

## • Copyright

### FREQUENTLY ASKED QUESTIONS

#### **What does copyright protect?**

Copyright protects literary, dramatic, musical and artistic works. It also protects sound recordings, films, published editions, performances and broadcasts. A song may have more than one copyright. The lyrics will be protected as a literary work and the music as a musical work. A recording of the song will also be separately protected as a sound recording.

#### **Do I have to register for copyright?**

No, you do not need to register your work, pay any fees or fill in any forms for it to be protected. Copyright protection is automatic, both in Australia and overseas. As soon as you write down your lyrics or music, or record it onto any medium, such as an MP3, CD or tape, it will be protected by copyright. The only requirement is that the work is original (ie it is not copied) and the result of some skill or effort on your part.

#### **Do I need a copyright notice on my work?**

You do not need a copyright notice on your work for it to be protected, however, it is advisable to warn people that you own the rights in the work. The notice is the copyright symbol ©, your name (and the names of other co-creators), and the year in which the work was created or published. For example: © John Brown, Jenny Black, Jackie Green 2008. You should mark all copies (print and recorded) with this notice.

#### **How can I prove that I am the copyright owner?**

It is rare that disputes arise about who owns the copyright in a work, but if this occurs, you need to be able to prove that you created the work. The best evidence of this would be early drafts or recordings of the work as well as diaries detailing its development.

#### **What rights do music copyright owners have?**

Copyright owners in music and lyrics have a number of exclusive rights. Anyone who wants to use a protected work in any of the ways outlined below will usually need the copyright owner's permission. He or she may also have to pay a royalty.

Copyright owners have the right to:

- *Reproduce the work*: This includes recording the music or lyrics onto a CD, a film soundtrack, or onto a computer disk. It also includes reproducing the music or lyrics as sheet music.
- *Publish the work*: This means making your work available to the public for the first time.

- *Perform the work in public*: This includes playing the work live at a venue, playing a recording of the work in a venue, business or work place, and showing a film containing the work.
- *Communicate the work to the public*: This includes communicating the work over the Internet, via a music on hold system or by television or radio broadcasting.
- *Make an adaptation of the work*: This includes arranging or transcribing music, or translating lyrics.
- *Rent a recording of the music*: This is the right to control the rental of recordings (on CD for example) of the work.

In the music industry, these rights are usually grouped in the following way:

- *The mechanical right*: This is the right to record a work on record, cassette or CD. This is usually administered by either AMCOS or by music publishers.
- *The synchronisation right*: This is the right to use music on the soundtrack of a film or video and is usually administered in the same way as the mechanical right.
- *The performing right*: This is the right to perform a work in public or to communicate a work to the public. It is administered by APRA.

### **What about the rights in sound recordings?**

There is a separate copyright in the sound recording of a musical work (with or without lyrics). The person or company that owns the rights in the recording owns the right to copy it, record it, perform it, communicate it to the public or rent it out.

### **What rights does APRA control?**

When you become a member of APRA, you assign your performing rights in all existing and future works to us. This is the right to perform the work in public and the right to communicate the work in public. We then administer these rights on your behalf. This means we enter licence agreements for the performance and communication of music and lyrics, we monitor the use of music under these agreements and distribute the royalties we collect to the copyright owners whose material is identified as having been used.

### **What are moral rights?**

Moral rights belong to the creator of a work regardless of whether he or she owns copyright in the work. Briefly the rights are the right to be attributed or credited correctly on the work and the right to object to the derogatory treatment of the work.

### **Who owns copyright?**

Generally the composer or author of music or lyrics is the first owner of copyright in the work. However, if you create music or lyrics as part of your employment, your employer is usually the first owner of copyright. Similarly, if you create a work under the direction or control of a government body, the government would own copyright in the absence of an agreement to the contrary.

- **Commissioned works:** If you are commissioned to write music or lyrics, the person who commissioned you does not automatically own the rights in the work, unless there is an agreement to this effect or unless they are “the Crown”. They will, however, have a right to use the work for the purpose for which it was commissioned. In these circumstances it is advisable to clarify the rights of both parties in a written agreement.
- **Works created in collaboration:** If you collaborate with others in writing music or lyrics, it is also advisable to have a written agreement clarifying who owns the rights in the resulting work. You may be regarded as joint authors under the law. Failure to clarify ownership at the time may result in lengthy and difficult disputes further down the track.
- **Sound recordings:** The person who pays for the sound recording to be made will usually be the first owner of copyright in the recording. The performers on the recording may also be joint owners of copyright in recordings made after 1 January 2005.

Advice on ownership questions and assistance with drafting these agreements can be obtained from the [Australian Copyright Council](#) or the [Arts Law Centre of Australia](#).

### **How long does copyright last?**

Generally copyright in music and lyrics lasts for the life of the author or creator, plus 70 years after the end of the calendar year in which the author dies. If the work was not published, broadcast, performed or records of the work had not been offered or exposed for sale to the public until after the creator’s death, copyright will last for 70 years from the end of the calendar year of first publication, broadcast, performance or when records of the work were offered or exposed for sale to the public.

- *Print music translations, arrangements and published editions:* Where music is arranged or lyrics are translated, there is likely to be a separate copyright in the arrangement or translation. Copyright in these will last for 70 years after the end of the calendar year in which the translator or arranger dies.
- *Published editions:* Another copyright exists in what is known as the published edition. Published edition copyright protects a publisher’s investment in the typesetting and typographical arrangement of the music and lyrics. Copyright in published editions lasts for 25 years after the date of publication. This copyright may still subsist even when the copyright in the music and lyrics have expired.

### **What happens when copyright expires?**

When copyright in a work expires, it is in the public domain and anyone can use it without having to obtain permission or pay a fee.

## **What about copyright in other countries?**

Most countries have copyright laws similar to Australia. If your work is protected here, it will also be protected in most other territories. This is because most countries (including Australia) have signed international treaties and conventions requiring signatories to provide minimum standards of protection for copyright material from all countries party to the treaty.

Australian copyright works are protected in about 133 countries, including Canada , China , France , Germany , Hong Kong , Indonesia , Japan , Korea , Malaysia , New Zealand , Singapore , the United Kingdom and the United States . Similarly, works from these and other territories will also be protected in Australia. It is important to note, however, that the term of protection may differ in other territories, and you may wish to seek specific advice on this matter.

## **What about copyright on the Internet?**

Many people assume that material on the Internet is copyright free, however it is protected in just the same way as material available through other more traditional channels. A song stored, for example, in an mp3 on a web site is protected in the same way as a recording on a CD. If you want to copy that CD, play it in public or communicate it to the public (by broadcast or via the Internet for example), you need permission from the copyright owner. Similarly, you will also need permission if you want to download the mp3 file onto your own computer, make a copy for a friend or put it on another site.

The Copyright Act states that a person who authorises a copyright infringement may also be liable for that infringement. A web site or bulletin board operator may therefore be liable for any infringements that occur as a result of users of their site uploading or downloading their material. The Australian courts have held that a person who sanctions, countenances or approves of an infringing activity may be liable for authorising that activity.