Protest Music and the Law

If I write protest music

- What am I allowed to say?
- Can I criticise certain people or institutions?
- How can I protect myself against legal action from these people and institutions?

In this information sheet, we answer questions to help artists navigate the law in Australia relating to the creation, publication and performance of protest music.

Given the nature of protest music as public commentary, the subjects of such commentary may aim to suppress or attack it by way of legal claims. So, it's important for artists to know what to look out for. This information sheet will likely be of interest to lyric writers, composers, instrumentalists, singers, bands, and recording studios who seek to make protest music. It outlines some claims artists should look out for, and how they might protect themselves.

Key points

- There is no explicit (Constitutional) right of freedom of speech in Australia.
- The Australian High Court has held that there is, however, an implied freedom of political communication that operates as a freedom against government restraint.
- Australia is also a party to international treaties that provide for freedom of opinion and expression, including in the context of music.
- Protest music must be related to a political issue in order to be protected by the implied freedom of political communication.
- Lyrics and statements made in protest songs about public figures must be factual and not misrepresent the public figure.
- Caution should be taken to ensure that the lyrics and statements made in the protest song are not defamatory.
- Protest songs that use parts of other works or sample soundbites of videos, broadcasts, or recordings should be reviewed by a legal professional to check if they infringe copyright or otherwise fall foul of the law.

When does music become protest music?

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Protest music is music created for the purposes of advancing or progressing a social or political message about a movement. Protest songs also typically aim to critique or expose a social or political ill. They may also or alternatively seek to invoke change or incite action for a specific social movement.

What can I say in my protest music?

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Protest music, much like any form of expression, is limited by the fact that Australia does not have an implied right to freedom of speech. Instead, Australia has an implied freedom of political communication. This means there needs to be a political element to the music for the implied freedom to apply. This implied freedom can be further limited by other Australian laws.

For musical artists, the lyrics of a protest song can target certain governmental institutions as their subject of critique. So long as the core message of a song goes toward a political issue, an artist will likely be protected under the implied freedom of political communication. However, protections under the implied freedom of political communication becomes difficult where a song mentions or involves a public figure or organisation. The reason being that artists open themselves up to civil suits by

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the parties that are being critiqued.

People and protest songs

Any time a protest song makes mention of a public figure or entity, there is always a risk of backlash from that specific entity. We outline some considerations that artists may wish to consider limiting their liability with protest songs.

- *Does the song have a political connection?*

If a song references a public figure (whether they be a politician or otherwise) if the contents of the song touch on a political issue the implied freedom of political communication mentioned in section 2 will be enlivened.

- *Can you use someone's image?*

While other countries have 'personality rights', there is no right to control the use of one's personal image in Australia. However, in Australia there *are* consumer protection laws that may help well-known public figures from having their image misappropriated in a manner which can be seen as endorsing or sponsoring a particular message, product, or service, where no such endorsement exists.

Courts take a subjective approach in determining whether a certain reference or representation qualifies as a misappropriation of an image. This subjective approach takes into account the message of the song, the content used by the public figure, what was being represented, and whether such a representation could induce confusion in consumers, amongst other factors.

'Passing off' is a similar law that covers trading off someone's reputation.

We recommend engaging a legal professional, such as Arts Law, to determine whether or not a reference to a public figure encroaches on any consumer protection laws.

- *Are you misleading the public with your representation of the person?*

You are not allowed to mislead, or misrepresent to, the public using the image of a public figure or organisation.

Misleading or deceptive conduct involves any act or statement which might lead the public to believe something in error. A misleading or deceptive statement could, for example, take the form of lyrics which incorrectly attribute certain facts to a public figure or sample and edit the words of a public figure to make it sound like the public figure said things that they did not say (*Australian Broadcasting Corporations v Hanson* [1998] QCA 306). It is important to ensure that the lyrics of your protest song are factual.

Historically, social media platforms such as Twitter, Instagram, YouTube, and Meta have had in place misinformation policies that included a commitment to removing misinformation on their platforms. Streaming platforms such as Spotify also have had a 'Dangerous and Deceptive' policy which allows them to remove content they deem dangerous or deceptive. When you sign up to these platforms, or use them, you will have agreed to their terms and conditions which will usually contain terms which grant them the contractual right to remove items in accordance with their internal policies. The approaches and policies of streaming, social media and other platforms for sharing or monetising your music can change overnight so it is important to check the terms of anything you sign up to and check them again when they're updated. If there is something you don't understand or are unsure about, it's a good idea to have a lawyer look over it and explain it to you.

It should be noted that a companies' misinformation policy will be unique to that company. There is no universal standard for corporate fact-checking. For example, commencing 2025, Meta has decided to ditch its reliance on third-party fact-checkers and opted for a community-based fact checking program whereby users will be able to report on and determine what is deemed factual or non-factual. This differs from various other companies which either rely on third parties or an internal fact-checking process. Artists should be aware that what is deemed misleading on third-party platforms may not always be

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consistent.

Where can I play my protest music?

Even if your protest music is legally sound, that does not mean it may appeal to public and private sensibilities.

Entertainment venues, publishers, streaming platforms, social media platforms, studios, governments, and event organizers have control over the music that they will associate with. Some platforms will have a contract with terms and conditions that allow them to prohibit certain songs from being played. In some instances, such as radio, there may not be a contractual agreement but internal policies which will dictate which songs will be played by the radio station. It is important to ensure that you review the terms of any contracts you sign or enquire about the internal policies of a certain entity to see if you can or cannot play your protest music.

Section 3 briefly touched on social media platforms who have contracted with their users the right to remove offensive, defamatory, misinformative, or misrepresentative content.

Defamation

You can be sued for defamation for statements, and lyrics, made in a song. All the same elements, principles, and defenses which apply to defamation law will apply to protest music.

Further information on defamation law can be found here.

Copyright

Copyright applies to protest music in the same way it does any other form of music. Typically, protest music will include samples of spoken word, news broadcasts, or recordings pertaining to political issues. These will likely be protected by copyright – whether it's a musical work, a literary work or another category. If you wish to sample a previous work made by another creator and protected by copyright, you must acquire permission to use a substantial part from the copyright owner.

Copyright infringement occurs where one creator uses a "substantial part" of someone else's copyright material without their permission. A "substantial part" is about quality rather than quantity and is generally understood as an important part of the whole copyright work. Infringement is assessed by reference to the copyright material allegedly used, not the new work.

For further information on copyright infringement, you can refer to the Arts Law Information Sheet available here.

There are exceptions which allow people to use the whole or a substantial part of a copyrighted material in one of the exclusive rights reserved to the owner of copyright, even without the copyright owner's permission. These exceptions are called fair dealing exceptions. The purpose for the use of copyrighted materials must be fair and for one of the following purposes,:

- Research or study
- Criticism or review
- Parody or satire
- Reporting the news
- Enabling a person with a disability to access the material
- Professional advice by a lawyer, patent attorney or trademark attorney
- Judicial proceedings or reporting judicial proceedings

Parody or satire is likely to be the most relevant fair dealing exception to protest music.

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For a more comprehensive explanation of fair dealing exceptions, you can refer to the Copyright Council's information available here. Legal advice should be sought to determine whether the use of certain samples may fall under a fair dealing exception. We recommend getting professional legal advice to determine this matter.

Conclusion

When making protest music it is important to understand what your rights are and how to stay protected. Artists and musicians should look to protect themselves from legal disputes where possible by engaging legal professionals, such as Arts Law, where they are unsure about their rights and responsibilities.

If protest music is done properly, there is no reason why any person should be able to stop you from voicing your position.

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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