Performers' Rights in Music

Performers such as actors, conductors, singers and musicians have rights which are separate from the rights of the authors, filmmakers, composers and songwriters who create the works that are performed. In this information sheet, we discuss the rights of musical performers that recognise the creative connection between musicians and the music they perform – whether or not it is music and songs which they wrote themselves.

What are performers' rights?

Performers such as actors, conductors, singers and musicians have rights which are separate from the rights of the authors, filmmakers, composers and songwriters who create the works that are performed. In this information sheet, we discuss the rights of musical performers. These rights recognise that there is creative connection between musicians and the music they perform – whether or not it is music and songs which they wrote themselves.

Under Australian law, performers have three types of rights:

- Rights of copyright in sound recordings of their live performances
- Rights to control how their performances are recorded and communicated
- Moral rights in their live performances and in sound recordings of those live performances

What copyright do performers have?

The copyright in sound recordings of live performances (whether live on stage or in a studio) is owned jointly by the 'maker' (which is usually the person who paid to make the recording or the recording studio) and the performers.

However, if the performers are employed or paid to perform, they do not obtain any copyright in the sound recording. For example, a session musician who is paid to sing backing vocals on a track does not have copyright but a friend who offers to sing backing vocals on a track for no payment will share in the copyright of the sound recording.

A performer's copyright is limited in that the performer cannot object to certain uses of the sound recording. If the sound recording was made for a particular purpose, the performer cannot use his or her copyright to stop the use of the sound recording for that purpose. For example, the friend who provided backing vocals on tracks being recorded for an album cannot object to, or prevent, the release of that album.

If the sound recording was made before 1 January 2005, the rights of performers are more limited.

For more information see Artists in the Black information sheet Copyright in music and lyrics.

What are performers' moral rights?

From 26 July 2007, musicians and singers have moral rights in their live performances and in any sound recordings of such live performances. Such performers (including both individual musicians and groups such as bands or orchestras) are entitled to:

- **A right of attribution** – this means that the performer or performers must be reasonably identified. For example, if your band's sound recording is played on the radio, the radio host will inform listeners that they are listening to a song performed by the band.
- **A right against false attribution** – this means that you can prevent anyone suggesting that you are responsible for a performance which is not yours. For example, a record label cannot release a record as yours when it is actually another

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group with a similar sound. Also, an event manager cannot advertise that you headlined a festival that you didn't appear at.

- **A right of integrity against derogatory treatment of the performance in a way that prejudices the reputation of the performer** – this prevents any material distortion, alteration or mutilation of your musical performance in a way which damages your reputation as a performer. For example, a studio which takes recordings that the band considers unfinished or very poor quality and releasing them on an album which then gets bad reviews.

However, moral rights are **not** infringed if the performer consented in writing or if the act or omission was 'reasonable' in the circumstances. For example, it may be reasonable just to give the name of the whole band which is performing rather than naming each individual member.

For more information see Artists in the Black information sheet Moral rights and music.

How else can musicians control their performances?

Musical performers have the right to say whether or not someone can record their performances or communicate their performance to the public (such as by radio, television broadcast or over the internet). An example of an unauthorised recording of a performance is a 'bootleg' video or sound recording of a live concert. There is an exception for recordings made in order to report the news.

Musical performers also have the right to say whether or not an authorised recording of their performance can be used on a soundtrack for a film (unless the sound recording was made specifically for that purpose and the performer knew that).

How long do performers' rights last?

Performers' copyright in sound recordings lasts for 70 years from the date the sound recording was first released or published.

Performers' moral rights in the sound recordings of their live performances continue for as long as copyright lasts in the sound recording except for the moral right of integrity which ends when the performer passes away.

The right of a performer to control the making of a sound recording of his or her musical performance and the use of that sound recording lasts for 50 years from the date of the performance. The right to control the making and use of a video recording or use of a sound recording as a soundtrack lasts for 20 years from the date of the performance.

Can my performer's rights be taken away by a contract?

Performer's copyright can be sold or transferred or limited by contract. A performer can also consent to certain acts which would otherwise breach his or her moral rights. In practice, the rights of performers are often reduced or limited by contract.

It is important to read and understand any contract before you sign it.

For more information see Artists in the Black information sheet Contracts.

What can I do if someone doesn't respect my rights in my performances?

You can take legal action against a person who does not respect your rights. These kinds of actions are called "infringements". If a court agrees that your rights have been infringed, you can get orders from a court which could include:

- an order that the person must stop the infringement (an injunction); or

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- an order that the person responsible must pay you money as compensation for the harm caused to you (damages);
- an order that the person responsible must pay you any profits made from the sales of an unauthorised sound recording of your performance;
- an order containing a public apology or correcting any false attribution.

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