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# The Question of Copyright in Music Therapy Practice and Research with Children: A Short Essay

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## Abstract

This short essay discusses the relationship between ownership of creative works and music therapy. We ask the following question: what do we mean by ownership of stories and songs in music therapy? We answer this question by highlighting examples from music therapy literature. We base the essay on the notion that children may have certain rights concerning their intellectual properties and products made in therapy, but these rights are not always honored. Musical products such as lyrics or narratives made in music therapy are protected by most countries' national copyright laws, and music therapists working with music should pay close attention to the rights of the creator. Music therapy should not be a *free zone* or grey area where the laws on copyright do not matter. The essay offers suggestions for practitioners and researchers.

**Keywords:** ownership; creative works; copyrights

## Introduction

...the process of working toward the performance within a therapeutic and supportive context likely contributed to the children's feelings of preparedness and ownership over the performance. (Fairchild et al., 2017, p. 45)

The above vignette illustrates what this essay is about, ownership and music therapy. We have chosen to use this quote to show how we as scholars discuss and reflect on the role of ownership in music therapy. If we look to the research done by the first author of this article, in child welfare and music therapy, we can identify similar reflections, as in the case with Trine.

Because family members, social workers, and teachers from school were invited as members of the audience when the song was performed, important people in Trine's life could take part in her storytelling. As the audience for Trine's story, the people closest to her could give her recognition for her performance (...). Through her music she could stand out as someone worth listening to, someone with a voice and a story to tell. (Krüger, 2018, p. 473)

But what do we mean by ownership of stories in songs in music therapy? Could it be that children actually have certain rights concerning their own intellectual properties and products made in therapy? The reason for asking this question is based on a notion that musical products, lyrics, narratives, etc. made in music therapy, such as songs, recordings, or art, are protected by most countries' national copyright laws, and that music therapists working with music should pay close attention to the rights of the creator. Generally, national copyright laws imply that as soon as the child writes, composes, draws, or creates a work of art — a song, a canvas, or a computer file — it is protected by copyright. The child does not have to register the work; it is automatically protected as soon as it is created. This applies whether the piece of art is created in collaboration with an adult or with peers.

When asking children to participate in our practices or in research, do we inform them about their rights concerning copyright? Or is music therapy practice and research a *free zone* or grey area where the laws on copyright do not matter, or count that much? Is it so that in the end many of us don't believe that our clients or participants will create a song or a piece of art worth protecting with copyright law? Such argumentation would then be in line with research showing that adults have lower expectations towards clients than with other individuals in the society (see for example Harker et al., 2003).

## Ethical Symmetry

The Belmont Report identifies *respect for persons, beneficence, and justice* as the primary principles underlying ethical research. The report goes on further to state that children are to be afforded the same protections as adults when they are research participants (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979).<sup>1</sup> The equal application of these principles to research with children has been labeled as "ethical symmetry" by Christensen & Prout (2002). In their view, "the ethical relationship between researcher and informant is the same whether he or she conducts research with adults or children" (p. 482).

Moreover, children have the right to be heard in research, and their voices are important. Such a view is advocated for in the fourth edition of The Norwegian National Research Ethics Committees' *Guidelines for Research Ethics in the Social Sciences, Humanities, Law and Theology*, where children are recognized as *agents*. According to NESH, it is of great importance to include children's valuable voices and contributions to research (NESH, 2021, p. 12). Children's voices can inform our effort in creating a fair and democratic society based on rights and participatory values (Falch-Eriksen & Backe-Hansen, 2018).

The United Nations Convention on the Rights of the Child (UNCRC, 1989) suggest that a child or a young person should be allowed to own, share and publish almost whatever he or she wants. More specifically, article 13 in the UNCRC clearly states that:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. (UNCRC, 1989, Article 13)

Article 13 reminds us that the child's choice of media source is a leading principle. Even though, according to the UNCRC and Article 13, children have the right to choose their

own media for expressions, this does not mean that any choice in any media is a good choice for those involved. Other relevant articles in the UNCRC are Article 3, the best interest of the child and Article 4, right to identity.

### **Knowledges as Power**

So why do we automatically not think of copyright when we think of children? A reason for this can be related to disparities in power between adults and children. Asymmetry between children and adults is recognized as being the biggest ethical obstacle and challenge to researchers including children in research (Alderson 1995; Mayall 2000). This is a line of thinking that aligns with narrative therapy. Narrative therapy views human challenges as coming from and being maintained by oppressive stories that dominate a person's life (White & Epston, 1990). In exploring these complex issues, White and Epston draw heavily from the philosophical analysis of modern history by Foucault and Sheridan (1991). One of the most important contributions is the analysis of Foucault's perspective on knowledge and power, or more precisely, "knowledge as power." White and Epston (1990) describe how documents and awards can be used in therapy.

Awards of various kinds, such as trophies and certificates, can be considered examples of alternative documents. Such awards often signal the person's arrival at a new status in the community, one that brings with it new responsibilities and privileges. As these alternative documents have the potential of incorporating a wide readership and of recruiting an audience to the performance of new stories. (pp. 190–191)

White and Epston considered a sense of ownership to one's own narrative as essential in therapy. They even described how the visibility of documents made in therapy could enhance possibilities for applying for jobs in the future.

The proliferation and elevated status of the modern document are reflected by the fact that it is increasingly relied upon for a variety of decisions about the worth of persons. For example, in job applications it is standard practice for the documents that are available on the person to be reviewed before the person is interviewed, and there exist circumstances in which decisions are wholly made about the applicant's worth, not through a meeting of persons, but through a meeting of documents. (p. 188)

The use of documents to empower participants is explained as a "knowledge technique," a technique where potential asymmetrical and disempowering power relations are disclosed. When such techniques can be identified, it becomes easier to externalize problems and to coordinate a person's escape from them. In line with this, we can learn from White and Epston that documents have the potential to influence lives of persons, and a way to understand this in a music therapy setting is to regard songs and art works as objects worth paying attention to. Ownership, as White and Epston understood it, did not include discussions on copyright, but could a fruitful way to maneuver in the future be to include copyright when we talk of children as creators of their own items? Could this be a way to fill the gap between rights and realities in music therapy research and practice, as Krüger and Stige (2016) have proposed the urge for seeking pathways for?

### **Register as Intellectual Property or Open Content?**

The Norwegian copyright law states, § 2, the creator of an intellectual work holds the copyright to the work. The law defines intellectual property as all artistic works of any kind, which are expressions of original and individual creative intellectual products such as texts, music works, film, photographs, etc. This law does not preclude children from

owning the copyright to their artistic works created in music therapy or elsewhere. The Norwegian Association for Music Therapy (NFMT) has included an item related to copyright in their ethical guidelines (CREO, 2022).

3.4. The music therapist acts in accordance with the copyright law in connection with the release or performance of music made in collaboration with clients. (para. 3.4)

The purpose of the Norwegian copyright law is to:

grant rights to those who create, perform or invest in intellectual property or related achievements and works, and thus also provide incentives for cultural production. (Lovdata, § 1 a, 2022)

In the law, intellectual works are understood as literary or artistic works of any kind, which are expressions of original and individual creative effort, such as:

- texts of all kinds, including fiction and non-fiction
- oral lectures
- stage works, both dramatic, music-dramatic and choreographic works, pantomimes and radio plays
- musical works, with or without lyrics
- film work
- photographic works
- paintings, drawings, graphics and similar visual arts
- sculpture of all kinds
- architecture, both drawings and models, and the building itself
- tapestries and objects of handicraft and art industry, both the model and the work itself
- maps, as well as drawings and graphic and plastic images of a scientific or technical nature
- computer programs
- translations and other adaptations of works mentioned above (Lovdata, 2022, § 2).

In the US, the American Music Therapy Association (AMTA) has a similar item in their guidelines, but without referring to any law copyright or intellectual property:

Respect the client's right of ownership to creative products as a result of participation in music therapy. (AMTA, 2022, §1.4)

It is unclear as to what AMTA means by this statement, and if their intention was to encourage music therapists to respect the right of client's ownership of their creative products and work within the American copyright laws when sharing or performing this work outside of the clinical setting. How should the music therapist or researcher deal with these questions? We will not argue that products made in music therapy research or practice should be protected according to copyright laws in all circumstances. There may be reasons not to consider this at all. In most cases, in order to register a song for copyright, there has to be a formal setting involved — someone economically and legally responsible for the concert, conference, or festival. However, we believe that we as a profession in a larger degree than we do today, should pay attention to the subject of copyright. There are many concerts, conferences, and festivals being arranged in music therapy settings, both in relation to practice and research, often both where clients' original works are presented. While it is possible that the client could obtain a copyright, another less costly option would be to obtain an "open content" license. The term open content "describes

any copyrightable work that is either (1) in the public domain or (2) licensed in a manner that provides everyone with free and perpetual permission to retain, revise, remix, reuse, or redistribute the work”<sup>2</sup> (Wiley, n.d.). Open content license can for example be distributed through [Creative Commons](#).

A search through various databases only identified two published articles related to ownership of music created during music therapy sessions. Baxter and O’Callahan (2010) raised the issue of ownership of unfinished legacy projects started by patients in palliative care. They note that property rights of songs or other artistic works created within the context of a music therapy session have not been given legal consideration. Further, they point out that researchers may include extended use of artistic creations after the conclusion of a study for research and education purposes. Aasgaard (2010) echoed that sentiment, noting that music therapists do not discuss what happens to songs once they have been written. This suggests a need for more research on music and art made in music therapy in order to better understand the connection between narratives, ownership, and copyright. We need to know more about the mechanisms of ownership, and how these apply to artistic works created in music therapy research (and clinical practice) by adults *and* children. This investigation would be in line with the Belmont Report which reminds researchers that children and adults should be treated equally.

### **Considerations for Practitioners and Researchers**

For both practitioners and researchers, discussing the issue of copyright can be a sustainable way to empower the child, and to create a sense of agency. A sense of being taken seriously as the owner of your own intellectual property could be an important step towards being taken seriously as a citizen participation, in line with Arnstein’s (1969) idea concerning the “ladder of participation” (p. 216). Inspired by Hart’s Ladder of Youth Participation, “from a music therapy perspective, we need working models that can be used to ensure the influence of children and young people on matters that concern them” (Krüger, 2020, p. 47).

Suggestions for discussing copyright with children include:

For Music Therapy Practitioners:

- Talk with the child about ownership and copyright, and what it means to own your own work.
- If necessary, take action towards registration in copyright companies, or free content organizations.
- Talk with the child’s parent or guardian if the child is unable to understand or make that decision, due to immaturity or lack of capacity.
- For potential organizers of music therapy related concerts or conferences, inform them about the rights of participators so that they can facilitate permission to use protected works.
- For potential contributions in media, inform about the child’s rights concerning potential intellectual properties.

For Music Therapy Researchers:

- The five points above.
- Include issues on copyright and ownership in informed consent, and make sure that the child understands.

As we move towards more equitable practice in music therapy, we must remember that children have rights, and are able to speak for themselves. Helping children understand

and then register works with copyright entities or free content organizations is one step towards empowering children and giving them equal say in how their artistic creations are used and shared beyond the music therapy clinical setting. Not to include circumstances around copyright and ownership of intellectual property, as indicated in national laws, would in many ways be a form of power misuse and in worst case, a form of manipulation or tokenism (Arnstein, 1969). As law texts, articles, and statements on issues related to copyright often are reserved to an adult world, the question of adapting to a child's perspective can be a question of language and power, whereas music therapists have a special responsibility to make the child understand what's going on, and how he or she can protect their works.

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<sup>1</sup> In 1979, the Belmont Report is regarded a milestone in the history of human research, and the report still remains a primary ethical framework for researchers. Historically speaking, the Belmont Report was a response to a research case, “The Tuskegee Syphilis Study.” In the study, African-Americans with syphilis were lied to and denied treatment for more than 40 years. As a result of participating in the study, many people died from being infected with the disease.

<sup>2</sup> This material is an adaptation of Defining the "Open" in Open Content and Open Educational Resources, which was originally written by David Wiley and published freely under a Creative Commons Attribution 4.0 license at <http://opencontent.org/definition/>.