



Music & Copyright

This information sheet provides an overview of copyright as it applies to music. It is aimed at songwriters and composers, but those who use other people's music may also find it helpful.

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.

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 but is also available to staff of educational institutions, archives and libraries.

We have a range of information sheets on a number of topics and publish books that analyse specific areas of the law. We can provide this information sheet in an accessible format on request. Check our website for information about our publications [here](#) and details of our seminar program [here](#).

Key points

- Copyright protection is free and applies automatically when material is created.
- A song normally comprises 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 from, 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 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 form (for example, written down, recorded onto disk or saved in a digital file). For the purposes of copyright law, a work is "original" 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 these are:

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**. 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 “© Australian Copyright Council 2019”) 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 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 AMCOS

Composers and songwriters can register their compositions/arrangements with APRA AMCOS through their Writer Portal. Types of works that can be registered include new original works, remixes, arrangements, jingles and film/TV works. Such registration does **not** create copyright or change the copyright status of the material. Registration of the material allows APRA AMCOS to collect licence fees for the public performance of the material and to identify the people entitled to receive the payments. Typically, the copyright owner will receive the fees although sometimes bands will come to an arrangement about sharing APRA AMCOS payments.

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. This means that in a single downloaded album there may be at least three separate copyrights to consider:

- 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 in Australia. 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:

www.copyright.gov.

Who owns copyright in music and 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. There are, however, 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.

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 (e.g. with other members of a band). If you create music in collaboration with other people, it is generally a good idea to make a written agreement about ownership. This helps to avoid misunderstandings and disputes later on.

Who owns copyright in a sound recording?

As a result of changes to the *Copyright Act* that came into operation on 1 January 2005, performers often have some rights in sound recordings of their live performances: unless there is an agreement to the contrary, the first owners of copyright in a sound recording of a live performance will usually 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 given 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](#).

Proving copyright ownership

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, as well as evidence in drafts and early recordings.

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 digital, CD or other formats;
- **synchronisation right:** refers to the right to use music on a soundtrack of a film; 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?

Musical works and lyrics

Copyright has expired if the creator died before 1 January 1955 and the material was published during his or her lifetime. If not, then the general rule for musical works and lyrics is that copyright lasts for the life of the creator plus 70 years – there are 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.

Sound recordings

Copyright has expired in any sound recording made before 1 January 1955. If not, then the general rule for sound recordings made after 1955, is that they are protected for 70 years after the year in which it is first published.

Once copyright has expired, it cannot be revived and the material can, at least within Australia, be used freely. (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 and licensing rights

Copyright owners can assign any or all of their copyright rights. "Assignment" 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. It is also industry practice to assign the performing rights (public performance and communication) to APRA AMCOS, which has reciprocal agreements with similar organisations internationally, so assigning your performing rights to APRA AMCOS means you will get the benefit of these rights when your material is performed or communicated overseas.

Alternatively, you can license the rights. "Licensing" 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 in a licence (e.g. by type of use or period of time).

Copyright owners can also impose conditions in return for an assignment or licence (e.g. 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 fully effective, assignments and exclusive licences must be in writing and signed by or on behalf of the copyright owner.

Copyright collecting societies and relevant organisations

APRA AMCOS

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 AMCOS, which is also the first point of contact in relation to licensing the communication of music and lyrics over the internet (e.g. streaming).

Composers, songwriters and music publishers join APRA AMCOS and it becomes the owner of the public performance, broadcast and cable transmission rights. There is no joining fee. APRA AMCOS collects licence fees from broadcasters and from venues where songs are performed. Money collected domestically is then paid to the copyright owners twice a year; international royalties are paid monthly. APRA AMCOS's head office is in Sydney, but it has branch offices in most capital cities: see their website at apraamcos.com.au for more information.

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 streaming or webcasting.

PPCA distributes most of the money it collects to record companies, but it also distributes some direct to the artists on the recordings. See ppca.com.au for more information.

OneMusic Australia

OneMusic Australia is a joint initiative of APRA AMCOS and PPCA to simplify the music licensing process. In the past, licencees seeking to play music in public (e.g. a restaurant owner looking to play music for customers in their dining space) needed to get at least two separate licence agreements, one for use of musical works and one for sound recordings, generally obtained from each of APRA AMCOS and PPCA respectively. OneMusic Australia means that such licensees can get a single, bundled OneMusic Australia licence agreement which includes all of the necessary permissions required to play music in public.

For musicians, songwriters, record labels and other music creators and rightsholders, the OneMusic Australia initiative does not directly affect you. If you are already a member of APRA AMCOS and/or a licensor of PPCA, APRA AMCOS and/or PPCA will still collect fees on your behalf, and your royalties will still be paid from APRA AMCOS and/or PPCA.

If you are not a member of APRA AMCOS or licensor of PPCA you can get more information about the registration process at apraamcos.com.au and/or ppca.com.au.

AMPAL

The Australasian Music Publishers Association (AMPAL) represents Australian and New Zealand Music Publishers and works on behalf of its members to promote a better understanding of the value of music, both culturally and economically. See ampal.com.au for more information.

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, and 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.

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.

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** came into effect in Australia on 26 July 2007. Moral rights belong to each person who contributed to the sounds of a performance recorded on or after that date, including the conductor of a musical work.

Frequently Asked Questions (FAQs)

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

If you think your copyright has been infringed, you should seek 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 of music 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 from 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 (i.e. the person who composes the melody, rhythm, orchestration 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. In practice, however, where people create pieces collaboratively (e.g. in a jam

session) it can sometimes be difficult to work out whether someone making suggestions is merely giving ideas or is a co-creator of the piece. In these cases, it's a good idea to have an agreement in place about copyright ownership.

If I pay someone to write out my music who owns the copyright?

Copyright in music is usually first owned by its author, i.e. the person who first records the music in some way (e.g. writes it down in musical notation).

However, a person who merely writes out music that you play to them, or who writes out music from a recording, is unlikely to be an author in this sense. Similarly, a person such as an audio engineer who merely records a song will not be the owner of copyright in the words or music (although they may own copyright in that particular recording).

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 copyright in the arrangement, even though you 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 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 are royalties?

The word royalty usually describes a percentage of income (e.g. 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 and advice

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 but is also available to staff of educational institutions and libraries. For further information about the service, see the Legal Advice section of our website copyright.org.au.

APRA AMCOS website: apraamcos.com.au

PPCA website: ppca.com.au

OneMusic Australia website: onemusic.com.au

Reproducing this information sheet

Our information sheets are regularly updated. Please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

About us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice education and forums on Australian copyright law for content creators and consumers. Australian Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



Australian Government



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

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