



Music - Use in Film

This information sheet is for people who want to incorporate music into the soundtrack of a film, DVD or video project they are creating. We give you information on how to get permission, and on some commonly used industry terms. For information about using music in home videos and student films, see our information sheet *Music – Use in Home Videos & Student Films*.

More detailed information about copyright as it applies to film and music is available in our books *Film & Copyright* and *Music & Copyright*. You can buy these at our online store at www.copyright.org.au/bookstore/.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

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

- Generally, you will need permission to use someone else's music in your film project.
- A single item may include a number of copyrights: if using an existing recording, you may need separate permission for the words, music and the sound recording.
- An easy way to clear rights in music is to use "production music" recorded especially for use in soundtracks.
- In some cases, you may need to check whether the performers have consented to the use of their performance in a soundtrack.
- Don't leave clearance procedures until late in the production schedule. Clearing music rights for film projects can be complicated: you may need to get permission from copyright owners outside Australia; the owner may refuse permission; or the fees may be outside your budget. Sometimes, you may need to select alternative music and request permission from another copyright owner.

Background

Copyright protects a range of material, including music, literary works (such as lyrics) and sound recordings. Copyright also protects films in all formats (digital file, disc, film, tape and the like).

Generally, the copyright owner is the only person who is entitled to do certain things with their work. For example, you generally need the copyright owner's permission to do any of the following with the music or lyrics to a song, or a recording of a performance of a song:

- **reproduce** it (whether by writing out the words or music, recording it, or including it in a film soundtrack);

- **perform** it (performing live, playing a sound recording or screening a film including the material, in a non-domestic setting);
- **communicate** it (for example, by broadcasting, streaming or making the film available online); or
- **adapt** the music or lyrics (for example, by arranging the music or translating the lyrics. This right does not apply to sound recordings).

The general rule is that copyright lasts for 70 years from the end of the year the creator of the work died (even if copyright is not owned by the creator). This rule applies to published music and literary works (such as lyrics to songs). Sound recordings are protected for 70 years from the end of the year they were first published.

However, duration of copyright varies from country to country. You may therefore need to check the copyright status of the same works in different territories, since a work which is “in the public domain” in one territory may still be protected in another. This will be relevant if you are planning to release your film internationally, and you may need to take this into account very early in planning your production budget.

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

When do you need permission to use music in film?

You need permission (a “licence”) to reproduce the whole or a “substantial part” of material in which someone else owns copyright, unless a specific exception to infringement applies.

In copyright law, any part of a work that is important, distinctive, essential or recognisable is likely to be “substantial”. A few notes of music may be “substantial” in this sense, and the use of even short excerpts of music will generally require permission.

There are many exceptions to infringement set out in the Copyright Act. See our information sheet *Exceptions to Copyright* for more details. However, for most film and multimedia projects, it is unlikely an exception to infringement will be available if you want to be able to screen or exhibit your project. In practice, unless all relevant copyrights have expired, you should always get permission to include music, lyrics and sound recordings in your project. The process of getting permission is often called “clearing rights” or “getting clearances”.

Who you must contact for permission

Generally, people who want to use copyright material need to contact the copyright owners to get permission unless an exception to infringement applies. In relation to music, the copyright owners are typically:

- for music and lyrics: the composer or songwriter or, if they are represented by a music publisher, the music publisher;
- for sound recordings: the record company that released the recording, although this is sometimes shared with the performers who contributed to the sounds on the performance; and
- for performances: sometimes you need the permission of the performers to record their performance or to use the recording on a soundtrack (or both).

For more details about ownership of copyright, see our information sheet *Ownership of Copyright*.

The copyright owner will often be identified in a copyright notice on the music (for example, on the back cover of a CD or in the metadata of a digital music file). In some cases, a collecting society may be able to find the copyright owner for you, usually for a fee.

We look at this in more detail below.

1. Specially commissioned music

Producers often commission a composer to write an original score.

If the composer has a publishing agreement, you may have to negotiate the deal with the composer's music publisher. This is because music publishing agreements often provide for assignments of future copyright to the publisher. This means that the publisher will own copyright in music written during the period of the composer's contract. Therefore, if the music is commissioned while the composer is under such a contract, all licences will need to come from the publisher, not the composer. In practice, you will generally enter a three-way agreement with the publisher and the composer.

If the composer is not tied to a publisher in this way, you can deal directly with the composer. It will then be up to you and the composer to negotiate a contract. The Australian Guild of Screen Composers (www.agsc.org.au) has a standard agreement which you might want to use as the basis of negotiations.

If the composer or their publisher is a member of the Australasian Performing Rights Association (APRA), which licences the public performance of music and lyrics, any rights you acquire from the composer will generally be subject to a prior assignment of the performing rights in the music to APRA. Note, however, that it is still technically possible, under certain conditions, for composers who are members of APRA to make arrangements so that they can deal directly with these rights in their works.

When the music is recorded, you should get written permission from the performers, both to record the performance and to use the recording in a soundtrack.

2. Published music to be specially recorded

You may wish to make a new recording of an existing piece of music to use in your film, rather than dubbing from an existing recording. In most instances the owner of copyright in the music will be a music publisher. If you want to use a piece of music from overseas, you should first contact the Australian representative for permission (most music publishers based overseas have representatives in Australia). If a music publisher based overseas does not have an Australian representative, the Australasian Mechanical Copyright Owners Society (AMCOS), which amongst other things licences recording of music and some synchronisation of music on film and video, will frequently be able to act on its behalf.

When the music is recorded, you should get written permission from the performers, both to record the performance and to use the recording in a soundtrack.

3. Published music recorded by someone else

You may want to use a particular recording of a musical work in your film – that is, to dub directly from an existing sound recording (for example, a song on a commercially released CD). (We discuss production music recordings below.) In this case there may be three copyrights you need to consider – copyright in (i) the music (ii) any lyrics and (iii) in the recording. Generally, rights in the music and any lyrics will be owned by a publisher, and the rights in the recording will be owned by a record company. You will also need to check with the record company that the performers of the music gave permission for the recording of their performance to be used in soundtracks.

Clearing copyright for the music and any lyrics

Contact the music publisher for permission. If an overseas composer wrote the music you want to use, you should first contact the relevant publisher's Australian representative for permission. If a

music publisher based overseas does not have an Australian representative, AMCOS will often be able to act on its behalf.

AMCOS also has an inexpensive research service that may be able to help you work out who owns copyright in the music you want to use.

Clearing copyright for the sound recording

Contact the record company for permission. Permission to use recordings of overseas artists can involve lengthy consultation with the parent company. In most cases, even with local artists, the record company will contact the individual artist.

Clearing performers' rights

The record company should generally be able to provide information on whether the performers consented to being recorded, and whether the performers gave consent for the recording to be used in soundtracks.

You will need to take particular care with "bootleg" recordings, as you may be unable to use the recording in your film unless you get permission from all the relevant performers.

The agreement you reach with the record company would generally include a warranty (that is, a legal promise) that these permissions were obtained, and an indemnity against any loss, damage or injury that you may incur if that warranty is not true.

Apart from Australia, several other countries provide performers with rights in recordings of their performances. In some cases, if you are releasing your film or product overseas, you will need to get approval from appropriate unions and guilds, and you will need to pay an additional sum for permission.

Weddings and other domestic videos

AMCOS offers a licence specifically for incorporating music onto videos for private and domestic use purposes, for example, wedding videos. The licence is offered in conjunction with ARIA (Australian Record Industry Association). For more information see www.apraamcos.com.au/music-customers/licence-types/copying-and-reproducing-music/domestic-use/

4. Published music specially recorded for an advertisement

AMCOS does not have general authority from its members to license music in advertisements (except in the case of "production music" recordings). However, it may do so if a member requests it to. In most cases AMCOS will refer you directly to the publisher. If the music you want to use is not controlled by an Australian publisher, AMCOS is often able to act on its behalf.

AMCOS has an inexpensive research service that may be able to help you work out who owns copyright in the music you want to use.

(These comments apply to commercial advertisements, not advertisements or promotional trailers for films. The use of music in film trailers and advertising may or may not be dealt with in the original music licence agreement. It is a good idea to let the copyright owner know if you require these rights when negotiating to include the music in the film).

5. Production music libraries

A production music library is a catalogue of music recorded specially to provide inexpensive and convenient background music for audio and audio-visual productions.

If you are using production music which is controlled by AMCOS, you should contact AMCOS. If you are using production music which is not controlled by AMCOS, you should contact the relevant production music company.

What rights do you need?

Copyright is made up of a number of rights, which may be licensed or assigned separately. You do not necessarily need to acquire all of the rights in a work: it may be sufficient to get permission only in relation to specified rights. In a few cases, you may be prepared to limit the rights you acquire to a particular territory, or a particular period.

In copyright terms, the producer needs these rights:

The reproduction right

Films and multimedia projects

The producer needs the right to **reproduce** music or a sound recording in the soundtrack of the film or multimedia project. In the film industry, the right to reproduce music in the soundtrack is often referred to as the “synchronisation right”, and copying a sound recording is called dubbing. If the film or project is to be distributed online, the producer will also need the right to **communicate** the music or sound recording (see further below).

Soundtrack albums

In Australia, there is a statutory right to re-record music which has already been released commercially - however, this only applies when recording for release as an audio recording – not for use in a film. Contact AMCOS for further information on this scheme.

If you want to release a soundtrack album using someone else’s recordings, you will generally need to get additional permission from the relevant record companies to use their sound recordings this way.

If the music you want to use on a soundtrack album has not already been commercially released, you will need to get permission from the composer or music publisher for the “mechanical reproduction” right to the music. In these cases, if it is likely that a soundtrack will be released as an album, a mechanical reproduction licence is generally obtained at the same time as the synchronisation licence is obtained. The mechanical reproduction licence is usually granted in exchange for payment of mechanical royalties at the prevailing rate. These royalties will be payable on sales of the soundtrack album in addition to any other fees that may be payable for the synchronisation rights.

If you have commissioned a composer to create music for you, the commissioning agreement might deal with soundtrack release, and specify your rights and the composer’s rights in relation to mechanical royalties.

If you will be recording music specially for your film or multimedia project, you will generally need to negotiate with the performers in relation to any residual rights (for example, for further broadcasts of the film, or for further releases of the project).

Public performance and communication rights

These rights are generally owned or administered by collecting societies. In Australia:

- for music and lyrics: the relevant society is APRA. Virtually all composers, lyricists and music publishers in Australia are members of APRA.

- for sound recordings: the relevant society is the Phonographic Performance Company of Australia (PPCA). PPCA members include record companies and independent recording artists.

In Australia, producers are not responsible for clearing public performance or communication rights for music or sound recordings included on a soundtrack. Clearing these rights is arranged between APRA or PPCA and the relevant cinema, venue, broadcaster or cable station operator. However, the performing right societies for music and lyrics in the United States – the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music Inc. (BMI) – are prevented by antitrust consent decrees from obtaining public performance royalties from cinemas within the USA. Therefore, an Australian producer will generally be required to pay an additional fee to the owner of copyright in the music in the event of US theatrical release of the film. This fee is in lieu of US theatrical performance royalties. The obligation to pay the fee is generally included in the terms of the synchronisation agreement.

For more details about public performance and communication rights in music, see our information sheet *Music – Playing Music: APRA & PPCA*.

The right to arrange

The right to arrange a piece of music is one of the copyright owner’s exclusive rights. Therefore, if you want to commission an arrangement of a piece of music that is protected by copyright, you will need to obtain permission. Generally, the music publisher is the first point of contact for this permission, and will request an assignment of copyright in the arrangement as part of the deal.

Permission should be obtained to:

- make the arrangement;
- record the arrangement; and
- synchronise the arrangement with the film and with any associated advertising.

If a soundtrack album is likely, the mechanical reproduction rights and any other relevant rights are generally negotiated at the same time.

Industry phrases

We have just described the rights needed by producers in copyright terms. Often, however, the words and phrases used within the industry to describe the various ways in which music is used are different. These are some of the industry’s terms:

Theatrical	exhibition to paying audiences (cinema release)
Non-theatrical	exhibition to non-paying audiences (eg, in-house training or non-profit film nights) or other non-cinema exhibition
Television	<ul style="list-style-type: none"> • “free-to-air” or broadcast television • subscription, pay, satellite or cable TV <p>These rights may include limited “catch up” rights – which generally include the right to make the television program available for streaming on the broadcaster’s website for a limited period following the initial broadcast of the program.</p>
DVD/Video	sale or rental of DVDs, Blu-Ray and video cassettes to the general public
Other “home use” formats	for example, CD-ROMs; in addition, non-theatrical rights may also need to be cleared if the reproduction into the audio-

	visual item is for supply to educational institutions or the general public
Internet transmission and/or supply	These may include making the film available through services that offer: <ul style="list-style-type: none"> • free and subscription video on demand • pay per view • electronic sell through
All media	all of the above

These categories may in turn be sub-categorised. **Theatrical** may, for example, be limited to film festivals; **non-theatrical** may be limited to training or educational uses; and (to use an American example) **television** could be limited to local or network television.

A **glossary and comments** on industry practice is also included at the end of this information sheet.

Fees and procedures

General

Clearance procedures and fees vary from company to company. Generally, the best approach is to send an email, letter or online application to the copyright owner, rather than to contact them by telephone.

Let the copyright owner know:

- what material you want to use;
- which countries you will be releasing the film in;
- what sort of use you are making of their recording (for example, are you using their material in a feature film, short film, online video, or in an app and how will your project be seen – for example, is it a theatrical release or online-only video?);
- how the music will appear (for example, as background, incidental, or featured).

If you will be releasing your project worldwide, you will need to think about whether you should initially get (and pay for) worldwide/all media rights, as securing rights on a territory-by-territory, and medium-by-medium basis may be more expensive in the long run. Alternatively, you might agree with the copyright owner on rates to apply if the film or multimedia project is released more widely than initially planned.

Licences granted by publishers or AMCOS, whether in relation to published or production music, may be either very detailed documents, or short-form documents which refer simply to the medium and territory for which the reproduction licence is granted, the fee payable, the limitation upon the amount of music to be used, and the time by which payment is to be made. If a video licence is granted that requires fees to be paid on production, a detailed agreement will generally have to be signed.

Similar documents will be required by record companies.

Any licence agreement you enter into will generally oblige you to submit a cue sheet to the licensor (for example, to the music publisher or AMCOS). You should also submit a cue sheet to APRA.

Commissioned music

The fees you will pay to a composer to write music for your film may vary. The reputation of the composer, the overall scale and budget, the amount and complexity of the music required, and the number of discrete units of music to be used will affect the amount you will be charged.

The composer may also be responsible for supervising and paying for the production of the master recording. This can include paying for studio time, musicians, editing and duplication. Sometimes a separate fee is negotiated for writing the music and for producing the master recording. Sometimes a single fee is negotiated for both tasks. At other times, the cost of producing the master is paid for by the producer. Whichever way it is structured, the fee paid should take account of each separate activity.

Whatever the medium in which the music is to be used, payments are usually made in three or more instalments for example (i) upon signing the contract (ii) upon delivery of the completed score and (iii) upon completion of synchronisation. If the composer is to be responsible for producing the master tape, it will generally be essential that they have a cash flow to pay for relevant expenses.

If you are commissioning music, you should have a written agreement with the composer and perhaps also their publisher. The agreement will generally cover not only the fees to be paid and the grant of rights, but also such matters as the composer's obligation to attend and/or supervise recording sessions; the time within which the score is to be delivered; the date by which synchronisation must be completed; and warranties and indemnities concerning originality. The licence to use commissioned music in a film or multimedia project will almost always be an exclusive licence. To be legally effective, such a grant of rights must be in writing and must be signed by or on behalf of the owner of copyright or prospective owner of copyright. As noted above, the Australian Screen Composers Guild has a standard agreement which you might use as the basis of negotiations.

Production music

If you are using music from an AMCOS-controlled production music library, a standard agreement and rate schedule applies, regardless of the budget or scale of the project. The amount you will have to pay depends upon the context in which you are using the production music, the territory where the film or multimedia product will be released, and the length of the extract you want to synchronise. See the "Production Music" section of the AMCOS website for information about registering for and sourcing production music as well as online fee calculators and submission forms.

You may be able to negotiate a special bulk rate with AMCOS if you will be using a lot of production music in your film or multimedia product.

If you are using production music which is not controlled by AMCOS, contact the relevant production music company for further information.

Published music to be specially recorded

Fees a publisher will charge for the use of published music vary considerably and largely depend upon the commercial value of the music you wish to use in your project. For example, permission to use a piece by Lennon/McCartney or Irving Berlin will cost more than an unknown work by an unknown composer. The type of use you want to make of the piece and the countries in which the film is to be released will also be relevant. The budget of your project will not always be taken into account when determining the fee.

Fees are commonly quoted in 30 second unit amounts and separate quotes can generally be obtained for each, or any, type of use.

You need to get permission to use published music **before** you synchronise it. Failing to do so could jeopardise your ability to complete or distribute your film. Note also that copyright owners have a right to refuse permission.

Often the following steps will apply:

1. Contact the relevant music publisher or local representative (in some cases this may be AMCOS).
2. You'll be given a quote. In some cases the quote will be subject to the final approval of the relevant principals, author or author's estate.
3. You will negotiate the terms, or reach an in-principle agreement.
4. The publisher or local representative will issue an agreement/invoice to you.
5. The fees will be paid and the licence issued upon the completion of your project.

For DVD/video in various formats, fees are normally stated as a percentage of the retail selling price or the dealer buying price (excluding sales tax) of the items. The amount you pay will often depend upon the amount of music used in the film. More often than not, you will have to pay an up-front fee for a minimum production run.

If you need to clear DVD/video rights for world distribution, the publisher may prefer you to pay a flat fee (called a "buy-out") rather than to pay on-going royalties. The "buy-out" price is designed to cover an unlimited production run and may in fact be required if any overseas distribution agreement you have requires the synchronisation rights to be supplied "unencumbered" (that is, not restricted by any future royalty payments).

Published music recordings

If you want to dub from an existing (non-production music) sound recording which is still in copyright, you will need to contact the relevant copyright owner. Any fee charged will be additional to the fee payable for permission to use the music (see "Published music to be specially recorded" above).

You should also ask whether the performers have given permission for the recording of their performance to be used in soundtracks. If the record company did not get consent from the performers to synchronise the recording with a film or similar project, written consent should be secured from the performers. Other terms and conditions between the record company and the performers may also be relevant (for example, the record company may have undertaken in its agreement with a performer to get specific consent before licensing the song into films or similar projects).

As with published music, the fee payable to the record company will depend upon the commercial value of the sound recording, the type of use and the territory licensed.

Glossary and comments on industry practice

Assignment: A sale or transfer of the copyright. This must be in writing and must be signed by the person assigning the copyright to be legally effective.

Author: This is the term used in the Copyright Act to describe the creator of the protected work, for example, the composer of the music and the author of any associated lyrics. The author is generally the first owner of copyright in a piece of music or a literary work.

Cue sheet: A log of all the music used in a production.

Dubbing: The reproduction of sound recordings onto film. The clearance of dubbing rights, as they are often called, does not cover the copyright in the underlying musical work, for which synchronisation rights need to be sought.

Licence: A licence is a permission to use a work – ownership of copyright is not transferred. It may be exclusive or non-exclusive:

- **an exclusive licence** grants rights to the licensee to the exclusion of all others, including the copyright owner – to be fully effective, it should be in writing and signed;
- **a non-exclusive licence** does not restrict the copyright owner or someone else permitted by the copyright owner from exploiting the work elsewhere – it need not be in writing.

Music publisher: Composers and lyricists will often assign or transfer copyright to a music publisher. A music publisher should arrange the sale or exploitation of music and lyrics, for example, by licensing the recording rights to a record company.

Production music libraries: These are catalogues of music recordings distributed by music publishers which are intended to provide background music “beds” for audio and audio-visual productions. Copyright in both the recording and the underlying musical work is controlled by the one party (ie, the publisher) and, in the case of AMCOS controlled libraries, is licensed by AMCOS.

Published music: The term “published music” is widely used in the industry to mean music in which the copyright is owned or controlled by a music publisher, but which does not form part of a production music library.

Record company: As the maker of the sound recording, the record company will generally own copyright in the recording. Sometimes, the performers contributing to the sounds of a performance (including the conductor) will also own copyright in the recording.

Synchronisation: The reproduction of musical works onto film.

Websites

<i>Australasian Mechanical Copyright Owners Society (AMCOS):</i>	www.apraamcos.com.au
<i>Australasian Performing Right Association (APRA):</i>	www.apraamcos.com.au
<i>Screen Australia:</i>	www.screenaustralia.gov.au
<i>Australian Record Industry Association (ARIA):</i>	www.aria.com.au
<i>Australian Guild of Screen Composers:</i>	www.agsc.org.au
<i>Phonographic Performance Company of Australia (PPCA):</i>	www.pcca.com.au

Further information

For further information about copyright, and about our other publications and seminar program, see our website, 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

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.

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