

together, and make a bit of progress each week. This approach asks very little of the celebrant's time, which is a relief for priests whose schedules can be wildly over-committed as it is.

In an ideal world, progress would occur week by week, always choosing the solemn option when such choices are available. However, the problem with all these options is that they invite people to express their preferences and leave the burden on the celebrant to account for why he is choosing how he did.

In this way, he feels himself forever on the "hot seat": "Father, why did you use that old dead language today? I can't understand a word of it!" "Why did you turn your back to us?" "I don't want to kneel like they did in the old days, and, in any case, it is my right to stand." "Why did you cut the sign of peace? That is a special time of the Mass for me." And so on.

One attraction of the older form is precisely that it does not have all these options. The celebrant is in a better position just to explain that this is the way the Mass rubrics work. It must be in Latin and *ad orientem*, communion must be kneeling, there are few choices among prayers, and there is no sign of peace among the people, etc., so there is less to fight about and less for insufferable liturgy committees to manage. The Mass is a package deal, and the celebrant and the people are asked to submit to the structure in humility for the greater good. This has the advantage of ending the liturgy battles and even wars over who or what is in control.

And yet, surely those priests who might have considered re-solemnizing the liturgy in the past should consider pushing forward today, in today's new light of freedom and renewed appreciation of our past and its accumulated wisdom. The culture of the parish is changing and so is the tolerance level for an overt love of the sacred. ❧

*The culture of the parish is changing and so is the tolerance level for an overt love of the sacred.*

## The Solesmes Copyright Conundrum

By Jeffrey Tucker

If you order the Meinrad font package, it comes with a set of instructions that includes the following interesting, if implausible claim:

In addition to their copyright of their interpretation of the Latin chant in their various editions, the Abbaye de Solesmes also claims a French copyright of certain newly designed neums as well as certain new combinations. This font provides other designs to avoid any conflict with the claim of the Abbaye de Solesmes. . . . As noted in the original introduction, the Abbaye de Solesmes claims a French copyright of certain newly designed notes and has asked that we not reproduce them: i.e. the *oriscus*, the *augmented punctum* (up and down), the *apostropha* and the *augmented apostropha*. In addition,

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Solesmes claims under French law the exclusive use of the following new combinations of older signs: the *initio debolis* for the *podatus* and *torculus*, the use of the small note of the *diminished podatus* for the *diminished porrectus*, and the use of the *rhombus* to form the *trigon*. Although one cannot copyright a font under American law, we have withdrawn these designs in recognition of the great contribution made by the Abbaye of Solesmes, and we offer substitutes which were newly designed to avoid the conflict with the Abbaye de Solesmes. While the pitches of Latin chant belong to the tradition, the interpretation with various rhythmic marks by the monks of Solesmes or by others is under their copyright.

From this, we are led to believe that a copyright can be held on a tiny like mark such as <sup>1</sup> if it is placed under a note to indicate the rhythmic pulse. Not only the *augmented punctum* and the *apostropha* but even the *episema* and the *ictus* are said to be copyrighted. And what does it mean that something is copyrighted? It is a legal designation, a promise by the state to act on behalf of a certain producer against any competitive producer who would reproduce a work without explicit and binding permission. If that promise under the law is withdrawn or expires, the work in question enters the “public domain,” which itself is not a legal designation but only a colloquial term indicating that something is no longer under copyright and it cannot be re-copyrighted in the future.

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So is it the case that if you put an *episema* over a *punctum*, you have called down the wrath of the state upon your head? Keep in mind that the only question concerning this issue is the law. It has nothing to do with what the producers claim or what street wisdom says or even what the fine print in a font package says. The one and only issue is what the law says. And it matters a great deal, not only for those who want to make new editions but also for journals such as this one, which reproduce chant regularly.

Initially we wrote the monastery for answers and received none. I've also accumulated photocopies of various permissions granted by Solesmes over the years, and the most recent ones dating from the 1980s have few specifics in terms of dates, terms, limits, and other matters that one usually expects on notices of this sort. Today, requests for permission are routinely ignored.

We then called the Copyright Office at the Library of Congress about the general idea of copyrighting a tiny apostrophe. The result was a hearty laugh from the person on the phone, and a confirmation that, exactly as we suspected, such a thing cannot be copyrighted in the United States—and the person on the phone offered no opinion about the law in France, Russia, China, Mozambique, or any other country, since the relevant law in this case is the U.S. one.

Then we called the Meinrad Abbey back and reported the results, the entire time feeling rather silly about investigating what I knew from experience (I work with copyright issues at my workplace) to be perfectly silly. The Abbey then confirmed that the text in their Meinrad font package was indeed at best dated, by many decades, and might be wholly incorrect even at the time it was written. Solesmes no longer even makes such claims. Indeed, Solesmes hasn't sued anyone for copyright since at least 1900. And so we asked him to change text on the font package, since we had reason to believe that chant typographers around the world were actually being deterred from writing clear chant notation. They said that they would not change it because they are working on a new font package and had no interest in servicing the old one.

That was step one into a series of investigations that would take us to the early twentieth century battles over chant typographers, more letters (and research fees) to the U.S. Copyright Office, retaining the services of an international copyright attorney, and a revelation that none of the old rhythmic signs by the Solesmes monastery, or even the chant editions themselves, remain under copyright.

Part of the puzzle here began with a question about how it is that St. Bonaventure Press managed to republish the old *Liber Usualis*, a wonderful preconiliar liturgical book that is no longer in print by Solesmes. If it were the case that Solesmes maintained its copyright, Bonaventure would have to seek and obtain permissions for a reprint. But the edition itself makes no such claim. It features only a date of publication, which is a classic sign that the publisher believes the book to be in public domain. So I wrote Bonaventure and asked about the copyright status of this book. They answered as follows: "I actually cannot be of any assistance to you, we keep a copyright attorney on retainer and put all of our copyright issues in his care."

This answer is precisely what one would expect from a publisher of a public domain manuscript. They are saying, in effect: "If you have a problem with what we have done, file a lawsuit, and we'll forward it on to our legal team." To file a suit would require research, which would quickly reveal that the book is no longer under copyright. Why wouldn't they simply state that to be the case? It is not conventional for a publisher to do so, since a publisher desires to maintain a dominant position in the market. To refuse to tell me the basis on which they published is simply good business practice. Nor is there a thing wrong with what they wrote me—but it is nonetheless telling.

Our next step was to investigate the status of the *Graduale* of 1962 as printed by Desclée with Solesmes rhythmic signs. Under the 1909 copyright law, works copyrighted in the U.S. before January 1, 1978 enjoyed protection for 28 years and then came up for renewal. If renewal was not obtained in the 28th year, the protection expired and could not be restored. Now, it might have been enough to merely search the database records, but since the 1962 edition was a reprint of an older edition, it was possible that renewal was sought and obtained, which would have secured rights for another 47 years. But the Copyright Office confirmed our suspicions: there was no record of any renewal. As for the international question, a treaty with Belgium dating from the late 19th century requires the Belgian state to abide by U.S. law insofar as it affects the U.S., and, in any case, since the U.S. is such a large market for publishers around the world, it is the common practice to maintain copyright security through the U.S. office.

In short, this communiqué from the Copyright Office confirmed the absence of copyright on the old *Graduale*, so, and in consultation with the CMAA's legal team, we quickly put it online and made it available. Now, it goes without saying that this status applies to the entire book, including the rhythmic markings, the music, the typography, the graphics, and everything else, without exception. The same is true of all preconiliar liturgical books from the monastery. As for Desclée itself, it effectively shut down in the years after the council and reportedly sold all its copyrights to a French publisher that no longer prints any of the books or even answers inquiries about them (we tried several times).

The upshot of all these investigations was nothing less than this: the chant belongs to the world. That conclusion might seem obvious in retrospect, and perhaps all this time, energy, and money spent was in vain. And yet there has long persisted a strange street wisdom about all these matters. We corresponded with many publishers and composers who have systematically

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avoided using rhythmic markings for fear of the copyright police. That's not as silly as it sounds: indeed the whole copyright issue sews a fantastic amount of confusion and conventional wisdom that is simply wrong. The problem is that people get distracted by rumors and bogus claims instead of looking at the one and only source that truly matters: the law.

The issue of chant copyright is infused with a very peculiar history that dates back to century-old battles over which chant editions were going to be accepted by the Vatican as the official editions. Solesmes in those days was highly protective of its proprietary contribution to the genre, and the monastery in this defense pose made some decisions that would later contribute no small degree of resentment among other publishers. You can read all about this in the histories of the chant. In any case, this is a matter of history that no longer has an animating force at Solesmes and hence has no relevance to the present day.

Now, of course, there are other issues that come into play here, such as respect and deference to tradition and institutions. Perhaps, then, it is a bad idea to make all of this public for fear that it would cut down on sales of new chant books? The empirical research on the matter confirms a counterintuitive fact: in economic terms, online resources and physical books are complimentary and not substitute goods. People use both, and each serves to enhance the value of the other. Online resources serve as excellent advertising for new volumes, in the same way that producers of soap or detergent know that the free sample is the single most effective form of promotion. In any case, there is also a moral imperative at work here: the chant belongs to the whole church and the whole world, and should not be held in escrow pending payment. This is a matter of special concern in poor parishes in poor countries. They too must have access.

So MusicaSacra.com is proud to be host to a vast number of chant downloads, many liturgical books, many editions from the past that are now available for free to the world. And the CMAA is pleased to be the bearer of glad tidings. The *episema* and the *ictus* may be used freely by all. So too can the augmented *punctum* and the *apostropha*. Indeed, virtually the entire corpus of liturgical material that predates the promulgation of the 1970 Missal is available without restriction. This fact alone could have some effect in promoting their use.

Faced with competitive pressure from accessible as versus copyrighted materials, perhaps the time will come when the International Commission on English in the Liturgy will similarly see the advantages of making its texts open source and free for all. As a general principle, no integral part of the Catholic liturgy should be held hostage pending payment when the means to make it available for free are readily available, as they are in our times. ❧

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