



## INFORMATION SHEET

G089

# Music: DJs

March 2006

This information sheet is for DJs—people playing songs one after the other at parties, clubs and events, as well as turntablists and other people who mix and remix their own sets. (By “mixing” and “remixing” we do not mean what people such as audio engineers and producers do when they mix a recording, but what DJs do when, for example, they play or record mixes and remixes.)

For information about our other information sheets, 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 how the law applies in a particular situation, please get advice from a lawyer.**

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

### 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 “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.

If you start putting out CDs or video clips, you will also have to think about other types of copyright material, such as “artistic works” (including logos, drawings or photos used on CD covers) and “cinematograph films” (such as the footage and sounds in a video clip).

In this information sheet we only talk about the copyrights in music, lyrics and recordings. Our other information sheets talk about copyright in these other types of things. See, for example, the information sheets *Films*, and *Artworks*.

### 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 or videotaping);

- **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 emailing digital files or posting them on the internet, 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, but not the last two rights in the list above.

## **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 any **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, while 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.

In some cases, however, 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**

### **APRA**

APRA stands for the “Australasian Performing Right Association”. APRA is a non-profit organisation; its members include songwriters, composers, lyricists and music publishers. It licenses the “public” performance of music.

In this context, “public” would cover any function or event other than personal or family functions such as birthday parties, weddings, 21sts and so on. DJ’ing at any other type of event or function is likely to be “in public” for the purposes of copyright law. This will be the case for private events such as corporate or club functions, 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, for example, DJs to copy the music and lyrics of their sound recording collections into other formats. This licence would cover a DJ transferring music and lyrics from their LP and CD collections onto a PC or other device to make the collection more portable. Unfortunately, there is no similar blanket licence to cover copyright in the recordings. Also, we understand that the APRA licence does not cover creating samples, mixes or mash-up.

## PPCA

The Phonographic Performance Company of Australia (PPCA) is a collecting society. Most Australian record companies have given PPCA the right to license the “public” playing of their recordings.

As noted above, in this context “public” would include any function other than family functions such as weddings, birthday parties, bar mitzvahs and bat mitzvahs.

If you are DJ’ing “in public”, you will need to be covered by a PPCA licence.

## Signing with a label

Not every DJ wanting to record his or her own mixes or mash-ups (an overlaying of one song with another) needs a publisher or a record company, but being signed to a publisher or record company can give you access to funding, contacts and administrative expertise so you can spend more time on your music.

You should get legal advice about any publishing or record deal you are offered.

The Arts Law Centre of Australia may be able to advise you if you are offered a recording deal; for information on the services it provides, see [www.artslaw.com.au](http://www.artslaw.com.au).

## Rights other than copyright which may be relevant

### Moral rights

Creators of copyright works have “moral rights” in their works whether or not they own copyright in them. These 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 have been some cases where songwriters and composers have objected to the way their works have been remixed, or to rap lyrics being put over the top of their songs. In other words, don’t assume that someone whose material you use will be happy with what you are doing.

In some cases, therefore, you might need 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 may be necessary. For more information, see our information sheet *Moral rights* and our detailed discussion guide, also entitled *Moral Rights*.

Note also that, at some point in the future, provisions giving performers similar moral rights are likely to come into effect. For more information, see our information sheet *Free Trade Agreement*.

### Performers’ rights

Essentially, these rights are useful for performers—including DJs creating their own live mixes—wanting to take action against people who have, for example, made bootleg recordings of a rehearsal or gig, or who have secretly filmed a performance.

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

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

Also, where an audio recording is made, a performer has the right to consent to that recorded performance being included on the soundtrack of anything classified as a “cinematograph film”, such as a film, documentary or computer game.

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 to these things 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.

Generally, if someone asks to film or record you while you are performing, you are entitled to say either "yes" or "no". However, if you say "yes", you should discuss what the person filming or recording wants to do with the film or recording; generally, you should limit your consent to the uses that you specifically agree to at the time, and make further use conditional on your written approval being given.

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

## Common questions

### **Whose responsibility is it to get an APRA or PCCA 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 PCCA licence will cover you for most recordings.

Many venues will already have both licences; even a live-band venue is likely to be playing CDs or tapes 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 PCCA just to cover the event at which you are DJing.

PCCA 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).

### **Do I need any special permissions to do a live mix?**

Provided you are covered by APRA and PCCA licences for DJing at a "public" event, it is unlikely that you will need any special permissions to do a live mix or mash-up.

In some cases you might need to consider moral rights issues. For example, in some cases it may be feasible to announce the songwriters of the material you are using. However, it is difficult to comment on whether a mix might infringe a composer's "right of integrity". To succeed in such an action, a composer would need to show that his or her reputation or honour as a composer has been damaged or prejudiced as a result of the mix. This may in many cases be difficult to do.

### **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 will almost invariably be a "substantial part" of the music. A sample could also contain a "substantial part" of lyrics and of the sound recording. If so, you will need permission from the relevant copyright owner(s).

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. In every case, the legal question is whether or not the part is an important, distinctive or essential part of the material from which it is taken.

Because this can be such a grey area, 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. You should check the licence agreement (it is often set out on the packaging or in an accompanying document): generally, 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. The online encyclopedia *Wikipedia* makes the following comments in relation to “battle records”:

[these] are vinyl records made up of brief samples from songs, film dialogue, sound effects, and drum loops for use by a DJ ... Often, the samples featured on these records do not have the blessing of the original copyright holders ...

If you use samples from such a disc, you will probably infringe copyright even if you don't mean to.

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

In some cases, a mix or remix could be considered a separate “musical work” and therefore, if you have recorded the mix or remix, it will be protected by copyright—this would be separate from the copyrights in the material used for the mix. Generally, 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.

Someone rapping over a mix or remix will generally own copyright in their rap, but a freestyle rap will only be protected by copyright if it is recorded in some way—for example, if it is written out or taped.

A publisher that gives you permission to remix a piece or put out a rap version of a song they publish may require you to assign copyright in what you have created to it: this is generally the case also with arrangements of pieces of music.

(Note again that we are not referring to the sort of mixing done by record producers or audio engineers when they are mixing a sound recording.)

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

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

For things like mixes and remixes (and any rapping over the top) you need to have your work in “material form” for it to be protected. This means, for example, that you need to write out or type up your material, or record it in some way (for example, onto tape, film or CDR, or into a device like an iPod). 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 in some way.

However, 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 to protect your material by copyright.

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

(Again, we are referring here to mixes or remixes created by those DJs who are essentially composing new pieces of music through mixing recorded sounds, sometimes together with scratches, raps or other additional elements.)

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

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.

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.

### **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. Again, the relevant record companies and music publishers are likely to own the rights, so contact them for clearances. There have been Australian cases—in 2003 and 2005—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 very large sums of money as compensation to the copyright owners.

You may, however, record and sell your own mixes if you write and record your own material, or only use licensed loops or samples.

## 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.

## 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 *Trade Practices Act 1974* (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, see our website—<http://www.copyright.org.au/> or contact us.

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.

APRA’s head office is in Sydney (Locked Bag 3665, St Leonards NSW 2065, ph: (02) 9935 7900), and it has branch offices in most capital cities. Its website is [www.apra.com.au](http://www.apra.com.au).

AMCOS is located in Sydney (Locked Bag 3456, St Leonards NSW 2065, ph: (02) 9935 7700). Its website is [www.amcos.com.au](http://www.amcos.com.au).

PPCA is located in Sydney (PO Box Q20, QVB PO, Sydney NSW 1230; ph: (02) 8569 1100). Its website is [www.pcca.com.au](http://www.pcca.com.au).

Entertainment lawyer Shane Simpson has written a useful book called *Music Business* (Omnibus Press, Sydney, 2002). It provides a detailed analysis of the legal and practical issues facing bands and musicians.

## Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop—<http://shop.copyright.org.au/>—or direct from us.

## 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



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