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## Music: DJs

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This information sheet is for DJs and people who mix or remix music.

**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

- If you want to make or sell mixes or remixes which include recordings and pieces written by other people, you will usually need to get copyright clearances from the relevant publishers and record companies.
- If you want to play music “in public”, you will generally need to be covered by both an APRA licence and, in most cases, a licence from PPCA.

### What types of copyright material do DJs usually have to think about?

DJs generally have three different types of copyright to think about:

- copyright in music;
- copyright in lyrics; and
- copyright in sound recordings.

### The rights of copyright owners

Copyright owners have a number of rights. For music and lyrics, they have the right to:

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

Owners of copyright in sound recordings have the right to copy, play in public and communicate their recordings.

## **These rights relate to using all or any “substantial part” of a copyright owner’s material**

Generally, you need the copyright owner’s permission if you want to use all or a substantial part of their material in one of the ways discussed above.

In many cases it can be hard to work out whether or not a part of a work (particularly a sample) is a “substantial part”. A “substantial part” doesn’t have to be a large part or a large proportion of the material: courts have said that any part that is important, distinctive or essential can be a “substantial part”, even if it is relatively small or short.

## **Who owns copyright?**

### **Music and lyrics**

The general rule is that whoever creates copyright material will be the first owner of copyright in that material.

In practice, however:

- a music publisher or record company will generally own the reproduction, adaptation and publication rights in music and lyrics;
- APRA (which we discuss further below) will generally own the public performance and communication rights (this is because writers will generally assign certain rights when they sign a publishing or record deal, and when they join APRA).

However, in some cases, writers or co-writers may have retained some or all of their rights.

### **Sound recording**

Generally, a record company is likely to own rights in a sound recording. In some cases, the performers whose performance has been recorded may have all or some of the rights. This will particularly be the case with bands and songwriter/performers who aren’t signed to a label.

## **Dealing with copyright rights in practice**

### **Australasian Performing Right Association (APRA)**

APRA is a non-profit organisation that licenses the “public” performance of music; its members include songwriters, composers, lyricists and music publishers.

In this context, “public” covers any function or event other than personal or family functions such as birthday parties, weddings, or 21sts. DJ’ing at any other type of event or function is likely to be “in public” for the purposes of copyright law. Private events such as corporate or club functions, will be “public” for copyright purposes even though members of the public might not be invited or welcome. If you are DJ’ing “in public”, you will need to be covered by an APRA licence.

APRA also offers a licence which allows DJs, for example, to copy the music and lyrics of their sound recording collections into other formats. This licence covers a DJ transferring music and lyrics from their LP and CD collections onto a PC or other device to make the collection more portable. We understand that this licence does not cover creating samples, remixes or mash-ups.

### **Phonographic Performance Company of Australia (PPCA)**

PPCA is a copyright collecting society. Most Australian record companies have given PPCA the right to license the “public” playing of their recordings. As with the rights licensed by APRA, if you are DJ’ing “in public”, you will need to be covered by a PPCA licence.

You may also be able to obtain an additional PPCA licence that enables you to format shift your recordings in limited commercial settings (for example, if you wanted to format shift your CDs to your laptop DJ software).

### **Signing with a label**

Signing with a publisher or record company can give you access to funding, contacts and administrative expertise so you can spend more time on your music. That said, not every DJ needs a publisher or a record company. If you are thinking about signing with a label, you should get legal advice about any publishing or record deal you are offered.

### **Rights other than copyright which may be relevant**

#### **Moral rights**

Creators of copyright works also have “moral rights” in their works. These rights are separate from copyright and impose obligations on people who use a copyright work.

A creator has the right to:

- be attributed as creator of his or her work (such as in the songwriting credits);
- take action if his or her work is falsely attributed; and
- take action if his or her work is treated in a way that could damage his or her honour or reputation (the “integrity” right).

There has been one case involving the right of integrity and music. In that case, the court found that an Australian DJ and promoter had infringed the moral right of integrity of an artist known as “Pitbull”. The case involved a song called *Bon Bon* performed by Pitbull. The Australian DJ was said to have distorted the work by removing some of the original words at the beginning of the song, then replacing these with an “audio drop”. The court found that this was an infringement of Pitbull’s right of integrity in his song *Bon Bon*. Pitbull was awarded damages for the infringement.

There have been some other cases where songwriters and composers have objected to the way their works have been remixed or sung over. Don’t assume that someone whose material you use will be happy with what you are doing. If you think the creator may not like what you are doing with their material, you may wish to consider getting a consent from a songwriter or composer for what might otherwise be a moral rights infringement. This consent is separate from any copyright clearances which you may need as well.

For more information, see our information sheet *Moral rights* and our book, *Moral Rights: A Practical Guide*.

#### **Performers’ rights**

Performers (including DJs) also have rights against people who make bootleg recordings or secret films of performances.

Performers generally have the right to consent or to refuse consent to their performances being:

- audio recorded;
- filmed; and
- broadcast or rebroadcast.

Where an audio recording is made, a performer also has the right to consent to that recorded performance being included on the soundtrack of anything classified as a “cinematograph film” (which can include feature film, documentary, computer games and the like).

The right to consent to these things is entirely separate from any copyright or moral rights permissions which might be needed by the person wanting to make the recording or broadcast.

Consent doesn't have to be in writing but, as a matter of practice, it is always best to give consent in writing and to list what the person making the recording or broadcast is allowed to do. If someone asks to film or record you while you are performing, you are entitled to say either “yes” or “no”. If you say “yes”, you should discuss what the person filming or recording wants to do with the film or recording. You should try to limit your consent to the uses that you specifically agree to at the time, and make further use conditional on your written approval.

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

### **Licensed music streaming services**

Music consumption has changed from an ownership model to an access model. There are many licensed music streaming services available where people pay a fee to listen to catalogues of music without having to actually purchase the individual songs or albums. If you want to use these services as part of a DJ set, you should check the terms and conditions of the service. Many of these music streaming services are licensed for private use. If the licence is for private or domestic use, it is unlikely that you will be able to use the service in public in a DJ set.

## **Frequently Asked Questions (FAQs)**

Note that we refer here to “mixes” or “remixes” created by DJs who are essentially composing new pieces of music through mixing recorded sounds, sometimes together with scratches, rap or other additional elements.

### ***Whose responsibility is it to get an APRA or PPCA licence - the venue or the DJ?***

You generally need permission to play music or recordings in public. An APRA licence will cover you for almost all music and lyrics, while a PPCA licence will cover you for most recordings.

Many venues will already have both licences. Even a live-band venue is likely to be playing recorded music at various times (for example, between sets or on jukeboxes). If the venue you're playing at is not covered, you can arrange for appropriate licences with APRA and PPCA just to cover the event at which you are DJing.

PPCA also offers a licence to mobile DJs. This covers events and functions that aren't covered by a venue licence (for example, a corporate function held in a marquee in a park).

### ***Can I sample material such as other people's recordings, and material from movies or TV, to use in my sets?***

Even a very short sample from a piece of music can be a “substantial part” of the music, lyrics and sound recording. A “substantial part” is an important, distinctive or essential part of the material from which it is taken. If you are using a “substantial part”, you will need permission from the relevant copyright owner. It is less clear whether or not a sample of dialogue or speech from a source such as a TV program or a film will be a “substantial part” of the relevant script or speech.

We understand that it is industry practice to clear all samples (for example, with both the relevant music publisher and the record company, if the sample is music). This avoids any arguments down the track as to whether or not you have infringed copyright.

### ***What if I'm using samples from a CD or vinyl of sounds, loops and samples?***

If you have bought a CD or vinyl from a sound, sample or loop library company, you will usually have a wide licence to use the samples or loops, both live and in recordings, without having to contact the copyright owner for permission. You should check the licence agreement, which is often set out on the packaging or in an accompanying document. Look to see if it says that use of the material is “copyright free” or “royalty free”, and that no particular restrictions are specified.

However, take care that the person putting out the compilation is able to give a copyright clearance. There are compilations of samples, sounds and loops which have **not** been cleared by the copyright owner. If you use “battle records” or similar types of sources and the samples have been compiled without permission, you could be infringing copyright even if you don't mean to.

### ***Are my raps and remixes protected by copyright?***

In some cases, a remix could be considered a separate “musical work” and it will be protected by copyright. This copyright protection for the remix would be separate from the copyright in the source material used for the remix. As the creator of the remix, you will own copyright in the new work. However, you will also generally need permission from the owners of copyright in any “underlying” pieces of music and recordings (that is, your source material).

Someone rapping over such a remix will separately own copyright in their rap as a type of literary work. A freestyle rap will only be protected by copyright once it is recorded in some way—for example, if it is written out or taped.

A publisher that gives you permission to remix a song they publish may require you to assign copyright in what you have created to it. This is usually the case with arrangements of pieces of music.

### ***How do I get copyright on my remixes?***

For recordings, copyright is created at the same time as you make the recording.

Remixes need to be in “material form” to be protected. This means, for example, that you need to record it in some way. This also means that what you create during a jam session, or as a live mix or freestyle rap, won't be protected until or unless you record it. Once your work is in “material form”, it is protected by copyright. This protection is automatic and free; there is no registration system in Australia that you have to follow for your material to be protected by copyright.

If you're worried about other people claiming they have created something that you created, record your material and keep any drafts.

### ***I want to work as a club DJ, and need to send them a demo. Can I do this?***

Unlike bands doing cover versions, DJs can't get a blanket licence for samples or mash-ups. For permissions, you'll need to contact copyright owners (record companies and music publishers) directly. You will generally need permission from the relevant copyright owners (usually record companies and music publishers) if you want to record a mix using material other than licensed loops.

### ***Are my playlists protected?***

If you are creating playlists that have sufficient skill and effort in the selection and arrangement of the songs, these playlists may be protected by copyright as a compilation. In a high-profile case in the United Kingdom, Ministry of Sound took action against Spotify because Spotify subscribers had created playlists based on Ministry of Sound's playlists. The matter was settled in early 2014.

See our information sheet *Protecting Your Copyright* for more information on how to protect your playlists.

### ***Can I record and sell my sets?***

You will need permission to do this if the material you are using is, for example, from commercially released material. The relevant record companies and music publishers are likely to own the rights, so contact them for clearances. There have been Australian cases in which courts have held that DJs and their labels had infringed copyright by recording and selling remixes of commercial music without permission from the owners of copyright in the material they had used. In each case, the DJs and their record companies had to pay not only legal costs, but also large sums of money as compensation to the copyright owners.

However, if you write and record your own material or only use licensed loops or samples, you can sell your own mixes,.

### ***Can I record myself mixing commercial material so I can see how I can improve?***

It could be argued that recording yourself mixing commercial material so you can improve your live mixes is covered by the “research or study” exception in the Copyright Act, which allows people to make a “fair dealing” with copyright material for their own research or study. However, you will need permission if you make copies of the recordings, or if you record the mixes for any other purpose.

For more information, see our information sheet “Research or Study”.

### ***I was photographed during one of my gigs and the picture appeared in promotional material for the venue. What can I do?***

Your image is not protected by copyright. However, you may be able to stop a venue using your image without permission by using other laws—the law of passing off, the *Competition and Consumer Act 2010* (Cth), or State and Territory fair trading laws. These areas of law concern conduct which may mislead or deceive the public. You will not necessarily be able to rely on these areas of law to stop the use of the photo. However, if you are concerned about the way the venue is using your image, you should get advice from a lawyer with the relevant experience.

(Performers’ rights only apply to recordings of performances: a photo is not a “recording” in this sense.)

### **Further information**

For further information about copyright, and about our other publications and training 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](http://www.copyright.org.au)

- APRA|AMCOS’s website is [www.apraamcos.com.au](http://www.apraamcos.com.au)
- PPCA’s website is [www.pcca.com.au](http://www.pcca.com.au)

Entertainment lawyer Shane Simpson’s book *Music Business* (Omnibus Press) is a useful resource that provides a detailed analysis of the legal and practical issues facing bands and musicians.

## 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.

## Australian Copyright Council

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.

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**Australian Government**



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