



---

## Music: Bands

---

This information sheet is for people playing in bands, particularly if they are writing and recording their own material.

For detailed information, see our practical guide *Music & Copyright*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version. Our website also includes our other information sheets and information about our publications and seminar programs: [www.copyright.org.au](http://www.copyright.org.au)

**The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.**

### Key points

- There are usually at least three different copyrights in a recorded song: the lyrics, the music and the recording of that particular performance of the song.
- It's a good idea to have agreements making it clear who owns copyright, as working out who owns copyright in songs or recordings can be difficult especially if someone leaves the band.
- In some cases, the performers (as well as the person who made the recording) own copyright in a recording.
- Many musicians license their music and lyrics through APRA|AMCOS.
- Many record labels and independent recording artists license their sound recordings through PPCA.

### How does copyright protect songs and recordings?

If you write a song, in copyright terms you have two copyright works: a literary work (the lyrics) and a musical work (the music). If you record the song, the sound recording has separate copyright protection. For more information, see our information sheet *Music & Copyright*.

### How do you get copyright protection?

Copyright protection is free and automatic. There is no registration system in Australia and no procedures that you have to follow before your material is protected.

For material like music and lyrics - your work must be in "material form" before it is protected. This means that it needs to be written down, typed up or recorded in some way. Things that aren't recorded, for example a jam session, or a freestyle rap won't be protected by copyright until they are in "material form". For recordings, copyright is created at the time you make the recording.

Some countries, including the United States, have government registration systems for copyright material. While it is not necessary to register in order to get copyright protection, registration in foreign countries can provide some benefits, particularly if you need to take action for infringement in that country.

## The copyright notice

It is a good idea to include a copyright notice on the material you create. The notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication: for example, "© Roland Stone 2014". For sound recordings the (p) symbol is often used instead of the ©.

The "copyright notice" does not need to be on something before it is protected by copyright in Australia or in most other countries, but it does remind people that the work may be protected and identifies the person claiming the rights. In some cases, in Australia and some other countries, the notice can be used to provide evidence of ownership of copyright (although this is not conclusive). Copyright owners can put the notice on their work themselves; there is no formal procedure.

Registering a song with APRA is **not** necessary for copyright protection; it just means that you've told APRA who it should pay for particular songs when monies are collected.

## Copyright protection

As a copyright owner, you have a number of rights.

For music and lyrics, these rights are to:

- **reproduce** (for example, by making a recording, burning a CD, downloading or burning an MP3 file, or by filming or videotaping);
- **perform in public** (playing the song, sound recording or a film or video which includes it, outside a private or domestic setting);
- **communicate to the public** (for example, by streaming or making files available online or by broadcasting the recording);
- **make public** for the first time; and
- **adapt** (for example, by translating the words or by making an arrangement of the music).

Owners of copyright in sound recordings have rights similar to the first three of these rights.

In practice, most musicians assign their public performance and communication rights in relation to music and lyrics to APRA so that it can license the public performance and communication of their songs on behalf of the musician.

## Ownership of copyright in music and lyrics

The general rule of ownership of copyright is the creator is the first owner of copyright. However, this rule is subject to some exceptions. The most important exception is that people can make agreements over who owns copyright.

## Music and lyrics written by one person

Generally, the person who writes the music and/or lyrics will be the first owner of copyright in what they wrote unless there is an agreement in place which states otherwise.

## Collaboration

Generally, if more than one person creates music or lyrics, each of them will own a share of the copyright, unless there is an agreement in place which sets out how copyright will be owned..

For example, if members of a band work on the music for a song together, it is likely they will share copyright. However, it is a question of degree. For example, someone who just makes suggestions about how the music should go or what words should be in the lyrics won't generally own a part of the copyright.

If your band is writing material together, it's a good idea to have a written agreement about who will own copyright, and in what proportions. This can avoid misunderstandings and disputes down the track.

### **Commissioned music and lyrics**

If someone pays you or your band to create music or lyrics, he or she will **not** own copyright in either the music or the lyrics, unless you have reached an agreement that they will. However, he or she will usually be entitled to use the work for the purpose for which it was commissioned.

### **Ownership of copyright in sound recordings**

The copyright in a recording is separate from the copyright in whatever is on the recording.

Generally, the owner of copyright in a sound recording is the person who owns the relevant recording medium on which the song is recorded. In some cases, the performers being recorded will share in the copyright (see below for more information on this). However, if you pay someone to make the recording for you (for example, a production studio, producer or audio engineer), you will own copyright in the recording unless there is an agreement stating otherwise. If a record company pays to have your band or material recorded, it will own copyright in the recording.

As with music and lyrics, it's best to have written agreements about who will own copyright in a recording if more than one person will be involved in making the recording. If you don't, the operation of the rules about ownership can create difficulties and tensions.

For example, consider the following scenarios where there is no agreement about copyright ownership in place:

- if a friend voluntarily worked as an audio engineer and supplied the tape or other recording medium, the friend may own copyright in the recording;
- if one member of the band brought along a tape on which the performance was recorded, then the copyright in the sound recording will belong to that person;
- if everyone in your band chipped in to have your band recorded professionally, it is likely that all the band members will jointly own copyright in the recording. But if just one or more people (such as a member of the band or a relative) paid for the session to be recorded, those people will own copyright.

### **Ownership of copyright in recordings made on or after 1 January 2005**

On 1 January 2005, new provisions relating to ownership of copyright in sound recordings came into operation. In some cases these provisions mean that the performers who are being recorded share copyright in the sound recording with the person who owns the item on which the recording is being made (for example, the tape or CD).

In practice, however, these provisions don't operate where you (or your record company) pay someone to record you (such as a producer or audio engineer). In these cases, the situation will remain as outlined above. On the other hand, where a recording is made on a voluntary basis the person supplying the recording medium will share copyright in the recording with the performers being recorded.

In any situation where more than one person is involved in making a recording, it is best to have a written agreement in place that deals with ownership issues and what each party can do with the recording.

For more information, see our information sheet *Ownership of Copyright*.

## Dealing with copyright rights in practice

Because there are many ways to listen and get access to music, it can be difficult for bands to manage their copyright on their own. Music publishers can help you get your music out there, but there are also some industry associations and copyright collecting societies that can make managing the various copyright rights in the music, lyrics and sound recordings easier.

### APRA and AMCOS

APRA|AMCOS is a non-profit organisation comprising the Australasian Performing Right Association (APRA) and the Australasian Mechanical Copyright Owners Society (AMCOS); its members include songwriters, composers, lyricists and music publishers. APRA|AMCOS licenses organisations to play, perform, copy, record or make available its members' music, and distributes the fees for such uses to its members.

#### *What APRA|AMCOS can do for you if you create your own material*

If you write music or lyrics and have begun to perform in public or have your music broadcast or played in public, or made available on a commercial digital music service you should think about joining APRA|AMCOS. If you join:

- you transfer your public performance and communication rights to APRA. In return, APRA passes on to you your share of licence fees from, for example, live performances and radio play of your material.
- you also have the option of transferring the rights to reproduce your music (sometimes known as “mechanicals”) to AMCOS. In return, AMCOS passes on to you your share of licence fees from, for example, the reproduction of your music in cover versions recorded by other people, the synchronisation of your music in film soundtracks or TV programs, or the reproduction of your music on a commercial digital music service. (However, if you are signed to a music publisher, in most cases the music publisher will already manage the mechanical rights for you and any distribution of fees from the license of your mechanical rights will be subject to your publishing agreement).

Joining APRA|AMCOS is a good way to manage your rights. For more information on membership (which is free), see [www.apraamcos.com.au](http://www.apraamcos.com.au)

#### *Licences from APRA|AMCOS*

APRA licenses music venues such as pubs, clubs and theatres, and commercial premises, offices and other organisations that play music and lyrics in public. APRA also licenses various online uses of music and offers licences for music on hold.

If your band is playing music in “public”, you (or the venue) will need to be covered by an APRA licence. Even if you play your own songs, if you are an APRA member you need the licence, as APRA is now the owner of the performance rights in those songs.

In this context, “public” would cover any function or event apart from private and domestic functions such as birthday parties, weddings, or 21sts. Corporate or club functions and events are “public” in this context, even though members of the public might not be welcome to turn up.

APRA also manages the affairs of AMCOS. If a recording of a song has been commercially released, anyone can record a cover version (including former band members) with an “Audio Manufacture Licence” from AMCOS. For more information or to download a licence application form, see [www.apraamcos.com.au](http://www.apraamcos.com.au)

In this context, “commercially released” means that copies of the recording have been made available for purchase. Music on CDs sold through shops or at gigs, or music made available online for download would have been commercially released. However, music included only on demo tapes to send to record companies or publishers would not be in this category.

## PPCA and ARIA

The Phonographic Performance Company of Australia (PPCA) is an organisation of record companies, which licenses the broadcast and public performance of sound recordings on behalf of its members. PPCA is also responsible for licences relating to other communications of recorded music such as streaming or webcasting. PPCA distributes most of the money it collects to record companies, but it also distributes some direct to the artists on the recordings where the record company and the artist have agreed that the artist may collect a share of income collected by PPCA directly from PPCA.

See [www.pcca.com.au](http://www.pcca.com.au) for more information.

The Australian Recording Industry Association (ARIA) is a national industry association representing the interests of its record company members. In some circumstances, ARIA provides a reproduction **licensing** function on behalf of its members for various copyright users.

See [www.aria.com.au](http://www.aria.com.au) for more information.

## Using other people's material

### Playing songs written by other bands

Generally, provided the venue is covered by an APRA licence, bands can play covers of music by other people. However, if the people who wrote a song are **not** members of APRA or an affiliated overseas "collecting society", the band will need permission from the writer or co-writers of the other band before they can perform it in public.

### Recording cover versions

If a piece of music has been commercially released, you can record a cover version by getting an "Audio Manufacture Licence" from AMCOS. If you want to change any lyrics or change the structure of a piece of music, you should contact the individual copyright owner (usually the publisher)

If a piece of music has **not** been commercially released, you will need to get permission to make the recording from the owner(s) of copyright in the music and lyrics. For an unsigned band, this may be the band members, but for a signed band, it will generally be the publisher.

### Performing and recording parodies

If you want to perform or record important or distinctive parts of someone else's music or lyrics (such as the chorus), then you should consider two options:

(i) whether your parody falls under the fair dealing exception for parody or satire. For more information, see our information sheet *Parodies, Satire & Jokes*.

(ii) if you are outside the scope of the fair dealing exception for parody and satire, then you may need permission. Permission to perform music in public is generally obtained from APRA. If you want to change the lyrics or perform the work in a dramatic context, APRA cannot license this and you will need to get permission directly from the music publisher. Permission to record music is generally obtained from AMCOS. However, AMCOS licences do not allow you to alter the lyrics or to make a recording which "debases" the original musical work. So, you would generally need to get permission directly from the music publisher.

### Using samples

Even a very short sample from another piece of music can be a "substantial part" of that piece, for which permission is needed. Industry practice appears to be that you clear all samples (for example, with both the relevant music publisher - in relation to the music and lyrics - and record

company – in relation to the sound recording). This avoids any arguments down the track as to whether or not you have infringed copyright.

Of course, if you have written and recorded your own samples, or are using a licensed library of samples or loops, you do not need permission.

We discuss this in more detail in our information sheet *Music: DJs*.

## **Infringement**

Usually, anyone who wants to use a song or a recording in ways reserved to the copyright owner needs permission.

For example:

- someone wanting to use the lyrics without the music (for example, by posting them online); or
- someone wanting to use the music without the lyrics (in an instrumental performance, or with different lyrics)

would generally need permission.

Copyright gives you legal protection against other people using your material without your permission. If someone infringes your copyright, you have a right to take legal action.

It is an infringement of copyright to use all of a work or a “substantial part” of a work without permission and if an exception does not apply. A “substantial part” doesn’t have to be a large part: courts have said that a “substantial part” is any part that is important, distinctive or essential, even if it is a small part. In some cases, a few notes or a couple of bars may be a “substantial part”.

If you believe your rights have been infringed, there are a number of options available to you. For more information, see our information sheet *Infringement: What Can I Do?*

## **How can I protect my songs online?**

If you make your songs available online, as well as potential legal remedies, there are certain practical measures you can take to protect your songs from copyright infringement.

For example, you may wish to:

- (i) limit the amount of music that people can listen to (for example 30 seconds or 1 minute of a 4 minute song);
- (ii) make lower resolution files made available on the publicly accessible parts of your website;
- (iii) consider digital rights management (DRM) to control uses of your files; and
- (iv) restrict access so that only people with a password can download or stream your music.

For more information about how to protect your copyright material generally, see our information sheet *Protecting Your Copyright*.

## **Moral rights**

Creators of copyright works also have “moral rights” in their works, whether or not they own copyright in them. These are separate from copyright.

A creator has the right to:

- be attributed as creator of his or her work (such as in the song writing credits);

- take action if his or her work is falsely attributed (for example, if someone else is credited as the songwriter or if a song is altered and credited without acknowledging the alterations); and
- take action if his or her work is treated in a way that is potentially damaging to their honour or reputation (the “integrity” right).

For more information, see our information sheet *Moral Rights*.

### **Publishers and record companies**

Not every band, composer or songwriter needs a publisher or a record company, but being signed to a publisher or record company can give you access to funding, administrative expertise and contacts, allowing you to spend more time on your music. Usually, songwriters and other people who sign with a publisher transfer their “non-APRA” rights to the publisher or record company.

You should always get legal advice about any publishing or record deal you are offered.

### **Performers’ rights**

In addition to sometimes sharing copyright in recordings, performers generally have the right either to consent or refuse consent to being:

- audio recorded;
- filmed or video recorded; or
- broadcast.

Performers’ also have their own moral rights in relation to both live and recorded performances.

For more information, see our information sheet *Performers’ Rights*.

### **Common questions**

#### ***I’m the copyright owner but who is entitled to APRA monies?***

Owning copyright is not the same as being a recipient of money collected by a collecting society such as APRA. For example, while two people in the band collaborate to write the songs, making them the copyright owners, they may agree to split all monies received from APRA with the other band members.

#### ***Whose names should we put on the APRA registration?***

It is generally the writer or co-writers who will get money for the commercial use of their material. As such, the names of the writers or co-writers should be registered with APRA for any particular song. It is common to allocate 50% to the lyrics and 50% to the music, but co-writers may reach some other agreement. However, people in a band can decide among themselves that non-writer members should share in monies generated by the band’s songs, including payments from APRA.

It is best to discuss these types of issues when a band is starting up, and to write down a band agreement. Of course, as a band evolves, a band agreement can be revised, but only with the agreement of everyone who was part of the original agreement.

#### ***The ex-singer in my band contributed five words to a song. Can she claim to be a co-writer of the lyrics?***

The answer to this type of question will depend on all the facts. For example, if the band created the material co-operatively, or if a number of suggestions were incorporated into a song, it may be that all the contributing band members, including the ex-singer, have a claim to be writers or co-writers of the entire song. However, if the writers or co-writers of a song come into rehearsals with a song already completely written, and the ex-singer contributes the words at that stage, the ex-

singer may have a claim to be a co-writer of the version of the lyrics containing those additional words. The band could decide to drop the ex-singer's contribution, and therefore not use the version over which the singer might have a co-writer claim.

In practice, it will often be really hard to work out whether or not a band member who has contributed to a song is a co-writer for copyright purposes. This is why it is best for a band to have a clear written agreement which deals with issues such as how copyright will be dealt with and who is entitled to copyright monies generated from material played by the band.

### ***What happens if an important band member leaves?***

Problems may arise if a band member who contributes to writing the band's songs leaves the band and is not willing to give permission for the band to keep using songs which they co-wrote.

Generally, the band will still be able to (i) perform the songs if they are all APRA members and (ii) record songs that have already been commercially released by getting the necessary licence from AMCOS. (See above in the section entitled "Licences from APRA|AMCOS", for information about what a "commercial release" might be in this context.)

If the songs the ex-band member co-wrote haven't been commercially released yet, the band would generally need to get legal advice to work out whether there might be any scope for relying on an implied licence to make or release a recording. However, the ex-band member may be able to revoke any such licence. It would usually not be a good idea to proceed with the recording sessions until you know where you stand. Generally, band agreements should deal specifically with issues such as what band members can do with material created for the band after a writer member leaves.

### ***What rights do session musicians have?***

Session musicians will have a claim to a share in the copyright of the sound recording unless the recording is (i) commissioned or (ii) the session musicians agree otherwise. Session musicians may also have limited rights in relation to recordings made before 1 January 2005.

If a session musician is improvising for a recording, or their improvisation is recorded at a live gig, they could be a co-writer of that particular version of the material. In one UK case, a session violinist was able to establish he owned copyright in a riff he had created in a recording session and on that basis was able to claim a proportion of the royalties in that piece.

It is a good idea to have a written agreement with session musicians that covers issues such as copyright in the music and recording, moral rights, performers' rights, and whether or not they are entitled to any additional payment for their contribution (either as an additional up-front payment or as a downstream royalty).

### ***Whose responsibility is it to get an APRA licence – the venue or the band?***

Your band will generally need permission to play music in public. An APRA licence will cover you for almost all music and lyrics.

Many venues will already have a licence with APRA – so check with the venue first. If you think the venue your band is playing at may not be covered, you can arrange for appropriate licences with APRA just to cover your event. Many venues will also have a licence with PCCA (the Phonographic Performance Company of Australia) which covers the public playing of sound recordings: even live-band venues will usually play recorded music at various times, such as between sets or on jukeboxes.



***I was photographed during one of my gigs and the picture appeared in promotional material for the venue. Can I stop this?***

A person's image is not protected by copyright. However, in some cases, using a person's image without permission may be prevented under other laws, such as the law of passing off, the *Competition and Consumer Act 2010* and State and Territory fair trading laws.

### Further information

For further information about copyright, and our other publications and seminar program, see our website – [www.copyright.org.au](http://www.copyright.org.au).

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see [www.copyright.org.au/legal-advice](http://www.copyright.org.au/legal-advice).

### Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

### About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

© Australian Copyright Council 2012-2014