

**A MANUAL OF MUSICAL  
COPYRIGHT LAW. FOR THE USE  
OF MUSIC-PUBLISHERS AND  
ARTISTS, AND OF THE LEGAL  
PROFESSION**

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A manual of musical copyright law. For the use of music-publishers and artists, and of the legal profession by Edward Cutler

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A MANUAL OF  
MUSICAL COPYRIGHT LAW.



## PREFACE.

A TREATISE ON MUSICAL COPYRIGHT, combining the results of a refined musical training with those of a legal one, is, the author believes, without precedent, or nearly so; the fact that his antecedents enable him to realise this combination was brought to his notice by several influential musical publishers and induced him to commit his practical experiences to paper.

It was pointed out that one who is exclusively a lawyer wants the personal contact with the publishing trade, which is necessary for explaining and adjusting the legal rights and obligations of composers, executants and publishers of music, both as between themselves and as between either of those three classes and the public. Such an one may easily overlook, or not quite grapple with, an infinity of subtle points likely to arise in business. He is not practically familiar with those niceties of trade which are only acquired by a series of personal dealings with music publishers, British and foreign, during many years. Not having the habit of closely analysing and dissecting melodic phrases, and relying merely on an untutored ear, he overlooks details of importance, with the result that he sees resemblances where the whole phrase, studied in its entirety, shows that none really exist; again, there are cases where the *cultured musician* would scent out an origin, common both to a supposed piratical copy of a given theme and to the theme itself; and the family likeness may be sufficiently definite to take away the right to complain of an infringement, but the *mere lawyer*, in such cases, might be misled into advising an action by the close similarity between the original phrase and the copy.

The author desires, partly by statement, and partly by concrete examples, to put composers and their publisher on their guard against these and similar mistakes; and

though he cannot deal with facts which have not arisen, he hopes, by suggestions as to what *may* arise, to inspire caution.

There are many themes of which an expert would at once say that they have probably occurred before the present time, though he may have never before heard or seen the actual notes, and only comes to a conclusion from simplicity of structure or other internal evidence.

In such a case any legal proceedings, even against a person who has reproduced a motive note for note, should be advised with great hesitation. This is no imaginary combination of circumstances, and has occurred in many cases within the author's experience. He was consulted by a publisher as to suing in respect of a popular tune of the day, over which the latter claimed copyright and which was reproduced *notatim* in a musical comedy. The author at once pointed out that the melody consisted mainly of broken chords; that the phrase was one which readily fell under the hand on a pianoforte, and that these facts pointed with great probability to a previous stage of existence. Relying on the boldness of the copyist's imitation, the publisher persisted in bringing an action, in the course of which, experts, consulted by the defendant, traced a transmigration through several stages from a serious cantata twenty years old, where the exact phrase (four or five bars) occurred, though in a different time and with a totally different sentiment. Needless to say the action failed.

The author earnestly hopes by dealing with this sort of question, in addition to those purely legal ones, some of which have often before been discussed, to add a new quota to the large stock of copyright-lore already existing.

His familiarity with this branch of the subject is founded on considerable practice as Counsel in the law courts; he has also had experience in drafting copyright statutes, and reporting on one very important one for the Board of Trade; and he has the satisfaction of being able to say that a bill which was framed by him contained a clause dealing with the two points on which the success of the street pirates has turned, viz.: he inserted words (1) empowering magistrates to act *ex parte*; and (2) making it a penal offence to sell piratical copies under the circumstances which have ruined hundreds of honest tradesmen, and brought British administration of justice into con-



tempt. His salutary provision was, however, eviscerated and rendered useless, as though on purpose to pour ill-gotten riches into the pockets of shameless thieves.

He wishes to discharge a debt of gratitude by cordially thanking for able and invaluable assistance in the preparation of this treatise, Mr. C. A. Bennett of the Chancery Bar, and Mr. Henry Clayton, also a Member of the Bar, and of the Copyright Association, but now a partner in one of the largest London firms of publishers.\* This little work has materially gained by many hours of discussion with these gentlemen, and by many suggestions made by them, and acted upon by the author.

Up to a certain point of time he profited largely by the assistance of Mr. Frederick Daldy, especially in that part of this treatise which deals with Canada. Mr. Daldy had a thorough knowledge of our relations with the Dominion in the matter of copyright, and in addition to a keen intellect, had had the advantage of twice making the voyage to Montreal, Toronto and Quebec for the purpose of discussing the burning questions between Canada and the Mother Country, which have hung up and delayed the settlement (by a codification bill long since prepared) of the whole subject of British copyright. Mr. Daldy's lamented death, when this work was only partly written, cut short the intercourse between him and the author, who lost at once a sagacious adviser and a sympathetic friend.

The Copyright Association with their head, Mr. John Murray, and their secretary, Mr. Sharon Turner, also deserve the author's thanks for facilitating his access to the collection of Colonial statutes, with Mr. Daldy's preface, dated in the year 1889, and printed for the Association.

In conclusion he has also to thank Mr. Copinger, whose work, a masterpiece of compendious arrangement, constitutes a copyright library in itself. The author has freely consulted, and, within the limits of fair usage, once or twice cited passages from this work, and has greatly profited by the learned writer's statements of law, and vigorous arguments, even where he differs from them.

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\* Mr. Clayton has with his own pen contributed useful matter, founded on practical knowledge, in the chapter on America.



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