



Playing By the Rules

~ Jerry Brubaker

Exclusive writer with a major publisher

Member of the ACB Board of Directors

This quote comes from Maestro Loras Schissel of the Virginia Grand Military Band:

Morton Gould told me he stopped writing for band because – “Bands have no respect for composers.”

That’s a strong statement coming from such a famous composer as Morton Gould. What could he possibly mean by this statement? Does he mean all bands have no respect for composers? Let’s examine the practices of bands in general to see if we can figure out why Mr. Gould felt the way he did.

We can start by examining how bands put music in their folders. The proper way to put a piece of music on the stand is to buy it from the publisher or a distributor. If you examine carefully the libraries of most bands you will find an abundance of photocopies. One can then only ask where the photocopy came from? Did the band borrow that piece from another band, and then copy a set for their use? As a composer/arranger I find this practice quite disturbing.

In general, the composer receives no advance for doing a new work. He/she is paid a percentage of the retail sale price of that piece. This percentage varies depending upon whether or not an arrangement has to be licensed from another publisher. Usually in this case the arranger receives a royalty of no more than 5%. Thus, if the piece sells for \$65.00, the arranger receives \$3.25 for each copy sold.

Paying the licensing fees ensures that composers and arrangers will continue to create new music.

You now can see how many units have to sell for an arranger to make a living from his/her craft. If you photocopy a piece of music you are cheating the composer/arranger, a real person (or his/her estate) out of a royalty. Is Mr. Gould making more sense now?

Keep it legal. You want your band members to value music. When you observe the copyright law, you show them the way. The future of music is in your hands. **Here’s how to keep it legal:**

What You Can Do:

- **You may make emergency photocopies** to replace missing purchased copies for an imminent performance, provided you replace all copies with purchased music in due course.
- **You may edit or simplify music** as long as the fundamental character of the work is not distorted. *Note: You may not alter or add lyrics*

What You Can’t Do:

- **Do not copy or download music to avoid purchase.**
- **Do not keep photocopies in your library.** Destroy any

unauthorized photocopies immediately and replace them with legal editions.

- **Do not copy out-of-print works** without permission of the publisher. *Note: If it is vital you obtain music that is out-of-print, contact the publisher directly. They can confirm if the work is out of print and can sometimes arrange for you to obtain a legal copy. “Out-of-print” does not mean “out of copyright.”*
- **Do not make arrangements of works** (other than to edit or simplify) without permission of the copyright owner.
- **Do not copy music for use in performance** unless you replace it with a legal edition in due course.
- **Do not copy without including the copyright notice** that appears on the printed copy.
- **Do not copy to create anthologies or compilations.**
- **Do not reproduce material designed to be consumable**, such as workbooks, standardized tests and answer sheets.

If you photocopy a piece of music you are cheating the composer/arranger, a real person (or his/her estate) out of a royalty.

Not knowing the copyright owner is no excuse for not following copyright law. Resources are readily available to help you find the owner. Please share this information regarding copyright and licensing with your band’s librarian.

Some bands purchase music and scan the parts into PDF and post them in a members’ area of their web site instead of distributing the hard copies. The reasons given are: Music doesn’t get torn, originals don’t get destroyed by written comments and circling and band members have quick access to music for home practice. **This practice is the same as making unauthorized photocopies and, as stated above, is a Violation of US Copyright law.**

The original parts are meant to be passed out to your band. That is why publishers supply multiple copies of instrumental parts for an entire band. If you purchase a piece of music and it doesn’t come with enough parts for your particular ensemble you are required by law to purchase those additional parts from the publisher. Photocopying is not authorized in this situation.

As adults, band members should be responsible enough to make markings in pencil only. Thom Proctor wrote a wonderful article for the *ACB Journal* on the correct way to mark parts. (“Mark Your Parts! A System and Suggestions for Marking Parts,” *ACB Journal*, February 2011.) This article is available in the ACB Web Site Member Area.

OK, so I’ve legally purchased a piece of music from a publisher or distributor. This means I can perform it, right? Unfortunately, no.

Simply purchasing a piece of music from a publisher does not automatically give you the right to perform that piece on a concert or recording. It's not an either/or thing. You must buy the music and you must obtain a license from ASCAP or BMI in order to perform any work. If you pay for the performance license it is still illegal to play from borrowed or copied parts. If you bought the music, do you still have to pay the performance license fee? Yes, you must do both.

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The performance fee is the license fee to perform one piece of music one time. Whenever there is a public performance of copyrighted work, license fees must be paid. Paying the license fees ensures that composers and arrangers will continue to create new music.

This is why the ACB negotiated a **Blanket Performance License with BMI and ASCAP** for our members to purchase that allows member bands to perform works that are licensed by ASCAP and BMI as many times as they wish during the year for one low fee. **ASCAP** stands for is the American Society of Composers, Authors, and Publishers; **BMI** stands for Broadcast Music Inc. Both represent composers, songwriters, lyricists, and music publishers across the country and internationally. They collect and distribute royalties for performances of copyrighted works.

Submission Process for reporting pieces played:

Each year, bands who have purchased this Blanket License must report the pieces they have played to ACB, who will in turn report them to ASCAP and BMI. To do so, download the ACB's ASCAP/BMI Excel Spreadsheet from the ACB Web Site. You will find it at www.acbands.org under RESOURCES. Fill it out according to the column headings. At the end of the year, email the spreadsheet to programs@acbands.org.

In filling out the spreadsheet, please supply all requested information, to ensure that composers, arrangers and publishers are credited appropriately; and be sure to include all works performed (published or manuscript) at all concerts, including free concerts or civic events. The submission deadline is for each year is the following January 31st.

You can learn more about ACB's Blanket license program in our FAQ in the public area of our web site. It is linked from this page: <http://www.acbands.org/ASCAP-BMI-Blanket-License.html>

In Conclusion

All this costs money; how does my band accomplish all this with limited funds? I particularly like what the Greenwood (PA) Concert Band does. Each year when they decide on a list of new music to purchase, they solicit band members to purchase something on the list for the band. The cost might be anywhere from \$50.00 to \$100.00 for a new piece. In turn, that individual band member is recognized in the program as having donated that piece of music. ACB also has resources for fundraising that can contribute to the building of a strong, legal library as well as the respect of those who create your new music!

Jerry Brubaker is an exclusive composer and arranger for Alfred Publishing Co and has published over 300 works for band, symphony orchestra and chorus. A native of Altoona, Pennsylvania, Jerry has a Bachelors degree from the Eastman School of Music and a Master of Music from The Catholic University of America. Mr. Brubaker served for 30 years in the United States Navy Band in Washington, DC as a French horn soloist and composer / arranger. He became the Band's Chief Arranger and held that position until his retirement from the Navy in 1998.



Jerry is a member of the City of Fairfax (VA) Band and has been an ACB member since 2002 and a member of the Board of Directors since 2011. He is very sensitive to the musical needs of community bands. One of his most recent works, "The American Road" received its official premier as the commissioned work for the 2010 convention in Plano, TX.

Do you use the Proud Member of ACB logo? We want to know!

Does your band put the Proud Member of ACB logo on your concert programs, posters, or website? We want to see it! We want others to see it too! Please follow these steps:

- 1) Take a picture of the program or poster (feel free to be creative!)
- 2) Post it on social media (Facebook, Twitter, Instagram, etc.)
- 3) Tag it with #BandsofACB
- 4) Email it to webmaster@acbands.org

All images that are emailed to us will be put in an album on our Facebook page. If you are not using this logo yet, now is a great time to start and let everyone know you are a member of the Association of Concert Bands. This image is available in the Members Area of the website in multiple formats.



Sarah McElfresh
Eastern Region Membership Coordinator