

Everything You Wanted to Know About Licensing and Were Afraid to Ask

Jim Hoare

(Reprinted from *Your School Theatre Director's Playbook* with the author's permission)



Module 2: Contracts and Licensing

What should every theatre educator/administrator know about theatrical licensing?

Why It Matters: At licensing workshops for theatre educators, I often ask if anyone has ever read their entire performance license for either a play or musical. The response is almost always less than half the group. This is not surprising, considering the many hats theatre educators wear and how busy they are. But when your name is on a contract, you should be fully aware of what you are signing. The excuse, “It’s easier to ask for forgiveness than permission” will not suffice in many circumstances – and could ultimately cost you your job.

Things to Consider:

After purchasing a perusal script and submitting a license application, can I announce my show?

Absolutely not! Being able to purchase a perusal script is no guarantee that a title is available to be licensed in your territory. To avoid disappointment and embarrassment, never announce your show until you have acquired the performance rights by returning your signed license agreement with a deposit or a School Purchase Order. A parent once called to complain that we “pulled the license” from her son’s school. I explained the truth to the parent, that after announcing the title to his students, the teacher discovered that the show was not yet available for amateur licensing and was just covering for his misstep. I imagine an awkward conversation may have followed between that parent and her son’s teacher.

Now that I have my performance license, can I change a character’s gender, edit problematic words, cut dance music, or make other changes in the script?

No, not without permission. Licensing companies represent authors and are tasked with the responsibility of protecting the integrity of their authors’ work. A performance license gives you the right to present a play or musical as written on the dates specified on the license agreement. You may not add new music, lyrics, dialogue, or anything to the Play as provided for in the performance material. You may not delete in whole or in part any material as provided and you may not make changes of any kind, including but not limited to changes of music, lyrics or dialogue or change in the period, characters (including their gender), or characterizations in the presently existing Play.

A note on gender: I have been asked if a female or trans actor can be cast in a male role, playing the character's gender as male. The answer to this question is yes. At a theatre conference back in the nineteen eighties, four-time Tony Award winning actor Zoe Caldwell told us the difference between an *actor* and an *actress*. "An *actress*," she said, "can only play female roles. I am an *actor*. I can play any role."

What if I am told by an administrator to make changes (or if I would like to change a line, word, a character's gender, or make cuts)?

First, remind the administrator that you are obliged to abide by the terms and conditions of the performance license, including that any proposed change, addition, omission, interpolation, or alteration in the music, lyrics, or book of the Play shall first be submitted in writing to the licensing company. If permission is granted by the Authors, the licensing company will advise you in writing.

Contact your licensing rep first. There is a good chance that your rep already has the answer and you may be pleasantly surprised. If not, they will contact the author(s) or their representatives and get back to you with a response.

What if I make changes without the Authors/licensing company's permission?

Do not take that risk. The least favorite part of a licensing rep's job is sending Cease & Desist letters on behalf of authors and their representatives to shut a show down that made unauthorized or egregious changes. It happens.

After I have my performance license, can I look on YouTube or go to the Lincoln Center Library in NYC to examine and replicate original choreography, set and costume designs?

No! Your License Agreement does not include the right to the original choreography, costume designs, staging, direction, or scenery designs of the Play, and any use of said elements is strictly prohibited.

Designers, directors, and choreographers would be justified taking legal action for the theft of their intellectual property**.

***Note* - There are products like Choreography Guides by Broadway Media (BMD) that acquire original choreography and designs to make them available for schools and amateur theatres to license. If these resources are available, your licensing company will list the resources on their website.

Am I required to include the authors names on show posters/flyers?

Yes, as specified in your performance license, you must give the author/creators billing credits on the first page of credits in all programs, your organization's website and on posters, displays and in all other advertising announcements of any kind.

Additionally, if you include cast/creative team bios in your program, you must include bios for the authors.

You must also give appropriate credit to the licensing company on all posters, fliers, advertisements, on your organization's website and on the title page of your programs.

Am I required to pay royalties for an invited dress rehearsal, even if no tickets are sold?

Yes. Any performance in front of a group of people, even a small group of invited family and friends is a public performance and requires a royalty payment even if no tickets are sold. Most licensing companies have established a minimum royalty fee for such instances. Contact your licensing rep.

Why are some titles restricted?

Shows are most frequently restricted by an ongoing Broadway run, a national tour and/or regional professional (Equity) productions. Even though a licensing company acquires the rights to secondary (stock and amateur) licensing for a specific title, they cannot release that title to amateur groups until the rights holders release the show to them. This is the reason that licensing companies create notification lists.

Are licensing fees negotiable?

Sometimes, yes. If you have a very large school auditorium to accommodate assemblies and community events, but will never sell more than half the room for your play or musical, contact your licensing rep. Some licensing companies will permit you to reduce the size of the room if you verify that less tickets will be printed/sold and only a portion of the room will be made available for the performances (this is often verified with an administrators letter on school letterhead that will be kept on file**).

If you discover that a show is selling more tickets than you originally printed, contact your licensing rep, and notify them that you would like to sell more tickets. They will send you an Invoice for the additional royalties that are due.

****Note:** Every licensing company (and most authors) have Google Alerts set up for their shows. If it is discovered that you are selling more tickets (or doing more performances) than agreed to on your performance license, not only can your license agreement be immediately terminated, you will be required to pay additional fees. You will also jeopardize the ability to negotiate a smaller House size for future productions.

Can I Create My Own Musical Revue using songs and/or scenes from musicals that I have directed or seen?

The short answer is no, you are not permitted to put together a revue of musical numbers from Broadway shows (with or without a "book") - especially if those songs/scenes are performed as if they were extracted from the musical.

Whether based on a composer's body of work, or around a theme, or from pre-existing "grand rights" (existing musicals) individual songs, creating a Broadway themed musical revue is a complex and time-consuming process that requires a myriad of correspondence to obtain clearances from song publishers, record labels, authors and original Broadway

producers. With the complexity of issues that arise (i.e. the show is still running, or the show is very popular in its full format, or the authors or estates are not interested in devaluing their work into a revue show, or the proposed script is unacceptable, etc.) these clearances are almost never provided. As a matter of fact, ASCAP, BMI and SESAC (United States Performing Rights Organizations that protect copyrights) specifically prohibit organizations from obtaining a license from them when the creation (or presentation) of a musical revue, using songs that were copyrighted as part of a grand right work, are involved.

Here is the relevant language from the ASCAP license: ASCAP Limitations on License:

c) This License is limited to nondramatic performances and does not authorize any dramatic performances. For purposes of this agreement, a dramatic performance shall include, but not limited to, the following:

i) performance of a "dramatico-musical work" (as hereafter defined) in its entirety;

ii) performance of one or more musical compositions from a "dramatico-musical work" (as hereafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken;

iii) performance of one or more musical compositions from a "dramatico-musical work" as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation;

iv) performance of a concert version of a "dramatico-musical work" (as hereafter defined).

The term "dramatico-musical work" as used in this agreement, shall include, but not be limited to, a musical, musical comedy, opera, play with music, revue, or ballet.

Most requests for usage of individual songs from Broadway shows for revue projects have been denied. Therefore, I would suggest that you see if the song(s) you want is/are available as a choral arrangement at JW Pepper, www.jwpepper.com. If you purchase copies of a choral arrangement from JW Pepper for each member of your performance group/cast, the license to perform that piece is included (as is an accompaniment track in most cases). However, the use of original choreography, costume designs, staging, direction, or scenery designs is strictly prohibited.

If you read the fine print in every Broadway Vocal Selections book in print, it specifically states that "public performance is an infringement of copyright." Even if you purchase sheet music on an authorized site like, <http://www.musicnotes.com/>, the permission granted is for private use, auditions and competitions only.

Unauthorized, unlicensed performances constitute a willful infringement of the copyright of the Musical, thereby entitling the copyright owners/authors to injunctive and other appropriate relief to the full extent of international law. The penalties and fines for the

willful infringement of international copyright law can amount up to \$10,000 for each unlicensed performance, plus the cost of royalties and materials. Additional penalties apply to the willful infringement of mechanical rights when unauthorized video and/or audio recordings are made.

These are the facts regarding copyright law and musical revues - and they do apply to all amateur groups, including schools.

As a safe alternative, I recommend selecting one of the existing revues already created and licensed in one of the music or theatrical licensing catalogues.

Can I create a video of my production?

Sometimes yes and sometimes, no – but never without permission. Copyright law gives authors the exclusive right to control the reproduction of their work. If a licensing company has acquired the mechanical (video recording) rights for a title, you will see it listed in your license agreement. For some titles an optional Video License will be offered for a small fee. For other titles the Video License may be included in the total licensing fee. When in doubt, ask your licensing rep.

In most cases, especially with Broadway titles, the performance license agreement will include language similar to: “This license does not grant you, or any third party, the right to make, use and/or distribute any recording or reproduction of the Play or any portion of it by any means whatsoever, including, but not limited to videotape or video disc (DVD or Digital), film, sound recording (CD), and other digital sequencing or storage/sequencing system. You shall not broadcast, transmit and/or electronically post any portion of the Play including, without limitation, musical selections by any means whatsoever, including but not limited to television, radio, satellite, pay or cable television or the Internet including but not limited to YouTube or iTunes.”

A licensing company cannot offer you rights that they do not hold.

Can I create a short promotional video?

First, refer to your performance license to see if language about promotional videos is included. Most licensing companies will permit you to create a short promotional video to publicize your production via your organization’s website, the Internet, radio, and television. Radio, television, or Internet commercials may be limited to excerpt usage of no more than 30 seconds from any one song or scene, and no longer than 3 minutes for the entire video. When in doubt, ask your licensing rep.

Can I create a video of my production?

Sometimes yes and sometimes, no – but never without permission. Copyright law gives authors the exclusive rights to control the reproduction of their work. If a licensing company has acquired the mechanical (video recording) rights for a title, you will see it listed in your license agreement. For some titles, an optional video license will be offered for a small fee. For other titles, the video license may be included in the total licensing fee. When in doubt, ask your licensing rep.

In most cases, especially with Broadway titles, the performance license agreement will include language like:

“This license does not grant you, or any third party, the right to make, use and/or distribute any recording or reproduction of the Play or any portion of it by any means whatsoever, including, but not limited to videotape or video disc (DVD or Digital), film, sound recording (CD), and other digital sequencing or storage/sequencing system. You shall not broadcast, transmit and/or electronically post any portion of the Play including, without limitation, musical selections by any means whatsoever, including but not limited to television, radio, satellite, pay or cable television or the Internet including but not limited to YouTube or iTunes.”

A theatrical licensing company cannot offer you rights that they do not control.

Note: Exceptions were made for streaming during the COVID-19 Pandemic and streaming in some fashion may remain after the pandemic. Decisions will be made by the rights holders (not the licensing company) on a title-by-title basis.

How can my school be selected to workshop a new “School Edition” of a musical?

Ask. Let the licensing company know your desire to work on a new title and invite them to see the quality of your work. If I am going to select a school as a workshop site for a new musical, I need to know that the school has a strong program and does quality work. The authors are often involved (directly or indirectly) in the process. I need to be confident that the authors will approve of the work that they will see.

If I write an original play or musical, how do I copyright it?

As of January 1, 1978, under U.S. copyright law, your work is automatically protected by copyright when it is created on a computer with the correct date and time. A work is “created” when it is fixed in a copy or phonorecord for the first time. When your work is completed and ready to be published and/or produced, you can contact the U.S. Copyright Office, <https://www.copyright.gov/registration/performing-arts/>. In some instances, as with plays published by TRW Plays, www.TRWPlays.com, the publisher will file the copyright on your behalf before your script is published.

How can I get an original play or musical published?

This is not so easy. Submission guidelines vary from company to company. But most large licensing companies will not publish or license a new work without a robust and successful production history, including professional productions. It is a long journey. Your best bet is to produce your original work locally, so that you can see it on its feet to make necessary changes. (Composer, Maurice Ravel once said, “The best work I did was with an eraser.”) When you have a draft that you believe is finished, submit your play/musical to one of the many new works contests or festivals.

But note – if your work is selected by a new works festival or by a professional theatre/producer (of any size), never sign a contract or representation agreement without first having an experienced attorney look at it.

Is it a good idea to create a contract for my cast and crew?

Your school district may already have student participation contracts required by the district’s legal department for all extracurricular activities. While they may negate the legal need for the following, having a show-specific contract for each production still has value. A cast/crew contract signed and dated by the student, a parent and you can be beneficial. While it is always good to have everyone on board about your expectations, the greatest benefit of a cast contract for me were the days when a parent would decide to take a student on a last-minute trip – on more than one occasion during Tech Week. In almost every instance, when reminded that they signed a contract agreeing that their child would be at rehearsal on that day, the trip was rescheduled. One parent remarked, “Well-played, Mr. H.”

If you do schedule a parent information meeting before auditions, you may want to share copies of your cast contracts with those who attend. Parental support is very important, and sadly lacking in some schools these days. When parents see themselves as a partner in the production, everyone benefits. Here is a sample contract that I have used with my students for our musical (adapt as needed):

(INSERT NAME OF THE SCHOOL) THEATRE DEPARTMENT

Cast Contract – Musical

(Insert title of show)

To: The cast members and their parents

From: (Director, musical director, choreographer... A team approach is always good.)

Congratulations on being accepted as a cast member for (insert title). We promise to work our hardest to create an excellent production. We expect the same from the cast and crew.

Read this entire sheet and evaluate your priorities and your availability before you sign this agreement. If you are unable to fully commit to this production, tell us now.

TERMS & CONDITIONS

It is understood that by signing this agreement you will abide by the following terms and conditions and understand that **breaking any may result in your dismissal** from the production.

1. All rehearsals will begin and end promptly as scheduled. **Be on time!** Contact the Theatre office or Stage Manager, (insert phone/email) if you are going to be late.
2. **One** unexcused absence may result in dismissal from the show or the loss of a lead role.
3. **Three** excused absences (including sickness) may result in the loss of a part, lines, solos etc. **Parts/roles can (and may) be recast at any time** in the production. What is best for the overall production will always be a priority.

4. Repeated lateness will result in dismissal.
5. All lines, songs, lyrics, and dances must be memorized by the deadlines given.
6. All homework, term papers, and assignments must be done on time. Your involvement in the play can never be used as an excuse to get out of or postpone class work or homework.
7. Come to rehearsal dressed and prepared to work hard and to work together. Anyone who exhibits behavior harmful to the peace and overall attitude of the ensemble (in person or on any social media) will be asked to leave the production.
8. All social media updates will be coordinated through our marketing and directing team to best build anticipation and enthusiasm for the upcoming production.
9. Cast and crew members should never share or post comments about a bad or tough rehearsal. They are a necessary part of the process, but not to be shared. (You cannot un-ring that bell – and it may affect ticket sales later.)
10. Finally, all school rules apply at rehearsals, performances, and any show related trips.

Sign and return the bottom part of this sheet to (Insert name), our Stage Manager, no later than (Insert date).

I would like to be a member of the company of (Insert title). I agree to the provisions listed and understand that a dedicated and cohesive ensemble is required to for the show to be a success. I am eager to do my part to create a great production.

Student signature

I have read the terms and conditions, seen the rehearsal schedule, and I approve of and give my permission for my daughter's/son's participation in (Name of School) High School's production of (Insert title).

Parent/guardian signature

An extra tidbit:

When working on an older play or musical that may not be politically correct in 2022, you might find the following *2019 Warner Brothers Cartoon Disclaimer* useful:

“The cartoons you are about to see are products of their time. They may depict some of the ethnic and racial prejudices that were commonplace in the U.S society. These depictions were wrong then and they are wrong today. While the following does not represent the Warner Bros. view of today's society, these cartoons are being presented as they were originally created, because to do otherwise would be the same as claiming that these prejudices never existed.”

Adapt as needed.

Recommended Actions You Can Take:

- Read your performance license before signing it.
- **Contact your licensing rep** if you have questions about any of the terms in the legal document before you sign it.
- **Contact your licensing rep** if you have questions about content, gender, specific words, cuts. Do not contact the author(s). Your licensing rep may already have an author-approved answer for you (yes or no).
- **Here's a tip** that will let your licensing rep know that you did read your license. Send one copy of your program. Most license agreements include language like: "You shall forward to us at least one (1) copy of the program for your production not later than five (5) days following the opening performance, via mail or e-mail attachment." Less than 10% of licensees do this. When you do, your licensing rep will be surprised.

Links and Resources:

Copyright Law: What Music Teachers Need to Know, Ken Schlager, April 2008, The National Association for Music Education. This article originally appeared in the April 2008 issue of Teaching Music magazine.

“Understanding Copyright and Compliance” found at the National Federation of High Schools here: <https://nfhslearn.com/courses/understanding-copyright-and-compliance>

Copyright: Performance Exemptions, National Association for Music Education, 2020, <https://nafme.org/my-classroom/copyright/copyright-performance-exemptions/>

Copyright For Drama Teachers, by Craig Mason, Theatrefolk 2015, <https://www.theatrefolk.com/blog/copyright-drama-teachers/>.

The Performing Arts Business Encyclopedia: For Individuals and Organizations as Well as the Attorneys and Business Advisors Who Assist Them, by Leonard Duboff, <https://www.amazon.com/Performing-Arts-Business-Encyclopedia-Organizations/dp/1880559420>.

Using Recorded Music—Legally, By Stephen Peithman, https://pentacletheatre.org/wp-content/uploads/2017/11/recorded_music.pdf

The Educational Theatre Association, www.schooltheatre.org

Theatre Educator Pro online learning center, <http://learn.schooltheatre.org>

About the Author: Jim Hoare, Executive VP, TRW, has directed world high school premieres and productions on the Thespian Festival Mainstage. He is a former New York State Thespians Chapter Director who has presented workshops throughout the USA and UK. In 2011 Jim received the New York State Theatre Education Association’s Lifetime Achievement Award. Jim is also the author of *Your High School Improv Show Playbook*, (Theatrefolk, 2019) and *Your School Theatre Director’s Playbook*, which will be published in 2022.