips trying even to the seasoned performer will be dispensed with. Artists may not even have to leave their homes, to endure the artificialities of the concert platform.

The compositions of the future will probably exploit much more subtle tonal combinations than do those of today. The tendency is now plainly in that direction, and has been for some time. The increase

of chromatism through the music of Schumann, Chopin, Wagner, Scriabin and moderns such as Stravinsky is a progressive one. Schools of composition founded on a formula, like that of Debussy, decrease instead of extend the variety of tonalism, despite the genius of the individual, and are therefore *cul-de-sacs* in this progress.

Whether the device of quarter-tones will come into general favor is problematic. The difficulties of performing such intervals on our present instruments are very great, and in the case of the piano

defect in the present scale is its limitations in the writing of accidentals. The old rigid systems of key signatures were happy solutions, so far as they went; but when the conception of endless modulation came in (Wagner gave it a considerable "boost"), it rendered them really useless. The key signature had to change with every few measures, and this was extremely confusing.

Many modern composers write entirely without these signatures, to all purposes in the Key of C Major. The consequent peppering of the staff with complicated

together. The strings to this day keep something of this function. The tendency during the last fifty years has been to pile up the subsidiary instruments—the brass with Wagner, the heaven-knows-what-not with Strauss. The result has sometimes been a muddy color, a thick melange of sound.

There is no doubt about it: beginning with Tchaikovsky, the music of the present has become steadily more percussive. That is the primitive stage, not the high estate, of music. If that of the future is to include still more of this element—as the newcomers seek to persuade us—then the strange, blatant harmonies, the crunches, groans and pulsations, must be bound with the strong glue of the lyrical, else music as such will decay. It is the test we apply to present modernist works—the great distinction of Stravinsky being that he achieves lyricism with devices that would have made our forefathers writhe.

It seems that to secure this end, the predominance of the strings must be restored either by increasing them, or by decreasing the whole orchestra proportionally. The fact that the small ensemble has grown into greater popularity within several decades—the wind ensemble undergoing a renaissance—indicates that the modernist is realizing that his effects can be made most surely with an economy of means. The giant orchestras of today may be regarded a century hence with something of the curiosity that we now bestow on Berlioz's ideal ensemble including 240 strings and thirty grand pianos.

Music Dramas of an Aeon Hence

The opera, one may be tempted to believe, will always be—the opera! It flaunts its brazen indiscretions in the face of the chaster forms of music, and everybody continues to love it. There is no reason to think that its theatrical element will be sacrificed to the musical. The first is its very life-blood. When Gluck and Wagner set out to idealize the union of the two, it was usually the musical member of the family that had to change her ways to suit the bad-mannered libretto. In opera, as elsewhere, the play's the thing!

What of the future? The original Richard, it may be confidently said, "started something" when he taught the voices not to know what the orchestra is doing! The great increase in harmonic complexity has all but sounded the death-knell of melody, until we have a way of referring to it as something to be ashamed of! The mediocre composer is able to cover up his lack in this respect by overlaying his thin tunes with thick layers of stuff. To compare music with painting, he has ceased to learn how to draw and spends all his time in mixing and remixing colors. We can imagine the music drama of the future as getting back to firm ground somewhere. The theory that two and two make five,—that a complex combination of bad, indifferent or loathsome melodic parts sounding at the same time makes a mysterious beauty—is absurd.

As to plots? The opera libretto ought to reflect life as it is, with due artistic re-arrangement. As that is growing more and more mechanical, the drama will deal in engines that both crush and comfort. Heroines will accomplish their cheerful vengeance on dastardly heart-tones by means of the newly-discovered death ray. *Tosca* may give up her dagger in favor of a high-powered explosive, and *Isolde* will certainly mix a swift and certain microbe in her fatal cup. *Lucrezia Borgia*, unless we are mistaken, will specialize in the hook-worm. *Mad Lucy* will suffer from *dementia praecox*, or depressive melancholia, instead of the comfortable old vague form of lunacy, and a revision of the libretto will surely include a consultation of psychoanalysts—for comic relief. *Turiddu* will die of tetanus from uncauterized ear-bite, and *Rodame* be lethal-gassed.

When that day dawns, who can picture the thrills of the opera subscriber? R. M. KNEER.



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it is impossible to do so without a specially devised keyboard. From abroad come reports of a new piano that has been made to surmount this difficulty. It has red keys between the customary white and black to supply the additional quarter-tones. Here is a revolution indeed! The whole system of piano teaching, of fingering, of technic, will have to be revised, if this piano of 176 keys comes into general use. At the same time, it is said to be a very practicable keyboard, which does not impose any difficulties on the hand which cannot be met. Other inventors are working along similar lines and perhaps, in time, our pianos may have two or even three keyboards, somewhat like those of the organ, but so arranged that an infinite number of tonal divisions will be possible.

In the case of stringed instruments, changes in number, length and quality of strings may be made; the relative size of the bow may be altered, or some artificial device to facilitate "stopping" be introduced. In the case of valved instruments, corresponding changes will have to be made, these almost certainly increasing the size and complexity of these pieces.

A New Art of Scoring

The present system of musical notation will be revised or extended without a doubt. It is, in fact, antiquated as it stands today. This will, however, not be so momentous a matter as it seems, for such revisions have taken place periodically in the history of music. The great

signs of chromatism has, as one English authority recently remarked, made it impossible to read notes in groups, but only one by one. One solution would be to increase the lines in the staff, doing away with sharps and flats.

More Flexible Notation Wanted

The same difficulty appears in modern scores with regard to time signatures. These change with disconcerting regularity in the modern orchestral work, and it is something of an endurance test that the conductor performs in changing the beat in such works as "Sacre du Printemps" or "The Planets." The solution might be in the adoption of a standard measure of a set number of beats, a new arrangement of the values of notes, so that a whole-note, for instance, would always be given one or two beats. It would then be necessary to invent a much greater variety of fractional notes, perhaps with a system of numbering to replace the old convention of the dotted note. Certainly the state of music today clamors for a more flexible notation—with single units for both pitch and tone.

As for the orchestra of the future, that is something of a vexing question! Without pretending to be a sybil, we can venture a belief that its present quantitative development is a misstep in its true evolution. The orchestra took shape around the unit of the string quartet, the other tones being somewhat in the nature of an "embellishment." That is, one choir of instruments originally stood out—as it were, cementing the whole to-

Stephanie Challenger

Publisher and Managing Editor

Susan Elliott

Editor, MusicalAmerica.com News and Special Reports
editor@musicalamerica.com

Joyce Wasserman

Senior Account Manager
732-851-6988 jwasserman@musicalamerica.com

Frances Wan

Design Director | Database Publishing Specialist

Howard Roth

Business Consultant

Sedgwick Clark

Features Editor, Musical America Directory

Robert E. Hudoba

Manager of Listing Services
listings@musicalamerica.com

Carolyn Eychenne (Europe)

Advertising Sales Representative
33.1.39.58.14.01 carolyn@eychenne.me

Andrea Rancati (Italy)

Advertising Sales Representative
39.02.703.00088 arancati@rancatinet.it

Debra Kraft

Account Coordinator
dkraft@musicalamerica.com

PUBLISHED BY

**Performing Arts
Resources, LLC**
Your source for news and information

PERFORMING ARTS RESOURCES, LLC

PO Box 1330, Hightstown, NJ 08520
609-448-3346 info@musicalamerica.com

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