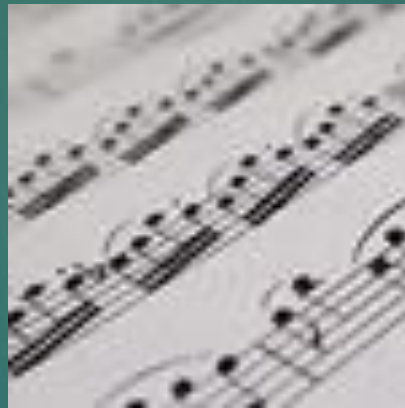


Reprographics, reluctance and risk: library copying of scores for users



CLAIRE KIDWELL

Outline



- ▶ International overview
- ▶ IAML (UK & Irl) study
 - ▶ Current practice
 - ▶ Interpretation of the law
 - ▶ Recommendations

Library and archive exceptions - international overview

- ▶ 161 of 191 WIPO countries have library and archive exceptions
- ▶ 105 have librarian copying for users
- ▶ Musical works not included
 - ▶ USA
 - ▶ Italy
 - ▶ Liechtenstein
 - ▶ Malta
 - ▶ South Africa
 - ▶ Canada

s42A Copying by librarians: single copies of published works

- ▶ Library not conducted for profit
- ▶ One article from a periodical issue; or reasonable proportion of any other work
- ▶ Declaration
 - ▶ User hasn't previously been provided
 - ▶ Private study or non-commercial research
 - ▶ Won't share
 - ▶ Not being requested by anyone else around the same time for the same purpose
- ▶ User liable for false declaration unless librarian was aware of this

s43 Copying by librarians or archivists: single copies of unpublished works

- ▶ The whole or part of a work
- ▶ One article from a periodical issue; or reasonable proportion of any other work
- ▶ Declaration
 - ▶ User hasn't previously been provided
 - ▶ Private study or non-commercial research
 - ▶ Won't share
- ▶ User liable for false declaration unless librarian was aware of this
- ▶ Copy is infringing if the work was published/communicated before deposit in the library, or if the copyright owner has prohibited copying of the work

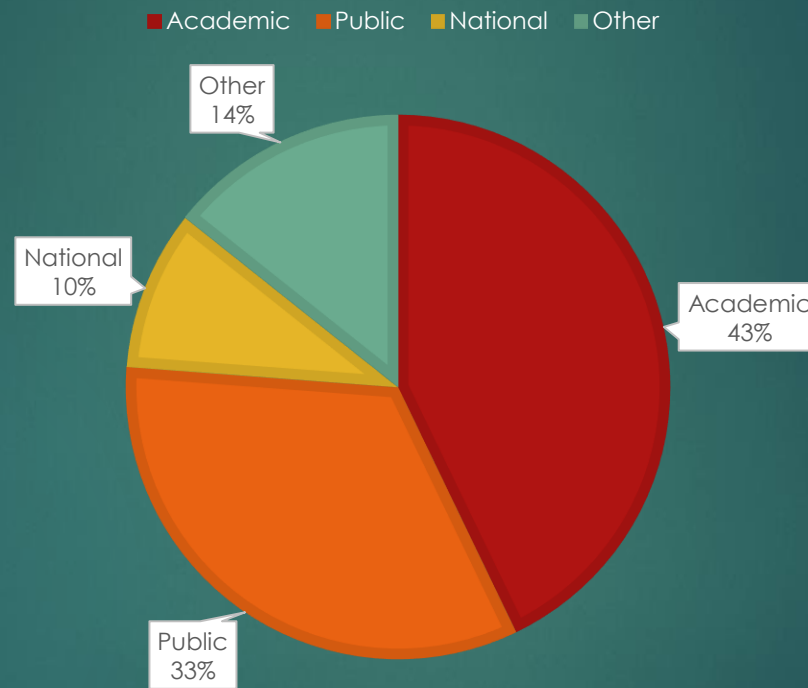
Survey

- ▶ Objectives
 - ▶ Build a picture of current practice
 - ▶ Identify obstacles to utilization
 - ▶ Consider whether guidance would be helpful

- ▶ Circulation
 - ▶ IAML (UK & Irl)
 - ▶ LIS-COPYSEEK
 - ▶ LIS-ILL
 - ▶ Library Association of Ireland – Academic & Special Libraries

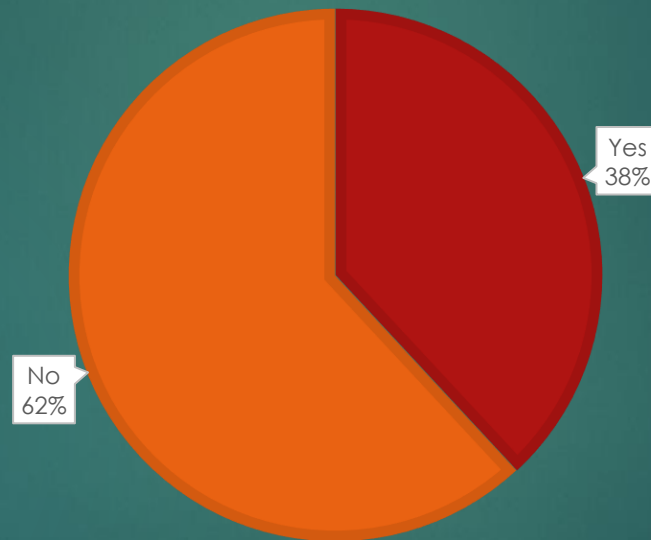
- ▶ 21 responses

Breakdown of respondents by library type



Does your library offer library privilege copying for published scores?

■ Yes ■ No



Why not?

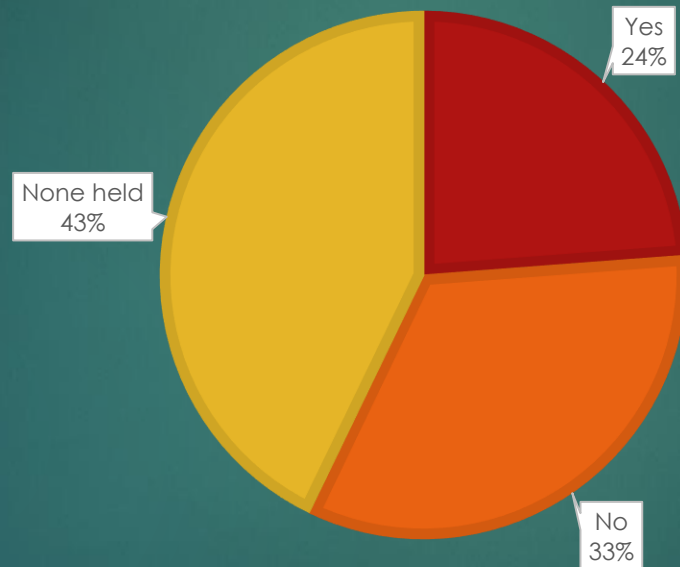
- ▶ Lack of time/staff resource
- ▶ Lack of expertise/confidence/difficulties in making judgements
- ▶ Perceived lack of demand

What criteria do you use to judge what comprises a “reasonable proportion” of a score?

- ▶ Most commonly
 - 5% of a work
 - 1 work from an anthology
- ▶ Other responses
 - 1 page or so
 - A single movement
 - 1 aria from an opera/oratorio
 - A practice orchestral part

Does your library offer library privilege copying for unpublished scores?

■ Yes ■ No ■ None held



Why not?

- ▶ Lack of resource/expertise
- ▶ Lack of access to materials
- ▶ Conservation reasons
- ▶ Perceived lack of demand

Summary observations

- ▶ The majority of respondents didn't exercise library privilege exceptions in relation to music scores. Those that did offer such a service didn't actively promote it
- ▶ Published works – primary obstacle is “reasonable proportion”, exacerbated by lack of subject specialism
- ▶ Unpublished works – a wider range of obstacles exist. Also difficulties in ascertaining publication status.

History of library privilege exceptions

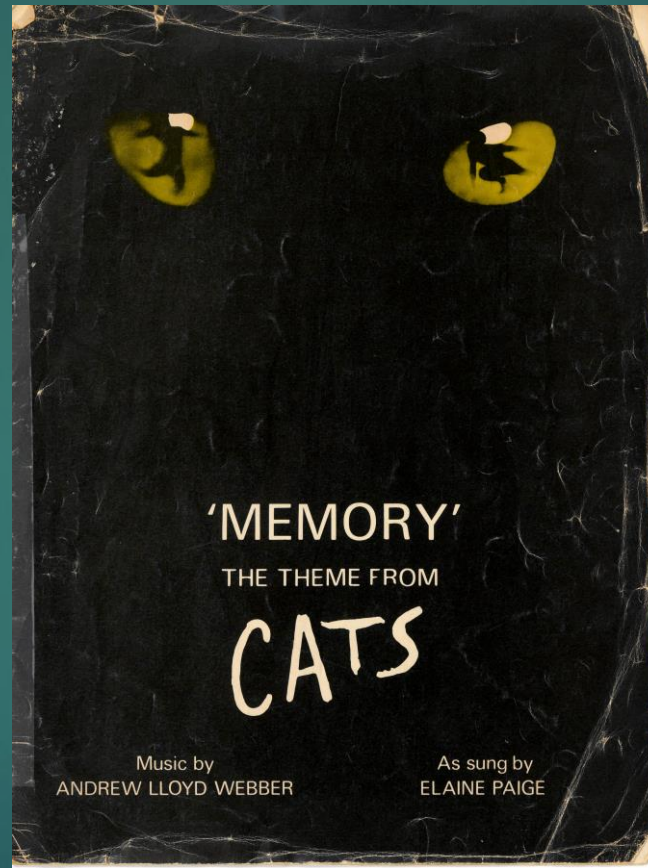
- ▶ Introduced in 1956 Act – “S7 special exceptions as respects libraries and archives”
 - ▶ Complete periodical article
 - ▶ Reasonable proportion of a literary dramatic or musical work (where not possible to identify/contact rights holder)
- ▶ CDPA 1988
 - ▶ S38 Copying by librarians: articles in periodicals
 - ▶ S39 Copying by librarians: parts of published works
- ▶ After 2014 revisions
 - ▶ S42A Copying by librarians: single copies of published works

“Reasonable proportion”

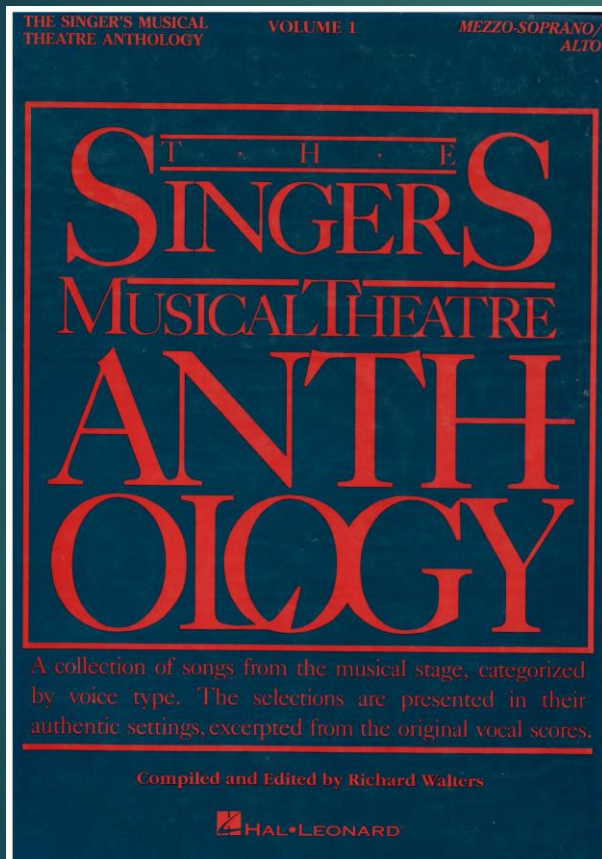
– secondary literature

- ▶ LACA – “a reasonable proportion generally means that only a limited part that is necessary for the research or study purpose can be copied”
- ▶ Cornish – “whilst a reasonable proportion is not defined, a general view from the publishing industry has been that 10% or a chapter might be reasonable. Although this is not a legal definition it is a helpful guideline”
- ▶ Padfield – “the best advice seems to be to restrict copying to the same quantities as for fair dealing...in general, for any kind of work 5% should always be fair... for musical works what is copied should not be performable”
- ▶ MPA – [in relation to study and research – not s42A specifically] “Copying whole movements or whole works is expressly forbidden under this permission”

What constitutes a work?



What constitutes a work?

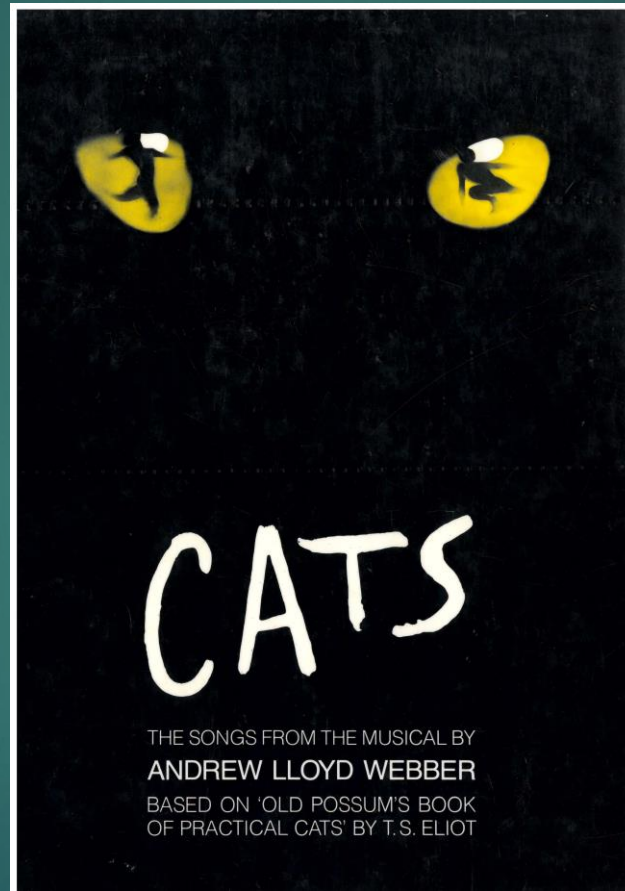


THE SINGER'S MUSICAL THEATRE ANTHOLOGY
Mezzo-Soprano/Alto

Contents

Allegro		Lady In The Dark
11 So Far		115 One Life To Live
Anyone Can Whistle		119 The Princess Of Pure Delight
17 Anyone Can Whistle		126 The Saga Of Jenny
Babes In Arms		A Little Night Music
21 The Lady Is A Tramp		132 The Miller's Son
26 My Funny Valentine		143 Send In The Clowns
Can-Can		Lost In The Stars
29 I Love Paris		147 Stay Well
The Cat And The Fiddle		154 Trouble Man
34 Try To Forget		My Fair Lady
Cats		162 Just You Wait
41 Memory		Oklahoma!
Celebration		170 I Cain't Say No
46 Love Song		On A Clear Day You Can See Forever
Cinderella		175 He Wasn't You
49 In My Own Little Corner		178 What Did I Have That I Don't Have?
Do I Hear A Waltz?		On Your Toes
56 Do I Hear A Waltz?		184 Glad To Be Unhappy
Evita		Pal Joey
64 Don't Cry For Me Argentina		189 Bewitched
Finian's Rainbow		The Sound Of Music
70 How Are Things In Glocca Mora?		193 My Favorite Things
73 Look To The Rainbow		202 The Sound Of Music
Follies		South Pacific
77 Could I Leave You?		207 A Cockeyed Optimist
88 In Buddy's Eyes		211 I'm In Love With A Wonderful Guy
94 Losing My Mind		Sweeney Todd
Funny Girl		219 By The Sea
99 People		228 The Worst Pies In London
103 Who Are You Now?		Two By Two
		235 An Old Man

What constitutes a work?



Beethovens Werke. **ERSTE SYMPHONIE** von **L. VAN BEETHOVEN.** Serie I. N^o 1.
 Dem Baron van Swieten gewidmet.
 Op. 21.

Adagio molto. $\text{♩} = 66$.

Flauti.
 Oboi.
 Clarinetti in C.
 Fagotti.
 Corni in C.
 Trombe in C.
 Timpani in C. G.
 Violino I.
 Violino II.
 Viola.
 Violoncello e Basso.

Vertical:
 sounds that
 are
 happening
 concurrently

Horizontal: linear
 time – start to
 finish

Beethovens Werke.

ERSTE SYMPHONIE von L. VAN BEETHOVEN.

Serie I. N. 1.

Dem Baron van Swieten gewidmet.

Op. 21.

Adagio molto. $\text{♩} = 80$.

Flauti. *pp* *cresc.* *f*

Oboi. *pp* *cresc.* *f*

Clarinetti in C. *pp* *cresc.* *f*

Fagotti. *pp* *cresc.* *f*

Corni in C. *pp* *cresc.* *f*

Trombe in C. *pp* *cresc.* *f*

Timpani in C. G. *pp* *cresc.* *f*

Violino I. *ppia.* *pp* *cresc.* *f* *atco.* *p*

Violino II. *ppia.* *pp* *cresc.* *f* *atco.* *p*

Viola. *ppia.* *pp* *cresc.* *f* *atco.* *p*

Violoncello e Basso. *ppia.* *pp* *cresc.* *f* *atco.* *p*

Adagio molto. *pizz.* *Arco.* *Ten.*

SINPHONIA
dey BEETHOVEN
Op. 21.

BASSO e VILO

1^o Fois 2^o Fois

552.

S29 Research and private study

- (1) Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

....

- (1C) Fair dealing with a work for the purposes of private study does not infringe any copyright in the work.

....

- (3) Copying by a person other than the researcher or student himself is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, that person does anything which is not permitted under section 42A (copying by librarians: single copies of published works), or

- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Reasonable proportion v fair dealing (1)

- ▶ Are the phrases synonymous or does one offer more flexibility?
- ▶ “In amending the provisions for librarians copying published works, the Government has used existing language from the CDPA. The current terminology has not been problematic; therefore, the current drafting is retained.”
(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/308732/response-copyright-techreview.pdf p.17)

Reasonable proportion v fair dealing

- ▶ InfoSoc Directive Article 5(5) “[specific acts of reproduction made by publicly accessible libraries...which are not for direct or indirect commercial advantage]... shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.”

Reasonable proportion v fair dealing

s42A Copying by librarians: single copies of published works

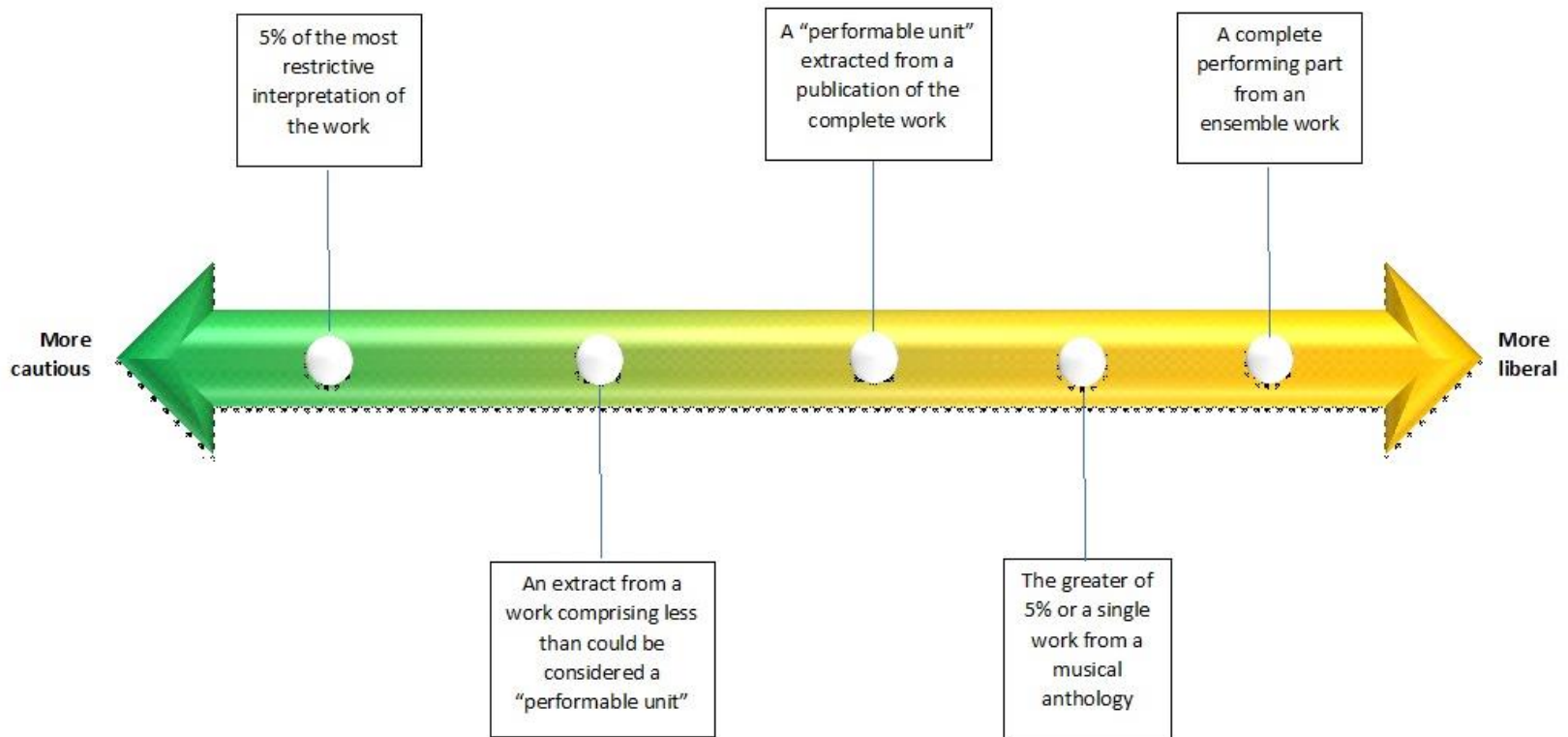
(1) A librarian of a library which is not conducted for profit may, if the conditions in subsection (2) are met, make and supply a single copy of—

(a) one article in any one issue of a periodical, or

(b) a reasonable proportion of any other published work,
without infringing copyright in the work.

- ▶ Is copying of a periodical article compatible with the 3-step test and could that affect our interpretation when copying music?

Risk continuum



Conclusion and Recommendations

- ▶ Excluding printed music from document supply services disadvantages music researchers and practitioners
- ▶ Libraries to establish parameters based on risk profile
- ▶ Policies to be established at a senior level and well-documented
- ▶ Front-line staff must have some musical literacy or access to specialists

Credits

Full report at:

https://iaml-uk-irl.org/sites/default/files/files/document_supply_notated_music_by_libraries.pdf

Crews, Kenneth, *Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and revised* (2017 ed. https://www.wipo.int/edocs/mdocs/copyright/en/sccr_35/sccr_35_6.pdf)

Cornish, Graeme, *Copyright: Interpreting the Law for Libraries, Archives and Information Services*, 6th ed. (London: Facet, 2015)

Padfield, Tim, *Copyright for Archivists and Records Managers*, 6th ed. (London: Facet, 2019)

Music Publisher's Association, *Code of Fair Practice* https://www.mpaonline.org.uk/wp-content/uploads/2017/09/The_Code_of_Fair_Practice_Revised_Apr_2016.pdf

United States Copyright Office, *Reproduction of Copyrighted Works by Educators and Librarians*, rev. 2014. <https://www.copyright.gov/circs/circ21.pdf>

Lloyd Webber, Andrew, *Memory: the theme from Cats as sung by Elaine Page* (London: The Really Useful Company, 1981)

Walter, Richard (ed.) *The Singer's Musical Theatre Anthology Vol. 1 Mezzo-soprano/alto* (Milwaukee, Hal Leonard, 2000)

Lloyd Webber, Andrew, *Cats* (London: Faber, 1989)



Questions?