



# ARTICLE

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## *Copyright*

Article for *Music in Australia Knowledge Base*

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### Overview of copyright law

#### Australian copyright law

Copyright law creates incentives for people to invest their time, talent and other resources in creating new material – particularly cultural and educational material. Copyright owners are entitled to control certain uses of their material, and on this basis are able to earn royalties, licensing fees and other payments. They are also generally able to control how other people use the material, and thereby protect their interests.

In Australia, copyright law is set out in the *Copyright Act 1968* (Cth). This is federal legislation, and applies throughout Australia. In addition to dealing with copyright rights, the Act also deals with performers' rights and the "moral rights" of individual creators.

Copyright protects specific categories of material – including literary, artistic, musical and dramatic works, audiovisual recordings and sound recordings. Copyright owners have the right to control certain uses of their material, including reproducing it, "communicating" it (for example by emailing or faxing it, putting it on websites or broadcasting it) and, for material such as music, song lyrics, sound recordings and films, performing in public.

There is no registration of copyright in Australia and no formalities are required in order to get copyright.

Copyright is a form of property. Copyright owners can sell ("assign") or license any or all of their rights. This is the means by which copyright owners such as composers earn royalties and licensing fees.

Copyright generally lasts until 70 years from the end of the year the creator died. There are some important exceptions: for example, if the material was not published in the creator's lifetime, it may continue to be protected indefinitely.

For more information about copyright generally, go to: <http://www.copyright.org.au/introductory.htm>.

#### The international context

As a result of international treaties such as the Berne Convention, Australian copyright material is protected in most other countries, and material created in most other countries is protected by Australian law.

In order to become a party to the international copyright treaties, a country must legislate to achieve a minimum standard of copyright protection. In most cases, a country wanting to join an international copyright treaty must also give protection for copyright material from all the countries which are party to the treaty ("national treatment"). Most countries grant copyright protection to Australian material under international treaties.

Minimum standards of copyright protection ensure that there is a basic level of copyright protection in all member countries, although the ways in which the legislation is implemented need not be uniform.

### *International copyright treaties*

Australia is a party to a number of international treaties dealing with copyright:

- Berne Convention for the Protection of Literary and Artistic Works (members are listed on [www.wipo.int/copyright](http://www.wipo.int/copyright));
- General Agreement on Tariffs and Trade or GATT, which includes the agreement on Trade Related Aspects of Intellectual Property Rights, or TRIPS (members of WTO are listed on [www.wto.org](http://www.wto.org));
- Universal Copyright Convention or UCC (members are listed on [www.unesco.org](http://www.unesco.org)—follow links to “culture”, “copyright” and “UCC”);
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, known as the Rome Convention (members are listed on [www.wipo.int/copyright](http://www.wipo.int/copyright)); and
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, known as the Geneva Convention or Phonograms Convention (members are listed on [www.wipo.int/copyright](http://www.wipo.int/copyright)).

Two international treaties were adopted in Geneva on 20 December 1996, following the World Intellectual Property Organisation (WIPO) Diplomatic Conference on Certain Copyright and Neighboring Rights Questions. The treaties are:

- the WIPO Copyright Treaty; and
- the WIPO Performances and Phonograms Treaty.

The Treaties supplement the provisions of both the Berne Convention and the Rome Convention by providing expanded rights for copyright owners, performers and phonogram producers, including a right of communication to the public to cover online transmissions of copyright material, such as over the internet, a right of “distribution” and moral rights for performers. Members of the treaties are listed at [www.wipo.int/copyright](http://www.wipo.int/copyright).

Both of the WIPO treaties are now in force. Australia has not yet signed or ratified either treaty, but is required to ratify the treaties under its Free Trade Agreements with the United States (AUSFTA) and Singapore. Legislation intended to bring Australia into compliance with the WIPO treaties was passed in 2004. Most of these amendments came into effect on 1 January 2005.

For more information about copyright in other countries and internationally, go to <http://www.copyright.org.au/international.htm/>.

## **Guide to copyright for Australian musicians and composers**

For detailed information on the issues in this section, go to the Australian Copyright Council’s website at <http://www.copyright.org.au/music.htm>.

### **How copyright applies to music**

Material is protected by copyright if it falls into one of the categories of material set out in the Copyright Act. The categories include musical works, literary works (including song lyrics) and sound recordings.

Sound recordings are separately protected by copyright. This copyright is additional to any copyrights in material on the recording. Thus in a CD there may be:

- a copyright in each musical work;
- a copyright in the lyrics to each song; and
- a copyright in the sound recording of the music and lyrics.

### **What is *not* protected by copyright?**

Copyright does not protect:

- ideas, concepts, styles, techniques or information (in some cases, people using your ideas, information or styles without permission could be in breach of other laws);
- names, titles and slogans (in some cases other areas of law, such as trade marks, may be relevant);

- people and their appearance (in some cases, other areas of law such as defamation may be relevant).

### **How do you get copyright protection?**

An original work which falls into one of the relevant categories is automatically protected as soon as it is recorded in some way (for example, written down, recorded on audio-tape, or saved in a digital file). A work is “original” for the purposes of copyright law if it has not merely been copied from another work, and it is the result of skill or labour on the part of its author.

You do not apply for copyright in Australia, and there is no system of registration here. You do not need to publish your work, put a copyright notice on it, or do anything else before your work is covered by copyright – the protection is free and automatic.

If a dispute about copyright ownership can't be resolved by negotiation, it may need to be resolved by a court. This is rare. The court considers all the relevant evidence, which will usually include evidence from the songwriter about how the song was written, and perhaps evidence from friends and acquaintances, and evidence in drafts and early recordings.

For more information, see the Australian Copyright Council's information sheet *Protecting your copyright*, available at <http://www.copyright.org.au/introductory.htm>.

### **Things that DON'T give something copyright protection**

There are many myths around about how you can give your work copyright protection. Some of the common ones are set out below.

- Sending a copy of the work to yourself by registered mail: Sending copies to yourself, whether by ordinary or registered post, has **no legal effect** whatever. At most, doing this may prove that the material existed at a particular date: it does not create copyright, and does not make you the copyright owner.
- Putting the “copyright notice” on material: A copyright notice does not alter the copyright status or legal ownership of the material. Material that meets the requirements for copyright protection is protected whether or not the copyright notice is used.
- Registering music with APRA: Many composers and songwriters are members of Australasian Performing Right Association (APRA) and are required to register their compositions with APRA. Such registration does **not** create copyright or change the copyright status of the material. Registration of the material allows APRA to collect licence fees for the public performance of the material, and to identify the people entitled to receive the payments. Normally, the copyright owner(s) will receive the fees, but this is not always the case. For example, it is common for bands to come to an arrangement about sharing APRA payments, even if not all members were involved in creating all the songs.

### **“Copyright notice”**

Although not needed in order to get copyright protection, it is a good idea to use the “copyright notice” on your work. The most commonly used, and internationally accepted, way to write the notice is in the form © (or the word Copyright) followed by the name of the copyright owner and the year of creation or first publication – for example “© Dee Rummer 2006”. For sound recordings, the letter “P” (for phonogram) in a circle or in brackets is used instead of the “C” in a circle. You may put the copyright notice on your work yourself – there is no formal procedure. For example, you can hand write, type or stamp the copyright notice on music and lyrics that have been written down, and on recordings of the music (including on demo tapes).

The purpose of the notice is to let someone seeing it know that the material is protected by copyright, and that the person named claims to be the copyright owner. It can also be helpful if someone wants to use your work, as it gives them somewhere to start when they are trying to find the copyright owner.

Although it does not change the legal status of your material, if you use the copyright notice on your material this may make things easier if you need to take court action because of infringement of your copyright.

## Who owns copyright?

### *Music & lyrics*

If there has been an agreement about the commissioning of music, or about ownership, this agreement is the first place to look to work out who owns copyright.

If there has been no such agreement, the general rule is that the composer is the first owner of copyright in a musical work, and the lyricist is the first owner of copyright in lyrics; however, there are some important exceptions.

If you are on staff (as opposed to working freelance), your employer will usually own copyright in works you create as part of your employment duties.

Generally, if you are working on a freelance basis, a person who pays you to create a work does **not** own copyright, but will usually be entitled to use the work for the purpose for which it was commissioned. However, State, Territory and Commonwealth governments generally own copyright in works made for them, or first published by them, unless there is an agreement to the contrary.

The Copyright Act allows you to make an agreement with other people about who owns copyright if you create music in collaboration with other people (for example, with other members of a band). It is generally a good idea to make a written agreement about ownership if you create music in collaboration with other people, as it helps to avoid misunderstanding and disputes later on.

### *Sound recordings*

Generally, the first owners of copyright in a sound recording of a live performance will be both the performer(s) and the person who owns the recording medium (such as the master tape).

The right of performers to own a share of copyright in the sound recording was introduced as a result of the Australia-US Free Trade Agreement (AUSFTA). However, 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.

Even for recordings made on or after 1 January 2005, performers' rights are limited. In particular, performers will 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 record company engages a production studio to produce a master recording).

## What are your rights as a copyright owner?

Owners of copyright in literary and musical "**works**" (such as music and song lyrics) have the exclusive right to:

- **reproduce** the work (including by photocopying, copying by hand, filming, recording and scanning);
- **make the work public** for the first time;
- **communicate** the work to the public (for example, via fax, email, broadcasting, cable or the internet);
- **perform the work in public** (this includes performing a work live, or playing a recording or showing a film containing the work, in a non-domestic situation);
- make an **adaptation** (for example, a translation or dramatised version of a literary work, a translation or "non-dramatic" version of a dramatic work, or an arrangement or transcription of a musical work).

Owners of copyright in films and sound recordings have the exclusive right to copy their material. In addition, there are rights relating to:

- showing films and playing recordings **in public**; and
- **communicating** films and sound recordings to the public using any form of technology (via email, broadcasting, cable or the internet, for example); and
- **renting** sound recordings.

In the music industry, the following terms are often used:

- **mechanical** right: refers to the right to record a song onto record, cassette or compact disc;

- **synchronisation** right: refers to the right to use music on a soundtrack of a film or video; and
- **performing** right: refers to the right to perform in public and to otherwise communicate the work to the public.

### **Making money from your copyright**

Basically, copyright owners make money by assigning or licensing rights in return for payment. For example, composers and songwriters may assign or license certain rights to a music publisher (for example, mechanical, synchronization and printing rights) in return for a share of the income. Most composers and songwriters also become members of the relevant copyright collecting society, such as APRA (which licenses public performance and communication of music and song lyrics). Performers will also generally join PCCA (which licenses the public playing and broadcasting of sound recordings and some communication, such as “music on hold” for telephone systems).

### **When is copyright infringed?**

Generally, copyright is infringed if someone uses copyright material in one of the ways reserved to the copyright owner without permission. Using part of a work may infringe copyright if that part is important to the work. It need not be a large part of the work. For example, permission is generally needed to sample music.

There are, however, situations in which copyright material may be used without permission, under special exceptions in the Copyright Act. The special exceptions include fair dealing with copyright material for research or study, for criticism or review and for parody and satire. There are also special provisions which allow the recording of cover versions of works which have previously been commercially released (provided a royalty is paid), and special provisions for the use of copyright material by educational institutions, governments and libraries.

New exceptions were introduced into the Copyright Act in 2007 allowing certain “personal uses” of copyright material – including taping from TV and individuals copying recordings they own. These are very narrow and subject to specific limitations (see generally the Australian Copyright Council’s information sheet *Copyright Amendment Act 2006*).

For further information, go to <http://www.copyright.org.au/permission.htm>

### **Copyright collecting societies**

Copyright collecting societies are not-for-profit organisations which license or administer certain uses of copyright material on behalf of their members. The licence fees collected are distributed to members.

Some collecting societies also collect and distribute fees under “statutory licences”. These are set up within the Copyright Act, and allow use of copyright material for certain special purposes – such as copying by educational institutions or governments.

Most of the collecting societies listed below have reciprocal relationships with collecting societies overseas. This means that an Australian collecting society is generally able to license the works of Australian copyright owners as well as the works of copyright owners who are members of, or affiliated with, overseas collecting societies with which it has agreements. Similarly, use of Australian music overseas is generally licensed by overseas collecting societies which pass on the fees to the appropriate Australian society.

### **APRA**

When a song is played in public or broadcast, permission is needed from the copyright owner. Because it is impractical for each individual songwriter to be contacted every time a song is played, non-profit “collecting societies” have been set up in most countries to license the performance, broadcast and cable transmission of songs on behalf of the composers, songwriters and music publishers. In Australia, the relevant collecting society is APRA. APRA is also the first point of contact in relation to licensing the “communication” of music and lyrics over the internet (e.g. webcasting).

Composers, songwriters and music publishers join APRA, and APRA becomes the owner of the public performance, broadcast and cable transmission rights. There is no joining fee. APRA collects licence fees from broadcasters and from venues where songs are performed. APRA also licenses a variety of online uses of music and lyrics. The money collected is then paid to the copyright owners twice a year. APRA’s head office is in Sydney: Locked Bag

3665, St Leonards NSW 2065; phone (02) 9935 7900; <http://www.apra.com.au>. It has branch offices in most capital cities.

## **AMCOS**

AMCOS is the Australasian Mechanical Copyright Owners Society. Among other things, it administers a licence scheme for cover versions, and also offers various miscellaneous licenses which involve the reproduction of music and, in some cases, recordings. AMCOS' reproduction licensing is administered by APRA.

## **PPCA**

The Phonographic Performance Company of Australia (PPCA) is an organisation of record companies which licenses the broadcast and public performance, and some forms of communication, of sound recordings on behalf of its members.

PPCA distributes most of the money it collects to record companies, but it also distributes some direct to the performers on the recordings. PPCA's contact details are as follows: PO Box Q20, Queen Victoria Building, Sydney NSW 2000; phone (02) 8569 1100; <http://www.ppca.com.au>.

## **Christian music collecting societies**

Many publishers of Christian music are not members of APRA, but instead are members of one of the following collecting societies:

### *Christian Copyright Licensing International (CCLI)*

CCLI is an international organisation originating in the USA, which licenses rights over Christian music published by its members and provides a range of worship resources. Its Australian contact details are: CCL Asia-Pacific Pty Ltd, PO Box 6644, Baulkham Hills Business Centre NSW 2153; phone (02) 9894 5386; toll free 1800 635 474; <http://www.ccli.com.au>

### *Mediacom/LicenSing*

MediaCom is an Australia–New Zealand organisation which licenses rights over Christian music published by its members (LicenSing) and provides a range of worship resources. Its Australian contact details are: 14 Eton Rd Keswick SA 5035; phone (08) 8371 1399; toll free 1800 811 311; <http://mediacom.mediacomonline.org.au>

### *Word of Life International*

Word of Life International is a copyright collection organisation for religious music. It operates in Australasia and the South Pacific. Its Australian contact details are: PO Box 345 Mirboo North VIC 3871; phone (03) 5664 9245; <http://www.freelink.com.au>

## **Current issues**

### **Creative Commons and standardised licences**

In recent years there has been a lot of publicity about free-use licences such as the standardised licences promoted by Creative Commons. While the hype can be very attractive, it is important to bear in mind the following points.

- The “human readable” summaries from CC concerning some of its licences are **very** misleading, so before offering your work under a CC licence, make sure you read and understand the full “legal code” which goes with each licence.
- A lot of the hype about CC licences may not apply to your circumstances – before adopting one, you need to make sure you understand what it can and can't achieve for you.
- Putting a CC licence on your work will generally mean you won't get paid for what you've created.
- Once you've used a CC licence on something you have created, you cannot change or revoke the licence for that work.

- Big companies and multinationals may have more to gain from creators using CC licences than creators do.
- CC licences are not the only way in which you can allow people to use your work for free. Other licensing approaches can more easily be tailored to your particular situation.

**If you are a professional creator, you will almost certainly be better off with a licence crafted to meet your concerns and situation than a Creative Commons licence, even if you are licensing your material for free.**

For more information, see the Australian Copyright Council's information sheet *Creative Commons licences*, available at <http://www.copyright.org.au/permission.htm>.

### Private copying

As a result of the 2006 amendments to the Copyright Act, there are now limited provisions allowing people to make copies for private use. The provisions permit:

- "time-shifting" (recording from TV and radio for watching or listening at a more convenient time) – provided the recording is not sold, rented or lent to anyone outside the family or household of the person who made the recording, nor played or shown in public nor broadcast;
- "space-shifting" (copying a sound recording from a CD you own to play on a device you own, such as an iPod or car CD player) – provided the copy is not made from a pirate CD, a download from the internet of a radio broadcast or similar program, an unauthorised download or other infringing copy, and provided the copy is not sold, rented or lent to anyone outside the family or household of the person who owns the CD, nor played or shown in public nor broadcast; and
- "format-shifting" (copying a book, photograph or video you own into another format, such as a digital file) – provided that no more than one copy is made in that format, the copy is not sold, rented or lent to anyone outside the family or household of the person who owns the original, no copies are made for other people and the owner of the original does not give it away.

For more information on the amendments, see the Australian Copyright Council's information sheet Copyright Amendment Act 2006, available at <http://www.copyright.org.au/permission.htm>.

### Broadcast royalty cap

The fees payable by broadcasters to owners of copyright in sound recordings (usually record companies) for broadcasting sound recordings are currently subject to a "cap": 1% of the gross earnings of the broadcaster. In practice, the amount is much less than 1%, as royalties are not payable to record companies for the broadcasting of recorded music from a number of countries, including the US. The government has stated that it proposes to remove the 1% cap, and replace it with an obligation to pay "equitable remuneration" and that, if broadcasters and copyright owners could not agree on "equitable remuneration", the matter would be decided by the Copyright Tribunal.

The proposal would not affect the separate royalties payable to APRA for broadcasting music. Those royalties are **not** subject to the cap provision (and **are** payable for US recordings of music within APRA's repertoire or the repertoire of APRA's international affiliates). A discussion paper is available from the Attorney-General's website at <http://www.ag.gov.au/onepercentcap>.

## What the Australian Copyright Council can do for you

The Australian Copyright Council is an independent not for profit organisation. We provide information, advice and training about copyright in Australia. Our publications include practical guides and discussion papers. We also do research, and make submissions on copyright policy issues.

For further information about music and copyright, go to: <http://www.copyright.org.au/music.htm>.

For a huge range of online information about copyright, go to <http://www.copyright.org.au/information>.

If you are a creator (such as a composer or songwriter) and have a specific question about copyright, you may be eligible for legal advice from the Copyright Council. **Please read the relevant information sheet before contacting us**, as these answer most common questions. For information about our advice service, and to contact us, go to <http://www.copyright.org.au/advice.htm>.

## Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



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