

Copyright for Songwriters & Composers

Overview

Musical works (compositions) and literary works (like song lyrics) are automatically protected by copyright when they are recorded in a material form, such as in writing, on an audio-recorder or on a digital file.

There is no need to register copyright or go through any process for your material to be protected by copyright.

To attract copyright protection, a work must be “original” in the sense that it originates from the author (creator) and is not copied. It must be a result of the author exercising independent skill and labour.

Ownership of copyright in music and lyrics

The general rule is that the composer of a musical work is the first owner of copyright in the musical work and the lyricist is the first owner of copyright in the lyrics.

If you have written material in the course of your employment, your employer is the first owner of copyright, unless you have agreed otherwise. If you have a written agreement about material you write that agreement may state who owns copyright in the material.

There may be more than one owner of copyright in a single work. If you collaborate with other people in writing music, it is sensible to agree in writing about copyright ownership, as it helps avoid confusion and disputes in the future.

Separate copyright in sound recordings

A recording of sounds is also protected by copyright, whether it is on an audio cassette, CD or other medium from which sounds can be reproduced. Copyright in the sound recording is separate and additional to any copyright in the musical or literary works on the recording.

For example, in a CD there may be a copyright in:

- each musical work;
- the lyrics to each song; and
- the sound recording of the music and lyrics.

The rules that apply to ownership of a sound recording are slightly different to ownership of copyright in musical and literary works.

Rights as a copyright owner

The Copyright Act gives copyright owners in music and lyrics the exclusive right to:

- copy their work (for example, by recording a performance of it, photocopying it, copying it by hand, or digital scanning);
- publish their work;
- perform their work in public;
- broadcast their work or include it in a cable programme service; and
- make an adaptation of their work (for example by translating the lyrics, or arranging or transcribing the music), or do any of the above activities in relation to an adaptation.

The owner of copyright in a sound recording has the exclusive right to:

- reproduce the recording;
- issue copies of the recording to the public for the first time and rent copies to the public (although non-profit educational establishments and some libraries are allowed to rent copies);
- play the recording in public; and
- broadcast the recording or include it in a cable programme service.

The copyright owner can authorise another person to do any of the above activities.

In the music industry, the following terms are often used:

Mechanical right: the right to record a song onto a record, cassette or CD;

Synchronisation right: the right to use music on a soundtrack of a film or video; and

Performing rights: the rights to perform in public and to broadcast or include the work in a cable programme service.

How long does copyright last?

In New Zealand, copyright in music and lyrics lasts for the life of the author plus fifty years from the end of the year in which the author dies. Because there may be two copyrights in a song (i.e. in the music and the lyrics), it is possible that the expiry date of the copyrights are different, if the music was composed and lyrics written at different times.

There is a slightly different period of copyright protection for sound recordings. This protection lasts 50 years from the end of the calendar year in which the work was made or made available to the public, whichever is the later.

The period of copyright protection is longer in Australia, Europe and the United States – generally 70 years from the end of the year in which the author dies.

Dealing with rights in copyright works

As copyright owner, you can assign or licence your copyright to another person.

If you assign copyright in a work, you are selling or transferring it to someone else and that other person becomes the owner of the copyright. An assignment of copyright must be in writing and signed by the person assigning copyright.

Licensing means that you remain the owner of copyright but permit someone else to deal with it, for example, allowing a publisher to publish a song or allowing APRA to manage public performance rights. You can limit the rights granted (for example, by type of use, by period of time, or by territory) and impose conditions (for example, that a person cannot use the work until you receive an agreed payment, or that you must receive an acknowledgement of authorship).

Copyright may also be transmitted to others on death of the copyright owner.

When is copyright infringed?

Copyright is infringed when another person does something in relation to a work in a way that is reserved to the copyright owner, without permission.

Infringement may occur in relation to a whole work or a substantial part of the work. “Substantial” refers to an important or distinctive part of the work. Generally, infringement turns on the quality of what is taken, rather than the quantity. For instance, for infringement it may be sufficient that only a few bars of a song is taken and sampled in another song.

There are special circumstances in the Act where a person may copy your work without your permission. These are:

- for criticism, review and news reporting;
- for research or private study;
- for educational purposes; and
- for public administration purposes.

These exceptions from infringement should be interpreted carefully because they apply in narrow circumstances only. For further information see our information sheets *Fair dealing*, *Copyright & education* and *Copyright & public administration*.

Copyright symbols and notices

Although not legally required for copyright protection, it is industry practice to include a copyright notice on your work. A common form of copyright notice consists of the © symbol, the name of the copyright owner and the year the work was first published, for example:
© Jane Doe, 2002

Copyright collecting societies

APRA – Permission is needed from copyright owners whenever a song is played in public or broadcast. Because it is impractical for each individual song writer 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 New Zealand, the relevant collecting society is the Australasian Performing Right Association (APRA) www.apra.co.nz.

Composers, songwriters and music publishers that join APRA, give their public performance, broadcast and cable transmission rights to APRA. APRA collects licence fees from broadcasters and from venues where songs are performed. The money collected is then paid to the copyright owners.

AMCOS – AMCOS is the Australasian Mechanical Copyright Owners Society. Among other things, it administers a licence scheme for the reproduction of sound recordings. In New Zealand, AMCOS rights are administered by APRA.

Moral rights

Songwriters and composers have certain “moral rights” which give them:

- the right to be identified as the author of the work;
- the right to object to derogatory treatment of the work;
- the right to not have a work falsely attributed to them.

The right to be identified as the author of a work must be asserted to be enforced. This means that you need to require a person to identify you as the author.

Moral rights remain with the creator, even if copyright is assigned to another person. Moral rights last until the writer dies and cannot be transferred or sold.

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

Performers' rights

Performers have certain protections under the Copyright Act. Their performing rights are infringed if someone makes a recording of their live performance or broadcasts it, without their consent.

Tāwhia Copyright Aotearoa does not provide legal advice, only general information on copyright issues. If you require expert or legal advice on copyright, you should seek the services of a legal professional. For more information please contact us.