



INFORMATION SHEET G59

Music: Choirs, bands & private music teachers

October 2005

This information sheet is for choirs, orchestras, bands, private music teachers, music students and others wanting to perform and copy music. It provides information about when permission is needed to use music, where to get permission, and whether a licence from a copyright collecting society is available. Contact details for the collecting societies are included towards the end of the information sheet.

For detailed information about how copyright applies in relation to music, see our practical guide *Music & Copyright* (this will be of particular interest to songwriters and composers). If you are in a band, or perform as a DJ, see our information sheets *Music: Bands* and *Music: DJs*. If you need information about the use of music in churches, see our information sheet *Churches & music*.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

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.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations. For further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

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

Key points

- Generally, you need permission to copy, record or perform music in public.
- There is no general exemption from copyright requirements where material is used for a non-profit purpose.
- There are no special copyright provisions for choirs, bands, orchestras or private music teachers.
- In some cases, rather than having to contact each copyright owner separately, you can get a licence from a copyright collecting society covering your use of material.

What does copyright protect?

Copyright protects a range of materials, including:

- musical works;
- arrangements and performing editions of music;
- accompanying lyrics (“literary works”);
- the typesetting of published lyrics and music (“published edition”); and
- recorded sounds (for example, on a CD) (“sound recordings”).

Other things protected by copyright include other types of **literary works** (such as novels and journal articles), **artistic works** (such as drawings and photographs) and **films** (recorded visual images and sounds).

For further information, see our information sheet *An introduction to copyright in Australia*.

The person who creates material such as music or lyrics also has separate rights known as “moral rights”. These are discussed in our information sheet *Moral rights*.

Protection is automatic

There is no system of registration for copyright protection in Australia. Copyright protection does not depend upon publication, a copyright notice, or any other procedure—protection is free and automatic.

As a result of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia.

When is permission needed?

You need the copyright owner’s permission if:

- you want to use all or a “substantial part” of copyright material in one of the ways exclusively reserved to the copyright owner;
- copyright has not expired; and
- no special exception to infringement applies.

A “substantial part” means an important, distinctive or essential part of the original work. This may be a very small part. Even a few notes of various pieces of music have been held by courts to be substantial parts of those works.

Exclusive rights of copyright owners

The exclusive rights of an owner of copyright in **music** or song **lyrics** include the right to:

- reproduce the work, including copying by hand, photocopying, scanning, recording and filming;
- perform the work “in public” (that is, in a non-domestic setting);
- arrange or transcribe the musical work;
- translate the lyrics; and
- communicate the work “to the public” (for example, by emailing a notated or recorded copy of the work or by making it available on a website).

The exclusive rights of an owner of copyright in a **sound recording** include the right to:

- reproduce or copy the sound recording;
- perform (play) the recording “in public” (that is, in a non-domestic setting); and
- communicate the recording “to the public” (for example, by emailing the recording or by making it available on a website).

Unless you have permission, dealing with all or any substantial part of copyright material in one of the above ways will usually infringe copyright unless copyright has expired or a special exception applies.

Copyright can also be infringed by “authorising” an infringement—that is, by endorsing or sanctioning an infringement.

It is important to remember that one article can contain a number of separate copyrights. For example, a CD may contain a sound recording as well as a musical work and lyrics, each of which may be separately protected.

Has copyright expired?

The general rule for published music and lyrics is that copyright lasts until 70 years from the end of the year the creator died. Copyright in sound recordings generally lasts until 70 years from the end of the year the recording was first published.

These periods were extended from 50 to 70 years by the US Free Trade Agreement. However, where copyright had expired before 1 January 2005 (for example because the creator died before 1 January 1955), it was not revived (even if it was less than 70 years since the creator's death).

To work out whether copyright has expired, you need to consider each of the relevant copyrights in the material you want to copy or perform: for example, music; lyrics; arrangements; performing editions or translations. Even if copyright in one of these has expired, you may need permission in relation to the remaining rights.

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

Does a special exception apply?

There are no special exceptions which relate specifically to the use of music by choirs, bands or orchestras, even if they are using music for a non-profit or charitable purpose. However, there are some exceptions to infringement that may be relevant to you or your group, in particular circumstances. Those that are likely to be relevant are set out in this section.

Fair dealing

Individuals can make a **fair dealing** with a work (for example, by copying or arranging a piece of music) for purposes of **research or study** without infringing copyright. It is deemed to be fair to use up to 10% of the number of pages of a musical work from a hardcopy **for research or study**, if the piece has been published in an edition of at least 10 pages.

If the music you want to use is not printed in an edition of at least 10 pages, or if you want to use more than 10%, or if you want to reproduce the notated music from a digital score or tablature, you will need to work out how much might be "fair" to use, by balancing the following factors:

- the purpose and character of the use of the work;
- the nature of the work;
- the possibility of obtaining the work within a reasonable time at an ordinary commercial price;
- the effect of the use upon the potential market for, or the value of, the work;
- where only part of the work is copied, the amount taken.

You will **not** be able to rely on this exception:

- to copy a whole piece of music if you can buy it (this would not be "fair");
- to copy music for performance (this would not usually be for "research or study");
- to copy music for someone else, such as a student or orchestra member (this would not be for the "research or study" of the person making the copy).

For further discussion, see the question under the heading "Can I photocopy music for my own study?" below. See also our information sheet *Research or study*. Other "fair dealing" exceptions are discussed in our information sheet *Fair dealing*.

Performance "in class"

A special exception to infringement allows a teacher or student to perform music, or play recorded music, in the course of giving or receiving educational instruction in class, provided the instruction is not given for profit, and provided the audience is limited to people taking part in the instruction.

Hand copying in class or for exams

There is also an exception which allows a teacher or student to make copies and arrangements of music and lyrics by hand in the course of educational instruction, and to make multiple copies of music and lyrics as part of the questions to be answered in an examination or in answer to a question in an examination.

Performing live or recorded music “in public”

Permission is generally needed to perform music in public. Under the Copyright Act, a performance includes:

- playing and performing live music; and
- playing a recording, such as a cassette or CD.

As a result of a number of court cases, most performances outside the private and domestic sphere are regarded as “in public” for the purposes of copyright. A performance which is given for free, or which has a small audience, may still be a “public performance” for the purposes of copyright. For example, courts have held that music played by an orchestra to members of a club was a public performance, even though no admission fee was charged and admission was limited to members.

Getting permission to play live music in public

Under the Copyright Act, both the performer of the music and anyone who organises a performance are separately responsible for making sure permission to perform protected music in public has been obtained. The owner or manager of a venue may have a separate legal obligation to make sure permission has been obtained.

In practice, it is generally the venue that gets the relevant licences. If the venue already has a licence, you don't need to get an additional licence.

Generally, you get permission from the Australasian Performing Right Association (APRA). APRA is a non-profit copyright collecting society which collects and distributes fees for public performance and communication of music and associated lyrics.

The APRA licences cover most types of performances taking place in a particular venue, and are generally renewed annually. However, some types of public performances of music are not covered. These include “grand rights” works (the performance of entire dramatic and musical works such as operas, musicals and large choral works such as oratorios) and the use of musical works in dramatic presentations and ballets. For such works, permission to perform is usually needed from the relevant music publisher. The composer or publisher may, however, deal through an agent who negotiates these uses on their behalf.

Getting permission to play recorded music in public

If you are playing any recorded music, you generally need permission from the copyright owner of the sound recording. In most cases, this permission is obtained from the Phonographic Performance Company of Australia (PPCA). Such permission is in addition to permission from APRA to perform musical works and lyrics.

PPCA is a non-profit association of record companies which licenses the public performance of sound recordings on behalf of its members.

A PPCA licence is **not** needed in some circumstances, including where a sound recording is played:

- at premises where people reside or sleep (for example, a guesthouse or prison), as part of the amenities provided exclusively for residents or inmates and their guests, and no charge is made for admission to the part of the premises where the recording is to be heard; or
- as part of the activities, or for the benefit, of a non-profit club, society or other organisation that has as its principal objects charity or the advancement of religion, education or social welfare and where, if a charge is made, the proceeds go toward the objects of the organisation.

It is important to remember that these exceptions apply only to the copyright in the sound recording. A licence from APRA is still required.

Copying print music

You need permission to copy sheet music, or a “substantial part” of a piece of music, unless copyright has expired or a special exception to infringement applies. Permission will be needed whether you are photocopying, scanning or hand copying. Even if the music itself is no longer protected (for example, because the composer has been dead for longer than 70 years), you may still need permission from the publisher to copy the typesetting, if it was published less than 25 years ago. Remember also that the performing edition or the arrangement of the work may still be protected.

Usually, the person to contact is the music publisher. The Australasian Mechanical Copyright Owners' Society (AMCOS) may be able to help you find the right company.

Most primary and secondary schools are covered by a licence granted by AMCOS for copying print music. This licence is discussed below.

Educational institutions

Educational institutions have the right to copy and communicate various types of copyright material, including sheet music, for their "educational purposes". Whether an educational institution can copy an entire piece of music under these provisions will depend on whether or not the music is commercially available.

Most schools are also able to rely on a licence from AMCOS allowing them to make a limited number of copies from published musical works within the AMCOS repertoire if the purchased music is owned by the school or a member of staff. The copies must be made for the educational purposes of the school and must be marked in accordance with the requirements of the licence. Information about this licence is contained in our publication *Educational Institutions: Digital & AV Resources*; otherwise contact your governing body, peak body or AMCOS.

Copying lyrics

You will need to get permission to copy lyrics, or any important part of lyrics, that are still protected by copyright, unless a special exception to infringement applies. This will be the case if, for example, you want to photocopy the lyrics or write them out by hand.

Contact the music publisher for permission.

Recording music

If you are recording live or pre-recorded music onto audiotape or videotape (for example, videotaping a choir during rehearsal or performance), you will usually need permission from the music publisher.

AMCOS offers a number of blanket licences for the recording of music, including:

- "special event" licences (for filming of events, other than stage plays and musicals, where music is played or where music is later synchronised onto the video soundtrack, and the video is only for private viewing of those appearing in the video, DVD or CD-ROM);
- cover version ("manufacture") licences (if you will be making audio recordings for demo purposes or commercial release); and
- licences for schools (offered in conjunction with the Australian Record Industry Association to primary and secondary schools), and for universities. Generally the licences are taken out by peak organisations and governing bodies such as Departments of Education and the AVCC. The licence covers specified types of recordings, films and videos of and for school events. See our publication *Educational Institutions: Digital & AV Resources* for more information, or contact AMCOS or your peak or governing body).

In these circumstances you will also need permission from the performers to record their performances. Note that if you make a sound recording (rather than an audiovisual recording) of a performance, the performers (even if they are schoolchildren) generally become joint owners of copyright. For more information on these issues, see our information sheet *Performers' rights*.

Arranging musical works

You need permission to make an arrangement or transcription of a musical work that is still protected by copyright, unless copyright has expired or a special exception to infringement applies. In most cases, making an arrangement will also involve making a reproduction (for example, on paper) for which permission will also be needed.

Contact details

- **AMCOS (Australasian Mechanical Copyright Owners Society):** Locked Bag 3456, St Leonards NSW 2065; ☎ (02) 9935 7700; fax: (02) 9935 7709; www.amcos.com.au
- **APRA (Australasian Performing Right Association):** Locked Bag 3665, St Leonards NSW 2065;

- ☎ (02) 9935 7900; fax (02) 9935 7999; www.apra.com.au
- **ARIA (Australian Record Industry Association):** PO Box Q20, Queen Victoria Building, Sydney NSW 1230; ☎ (02) 9267 7996; www.aria.com.au
 - **PPCA (Phonographic Performance Company of Australia):** PO Box Q20, Queen Victoria Building, Sydney NSW 1230; ☎ (02) 9267 7877; fax (02) 9264 5589; www.ppca.com.au

Common questions

Can I photocopy music which I own for ease of use during rehearsal and performance?

You cannot copy print music merely because you own it. You will need permission from the publisher, unless all relevant copyrights have expired, or a special exception to infringement applies.

AMCOS has published guidelines for choirs and community choral groups, private music teachers and music students which list the following examples of situations in which music publishers which are members of AMCOS would allow the copying of music without the need to obtain their express permission, provided you own the print original:

- enlarging a page of music because you have poor eyesight;
- copying to overcome a difficult page turn (to use in conjunction with the printed copy); and
- giving a photocopy of a piece to an eisteddfod or competition adjudicator or an examiner, provided certain formalities are followed and the copy is destroyed afterwards.

For detailed information, see the booklet published by AMCOS entitled *A Practical Copyright Guide to the Use of Print Music in Australia* second edition, (available in print form from AMCOS or downloadable from its web site at http://www.apra.com.au/music-users/apra_publications.asp. It is also available for free from many music retailers).

Can I photocopy music which is out of print?

Even if music is out of print, it may still be protected by copyright. You will usually need the publisher's permission, unless copyright has expired or a special exception to infringement applies.

Can I copy print music to practise for my exams?

The "research or study" exception in the Copyright Act is likely to include copying a piece of music in order to practise it for an exam. However, under this exception, you could generally only copy up to 10% of the number of pages if the work has been published in an edition of at least 10 pages. If you wanted to copy more than that, or if the music you want to copy is not published in an edition of at least 10 pages, you can only copy what is "fair" in all the circumstances.

If the piece of music you need is readily available for purchase, it will not normally be "fair" to copy all of it.

Can a private music teacher copy print music for students?

There is a provision in the Copyright Act (section 200) which allows a teacher or student to make copies of music and lyrics by hand (for example, on a blackboard or overhead transparency) in the course of educational instruction.

There is also a provision which allows the copying of music and lyrics as part of the questions to be answered in an examination or in answer to a question in an examination. In our view, this provision is unlikely to apply to private teachers wanting to provide copies of music for exams such as those run by Trinity College or the AMEB, as the copy of the music would **not** be either a "question" or an "answer" in the way the exception applies.

Apart from these situations, a private music teacher will usually need to get permission from the music publisher to copy print music for students, unless the copyright has expired. AMCOS's booklet, *A Practical Copyright Guide to the Use of Print Music in Australia*, states some instances in which copyright music controlled by AMCOS's publisher members may be dealt with without permission.

Do I need permission to copy CDs to give to students to help them learn pieces or to make backing tapes of music for students?

You will need permission to reproduce recorded music for students, unless all the relevant copyrights have expired.

If you are working in a primary or secondary school, or in a university, the AMCOS/ARIA licence will generally permit you to record music and recordings for purposes such as these (see our publication *Educational Institutions: Digital & AV Resources* for more information, or contact AMCOS or your peak body).

Can I photocopy sheet music to avoid a tricky page turn or change the song order?

There are no special exceptions in the Copyright Act which allow you to copy music to avoid a difficult page turn or to assemble songs in a different order for performance purposes. However, AMCOS publisher members permit copying for the purpose of avoiding a difficult page turn, provided you own the music from which you are playing, and use the copy in conjunction with the printed music. For detailed information about this and other permitted uses, see the booklet published by AMCOS entitled *A Practical Copyright Guide to the Use of Print Music in Australia*.

Generally, you will need permission to copy music if you want to assemble pieces in a different order or if you want to avoid juggling several books.

Can I write out a tune by hand that I have learnt by listening to a CD?

If the tune is still protected by copyright and no special exception to infringement applies, you will need permission from the copyright owner, because this involves a reproduction of the music.

If you are doing this privately to sharpen your listening skills, you may be able to rely on the "research or study" exception to infringement.

Do we need to get permission to hold rehearsals for concerts?

It is likely that a rehearsal for a concert will be a "public performance" for the purposes of copyright law, as the people at the rehearsal are generally not there as members of a family group, but in a public capacity, as members of the particular ensemble which is rehearsing. This means that the relevant clearances will be needed.

The performance of music at rehearsals may already be covered by a licence with APRA if the venue where the rehearsal is taking place has an annual APRA licence, or if the group is a community group (such as a band or a choir) and it has taken out a "Community Bands, Groups, Choirs" licence with APRA for that year. You should check that the venues where rehearsals take place are covered by APRA licences, or that the Community Bands, Groups, Choirs licence is up to date.

If you have the copyright owner's permission to perform spoken word material in a concert, or to perform a grand rights work such as a musical, ballet, oratorio or operetta, it is likely that you also have an implied permission to rehearse that material.

Do we need permission to perform music for a non-profit purpose?

If you are performing protected music "in public", for example at a concert or community event, you will need a licence from APRA, even if you are not charging an entrance fee or making any money out of the performance.

What licences do we need to play commercially produced backing tapes to accompany a choir?

You will generally need a licence from APRA, covering the public performance of the music on the tapes, and a licence from PPCA, for the public performance of the sound recording. For more information about the APRA and PPCA licences (including the circumstances in which you will only need an APRA licence), see the section above on playing recorded music.

Note also that you will generally need permission from relevant music publishers and record companies to copy a commercially produced recording to use as a backing tape, although AMCOS may be able to provide a licence on behalf of its member publishers.

If you record your own backing tape of copyright music, you will only need licences from APRA and AMCOS.

Do we need permission to perform Christmas carols or to reproduce them?

Many Christmas carols (including *Silent Night*, *O Come*, *All Ye Faithful*, *Joy to the World* and *Jingle Bells* in their original versions and traditional arrangements and translations) are no longer protected by copyright, which means you can reproduce them and perform them without permission provided you don't use a version or arrangement which is still protected by copyright. However, many other carols are still protected by copyright, so you will need an APRA licence to perform them and the publisher's permission to reproduce them.

AMCOS publishes a list of Christmas carols (on its web site at www.amcos.com.au/Resource/ResXmas.htm) with information about their copyright status and ownership. The list is updated annually.

Further information

For further information about copyright, see our website—<http://www.copyright.org.au> or contact us.

Reproducing this information sheet

You may download and print one copy of this information sheet from our web site for your reference, or you may purchase a printed copy.

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.



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.

© Australian Copyright Council 2005