



Advisory from the AMTA COVID19 Task Force

Copyright and licensing: Maintaining compliance in online/remote environments

Copyright law 17 U.S.C. (U.S. Copyright Office, 2020) and the processes to obtain licensing or permissions are complex and time consuming for clinicians. This advisory is aimed at and limited to practicing clinicians. Faculty should consult their respective institutions regarding copyright in educational settings. This advisory adopts a conservative stance. As credentialed music therapists, it is the clinician's responsibility to follow the law. This guidance is not a legal opinion or legal advice, and AMTA cannot provide legal consultations. However, this advisory may serve as a brief introduction to facilitate understanding of useful copyright provisions to guide music therapists in making informed decisions.

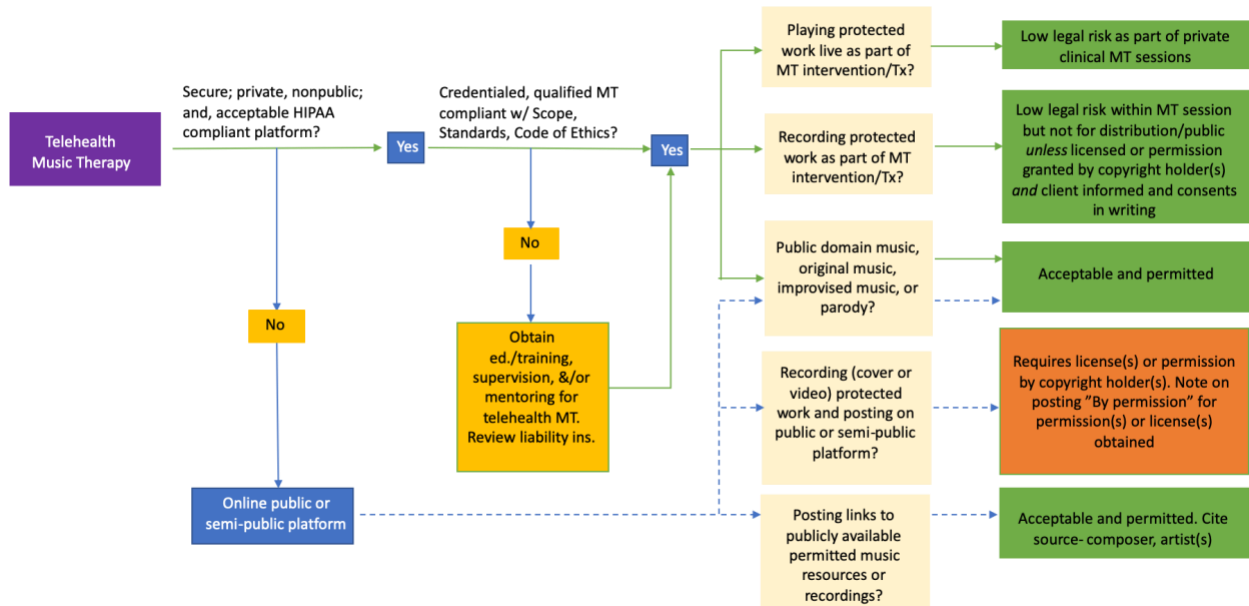
The scope of the document highlights and organizes copyright compliance from two circumstances in the online environment. The first circumstance is when the credentialed therapist conducts a private telehealth music therapy session.¹ The second circumstance discusses nonclinical and/or supplemental music therapy-informed content provided by music therapists outside the private music therapy session via public or semi-public channels online such as on a YouTube channel using various visibility settings (public, private, unlisted) or Facebook. A simplified graphic, outlining the essentials of this advisory, is included as part of the document.

Understanding the essential components and principles of copyright law is an important part of music therapy practice in *all* clinical settings (Copyright.gov, 2020; Netanel, 2018). This understanding must include and extend to online and remotely delivered services where the law, regulations, rules, and terms of licensing still apply. While we continue to advocate for an exemption under the law for credentialed music therapists practicing in the United States, the COVID-19 2020 pandemic only highlights and underscores the importance of paying attention to: a) types and terms of licenses and b) the needs of clients relative to the rights of copyright holders for performing, playing, or recording protected works as part of a music therapy intervention (Kohn & Kohn, 2019; Kohn, 2019).

¹ See <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html> for a discussion of HIPAA compliant platform guidance.

A conservative approach simply avoids music covered under copyright in any setting. Music therapists under U.S. law may use originally-composed music, improvised music, parodies, and works in the public domain without a license. YouTube provides a discussion on copyright and offers an audio library of free tunes and sound effects clinicians may find helpful (YouTube, 2020; YouTube, n.d.). Obviously, the major downside of this is the inability to tailor music preferences and interventions for clients that usually include tunes protected under copyright.

Simplified Graphic for MT-BCs on Maintaining compliance in Online/remote Environments



Circumstance 1: Telehealth

Use of protected works as part of private individual or group music therapy conducted in private, nonpublic locations is low legal risk when used in accordance with our Standards of Clinical Practice, Scope of Practice, Code of Ethics, and Board Certification Domains (AMTA, 2001, 2013, 2015, 2019; CBMT, 2020). The provision of music therapy services via an acceptable telehealth platform shifts the clinician and client from face-to-face therapeutic exchange to an online exchange. As long as the telehealth platform is secure and takes place in a private location, the same considerations for copyright are assumed to apply in telehealth platforms as in face-to-face venues, and performing protected works as part of the session is considered low legal risk in this circumstance.

If the music therapist records (audio and/or video) a protected work as part of an intervention, the working assumption is that it is acceptable as long as the recording is not copied, shared, or distributed publicly. The recording should be noted in the client documentation (progress notes) and referenced or tied to the specific intervention. A policy and procedure should be in place regarding secure storage, archival, and eventual destruction of the media. If there is a specific and clinically-relevant reason to make copies and distribute a recording made as part of the private music therapy session(s) (e.g., legacy recording for sharing at a memorial upon death of

a client seen at end of life), permissions or license(s) are required. Signed informed consent by the client (or individual with legal authority) to distribute is needed. Clients or caregivers should be advised to review the terms of licensing or permissions granted in this situation.

For music therapists working in school districts and providing telehealth music therapy services approved as part of Individualized Education Plans (IEPs), a case may be made for permitted use of protected music under the Fair Use exemption of the copyright law (17 U.S.C. § 107). Clinicians should consult their school districts and remain vigilant for any changes to guidelines in this regard.

Circumstance 2: Programming by music therapists online on public and semi-public platforms

It may be helpful during the current COVID-19 pandemic for therapists to curate and post permitted and freely available music resources and materials on public or semi-public platforms. This may be a convenient way for clinicians in practice to stay connected with their clients and/or offer enrichment materials where face-to-face sessions are prohibited or facilities are temporarily closed during quarantine and stay at home orders. This is permitted as long as the links are from permitted sources. It is suggested that clinicians recognize and cite the copyright holders (e.g., composer, artist, publisher) in the posting.

If the music therapist records (audio and/or video) a protected work and wishes to post it in a public or semi-public platform, permission or licensing is needed. When posting publicly, it is suggested that music therapists note the posting is provided “by permission of...” or note licensing was obtained in accordance with copyright law. Even if you believe there could be good social value to your posting or a rationale under the Fair Use doctrine, it could also be argued that you are an artist performing a cover tune in a public space. A conservative stance, therefore, is recommended. Some sites such as YouTube are rather tricky and clinicians should carefully review copyright information for covering tunes and posting on YouTube (See YouTube’s *Navigating music copyright for artists*).

In closing, this advisory recognizes that many may be experiencing angst and uncertainty knowing there is no explicit solution or answer on copyright and licensing questions in practice situations. Music therapists are encouraged to consult AMTA’s resources on ethical decision-making models (noted as an Appendix to the Code of Ethics) and to consult resources and/or experts on intellectual property and copyright as part of one’s ongoing professional activities (See <https://www.musictherapy.org/about/ethics/>). As always, continue to adhere to policies at your respective facilities (practice sites) and monitor for updates in the industry and at AMTA.

References

American Music Therapy Association. (2001). *Copyright letter*.
<https://www.musictherapy.org/members/documents/>

American Music Therapy Association. (2013). *Standards of clinical practice*.
<https://www.musictherapy.org/about/standards/>

- American Music Therapy Association. (2015). *Scope of music therapy practice*.
https://www.musictherapy.org/about/scope_of_music_therapy_practice/
- American Music Therapy Association. (2019). *American Music Therapy Association code of ethics* <https://www.musictherapy.org/about/ethics/>
- Audio library*. YouTube.com. Retrieved May 15, 2020 from
<https://www.youtube.com/audiolibrary/music?ar=1589644027060&nv=1>
- Certification Board for Music Therapists. (2020). *Board certification domains – 2020*.
https://www.cbmt.org/wp-content/uploads/2020/03/CBMT_Board_Certification_Domains_2020.pdf
- Kohn, A., & Kohn, B. (2019). *Kohn on music licensing* (5th ed.). Wolters Kluwer.
- Kohn, B. (2019). *Links and resources*. Retrieved on May 15, 2020 from
<https://www.bobkohn.com/kohn-on-music-licensing>
- Navigating music copyright for artists*. YouTube.com. Retrieved May 15, 2020 from
<https://creatoracademy.youtube.com/page/lesson/artist-copyright>
- Netanel, N. W. (2018). *Copyright: What everyone needs to know* ®. Oxford University Press.
- U.S. Copyright Office. (2020). *Copyright Law of the United States*. Retrieved May 15, 2020 from
<https://www.copyright.gov/title17/>