

Service Builder, personal scans, and copyrights

The content below deals with a variety of questions related to: the cost of *Service Builder*, hesitance on the part of lay leaders to approve purchase, and pastors seeking alternatives that do not carry an annual cost. Some have asked if digital files will be available apart from *Service Builder*, as with CW93 and CWS. Some have assumed that by purchasing the necessary quantity of hymnals for their church that they then are allowed to scan the hymnal's contents for inclusion in a worship folder.

Is scanning content or using someone else's scanned content legal?

The simple answer is "no", purchasing a quantity of books does not provide one with permission to create worship folders by scanning the content from one of the purchased books, nor does it give one the right to use digital materials that have been scanned by others. It's understandable why someone would think that would be acceptable, but under the copyright laws such clearly is not permissible, in fact it's flat-out illegal.

But why? Rather than focusing on the law, let's instead ask "Why would a copyright holder or publisher structure permission such that this is NOT allowed?" One possible reason is that the copyright holder set its price points based on a calculation of product viability, i.e., if a certain number of people choose to copy instead of purchase, they damage the calculation of product viability. Another possible reason is that the owner of copyrighted content wants to gain income both from a printed product and from a digital product.

But, in the end, it really doesn't matter what reasons we might imagine or how reasonable or unreasonable we judge the actions of the copyright holder to be. Under the law, the copyright holder may set the terms under which it grants others the right to use the copyright holder's content.

(Specifically concerning the new hymnal, please note that it is not NPH policy or decision that determines permissions, but rather the general industry standard expectations of copyright holders.)

Why the confusion?

The false assumption about purchasing books and making worship folders has existed for a long time. It persists today within WELS, stemming from two things:

1. A logic that makes some sense (but that for better or worse is entirely inconsistent with the law), proliferated by people (even pastors) who have not understood the law before they share their somewhat logical but unfortunately false assumptions.
2. A paragraph on page 925 of CW93 that is misunderstood and has been misapplied far beyond its limitations. This paragraph states: *Copyrighted materials marked with an asterisk (*) may be reproduced in worship bulletins by congregations that have purchased multiple copies for regular worship services or Wisconsin Ev. Lutheran Synod organizations in meeting, without securing further permission from the publisher or individual copyright holders. Church schools may reproduce these materials for one-time use provided the copies are destroyed after use. Public domain materials have no copyright restrictions.* But numerous copyright holders did not grant this permission for CW93.

CW93's Electronic Edition (PDF/TIFF/RTF's) also appears to be a misunderstood product. For example, many believe that by purchasing it, they received the right to use its content in bulletins without the need for further

licensing. This misunderstanding is further complicated by the fact that there is an ongoing user license from NPH for the Electronic Edition (which was part of the agreement with the copyright holders so that the resource could be offered at a reasonable price). That license, however, has nothing to do with the granting a license to the user for reprinting, projecting, or disseminating in printed or electronic mediums (such as posting to web site or streaming). Despite best efforts to explain, some people still seem to misunderstand or to believe what they want.

NPH and the Commission on Worship are not the copyright police. At the same time, we have tried to explain and educate over the last thirty years. But there is still a long way to go. Some have gotten up to speed. Some are closer to speed than others. And some are still operating under a good deal of ignorance and misunderstanding, following an illegal practice that to a large degree is unchecked and unenforced.

What's different in 2021?

The advent of the new hymnal is forcing us to deal up front and in a straightforward fashion (i) with the existing misunderstandings, (ii) with what is necessary for compliance with the copyright laws, and (iii) with the fact that compliance with the copyright laws is not an option but a necessity.

For some the issue was forced in part by the pandemic, and they got their licensing ducks in a row (or at least in a better row than previously). For others, this is like hitting a wall, even though it's a wall that has been in their path for a long time – they just didn't know it. Across the industry and across denominations, since the advent of CW93, things have changed and tightened up regarding the need for individuals, congregations, and denominations to adhere properly to copyright laws. Not surprisingly, this tightening and the need to adhere to the copyright laws has impacted the new hymnal and its related products. And, as a copyright licensee itself, NPH needs to ensure that it appropriately respects the limits of the rights it received from the many licensors who have licensed the content that appears in the new hymnal.

The thoughts above were written in part by a WELS attorney who specializes in intellectual property law.

Some thoughts on pricing

See another article: "Service Builder: Cost, Value, and Benefit."

See also [Worship the Lord #110](#) (Sept. 2021).

Some thoughts on convincing leaders

If the thoughts above and in the cost/value/benefit article aren't convincing enough, then perhaps it's best to revert to using the pew edition along with a worship folder that serves as an outline and bookmark. Yes, this will require finding each hymn and psalm in the hymnal and keeping track of one's place in the liturgy. If leaders feel that this is not acceptable (and if they understand the copyright restrictions), perhaps they will see more value in purchasing *Service Builder*. But scanning the pew edition to create worship folders really is not an option because it is simply illegal.