

## Music

**Note:** Copyright tariffs for Music programs taped by individuals are the responsibility of the Principal or individual users.

### Part I

#### Copyright Law

The Copyright Act includes provisions in Sections 20(5) and 32.2(3) [see Appendix I], called exceptions, that permit educational institutions to perform music, whether recorded or live, without payment or permission from the copyright owner. This advisory identifies music uses in educational institutions that are covered by the exceptions and those that are not. Where a use is covered by the exceptions, no payment or permission is needed. Where a use is not covered by the exceptions, educational institutions must obtain authorization from the copyright owner or a collective authorized to represent the owner.

#### Section 29(5)

This exception in the Copyright Act permits a person acting under the authority of a non-profit educational institution to:

- Perform a musical work live if the performance is primarily by students of the educational institution;
- Play sound recording containing a musical work;
- Play radio and television programs containing a musical work while the program is being transmitted (via over-the-air broadcast, cable, satellite, or Internet).

The following conditions apply – the performance must:

- Take place on the premises of an educational institution;
- Be for educational or training purposes;
- Not be for profit;
- Take place before an audience consisting primarily of students of the educational institution, instructors acting under the authority of the educational institution, or any person who is directly responsible for setting a curriculum for the educational institution.

#### Section 32.2(3)

This exception in the Copyright Act permits the public performance of music in schools, when it is “in furtherance of an educational object.” Any use of music that can be considered in furtherance of an educational object is not subject to payment. If the performance is not in furtherance of an educational object, the exception will not apply. The public performance of music in these circumstances must be authorized by the copyright owner or by SOCAN as the collective that represents the owner.

## Part II

### Music uses licensed by SOCAN

SOCAN is a collective authorized by the owners of copyright in musical works to license the public performance of music. Another collective, the Neighboring Rights Collective of Canada (NRCC), is authorized by the makers of sound recordings and performers to license the public performance rights in sound recordings and performances. This advisory deals only with the public performance rights in music administered by SOCAN.

SOCAN offers two types of licensing arrangements, based on (1) tariffs set by the Copyright Board of Canada (see [www.cb-cda.gc.ca](http://www.cb-cda.gc.ca)) for defined uses of music and (2) voluntary contractual licences. In the latter arrangement, SOCAN offers school boards and individual schools a licence for 25 cents per student for all uses of music not covered by exceptions in the Copyright Act.

### Music uses covered by the exceptions

The following list identifies uses of live and recorded music covered by the exceptions in the Copyright Act that therefore do not require permission and payment:

- In school assemblies (*e.g., a recording of O Canada*);
- By a student in a presentation to other students, teachers, assessors, or parents (*e.g., as part of a presentation during music class*);
- In demonstration activities by students, primarily for other students, teachers, assessors, or parents and for which any admission fee charged covers costs but does not make a profit (*e.g., a concert by the school choir, gymnastic routines, shows by school bands*);
- During school hours for teaching/learning (*e.g., music/dance/dramatic arts classes*);
- Before and after school, and during recess, if the use is for educational purposes (*e.g., school radio operated by students for credit and supervised by a teacher*).

### Music uses not covered by the exception

The following list identifies uses of live and recorded music not covered by the exceptions in the Copyright Act that therefore require permission and payment:

- At school dances;
- At school sporting events;
- While people are on hold when they telephone the school;
- At an event where the admission fee is intended to make a profit;
- On school premises for no other reason than as background (*e.g., in the classroom, cafeteria, halls, over the PA system, at school events such as fairs, carnivals, sociocultural events*).

SOCAN has the authority to grant permission for these music uses and can provide licences to schools/school boards across Canada.

The following list identifies uses of live and recorded music not covered by the exceptions in the Copyright Act

that therefore require permission and payment. SOCAN does not have the authority to grant permission for these music uses:

- In a play performed live (e.g., a drama class's production of *My Fair Lady*). In this case, the educational institution must obtain copyright authorization from a theatrical agent;
- In performances on school premises by outside performers (e.g., invited singers, magicians). In this case, obtaining copyright authorization is the responsibility of the outside performers;
- In activities held in school facilities that are rented or are provided free of charge to outside groups. In this case, obtaining copyright authorization is the responsibility of the outside group.

#### Deciding when the exceptions apply

This advisory does not list all possible music uses in schools. These are some of the factors to consider when determining whether a music use is covered by the exceptions:

- Did the music use occur during school hours?
- Will the student be graded on the activity involving the music use?
- Does the music use involve a demonstration by a student or teacher for other students, teachers, assessors, or parents?
- Is it reasonable to consider the music use to be for educational purposes? The phrase "educational purposes" is not defined in the Act but can be described as an activity that is planned and where the objective is for students to meet one or more subject or program outcomes;
- Was the music used on school premises?
- If admission was controlled, was it free?
- Was the music use for a non-profit purpose?

If the majority of the answers to these questions is "yes" then the music use is most likely covered by exceptions in the Copyright Act.

Whether the exceptions apply or not to music will frequently depend on the particular facts. It is recommended that schools and school boards seek legal advice in cases of uncertainty.