

# NOTES AND GUIDANCE

## COPYRIGHT - WHAT IS IT?

Here is the **LEGAL DEFINITION**:

**"Copyright is a proprietary right given to the creator of an original literary, dramatic, musical or artistic work. Copyright is also granted to the creator of original sound recordings, films, broadcasts, cable programmes and typographical arrangements".**

UK copyright legislation is found in the Copyright, Designs and Patents Act 1988 ("the Act").

### What does this mean in practice?

If you have written a piece of original music, you have created a musical work

If you have written some original lyrics, you have created a literary work

If you make an original recording or 'master', you have created a 'sound recording'.

All these are examples of copyright works. Other examples of copyright works to be found in music include:

The libretto to an opera (a literary work)

An album by a pop group (a music work AND a literary work AND a sound recording)

The lyrics that you find reprinted in pop music magazines (literary work)



When does my work become copyright?

In the United Kingdom, copyright exists as soon as a work is set down in a “fixed” form - that means written down on paper or recorded onto tape / CD. There is no copyright in an idea, it has to be in a fixed form. If you have written an original piece of music, as soon as you put the music into a written form or recorded form, copyright is created at that moment.

Some countries such as the USA offer greater copyright protection if the song is registered, however in the UK there are no formal registration requirements.

It is a common misunderstanding amongst musicians that copyright is in some way "created" by posting a recording/manuscript of your music to yourself by Recorded and Signed For mail. This does not create the copyright but it is a useful way of proving ( should you need to do so ) the date upon which you created your work.

Another misunderstanding surrounds the use of the © symbol. The use of the symbol itself does not create the copyright. It simply acts as a notice to tell people that you are the copyright owner and should warn them not to copy your music without your approval.



TIP

How do you protect your copyright in a sound recording?

Your copyright is created as soon as you have set your music down in a fixed form. However you may want to prove that you are the copyright owner if there is a problem later on. The easiest way to do this is to send a copy of your music by 'Recorded and Signed For' mail to yourself or a professional person ( such as a solicitor or bank manager ) who can store it safely for you unopened. Use the © symbol with your name and date, only put one work in the envelope and mark that work outside the envelope.

TIP

You have a band name that you want to protect? What do you do?

Check with [www.thebandregister2.co.uk](http://www.thebandregister2.co.uk) or [www.bandregister.co.uk](http://www.bandregister.co.uk). They will check to see if your name already exists. In general, a name would be awarded to a band who perhaps have traded for some time and who might suffer most on a financial basis. Example, a working cabaret band, who are performing three or four times a week and have been together for twelve months, would be favoured against a new act who have not as yet, started gigging.

Although copyright does not exist in a single name, the actual value in a band’s name and logo can be quite significant. Considering how much bands make from the sale of merchandise, it’s not surprising that an artist may wish to **trade mark** a name and logo to offer better protection.

You can register your band name and logo as a trade mark in the UK, but remember that this may cost hundreds if not thousands of pounds.

For more information on trade marks go to [www.patent.gov.uk/tm/](http://www.patent.gov.uk/tm/)

It is important to understand that several copyrights can exist in a single piece of music or a song.

**If you are the writer of the music and the lyrics:** → You will be the first copyright owner of the musical copyright work and the literary copyright work.

**If your song is then recorded and a master sound recording created, a third copyright is created:** → The copyright in the sound recording. This is owned by the person "who made the arrangements necessary for the making of the sound recording."

**Who owns the copyright in a demo sound recording?** → Whoever 'made the arrangements necessary for the making of the sound recording'. This may be the musicians themselves, or it may be the manager if they have made all the recording arrangements and paid for the studio. It could be the record company if they have paid for the recording, or a publishing company if ( for example ) they have paid for some demo recordings.

**Who owns the copyright in a recording made by an artist under contract to a record company?** → The copyright owner in the sound recording will almost certainly be the record company.

It is important to remember the distinction between the music and literary copyrights in the song and the copyright in the sound recording. Each of the copyrights can be owned by different people and generate different revenue streams.

**AS THE COPYRIGHT OWNER  
- WHAT ARE MY RIGHTS?**

As the copyright owner, you have certain exclusive rights. These rights are referred to as the "restricted acts". The law allows you to prevent other people from copying, performing, broadcasting or adapting your work without your consent. If a person does copy a substantial part of your music without your consent this may constitute copyright infringement.

In practice, this means that if you have written a song ( or part of a song ) then your permission is required before anyone wishes to perform, record, copy or sell your music in any way.

# COPYRIGHT INFRINGEMENT

If anyone copies or uses your work without your consent then this may constitute copyright infringement.

Infringement is when a substantial part of the work has been copied. There are no hard and fast rules about exactly what "substantial" means.

A popular example of copyright infringement is the use of samples. When sampling music, you should seek the consent of all the copyright owners regardless of the length of the sample. If the sample is recognisable from the song or recording that it has been taken from, it is likely that this will be copyright infringement even if it is just a few seconds long.

If someone has infringed your copyright, you will be entitled to a number of legal remedies:

an **INJUNCTION** to prevent the infringer from continuing to use your music or recording

an order for **DELIVERY UP** of the infringing copies (i.e.) you will be able to take possession of all records, tapes, demos, CDs that contain samples of copies of your music or recording

## DAMAGES

However remember that you will need to spend money on a lawyer to do this.

**THINK ABOUT THIS IF YOU INTEND TO USE SAMPLES!!**



Many people frequently say "the rule is you can use 30 seconds for free". This is wrong.

# PRACTICAL GUIDE TO CLEARING SAMPLES

If you want to release a recording commercially, it is vital that you clear the use of any sample that you have included.

You will need to get clearance from the owners of the copyrights in both the sound recording and the song itself. If a record has been released in the UK, you can contact MCPS who will have up to date information about the copyright owners and can also talk you through what steps you need to take to get your sample cleared.

You could also pay a specialist sample clearance company to do this for you, but it will cost several hundred pounds.

When you do contact the copyright holder(s), send them your track with details of where the sample is - tell them how and where you are going to release it and how many copies are being released. Make it easy for them to get back to you and make a decision. You will need to agree how any royalties will be split and they may ask for an advance

Don't leave it too late – if you release a record with an uncleared sample in it, the copyright owners may sue you for copyright infringement, stop the record from being released ( an injunction ) or demand a substantial part of your income from that release.

See 'More Information' for links to useful websites.

# MUSIC ON THE INTERNET

With the advent of mobile phones, MP3 files, Napster, iTunes and other online music services, the way people consume music has changed forever.

In the digital world, the same rules of copyright apply. The downloading or other use of music from the Internet must be authorised by the copyright owner in the same way as any other distribution method. Unauthorised copying is a "restricted act" under the Act and will constitute infringement if "substantial" Any use of copyright works on a web site should be licensed ( authorised ) by the copyright owner.



In 2003, The Recording Industry Association of America ( RIAA ) took legal action against hundreds of individuals who had been using internet file-sharing programs such as Grokster and Kazaa. They did this in an effort to deter the entire population from using these services and getting music for free.

Also, a number of highly successful artists separately pursued file share users as they were concerned about the impact on their record sales.

RELATED RIGHTS

There are other ‘related rights’ that you need to be aware of.

MORAL RIGHTS

As the creator of the copyright, the law also gives you further rights which are referred to as "moral rights".

The right of paternity is simply the right to be credited as the composer of the work.

The right of integrity is the right to prevent any derogatory treatment of your work. For example, if someone sampled your work without your consent, you may also consider they had in some way prejudiced your reputation. In this case, you may be able to bring a claim for breach of your moral rights. If the sample is substantial, you may also be able to bring a copyright infringement claim.

Eminem sued Apple Computer in a copyright infringement lawsuit filed in Detroit in February 2004, claiming that it used one of his hit songs, "Lose Yourself", in a TV advertisement without permission.

PERFORMANCE RIGHTS

The law also gives rights to performers in respect of their live performances and also in relation to the recordings made of their performances. As a general rule a recording of a performance cannot be exploited without the consent of the performer. Performance rights are separate and different from copyright or moral rights. Performance rights are in addition to and independent of any copyright in or moral rights relating to any work performed or any sound recording of the performance.

There is a distinction between:

- 1. the right that a performer has in his performance;
- and
- 2. the right of a copyright owner to prevent the public performance of his work.

The legal definition of a "performance" is:

- (a) a dramatic performance
- (b) a musical performance
- (c) a reading or recitation of a literary work
- (d) a performance of a variety act or similar presentation

Examples of those who have rights in their performance:

- musicians
- actors
- dancers
- singers
- news presenters

The Rental Directive has introduced the right for performers to receive payment for the exploitation of their performance when it is broadcast or shown to the public.

The Rental Directive “requires that performers are remunerated for broadcasting or other communication to the public of commercially published sound recordings of their performances”

CASE STUDY

A Session Musician who plays on a track in the studio

Performance rights are particularly important to session musicians who are unlikely to have any copyright in the music they perform. A session musician actually has rights in his/her performance.

Session musicians are able to sign up directly with the PPL ( or a Performer organisation such as AURA and PAMRA ) and collect income from the exploitation of their performance on the recording.

For more information on claiming payments from PPL, AURA and PAMRA

➤ WORKBOOK 8 – BUSINESS AND MONEY  
– CHAPTER 3

# DURATION OF COPYRIGHT

For musical or literary work, copyright lasts for 70 years after the end of the year of the death of the author.

Sound recording copyright lasts for 50 years from the year the recording was made or released.

Once copyright has expired, a work or recording becomes ‘out of copyright’ and falls into the ‘public domain’. This means that the work or recording is no longer protected and can be copied freely by anybody.

There are different durations in different countries.

# EXPLOITING YOUR COPYRIGHT MAKING MONEY OUT OF YOUR MUSIC

Once you have created a copyright work, copyright law allows you to control the exploitation of your music. As the first copyright owner you are able to exploit your rights by entering into either licence agreements or assignments with third parties.

It is the rental or sale of your copyright that will make you money and entitle you to the payment of royalties. Even if you are not a writing member of a band, the law gives you rights in your performance which allows you to prevent or restrict the exploitation of your performance and entitles you to fair compensation in the event that your performance is commercially exploited.

## When you assign your rights, you sell them

An assignment is a complete "buy-out" of your rights. You sell all your rights. You will cease to have any rights.

## When you license your rights, you rent them

A licence on the other hand can take many different forms and is basically an agreement where you allow somebody else to use your rights for a limited purpose and for limited time. With a licence you maintain ownership of the copyright at all times.

In practice, this means that you may deal with one or more of the following organisations:

**PUBLISHING COMPANY  
RECORD COMPANY.  
COLLECTION SOCIETY**

Go to CHAPTER 3 Workbook 8 and find out more about the ways in which you can work with business organisations and collection societies to exploit your copyrights.