Musicians and composers: useful resources

This information sheet lists resources, including sample agreements, which musicians, composers, songwriters and bands may find useful. It includes a brief description of the different music copyright collecting societies including APRA|AMCOS and PPCA, the resources available on the website of the Arts Law Centre of Australia and relevant national and state music organisations.

Introduction

Composers, songwriters, lyricists and musicians and others involved in the creation and performance of musical works may be entitled to copyright in what they create or, the performers' rights that are described in the Copyright Act 1968 (Cth).

This information sheet also provides links to the websites of the unions, guilds and other organisations that operate in the music industry and to the websites of the collecting societies that collect and distribute royalties related to the exploitation of musical works and sound recordings. Registering musical works and sound recordings with these collecting societies can result in royalty payments when the musical works and sound recordings are exploited or communicated to the public, such as by radio and television channels. Composers, lyricists, translators and arrangers can derive income from the copyright in the musical works and lyrics. Vocalists and musicians, such as a members of a band, can derive income from the sound recordings made of their performances. This income also depends on how their works are used or performed. You can also find more information about the ownership of copyright in music in the Arts Law information sheet: Music Copyright and Publishing for Bands and Recording Artists.

This information sheet lists resources including contracts, available for use by those involved in the composition, recording or performance of music, and explains when the different contracts can be used.

Arts Law Centre of Australia

Arts Law provides a telephone advice and document review service that can be accessed via the Arts Law website.

The Artists in the Black website provides resources that are directed to artists of Aboriginal or Torres Strait Islander heritage, including artists involved in the creation or performance of music.

Arts Law Information Sheets

- **Copyright**

Copyright provides a way for musicians to protect and monetise their creativity. Knowing how to license copyright and earn a royalty gives musicians a way to make money from their work. Knowing what to do if someone makes an unauthorised copy is also vital. This information sheet will introduce you to some of the copyright basics. It discusses the key concepts and rules established by *Copyright Act 1968* (Cth) including the 'author' of a musical work, the 'maker' of a sound recording and the concept of 'joint-authorship'. It also gives an overview about dealing with copyright.

- **Copyright Collecting Societies**

Composers, musicians and other owners of copyright material use collecting societies to license certain uses of their copyright. Collecting societies collect royalties (including resale royalties) on behalf of their members when their copyright is used. This information sheet provides information about the collecting societies operating in Australia that are relevant to composers of musical works and owners of sound recordings, including Australasian Performing Right Association (APRA), Australasian Mechanical Copyright Owners Society (AMCOS), which share the APRA|AMCOS website and Phonographic Performance Company of Australia (PPCA).

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- **Contracts: an introduction**

This information sheet also explains the requirements for a legally binding contract. It provides some basic contract tips to help you to negotiate and end up with an agreement that is a binding legal commitment. Arts Law recommends artists read this information sheet before using any of our sample agreements.

- **Contracts: a glossary of jargon**

When negotiating, discussing, entering or arguing about an agreement, a vocabulary of unfamiliar word and expressions may be introduced into the conversation. This information sheet contains a list of some of the more common legal terms that you might come across in negotiations as well as words and expressions that may appear in an agreement.

- **Moral Rights**

Moral rights protect the personal relationship between a creator, such as a composer or songwriter, and their work even if they don't own the copyright. Moral rights concern a creator's right to be properly attributed or credited, and the protection of their work from derogatory treatment. This information sheet provides an overview of moral rights and what constitutes infringement.

- **Performer's rights**

Musicians and other live performers may have performers' rights in their performances. These rights include the right to control the recording and broadcast of live performances, limited copyright in certain sound recordings of live performances and moral rights. This information sheet provides an overview of performers' rights and what constitutes infringement.

- **Protecting your ideas**

Copyright law does not protect ideas, only the original expression of ideas in material form. This information sheet explains how to protect ideas and give an overview of the law of confidentiality. It also includes a sample deed of confidentiality.

- **Music – Bands and recording artists**

This information sheet explains the rights in musical works, sound recordings and describes how composers, independent recording artists and bands that own the copyright in their music can derive income through the licensing and performance of their compositions and sound recordings.

- **Direct Licensing Guidelines: Sound Recordings**

This information sheet is for small Australian record companies and independent artists that have an input agreement with the Phonographic Performance Company of Australia (PPCA). TAll record companies and independent artists that are PPCA licensors must have direct licensing guidelines that outline the circumstances in which they may directly licence public performance and transmission rights for their sound recordings. This information sheet includes a sample Direct Licensing Guideline that is available for use by PPCA Licensors.

Arts Law Sample Agreements

- **Band Partnership Deed**

This sample Band Partnership Deed is designed to be used where a group of performers either wishes to join together and form a band, or already exist as a band and they want to formalise and document the terms on which they work together. This template is an alternative to the simpler Band Partnership Letter Agreement.

- **Band Partnership Letter agreement**

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This template is an alternative to the longer more detailed band partnership agreement and can be used when bands want a basic straightforward record of how they want to work together, who owns the music they make and how they will share expenses and income.

- **Music Commission Agreement for Film**

This sample agreement is intended for use when a filmmaker wants a composer/musician/band to create or adapt music for use in his/her film.

- **Music Commission Agreement for Games**

This sample Agreement is intended for use when a game developer wants a composer, musician or band either to create original music for use in the developer's game or to adapt existing music into a new composition or arrangement.

- **Music Licence for Film**

The Music Licence for Film agreement is for use where a filmmaker wants to synchronise existing music and an existing master tape of the music to a soundtrack for a film or video. It is appropriate when the composer of the music owns the copyright in both the music (and lyrics) and the sound recording.

- **Music Licence for Games**

The Music Licence for Games is for use where a game developer wants to synchronise existing music and an existing master recording of the music to a soundtrack for a game. It is appropriate when the composer of the music owns the copyright in both the music (and lyrics) and the sound recording.

- **Music Studio Recording Agreement for Unsigned Artists**

This sample agreement should be used when an unsigned artist is negotiating a booking with a recording studio. It can be used as a starting point for drafting an agreement or as a checklist to compare to the terms offered by the studio.

- **Music recording agreements guide**

This guide outlines the basic concepts of a recording agreement. It explains the different types of recording contracts and briefly states the formalities of forming and negotiating a deal with a record company. This checklist also has a glossary of common terms which will help you understand what is being offered in a recording deal.

- **Session Musician's Release**

The Session Musician's Release agreement should be used when a musician is being hired to perform a musical work as part of a recorded music session. The main topics that a Session Musician's Release deals with are authorisations for recording or broadcasting the session and using it in a soundtrack, copyright interests in sound recordings of a session and moral rights in relation to the musicians performing the musical work. It is important to note that a session musician will be entitled to performers' rights.

- **Music Compilation Licence for a Community Project**

This sample agreement should be used when a compilation CD is being created as part of a community project. It is drafted with unsigned artists in mind who do not have a publisher or recording company to negotiate on their behalf.

Collecting Societies

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Owners of the copyright in musical works and sound recordings can register with collecting societies who will licence specific categories of users of music and otherwise identify the use of copyright materials on an owner's behalf, as well as collecting and distributing royalties.

The Arts Law information sheet on Music – Bands and recording artists, discusses legal issues in managing the relationship with APRA, AMCOS and the PPCA.

The Australia collecting societies and music licensing services that deal with music are:

- Australasian Performing Right Association (**APRA**) – performance, broadcast and communication of musical works and lyrics;
- Australasian Mechanical Copyright Owners Society (**AMCOS**) – reproduction of musical works on sound recordings, and photocopying sheet music in school;
- Phonographic Performance Company of Australia (**PPCA**) – performance, broadcast and communication of sound recordings;
- Audio-Visual Copyright Society Limited, trading as **Screenrights** – educational use and retransmission of TV and radio programs, including the underlying musical works and recordings incorporated in them;
- Christian Copyright Licensing Asia-Pacific and World of Life International – print music licensing services that provide permission for specific copying activities that is relevant to churches and schools and other Christian ministries.

APRA|AMCOS – Australasian Performing Right Association & Australasian Mechanical Copyright Owners Society

APRA and AMCOS are separate organisations that deal with different aspects of the copyright in musical works. For administrative convenience the two organisations operate from the same website and share other back-office functions; therefore, for convenience they will be referred to as APRA|AMCOS.

APRA|AMCOS looks after the performing, communication and mechanical copyright of songwriters, composers and music publishers in Australia. The mechanical copyright describes the reproduction of music works, such as the reproduction of a song on a CD, DVD or in the operation of a digital download or steaming service. APRA|AMCOS acts as a link between the creators and owners of musical works, and those who want to use the musical works.

APRA|AMCOS collect royalties for the performance, communication, synchronisation, recording and reproduction of musical works and lyrics and pays the copyright owners in accordance with the distribution polices of APRA|AMCOS. They provide licences covering the copyright in the song and represent the interests of composers and publishers. APRA|AMCOS has relationship with collecting societies in other countries so that APRA|AMCOS collects royalties from overseas use of the work of songwriters, composers and publishers that are registered with APRA|AMCOS.

APRA|AMCOS membership is for individual composer, songwriter and lyricist. If you write songs and compositions with other people, each co-writer has to join separately to collect their royalties. In order to collect royalties, musicians must have an Australian Business Number (ABN). APRA|AMCOS provide information for creators of music, including: Working with co-writers, which provides tips for collaborating with other composers and lyricists.

APRA|AMCOS also offers a dedicated service for composers and songwriters of Aboriginal or Torres Strait Islander heritage. This ATSI APRA|AMCOS service provides career opportunities and ongoing career support including professional development and education.

APRA|AMCOS provide information for users of copyright music, including:

- Audio manufacture licence to reproduce music in a physical form (e.g. CD, DVD, vinyl records);

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- Digital and online music services – licenses for downloading and streaming services;
- Music in Theatre and the licensing of the so-called 'grand rights' in copyrighted operas, operettas, musicals, revues, ballets and choral works (exceeding 20 minutes);
- Production Music – a cost effective alternative to licensing commercially recorded music for use in all forms of audio and audiovisual productions including advertisements, films, TV programmes, websites, online games and music-on-hold.

APRA

Licensing to APRA grants them the right to administer the public **performance** and **communication** of a Musician's copyright in music and lyrics. APRA membership is appropriate for:

- Original creator of a musical work;
- Arranger of non-copyright works; and
- Creator of works publicly performed or broadcast.

AMCOS

AMCOS administers the reproduction (or 'mechanical') use of copyright musical works through the collection and distribution of mechanical copyright fees. AMCOS membership is appropriate for composers, songwriters and music publishers.

AMCOS is responsible for:

- licensing record companies and individuals for the mechanical reproduction of members' works, and of works administered on behalf of affiliated, overseas societies;
- licensing musical works for use in music videos;
- licensing production music;
- licensing schools for off-air copying of musical works (through **Screenrights**);
- collecting income from Screenrights for print music photocopying by other educational institutions;
- licensing music for use online and in mobile telephony including use in webcasters, download services, on-demand applications and other web portals. See also the Digital Content Guide.

'Opt out' or 'licence back' rights from APRA|AMCOS

Becoming a member of APRA|AMCOS will grant them a blanket licence enabling them to perform the functions discussed above. APRA|AMCOS can also grant a free licence for the personal website of the songwriter or composer. Members can opt out of APRA|AMCOS licencing or seek to licence back certain rights. Either licensing back rights from APRA|AMCOS or opting out of the grant of performing and communication rights will be necessary you need to directly licence an Online Sales Service (OSS) that provide a platform for consumers to access and purchase sound recordings. This is because the terms of service (TOS) or terms of use (TOU) of the OSS usually required the songwriter or composer to directly licence rights to the OSS.

APRA|AMCOS describes how you can opt out or licence back your rights:

Opt out (performing and communication rights):

- Songwriter or composer members wishing to retain control over certain category of works can seek an Opt Out from APRA|AMCOS for:
  - Public performance (anything other than broadcast and online);

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- Broadcasting;
- Communication to the public other than by broadcasting (e.g. web streaming);
- Live performances (e.g. concert or festival);
- Public performance by means of film (cinema);
- Public performances other than live and cinema (e.g. background music, fitness centres, dance parties);
- Radio broadcasting;
- Free to air TV broadcasting; and
- Subscription (pay) TV broadcasting.

The minimum opt out period is 12 months. Members must give APRA|AMCOS at least 3 months written notice to take effect on either 1 Jan or 1 July in any year. APRA|AMCOS may charge an administration fee capped at $200.

For more information, see Alternatives to APRA|AMCOS.

Licence back

- Songwriter or composer members wishing to deal directly with another party in Australia or New Zealand can licence back from APRA|AMCOS. You must give APRA|AMCOS written notice at least one week before the required use.

Although APRA|AMCOS deal with copyright in sound recordings and music videos, their services exclude live performances. Artists who perform on recordings should also consider registering with PPCA.

Phonographic Performance Company of Australia (PPCA)

The **PPCA** provides licences covering the recording and/or music video of the song, and represents the interests of recording artists and record labels.

Under the Copyright Act, the owners of copyright in sound recordings and music videos have certain exclusive rights to that sound recording or music video including rights to cause the sound recording or music video to be seen and/or heard in public, broadcast, and transmit them by a range of other electronic means, including by making them available on the Internet. PPCA collects the licence fees from broadcasters and businesses publicly playing recorded music or music videos, and distribute the money to copyright holders (licensors) and Australia recording artists registered with PPCA. Distributions are made annually and no funds are held in reserve for artists who haven't registered by the 31 August each year.

Artists who hold the copyright of their sound recording or only have a distribution deal with a record company need to register with PPCA as a Licensor. PPCA licences are for:

- public performance of sound recordings;
- public exhibition of music videos;
- music on hold – issued to commercial operations that play sound recordings over their telephone systems to callers on hold;
- broadcasting – use of sound recordings and music videos are negotiated with and granted to TV and radio broadcasters; and
- online – cover use of sound recordings in connection with certain online services including simulcasting of radio broadcasts over the Internet, webcasting, audio-visual streaming and podcasting. PPCA also offer licences covering the use of music videos in webcasts and simulcasts of TV broadcasts.

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Arts Law publishes a sample Direct Licensing Guideline and other information for PPCA Licensors about direct licensing of sound recordings.

Music Publishers

A music publisher works with songwriters and composers to support their careers and to maximize the income of the songwriters and composers. A music publisher takes a share of the income the publisher generates for the songwriters and composers than sign with the publisher. A music publisher performs administrative, licensing and creative functions including:

- collect fees and royalties, maintain and protect copyright;
- negotiate rates for the use of works with industry associations such as APRA|AMCOS; and
- promote and negotiate for publication of the copyright material that it owns or controls.

If the composer of a musical work is signed to a musical publisher, any royalty distribution is subject to the publishing contract which may detail a publisher's rights in the copyright material. The key sources of music publishing income are mechanical royalties for the reproduction of music on recordings, licensing income including synchronisation, performance, broadcast and communication, and print income.

For more information about music publishing, see the Arts Law information sheet: Music – Bands and recording artists.

APRA|AMCOS provides information as to the services offered to music publishers.

The Australasian Music Publishers Association (AMPAL) represents Australian and New Zealand music publishers and publishers a list of members.

Other Useful Organisations

National organisations

Australian Music Industry Network (AMIN)

AMIN is the peak body representing the state and territory music industry associations, and provides a national platform for the contemporary music industry in Australia. They publish fact sheets and checklists for musicians.

Australasian Songwriters Association

A national, non-profit, member organisation dedicated to supporting songwriters and their art.

Australian Copyright Council

A national organisation dedicated to providing copyright advice and publishes a range of information sheets on their website including information sheets on music & copyright and performer's rights.

Australian Entertainment Agents Association (AEAA)

AEAA represent entertainment agencies in dealings with other bodies and publishes a Code of Ethics for professional entertainment agents in Australia. The AEAA website provides a list of agents who are members of the association. AEAA also publishes guidelines for entertainers, employers and entertainment agent members.

Australian Recording Industry Association (ARIA)

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ARIA is a national industry association that represents the interests of its members who include small independent labels, medium size recording companies and the major labels with international affiliates. ARIA publishes a list of members. The ARIA Awards are open to recordings released by ARIA members.

Australian Independent Record Labels Association (AIR)

AIR is a non-government association dedicated to supporting the development of the independent recording sector in Australia. AIR represents Australian owned record labels and independent artists based in Australia. AIR publishes a list of members.

CAAMA Music

CAAMA Music is an Aboriginal owned and controlled media organisation dedicated to the development of Aboriginal musicians and taking their music to Australian and overseas market. CAAMA music is based in Alice Springs and works with Indigenous Australians to train, develop and nurture the talents and skills of artists and music industry workers.

Media Entertainment & Arts Alliance (MEAA)

MEAA is the national union working in the media, communications, entertainment, arts and sports industries. MEAA is a member based not-for-profit organisation with branch offices in each state. MEAA represents musicians who work in symphony and ballet orchestras, as well as professional musicians in New South Wales and Western Australia. MEAA publishes information, contracts for musicians, awards and enterprise agreements relevant to its members.

Musicians Union of Australia (MUA)

MUA protect the interests of musician members through legal advice, insurance advice, draft contracts and venue vetting. The union has branch offices in Queensland, New South Wales, Victoria, South Australia and Tasmania. MUA publishes the award rates and allowances under the Live Performance Award and other information relevant to the employment of musicians in film and TV production and in recording sessions for audio only releases.

Music Australia

Music Australia is the new name for the Music Council of Australia (MCA), which represents all Australian musicians and music interests as an advocate and information provider.

Support Act – Australian Music Industry Benevolent Fund

Support Act helps people who have worked in and contributed to Australia's music industry, who have no other means of assistance when illness or injury affects them.

State or territory organisations

NSW Government – Department of Industrial Relations

For information about the *Entertainment Industry Act 2013* (NSW) and licensing of music managers & agents in NSW. The Act introduces a code of conduct to provide the standards of service required from NSW performer representatives when providing services to performers.

The state and territory music organisations that are affiliated to **Australian Music Industry Network (AMIN)** are:

Music NSW: Supports represents and develops the contemporary music industry in New South Wales. MusicNSW host recordings of their monthly workshops via SoundCloud and offer free resources include factsheets, checklists and PDF templates useful for artists operating in the music industry.

Music ACT: Supports represents and develops the contemporary music industry in the Australian Capital Territory.

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Q Music: Supports represents and develops the contemporary music industry in Queensland.

Western Australian Music (WAM): Supports represents and develops the contemporary music industry in Western Australia.

Music NT: Supports represents and develops the contemporary music industry in the Northern Territory.

Music SA: Supports represents and develops the contemporary music industry in South Australia.

Music Tasmania: Supports represents and develops the contemporary music industry in Tasmania.

Music Victoria: Supports represents and develops the contemporary music industry in Victoria.

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 for more articles and information sheets

Disclaimer

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