



Music: Use in Home Videos & Student Films

In this information sheet, we give a brief overview of copyright law as it relates to the use of music in home videos and student films. See our information sheet *Music: Use in Film* for information on copyright issues relating to the use of music in film in other contexts.

For information about our other information sheets, publications and seminar program, see our website www.copyright.org.au.

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 a film or video.
- There are a number of limited situations that may allow you to use someone else's music without their permission.
- You will usually need to get permission to record and use a person's live performance in your film.

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 material. 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).

How long does copyright last?

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. Therefore, if you are planning to make your film available beyond a domestic or educational context, for example, if you want to make your film generally available on YouTube, Vimeo or other video sharing platform, or you want to enter your film into international competitions or film festivals, you may therefore need to check the copyright status of the same material in different territories, since a work which is “in the public domain” in one territory may still be protected in another.

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

When do you need permission to use music in your 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, in practice, if you intend to screen or distribute your film project in any context that is not part of your course of study, you are likely to require permission to include music, lyrics and sound recordings in your project. The process of getting permission is often called “clearing rights” or “getting clearances”.

Some situations in which it may be legal to use material without permission

Copyright has expired

Once copyright has expired, anyone may freely use the material.

For example, Beethoven’s *Für Elise* is not protected by copyright. If you want to film your sister playing *Für Elise*, you are free to do so, provided your sister agrees to be recorded (see “Performers’ rights” below). You are also free to record her and synchronise that recording into your film, provided your sister agrees. On the other hand, if you want to use someone else’s recording of the piece (for example, a recent commercially released recording of the Queensland Symphony Orchestra performing *Für Elise*), you would need permission from the owner of copyright in the sound recording (who is usually the record company) and possibly also from the performer(s).

Similarly, if you wanted to use someone else’s arrangement of the piece (for example, a recently published arrangement of *Für Elise* for bagpipes and percussion), you would generally need permission from the copyright owner of the arrangement (who is usually the relevant publishing company).

Research or study

The Copyright Act contains provisions which permit students to use music and sound recordings in films and videos they make as part of a course of study, without the permission of the copyright owner, subject to certain conditions.

In particular, a student may be able to deal with copyright material for research or study, provided the use is **fair**. In one case, the Court considered the meaning of the words “research” and “study” and held that they have the meanings given in the *Macquarie Dictionary*:

“research” – “diligent and systematic enquiry or investigation into a subject in order to discover facts or principles”.

“study” – “1. application of the mind to the acquisition of knowledge, as by reading, investigation or reflection. 2. the cultivation of a particular branch of learning, science, or art: *The study of law* 3. a particular course of effort to acquire knowledge: *to pursue special medical studies* ...5. a thorough examination and analysis of a particular subject ...”

An example of fair dealing for research or study may be using music in a film which is to be submitted for a school or university project, but which you do not intend to show outside the classroom or distribute further.

However, a student making a home video or film of a wedding or school concert could not rely on this exception as the use would not be for the purpose of “research or study”. Similarly, if a film originally made for the purposes of research or study was subsequently submitted to a film festival or made generally available online, the exception for fair dealing for research or study is unlikely to apply to the subsequent use.

For more details about the fair dealing exception for research or study, see our information sheet *Research or Study*.

Getting 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.

In some cases, multiple permissions may be needed in relation to the one item. For example, if you want to synchronise a commercially released sound recording into the sound track of your film, you are likely to need to obtain permission from both the relevant music publisher (in relation to the music and lyrics) and record company (in relation to the sound recording itself).

However, in a number of cases, copyright owners have set up procedures to make it easier to get permission. For example, if you are a school or university student, you may be able to include music in your film under the terms of the blanket licence agreements negotiated between the education sector and the music industry collecting societies. Under these agreements, the music industry collecting societies give “blanket” permissions, on behalf of relevant copyright owners, to schools and universities to use music in certain ways, including in film. If your use of music in your film is covered by the relevant blanket licence agreements, you will not need to obtain specific permission from the copyright owners for the use. If your use of music in your film is not covered

by these sector specific agreements, you may be eligible for a general licence for the use of music in your film.

APRA|AMCOS/ARIA Schools' Music Recordings and Access Licence

Most primary and secondary schools have a joint licence agreement with APRA|AMCOS and ARIA (the Australian Record Industry Association) that allows them to make certain video and audio recordings of music, including recorded music. For detailed information about this licence, see our book *Educational Institutions: Using Sound & Screen*. See also our information sheet *Education: Using AV Materials* or visit the APRA|AMCOS website at: www.apraamcos.com.au/music-customers/licence-types/music-in-education/schools/.

APRA|AMCOS ARIA PPCA Universities' Licence

Universities Australia has signed an agreement with APRA|AMCOS, ARIA and PPCA that allows music to be recorded and used in a number of ways. Under the licence, staff and students at eligible universities can make audio and video recordings for use at university events, of university events and for educational purposes. For detailed information about this licence, see our book *Educational Institutions: Using Sound & Screen*. See also our information sheet *Education: Using AV Materials* or visit the APRA|AMCOS website at: www.apraamcos.com.au/music-customers/licence-types/music-in-education/universities/.

General licences available

AMCOS has set up various licence schemes in association with ARIA that allows some home movie makers to reproduce music in their films.

There are two "Domestic Use Video Licences" available: a "Single Event" licence and an annual licence. The cost of the licence depends on how many copies of the video or DVD are to be made. The licence allows a person recording events such as weddings, birthday parties, sporting events and school concerts, to include the music that was played at the event and also to dub in recorded music after the event.

The licence is for using music in footage which will just be for "the private domestic viewing only of those appearing in the video", and does not permit the inclusion of promotional or advertising material in the video. The licence does not apply to corporate videos, training films or videos that will be commercially marketed, sold to the public or publicly screened. Further details and licence applications are available from AMCOS here: www.apraamcos.com.au/music-customers/licence-types/copying-and-reproducing-music/domestic-use/.

AMCOS can also help film and video makers get permission to include music in films and videos where a licence scheme is not available. In particular, AMCOS administers rights in "production music" libraries. (Production music is music specially designed to be used as background music for films, videos and similar projects.) Further information is available on the APRA|AMCOS website at: www.apraamcos.com.au/music-customers/production-music/

Consequences of unauthorised copying

Unless a special exception applies or copyright has expired, copying copyright material without permission will usually infringe copyright. Authorising someone else to copy protected material without permission may also infringe copyright.

A copyright owner who becomes aware of an infringement may take legal action and seek orders from a court (e.g. that compensation be paid by the infringer). Performers also have the right to take action if their performance is recorded without consent (see "Performers' rights" below). People infringing copyright for commercial purposes may also be charged with criminal offences.

For more information about infringement see *Infringement: Actions, Remedies, Offences & Penalties* and *Infringement: What Can I Do?*

Performers' rights

Permission to record performances

In addition to any copyright rights that need to be cleared, a performer's consent must also be obtained to record a live performance. Consent from a performer must also be obtained to synchronise a sound recording of his or her performance into a soundtrack.

You will therefore generally need to get permission from any musician or other performer that you record. If you are using pre-recorded music, you will also need to check that the performer consented to the recording being used in film or video soundtracks.

Performers' rights in sound recordings

Performers may have some rights in relation to authorised sound recordings. These rights only relate to audio recordings, **not** to sounds on a soundtrack for a film. In the absence of an agreement to the contrary, the first owners of copyright in a sound recording of a performance are the performer and the person who owns the recording medium (the master).

Performers have very limited rights in relation to recordings made before 1 January 2005, and are not entitled to exercise these rights where this would interfere with the rights of those who already owned copyright in those sound recordings.

In practice, performers' rights are limited. In particular, performers do not own a share in the copyright in the sound recording if:

- the performance was in the course of their employment; or
- the recording was commissioned (for example, a school engages someone to produce a master recording or you pay someone to make the recording).

Performers' moral rights

As of 26 July 2007, **performers** have had moral rights in relation to (i) their live performances and (ii) performances embodied in sound recordings. For further information on these provisions, see our information sheets *Performers' Rights*.

Common questions

My students want to use music in videos they are creating for a class assessment. Is that OK?

Generally, students will be able to dub music into videos they are making for class (see "Research or study" above as well as the information on the APRA|AMCOS/ARIA Schools' Music Recordings and Access Licence).

However, if the purpose for which the music is being dubbed includes other purposes, such as public screening, entry into competitions or broadcast on local TV, permission will generally be required from relevant copyright owners (see "Getting permission" above).

I'm filming my nephew's wedding next week. What copyright issues do I need to consider?

Depending on the type of music used in the service, you may need to obtain a "Domestic Use" video licence from AMCOS (see "How long does copyright last?" and "Getting permission" above).

Secondly, both legally and as a matter of courtesy, you should ask permission to record the person officiating at the service and any musicians (see "Performers' rights" above). Not everyone appreciates people filming during services or ceremonies, particularly where the person filming uses artificial light or obscures other people's views of the event. Permission to film may be refused either on the basis of the performers' rights provisions in the Copyright Act, or on the basis that the person who controls the premises is entitled to prevent filming (for example, by imposing a prohibition on filming as one of the conditions of access to the venue).

What copyright issues do I need to consider if I want to film my child's end of year ballet performance?

As far as copyright is concerned, you may need to clear permissions for the following:

- music or sound recordings (via an AMCOS "Domestic Use" video licence); and
- choreography (generally, from the choreographer).

You will also need to get consent from all the performers you want to video.

Note that even if you obtaining all necessary permissions and consents relating to the music and performers, you are not automatically entitled to film a concert or performance. Anyone who controls the premises in which a concert or performance is to take place is entitled to prevent filming (for example, by imposing a prohibition on filming as one of the conditions of access to the venue). They may do this, for example, if they consider such filming intrusive or distracting or if they merely wish to protect their own ability to distribute video of the concert they may have made.

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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