



INFORMATION SHEET

G12

Music & copyright

July 2006

This information sheet is for songwriters and composers. People who use other people's music may also find it helpful. If you are interested in performers' rights, see our information sheet *Performers' rights*. If you want information about playing music (including CDs or records and radios or TVs) in public, see our information sheets *Music: playing music*, *APRA & PCCA*, *Music: Bands* and *Music: DJs*.

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

Key points

- Copyright protection is free and applies automatically when material is created.
- A song normally comprises of both a musical work and a literary work, each of which may have different copyright owners.
- Sound recordings are also protected by copyright. This copyright is separate and additional to any copyrights in the music and lyrics.
- Creators of musical or literary works also have moral rights in relation to their work.

Copyright protection generally

There is no registration procedure for copyright protection in Australia.

For a work to be protected by copyright it must fall into one of the categories of material set out in the Copyright Act. The categories include musical works, literary works and sound recordings.

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.

Things that DON'T make you a copyright owner

There are many myths around about how you can prove you own copyright. Some of the common ones are set out below.

Sending a copy of the work to yourself by registered mail

This is a widely held belief among musicians. 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 (in forms such as “© Dee Rummer 2006”) does not alter the copyright status or ownership of the material. Material that meets the requirements for copyright protection is protected whether or not the copyright notice is used.

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. Since it does not change the copyright status of the material, the wording of the notice is not crucial. Nonetheless, it is a good idea to use the notice, or similar wording, on material you create.

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. See our information sheets *Music* and *Music: bands* for further information.

Additional copyright in a “sound recording”

Sound recordings are also protected by copyright. This copyright is separate and 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.

Protection overseas

As a result of international treaties such as the Berne Convention, Australian music and lyrics are protected by copyright in most other countries and material created in most other countries is protected by Australian law. For sound recordings, the notice is the letter “P” in a circle (or brackets), followed by the name of the copyright owner and the year.

It is not necessary to register your work in other countries in order to have copyright protection overseas, although you may be eligible to register under some systems, such as the system administered by the United States Copyright Office. If your work will be exploited in the US, it is a good idea to consider registering your copyright there. For more information, see: <http://www.copyright.gov>.

Who owns copyright in 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 first owner of copyright in a musical work is the composer, and the first owner of copyright in lyrics is the lyricist; 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.

Who owns copyright in the sound recording?

The amendments made to the Copyright Act as a result of the Australia–US Free Trade Agreement (AUSFTA) have changed the general rules on ownership of copyright in sound recordings. As a result, performers generally have some rights in sound recordings of their live performances.

Therefore, unless there is an agreement to the contrary, the first owners of copyright in a sound recording of a live performance will be the performer and the person who owns the recording medium (such as the master tape).

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 likely to be very limited in practice as a result of a number of the provisions. 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).

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

What are your rights as an owner of copyright?

If you own copyright in a musical work or lyrics, you are generally the only person who can:

- **reproduce it:** for example, by recording a performance of it, photocopying it, copying it by hand, or scanning it onto a computer disk;
- **make it public for the first time;**
- **perform it in public;**
- **communicate it to the public** (including via radio, television and the internet);
- **translate it** (for lyrics); or
- **arrange or transcribe it** (for music).

If you own copyright in a sound recording, you are generally the only person who can make copies of the recording, or perform it, cause it to be communicated to the public or rent it out.

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 rights:** refers to the rights to perform in public and to otherwise communicate the work to the public.

How long does copyright last?

The current general rule – that copyright generally lasts for the life of the creator plus 70 years – came into operation on 1 January 2005. Until that date, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including:

- where a work was not published, performed or broadcast during the creator's lifetime; and
- where something was published anonymously or under a pseudonym, and the identity of the creator couldn't reasonably be ascertained.

(In each of these cases, copyright lasted for 50 years from the end of the year the work was, with permission, first published, performed or broadcast.)

The change in rules resulted from Australia's commitments under the Free Trade Agreement with the US. However, Australia was not obliged to apply the new rules to material in which copyright had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

Note, however, that the rules on duration of copyright vary from country to country.

For detailed information on duration in Australia, see our information sheet *Duration of copyright*.

Assigning & licensing rights

Copyright owners can assign any or all of their copyright rights. This means that someone else becomes the owner of the rights. Agreements with music publishers may require you to assign some rights, often for a limited period.

Alternatively, you can license the rights. This means that ownership of copyright is unchanged but someone else is permitted to deal with the work in specified ways. Copyright owners can limit the rights granted (for example, by type of use, or period of time).

Copyright owners can also impose conditions in return for an assignment or licence (for example, that the licensee cannot use the work until they have made an agreed payment).

You should record in writing all agreements and transactions relating to copyright. To be legally effective, assignments and exclusive licences **must** be in writing and signed by or on behalf of the copyright owner. For more information, see our information sheet *Assigning and licensing rights*.

Copyright collecting societies

What is APRA?

Every time 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 copyright owners. 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. 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.

What is 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' head office is in Sydney: Locked Bag 3456, St Leonards NSW 2065; phone (02) 9935 7700; <http://www.amcos.com.au>.

What is PPCA?

The Phonographic Performance Company of Australia (PPCA) is an organisation of record companies which licenses the broadcast and public performance of sound recordings on behalf of its members. PPCA is also responsible for licences relating to other communications of recorded music such as webcasting.

PPCA distributes most of the money it collects to record companies, but it also distributes some direct to the artists 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.pcca.com.au>.

When is copyright infringed?

Copyright is infringed if someone uses copyright material in one of the ways set out in the Copyright Act without the copyright owner's permission, unless a special exception applies. The special exceptions include fair dealings with copyright material for research or study, or for criticism or review. 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. For more information, see our information sheets *Educational institutions, Governments (Commonwealth, State and Territory)* and *Libraries (Non-Profit)*.

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 more information, see our information sheet *Quotes and extracts: copyright obligations*.

How do I prove I own copyright in the music?

If a dispute about copyright ownership can't be resolved by negotiation, it may need to be resolved by a court. 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 our information sheet *An introduction to copyright in Australia*.

Fair use proposals

The Government has recently announced proposals to change the Copyright Act 1968 (Cth) which will permit, amongst other things, copying music for certain types of "personal use". These proposals have not yet changed the law. For more information, see

<http://www.copyright.org.au/whatsnew/news/newsbytopic/changesnews/U26782>.

Moral rights

Creators, including composers and lyricists have moral rights in relation to their musical works. The creator of a work has the right to:

- be attributed as the creator of the work;
- take action if the work is falsely attributed as the work of another person; and
- take action if the work is distorted or treated in a way that is prejudicial to his or her honour or reputation.

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

Moral rights for **performers** whose performances are captured on sound recordings were introduced by the AUSFTA, but will only be effective once the World Intellectual Property Organisation Performances and Phonograms Treaty comes into force in Australia. Moral rights belong to each person who contributed to the sounds of a performance, including the conductor of a musical work. For more information, see our information sheet *Performers' rights*.

Some common questions

Someone has infringed the copyright in my music. What can I do?

If you think your copyright has been infringed, you will usually need advice from a lawyer about your chances of success in a legal action and what steps you should take. You need to be able to prove that the other work is the same as, or reproduces a "substantial part", of your music. You also need to be able to show that the similarity

results from actual copying of your music (not just coincidence). For more information, see our information sheet *Infringement: what can I do?*

Can I write a piece based on someone else's idea?

Ideas are not protected by copyright, so you are free to create a piece based on someone else's idea. However, you must be careful to ensure that you do not reproduce a "substantial part", that is, an important or distinctive part, of the way someone else has expressed their idea.

It can be particularly difficult in the context of music to distinguish between an idea and its expression in a particular work. If your work incorporates elements or melodies of another person's work, you may need to get permission or specific legal advice.

If someone makes suggestions on how to write a song, do they own copyright?

The creator of a musical work or lyrics is the person who writes the work (that is, the person who composes the melody and harmony of the musical work or the words which make up the lyrics). A person who just gives suggestions or ideas is not a creator, and has no claim to own copyright.

If I pay someone to arrange music I have composed, who owns copyright in the arrangement?

If a person arranges a piece of music you have written, they will generally own the copyright in the arrangement, even though you will retain copyright in your original. However, the arranger will not generally be able to use the arrangement without your permission, because in doing so they will be using your tune. You will usually be able to use the arrangement for the purposes for which you commissioned it.

To avoid complications and disputes arising in this situation, it's a good idea for you to reach an agreement (preferably in writing) about ownership of copyright before the work is done. You could, for example, require the arranger or transcriber to assign you any copyright in the work he or she creates. Alternatively, that person could license you to use his or her copyright for certain purposes.

What is the role of a music publisher?

A music publisher should arrange the sale or exploitation of your pieces, for example, by licensing the recording rights to a record company. Music publishers usually ask for an assignment of the mechanical (recording) rights, synchronisation rights and print music rights. An agreed percentage of the income received by the publisher is then payable to the songwriter.

The benefits a music publisher can provide include:

- collection of income owed to the composer, e.g. from record companies or overseas collection agencies;
- promotion of the pieces to potential buyers such as record companies and film makers; and
- an advance on future royalties.

A composer who is offered a publishing contract needs to consider whether the benefits are worth it. If a composer performs their own songs, and already has a record deal, the publisher may have a limited role to play. This is particularly so if the publisher is connected to the record company. If you are offered a publishing contract, you will need legal advice about, for example: what the agreement means and how it will work; whether it is acceptable by current industry standards; and what aspects you should negotiate to change.

What are royalties?

The word "royalty" usually describes a percentage of income (for example, from the selling price of a recording) which is payable to a copyright owner under a contract with someone who is using the copyright owner's work. For example, royalties are generally payable by a music publisher to a composer under a music publishing contract.

Can I get out of a bad contract?

It is very hard to get out of a contract, even if it is unfair. Generally, courts treat the fact that you signed the contract as evidence that you understood and agreed with it. There have been cases, though, where songwriters

or performers have been able to get out of contracts which were harsh or too one-sided; you should seek advice if you are in this situation. Generally, though, the only way to avoid a bad contract is not to sign one.

Further information

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>.

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

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, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566. The book "Music Business" (Omnibus Press, 2002), by Shane Simpson, a leading lawyer in this area, is another useful resource.

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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.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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