



Intellectual Property Guides

Copyright in Music

**Frequently asked questions relating to
copyright in music**

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This leaflet is a brief guide to UK copyright specifically aimed at those who intend to be involved in the music industry as writers, musicians or performers. It should not be considered legal advice.

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Copyright: The Basics

What is copyright?

Copyright is an automatic legal right which protects original literary, dramatic, musical and artistic works. This includes among other things, sound recordings, broadcasts, photography, film and computer programs. It does not protect inventions or the names you give to your product or service. It also does not protect an idea, but rather the tangible expression of the idea in some physical form.

Why is copyright important?

Copyright enables those who have created a work, such as a song, or a story, to be paid for their creativity and to be acknowledged as the creator (see section on Moral Rights). Others can only use copyrighted work with the permission of the copyright owner. Copyright owners can also control how their work is used i.e. how it is copied, distributed, altered, transmitted, broadcast or performed. Anyone who uses a copyright work without permission can be guilty of infringement and action could be taken against them.

Do I apply for copyright?

No. Copyright is an automatic right which exists as soon as the work to which it is related exists providing it is recorded or “fixed” in some way; this may be in the form of a photograph, a film, video or DVD recording.

Is copyright protection enforced by law?

The Copyright Designs & Patent Act 1988 forms the basis for copyright protection in the UK. Copyright law is an attempt to balance the interests of those who create the particular work or composition and those who want to use it or enjoy it. Other laws can affect what can be done with a particular work as will be described in later sections.



How long does copyright last?

In the UK, copyright for literary works generally lasts for 70 years after the death of the person who created the copyright work. In the case of films, it lasts for 70 years after the death of the principal director, the writers of the screenplay, the writers of the dialogue or the composer of the film's music (whichever of these happened last). In each case this term is calculated from the end of the calendar year. Copyright on sound recordings and broadcasts lasts for 50 years from the end of the calendar year of publication or broadcast. Calculating whether a particular work is currently protected by copyright can become quite complex as over the years different rules have applied at different times and often it is determined by the law in force at the time that the work was created.

How is copyright infringed?

Copyright comprises a collection of rights, basically copying, issuing to the public (including renting), performing, broadcasting, storing by electronic means, posting on the internet or adapting the work. Copyright is infringed if any of these acts are carried out without the copyright owner's permission. When this happens, the copyright owner can take legal action against the person or organisation who is infringing. Such infringement requires that a "substantial" part of the work is copied or used without permission by someone else. Anyone who gains permission to use an item which is in copyright needs to be clear what it's going to be used for. If it's ambiguous and it's used for something not explicitly agreed, this could be infringement. Where multiple copyrights exist, each one needs to be cleared before it can be used.

What exactly does substantial mean?

It is important to understand that "substantial" does not necessarily mean "large". A very small part of the work which is distinctive or significant would be regarded as being substantial by a court. So using a distinctive chord sequence from someone else's song in your own composition and selling it would infringe the rights of the creator of the original piece of music.



Is it a criminal offence to infringe copyright?

Deliberate infringement on a commercial basis is a criminal offence for example producing, or distributing, or selling pirate copies of CDs, DVDs etc or assisting someone else to do so. Such an offence can be punishable by fines and / or a prison sentence.

Are there situations when I do not need permission to use someone else's work?

Copyright works can only be used by others without the owner's permission in certain specific, and limited circumstances – such as using the work to write a review or news report. In this situation it has to be used in a “fair” way and the owner must be acknowledged. Recording a video of a television programme at home to be watched at a more convenient time is also permissible.

Is there a register of copyright?

No. Because it is an automatic right which is free, there is no register of copyright or application system in the UK. It is therefore important to be able to prove as far as you can when the work first existed. A relatively simple way to do this is to place it in a sealed package, sign your name across the seal, post a copy to yourself by Special Delivery (thereby obtaining a dated receipt) and leave the envelope unopened when you receive it. Alternatively, you could deposit a copy with a bank, building society or solicitor and once again, obtain a dated receipt. If a copyright case came to court, the package would be opened by the judge.

Is any other information helpful?

Some suggest putting further proof in the package eg a page from a newspaper of that particular day, or more details of the song – such as a lyric sheet, who performed on the recording etc. It may be a good idea to deposit in this way any different versions of the work which you may have, or even any uncompleted item which you are still working on. Particularly if you are doing this with several pieces of work it is advisable to mark the title of the work(s) on the envelope.



Who can help you to prove when a work first existed?

There are private organisations such as the UK Copyright Service which offers to add your work to their own register for a charge, in order to help you establish when the work first existed. The Musicians Union offers a similar service which is included in member's subscription fees. As such registration is not required by law you would obviously need to balance the advantages in doing so against the costs involved.

Do I need to mark my work in any way?

In the UK It is not an essential requirement to do this although some other countries do require the work to be marked. However, it is good practice to use the © followed by your name and year of creation to indicate clearly that you intend to assert your rights - to warn others off. This can be done on such things as demos, lyric sheets, and scores. It is a good habit to get into at an early stage, particularly when you are dealing with anyone who is not connected with the creation of the work – including recording companies.

Does copyright protect material on the internet?

Material on websites is subject to the same copyright protection as material anywhere else, and once again it is a good idea to mark each page with the © symbol, year and copyright owner's name. Anyone copying, using or downloading copyright material from a website infringes copyright. It can be difficult to enforce copyright on material you have made freely available on a website accessible worldwide.

Does copyright protect my works abroad?

Most major countries are members of international copyright conventions recognizing copyright which has originated in any member country however some do not do so; countries, such as the US, advise registration there even though it is not legally required.



What are economic and moral rights?

Economic rights are concerned with the copyright holder's right to make money out of their work. Copyright also gives the owner moral rights which last in most cases as long as economic rights. Moral rights are the rights of the copyright owner to be identified as the creator of the work, and also to prevent others using their work in a way which distorts it or could damage the copyright owner's reputation. For example if someone were to change the original lyrics of a song to make them offensive, or use part of a song to advertise a product which the original copyright owner did not approve of, then moral rights could be infringed. To be identified as the creator of a work the copyright owner must state in writing that they wish to assert these rights. Some music publishers may request this.

Can copyright change hands?

Copyright is a property right – it is a form of “intellectual property” - and like any other property, copyright can be transferred, bought, sold or inherited. This is described in more detail in the section on licensing and assignment.



Copyright in Music

Copyright in music

There can be a number of different rights relating to one musical work each of which may have a differing time-span – there will be copyright in the melody, in the lyrics (which are classed as a literary work), in the score and in the sound recording. The typography of a musical score (the style and arrangement of the notes, staves etc) is protected for 25 years from the date first published. If it is republished in an original format this republication will be protected for 25 years from republication. There are also rights covering the performance of the music. If the music is packaged copyright will also relate to such things as the artwork. The © symbol is generally used in relation to most of these rights but you will also see the ℗ symbol which specifically applies to the sound recording of the work (on CDs etc). This is sometimes referred to as phonographic copyright.

Who owns musical copyright?

Copyright initially belongs to the original creator – for example the person who writes a song. However, this might not always be clear. If two people worked together on a song it is assumed that ownership is equally shared (and lasts for 70yrs after the death of the last surviving author). In the case of a band the situation can become more complex. Any member of the group who can show that they made a “significant” and “original contribution” to the final outcome of a piece of music may be able to claim joint ownership - for instance a band member who was not involved in the original writing of a song but then added a distinctive guitar riff by which the song is frequently recognised. Such claims can be made some time after the original composition.

Can anything else affect who owns the original copyright?

If someone creates a work in the normal course of their employment, then the employer retains the copyright. It is also worth remembering that owning a copy of the work does not mean that you own the rights within it - for example if you buy a CD or DVD this does not allow you to copy the contents.



Can I use someone else's music?

If you want to use someone else's music such as a song, part of a song (even a very small part) or sample, it is important to seek permission to do so either from the copyright owner or from the relevant collection society. This is also the case if you want to make an arrangement of someone else's work. If you obtain someone else's music from a third party you need to check that they have a licence to allow you to do this. Failure to do so could result in action against you for infringement.

In 1997 the *Verve* achieved an international hit with their song "Bittersweet Symphony". The track included a sample from an orchestral version of an old *Rolling Stones* song. They did get permission to use the sample but there were subsequent arguments about what exactly the permission included. A court case followed and the band had to hand over 100% of the song royalties. They therefore completely lost any control over their biggest hit. It is vitally important to ensure in these situations that all the appropriate permissions, and there may be several, are given.

Does copyright just protect against deliberate copying?

If you inadvertently create a song or piece of music which happens to be similar to an existing work you are not infringing copyright. However, such a situation is not always straightforward. In 1976 former Beatle George Harrison was sued because of the similarities between his song "My Sweet Lord" and an earlier song "He's so Fine" performed by the *Chiffons*. The court decided that he had not deliberately copied the song but because of striking similarities in the music and the fact that he was known to be *aware* of the earlier song he was found guilty of *unconsciously* infringing copyright. Obviously if a similar situation arose, legal advice is advisable.



What was the Procul Harum case?

In 1967 pop group *Procul Harum* achieved an international hit with their song “A Whiter Shade of Pale” and songwriters Keith Reid and Gary Brooker received royalty payments as a result. Almost 40 years later the band’s organist, Matthew Fisher, claimed in court that he should receive a large share of royalties because he had added a distinctive organ solo to the original composition and argued that many people recognised the song because of his solo. The judge agreed that Fisher’s contribution was original and added significantly to Reid and Brooker’s composition. The decision of the court, therefore, was that Fisher was entitled to song writing royalties. There have been a number of similar cases.

Can I protect the name of my band?

The name of your band might become very important to you, particularly if you do achieve success. In that case it could be a financially valuable *brand* name or *trade mark*. You can not copyright names but you may be able to register the name as a trade mark, and use the ® symbol to prevent others from using it. Broadly speaking, registration may be possible providing the name is distinctive, is not likely to be confused with an existing name or brand and is not offensive. There are costs involved in doing so and you would have to balance these costs against the value you place on the band’s name. Alternatively you can use TM after the name without registering – this unregistered mark can help to warn others off but is far more difficult to enforce and is dependent upon you building up a significant reputation over a period of time.



Royalties and Licensing

What is Licensing & Assignment?

Although the copyright owner has the right to prevent anyone using their work, in the music business it is normal for the owner to licence or assign their rights to others in order to fully exploit their creations. This is usually done in one of two ways:-

Licensing: In the case of licensing the copyright owner allows others to use their music in return for payment but the owner keeps the rights. Several people can be given a licence at the same time. In most cases a recording contract will stipulate that copyright is licensed to the recording company. This means that if a recording company produces a CD for a particular band, no-one else (even the band themselves) could release that recording without the recording company's permission. This license is normally limited to a certain length of time and also to certain terms or conditions.

Assignment: If an artist assigns the rights to someone, the artist is transferring ownership and no longer has a say in how they are used. (ie they are selling the rights) Once again, this assignment could be limited by time or to part of the rights. For example it is common practice to assign rights for publication of sheet music to a publishing company. Licensing is more flexible than assignment. Licences and assignments should be made in writing and signed by the owner. It is possible to assign works which will be created in the future so that an individual agreement does not have to be set up each time. This is known as "future assignment". It would be advisable to include an assertion of moral rights in any licensing or assignment agreement.



Who earns royalties from a work?

Copyright holders are due a royalty payment every time their work is performed or aired in public whether that is through a performance, a recording, used in a radio broadcast or any other form. All those who contribute to the development of a song from writing to recording ie artist (band), writers, recording co. and performer(s), which can be the band or others, will have rights in the work. All gain from the copyright and will be paid in different ways.

What are Performance Rights?

Public performance of copyright music or other creative works requires permission from the copyright owner or someone representing them (for example a collecting society, as described below). “Public performance” does not just mean a concert – it includes music broadcast on radio, on television, played in public in shops, restaurants etc Rights in performance expire 50 years from the end of the calendar year in which the performance was made or 50 years from the calendar year when the sound recording was released. It is the responsibility of any establishment which plays music, whether it is recorded music or live acts, to obtain the correct licences. This is described in more detail in the section on distribution of royalties.

What are band agreements?

To avoid future disputes it can be helpful at an early stage to draw up an agreement within the band which clarifies who owns the rights to songs and how royalties would be distributed if money is made from the songs. Some decide to split the bulk of the royalties between the writer of the music and the writer of the lyrics, others go for an even split between all members of the band. This is particularly important where a piece of music is created by more than one person. It would be a good idea to consider how royalties would be distributed if someone left or if the band split up. A common area of dispute when there is a split is arguments over who should be able to continue using the band name. Any such agreements should be reviewed periodically to ensure that they reflect current circumstances. The Musicians Union is one organisation which can help with drawing up such an agreement.



Who distributes royalties from musical works?

There are several organisations or Collecting Societies which collect and distribute royalties relating to the different rights involved in musical copyright on behalf of the copyright owner. It is up to the copyright owner to join the appropriate societies in order to gain the benefit of their services.

Performing Right Society (PRS) is a non-profit making organisation which collects royalties on behalf of copyright owners, such as composers and publishers. Organisations using copyright music – such as concert venues, broadcasters etc inform PRS when they use copyright work. PRS then collects and distributes royalties. Any copyright owner joining PRS will be required to assign the “performing rights” in their work to PRS. This also includes rights in any future works.

Phonographic Performance Ltd (PPL) – a music industry organization owned by the recording companies which collects royalties for performers and recording companies whenever a particular *recording* is played in public so it has nothing to do with live performances. This includes background music played in such places as supermarkets, bars and restaurants. Such places will need a PPL licence in order to play music. In effect there are two separate licence fees which have to be paid when a sound recording is played in public: While PRS represents those who create the original music, PPL collects and distributes royalties generated by a particular *recorded* version of a work.

Mechanical Copyright Protection Society (MCPS) – a non-profit making organisation which collects and distributes royalties relating to the right to record and distribute the work in any format such as CDs, videos, DVDs, ringtones, computer games etc or enabling downloads. Generally this right is licensed to a recording company enabling them to produce CDs etc. MCPS then collects royalties from the recording company and distributes them to the copyright owner. Any composer or publisher can join.



The Music Publishers Association (MPA) MPA produce printed music scores and licence them. They ensure that royalties are collected and paid to the copyright owner and can also actively promote the songs. If you get a record deal you would be in a stronger position to get a good publishing deal. However publishers do sometimes sign artists who do not have a recording contract, and can then help them to get a recording deal. Songwriters normally assign their copyright to the publisher, so the publisher becomes the *owner* of the publishing rights. Usually a publishing deal is exclusive, which means that you can't write songs for someone else without their permission. The organisation can help if you are trying to contact / trace a copyright owner in order to gain permission to use their work.

Video Performance Ltd (VPL) licenses broadcasting of videos and collects royalties from television stations, pubs, bars and anyone else showing music videos. **Christian Copyright Licensing International (CCLI)** licenses religious music.

How are the royalties distributed?

When a band performs an original work, PRS collects for the writers; a share of the PPL goes to the band members for their performance and an equal amount to the record company. Where a band is involved in the recording of a cover version of a song, PRS will collect royalties for the original writers of the song while PPL will collect royalties on the new recording which will be split evenly between the cover band's record company and the performers of the cover version – this includes band members *plus* any session musicians, backing singers etc. PPL is not involved in *live* performances. Copyright owners can't become members of PPL but it is important that they, along with their recording company, register with PPL so that royalties can be distributed.

Do I need legal advice?

If you are offered a recording contract or if you are considering action against someone who has infringed your copyright It is always advisable to seek legal advice from someone who specialises in music or copyright.



Further Information

British Copyright Council
29-33 Berners Street
London
W1T 3AB
Tel 01986 788 122
Website: www.britishcopyright.org

British Music Rights
British Music House
26, Berners Street
London
W1T 3LR
Tel 0207 306 4446
Website: www.bmr.org

MCPS-PRS Alliance
Copyright House
29-33 Berners Street
London
W1T 3AB
Tel 0207 580 5544
Website:
www.mcps-prs-alliance.co.uk

Music Publishers Association
6th Floor
British Music House
26 Berners Street
London
W1T 3LR
Tel 0207 580 0126
Website: www.mpaonline.org.uk

Musicians Union (Northern
Region)
40, Canal Street
Manchester
M1 3WD
Tel 0161 236 1764
Website: www.musiciansunion.org

PPL
1, Upper James Street
London
W1F 9DE
Tel 0207 534 1000
Website: www.ppluk.com

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Concept House
Cardiff Road
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NP10 8QQ
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