
DIRECT LICENSING GUIDELINES

Who should use this information sheet?

This information sheet is primarily directed at small Australian record companies and independent artists (i.e. those not signed to a record label) that are licensors to the Phonographic Performance Company of Australia (PPCA; www.pcca.com.au). From 19 April 2008 all record companies and independent artists that are PPCA licensors must have direct licensing guidelines that outline the circumstances in which the recording company or artist will consider entering into a direct licence for public performance and transmission rights for sound recordings which the company owns. This information sheet provides information for understanding this requirement.

PPCA input agreement

PPCA have changed their input agreement, i.e. the agreement that you sign when you agree to let PPCA licence your sound recordings and music videos and to collect royalties on your behalf. If you had signed an old input agreement, this agreement terminated on 30 June 2008. Since 1 July 2008, PPCA will not licence your sound recordings unless you have signed the new input agreement and have developed direct licensing guidelines. Arts Law provides free legal advice on the new input agreement to all PPCA licensors. Call (02) 9356 2566 or toll-free outside Sydney on 1800 221 457 to find out more about this service.

Am I a PPCA licensor?

If you have signed a PPCA input agreement you are a PPCA licensor, unless either you or PPCA have terminated the agreement. If you have signed up to the PPCA artist direct distribution scheme, but have not signed an input agreement, then you are not a PPCA licensor and are not required by any PPCA input licence agreement to have direct licensing guidelines.

What is direct licensing?

Direct licensing is where the person seeking a licence goes directly to the person who owns the copyright and negotiates the terms of the licence with the copyright owner. This is instead of going to PPCA.

Do I have to provide direct licensing?

You cannot be forced to directly licence your work. It is up to you to decide whether or not you wish to directly licence the use of your sound recordings or music videos. However, if you are a PPCA

licensor you must have direct licensing guidelines. PPCA will continue to licence your sound recordings in accordance with your input agreement, unless the agreement is terminated. If you decide that you do not want to directly licence your sound recordings or music videos then you must state this in your guidelines and you should state the reasons for this decision.

Arts Law has developed sample guidelines that you may use and adapt to your own needs. The sample guidelines are available free of charge to all PPCA licensors. The sample guidelines enable you to set out the procedure for direct licensing or to state that you are not currently offering direct licensing for public performance and transmission rights in your sound recordings.

Why do I have to have direct licensing guidelines?

All PPCA licensors must have direct licensing guidelines from 19 April 2008 onwards due to conditions placed upon PPCA by the Australian Competition and Consumer Commission (**ACCC**) (www.accc.gov.au).

On 27 September 2007 the ACCC granted an authorisation to PPCA. This authorisation gives PPCA immunity, in respect of conduct described in the authorisation, from the application of certain provisions of the *Australian Consumer Law* (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) (**ACL**). A condition of the authorisation is that each PPCA licensor must independently develop a set of guidelines which outlines the circumstances in which the licensor would consider entering into direct licences for public performance and transmission rights in sound recordings.

The ACCC decision (www.accc.gov.au/content/index.phtml/itemId/784043) can be downloaded free of charge from or phone 1300 302 502 and refer to Public Register no: C2007/800, which is the determination dated 27 September 2007 for authorisations nos A91041 and A91042.

PPCA have told me I need a direct licensing policy – what should I do?

PPCA is requiring all PPCA licensors to have direct licensing policies. You can draft your own policies or you can use the Arts Law sample guidelines. PPCA has used the expression "policy" whereas Arts Law uses the expression "guidelines" – the two different expressions refer to the same thing.

When must my direct licensing guidelines be finalised?

From 1 July 2008 PPCA have ceased providing licensing on your behalf if you did not have direct licensing guidelines available.

What should I put in my guidelines?

It is up to you what you put into your guidelines. The ACCC requires that you produce guidelines for the direct licensing of your sound recordings and that these should include:

- the contact person and relevant details; and
- the process users should follow to make an enquiry about the option of direct licensing.

Do I have to provide a copy of my guidelines on my website?

Your direct licensing guidelines must be available on your website. If you do not have a website then upon request you must provide a copy of the guidelines.

Do I have to provide a copy of my policy to PPCA?

You must provide a copy of your direct licensing policy to PPCA. Every time you change your guidelines you must provide an updated copy of the guidelines to PPCA. This is a term of your input agreement with PPCA (the agreement you signed allowing PPCA to licence your sound recordings and music videos).

Can I change my policy?

You can change your policy as often as you wish. If you find your policy is not suitable or that you are not following it, then you should change it to make it more appropriate for your needs and for the needs of the people seeking licences from you. If you change your policy you must provide the new policy on your website (if you have one) and must send a copy to PPCA.

Can PPCA still provide blanket licences?

PPCA are still offering blanket licences and if you are a PPCA licensor you will continue to receive royalties from PPCA for the licence fees that they collect on your behalf. These are distributed in accordance with the PPCA distribution policy (www.pcca.com.au/policies.htm). If you cannot access a copy online phone (02) 8569 1100.

Can I offer an exclusive licence?

If you have signed a PPCA input agreement then any direct licences you enter into must be non-exclusive. An exclusive licence is one that is not offered to anyone else. If you grant a non-exclusive licence you can continue to use the work yourself and to grant licences to other people for the same sound recording.

When is a licence required?

If a person intends to play a sound recording or music video in public that person must first get a licence unless the work is not protected under Australian copyright laws. This will be the case even if what the person is doing is not directly music related. For example someone running a business must get a licence if the person is going to play music to its customers or staff.

There are several layers of copyright in a work. For example, a work could have the following layers of copyright:

- copyright in the sound recording;
- copyright in the musical work (i.e. the notes that make up the song); and
- copyright in the lyrics.

It is common for these layers of copyright to be owned by different people. For example, the copyright in a sound recording may be owned by a record company or it may be co-owned with the performers. The copyright in a musical work that is performed on the sound recording might be owned by one band member while another band member may own the copyright in the lyrics.

A licence to use the copyright in a sound recording or music video can be sought from the owner of the sound recording/music video or from PPCA. PPCA is the collecting society dealing with copyright in sound recordings and it provides public performance and transmission rights licences for use of sound recordings and music videos.

In addition to the licence to use the sound recording, a licence to use the copyright in the music and lyrics (if there are any lyrics) is usually sought from the Australasian Performing Rights Association (APRA) or Australasian Mechanical Copyright Owners Society (AMCOS) (www.apra-amcos.com.au). In some circumstances permission will be sought directly from the songwriter and/or composer. APRA/AMCOS are the collecting societies for the performance, broadcast and recording of music (not including sound recordings). These two organisations operate from the same office and have responsibility for different types of licensing. Call 1300 852 388.

Licences for public performance

A public performance of a sound recording or music video occurs every time that it is played in public. To play the sound recording or music video in public it is necessary to have a licence from PPCA or from the person who owns the copyright in the sound recording or music video. The meaning of performing "in public" is very broad. For example, playing a CD at your business premises for your staff constitutes a "public" performance.

Licences for transmission rights

Transmission rights relate to the broadcasting or transmission of a work. To transmit or broadcast a sound recording or music video it is necessary to have a licence from PPCA or from the person who owns the copyright in the sound recording or music video. For example, if you wish to broadcast a recording over the radio, or stream a music video online, it is necessary to have a licence for the transmission rights.

Circumstances where a licence is not required

Permission to use a sound recording or music video is not required if:

- a fair dealing exception applies (see the *Fair Dealing* information sheet of the Australian Copyright Council (ACC));
- you are an educational institution and your use fits within the provisions for educational institutions (see the *Educational Institutions: Introduction to Copyright* information sheet of the ACC);
- you are not using a substantial part of the recording (the term "substantial" has a specific legal meaning and if you are playing a recognisable part there is a strong risk that this will be "substantial". See the *Quotes and Extracts: Copyright Obligations* information sheet of the ACC); or

- you are using it for domestic purposes, such as playing it at home for your own enjoyment, or at your birthday party.

Permission to use a sound recording is not required where it is being played:

- from a radio or television (however, playing the radio on your telephone system does require a licence);
- at premises where people reside or sleep (including your own home or a guesthouse) and no admission fee is being charged; or
- as part of the activities of, or for the benefit of, a club, society or other not for profit charitable organisation that is concerned with the advancement of religion, education or social welfare.

Protected sound recordings

If a sound recording or music video is not protected under Australian copyright law then a licence is not required to use that sound recording or music video in Australia.

Sound recordings are protected under Australian law where:

- the recording has been released for less than 7 weeks, regardless of where the recording was made or who made it;
- the recording was made in Australia;
- first publication of the recording occurred in Australia;
- the person who owned the recording (usually the record company) was either an Australian citizen, resident in Australia or incorporated in Australia;
- any of the performers on the recording are Australian citizens or resident in Australia; or
- there are reciprocal arrangements in place under the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961.¹

It is a common misconception that no US recordings are protected sound recordings. This is incorrect. Some recordings will be protected and some will not. This will be assessed on the above criteria.

Duration of copyright

Copyright in a sound recording will have expired for all recordings made before 1 January 1955. For all other recordings copyright protection lasts for 70 years after the year the recording is first published.

¹ As of 1 January 2008 there are 86 countries that are members of the Rome Convention. A list of these is available from the World Intellectual Property Organization (**WIPO**) (www.wipo.int). The countries party to this convention include Australia, New Zealand, the United Kingdom, Canada and all European countries. The USA is not a party to the convention.

Copyright in a music video is complex because of the changes to the way in which the law protects cinematograph films and the duration of protection. For any music video made on or after 1 May 1969 copyright will last for 70 years after the year it is published.

For detailed information about copyright duration see the ACC information sheet *Duration of Copyright*.

Further information

- **Arts Law Centre of Australia** (www.artslaw.com.au) has developed sample direct licensing guidelines that you may use and adapt to your own business. These are available free of charge to all PPCA licensors. Arts Law can provide information and assistance on this information sheet, the sample direct licensing guidelines and any arts related legal inquiries. Phone (02) 9356 2566 or toll-free outside Sydney on 1800 221 457.
- **Australasian Performing Right Association / Australasian Mechanical Copyright Owners Society** (www.apra.com.au) collects royalties for composers and songwriters, can provide information about music licensing and copyright and can provide licences in relation to the musical work (including lyrics where applicable). Phone (02) 9935 7900
- **Australian Competition and Consumer Commission** (www.accc.gov.au) promotes competition and fair trade in the market place to benefit consumers, business and the community. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. Phone 1300 302 502.
- **Australian Copyright Council** (www.copyright.org.au) provides legal advice on copyright and has a number of useful publications. Its information sheets may be accessed for free on its website or ordered via the telephone. Tel: (02) 9318 1788 or go to
- **Australian Recording Industry Association** (www.aria.com.au) is the industry organisation representing record companies. In some circumstances ARIA can provide licences to copy sound recordings. Phone (02) 9267 7996.
- **Phonographic Performance Company of Australia Limited** (www.pcca.com.au) is the collecting society dealing with copyright in sound recordings. Public performance and transmission rights licences for use of sound recordings are available through PPCA. Phone (02) 8569 1100.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Arts Law website (www.artslaw.com.au) for more articles and information sheets.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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