

Frequently Asked Questions Music Copyright and Music Publishing

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1. What is music copyright?

Music copyright is a type of intellectual property. It is the mechanism by which composers, producers or authors of music can be paid for the work they create. It allows them to control who makes use of their work and the circumstances in which it is used. This ensures that the integrity and value of their work is

respected. Music copyright law attempts to balance the interests of those who invest their skills, intellectual effort, time and money in the creation of their music and those who wish to use or enjoy it.

Music copyright automatically arises once a piece of music is created. It does not have to be registered, and in fact there is no system under which to register music copyright in the UK. More information on music copyright and copyright in general can be found at the UK Patent Office Intellectual Property website at <http://www.intellectual-property.gov.uk/resources/copyright/index.htm>

2. Who can hold music copyright?

Music copyright in any given piece of music is normally owned by one or more of the following entities:

- The composer, producer or author of the music
- The record company
- The music publishing company

It is possible for a piece of music to have more than one owner of rights in that music. The composer, producer or author (and sometimes, depending on the contractual arrangement, the publisher) generally owns authors' rights in the melody or lyrics. It should be noted that:

- **Music copyright** only applies to the **melody**
- The **lyrics** are protected by **literary copyright**
- The physical recording is protected under a separate right.

Record labels automatically own rights in a piece of music if a composer, producer or author is 'employed' by them.

If a third party wishes to exploit a piece of music, permission has to be sought from the owner of the rights in that music. This could be the person who created the music, or it could be the person to whom the rights in the piece of music have been assigned (i.e. sold to a third party).

For more information please visit http://www.rtcoopers.com/practice_mediaentertainment.php

3. How can you tell if a piece of music is subject to music copyright?

If you are the owner of the copyright in the music, it should have a copyright notice, to give notice to the world that you own the copyright in this music. This is designed to indicate that the piece of music is protected. It normally appears as a © [Name of creator/Owner], [Year of Creation]. As mentioned above, there is no official way to register music copyright. This means that all copyright in music arises automatically as soon as it is created, provided it is new. In Europe, composers, producers and authors retain copyright in their pieces of music for 70 years after their death. Sometimes they may have an arrangement with a music

publisher, in which case it is possible that the music publisher will own the copyright for the same period of time.

Occasionally, music is created for the specific purpose of being used freely by anyone who wishes to do so. When such music is produced, it will normally be clearly indicated that there is no copyright attached to it. The most common users of this music are amateur musicians or film producers. It allows them to have a selection of music which they are able to use without having to worry about infringing copyright or paying royalties.

4. How can music be 'exploited'?

There are a number of ways in which music can be exploited for the purposes of copyright. Aside from listening to and enjoying a piece of music, that music can be:

1.	Copied	This involves copying the contents of any medium on which music can be recorded to another. This includes CD, DAT, Mini Disc, DVD, Analogue Tape, Vinyl and Hard Disk.
2.	Altered	This involves changing a piece of music without making the 'content' of the music substantially different. For example, re-arranging the 'sections' of a piece of music so that they are played in a different order than the original.
3.	Sampled	This involves taking a small section of a piece of music and using it as a constituent part in the creation of another piece of music.
4.	Remixed	This involves changing a piece of music to such an extent that 'content' of the music could potentially attract its own copyright protection. The remixed version of a piece of music is usually identifiable as being 'related' to or derived from the original, typically due to the sounds or melodies used.
5.	Uploaded	This is the action of 'ripping' a piece of music from an audio CD or other source to a PC's Hard Disk, and then either copying the ripped music to a website, or making it available to others over a peer-to-peer network.
6.	Broadcasted	This includes playing a piece of music in public, transmitting it via the radio or broadcasting it via TV.
7.	Performed	This would be when the piece of music is performed live.

The permission of the copyright owner must be sought to engage in any of the above activities with regard to a piece of music. Offenders can be prosecuted.

5. What is legal and what is illegal?

In order to copy, alter, sample, remix, upload, broadcast or perform a piece of music the permission of the relevant copyright owners must be obtained.

Copyright protection is almost completely international, and so almost any piece of music requires permission if it is to be used in one of the above ways.

If the permission of the copyright owner is not obtained, and the piece of music is used, this constitutes an infringement of copyright. If the person using the piece of music without permission makes a profit from its exploitation, the penalties for doing so will be more severe than if it were not for profit.

It should be noted that it is acceptable to make copies of a piece of music for personal or private use, or for back-up purposes. For example, if a CD is purchased, the rights to own the physical disc, the right to play it privately and the right to pass that disc on to another person are paid for. It is not normally acceptable to re-sell the disc, but it is sometimes okay to copy the disc for your own personal use. However, if this personal copy is distributed, for example through a peer-to-peer file sharing network over the internet, then the copyright in the music is infringed.

6. What is the situation regarding very old pieces of music?

Some very old pieces of music may be in what is known as 'the public domain'. This means that there is no copyright owner who needs to be approached in order for that piece of music to be used in one of the above ways. For example, many classical pieces of music do not have any copyright afforded to them, however, this should not be confused for example with the copyright afforded to a sound recording of the London Philharmonic Orchestra playing a particular piece of classical music. Even though there may not be a 'musical' copyright owner, there could well be a 'sound recording' copyright owner. Copyright in sound recordings last for 50 years from when the recording was first published.

7. What is music publishing?

Music publishing can best be described as the 'business' relating to music copyright. The control of music copyright enables a publisher to recover the investment made by the composer, producer or author of a piece of music and ensures that they are rewarded for their creative efforts. Without music copyright there would be no financial incentive for music publishers to invest in musicians. This would not be in the interest of the composers, producers or authors who depend upon publishers to exploit their musical works and to facilitate the receipt of royalty payments.

Visit <http://www.mpaonline.org.uk> for more information about music publishing.

8. How do music copyright and music publishing relate?

The relationship between the music copyright created by the composer, producer or author of a piece of music and a music publisher, is governed by a publishing contract. This is normally drafted in such a way that each party would have rights and obligations to the other. It is normally the case with these sorts of contracts that the music copyright owned by the composers, producers or authors is assigned to the music publisher in return for a commitment to promote, exploit and protect that music. It should be noted that it is usually the case that the musician will retain their 'moral' rights – these include such things as having their name attributed to the work or not having other pieces of work falsely attributed to them. The music publisher also normally has to agree to pay the musician a

percentage of any income earned from such exploitation. These are called 'royalties'.

9. How do royalties work?

There are three main types of royalties and each work in a slightly different way. Firstly, there are **Performance royalties**. These are the royalties that the musician will receive from the music publisher with regards to their piece of music being broadcast or performed live. If their work is played on the radio, during a TV commercial, as part of a show or film soundtrack, at a nightclub or in any other public place, the musician should be paid a percentage of the income received in relation to the broadcast or performance. Performance royalties are collected from broadcasters in the UK by the Performing Rights Society ("PRS"). If the musicians are members of the PRS, they would receive their royalties directly from PRS, otherwise the music publisher would be given the musicians royalties which are then passed on to the musician.

Secondly, there are **Mechanical royalties**. These are royalties which are associated with recorded versions of a piece of music which are then manufactured and sold to the public, for example, CD's or Vinyl. It should be noted that this category excludes the use of the music in Television Films or Cinematograph Films. Royalties are collected from the manufacturers and record labels by the Mechanical Copyright Protection Society ("MCPS").

Finally, any royalties received in connection with the use of a piece of music in a film are called **Synchronisation Fees**. These are paid to the music publisher for use of a piece of music in the production of a film where the music has to be slightly altered in a way to fit with what happens on screen.

10. What is the Performing Rights Society?

The PRS is a society established specifically for composers, producers and authors of all music styles. It represents approaching 1 million copyright owners and monitors millions of pieces of music. The primary function of the PRS is to collect royalties from people or organisations which use the music created by musicians and to ensure that those royalties reach their members. It should be noted that musicians do not have to be a member of the PRS to receive royalties for their music. The benefit of being members is that musicians would receive their royalties directly from the PRS, however, if they are not members, their royalties would be passed from the PRS to the music publisher, who would in turn pass them to the musician.

The PRS also has affiliations with collecting agencies in other countries. As the PRS only deals with music use in the UK, it needs to have these affiliations in order to collect royalties for musicians when their music is used overseas. For more information visit <http://www.prs.co.uk>

11. How does the PRS work?

The PRS issues an annual licence to music users in order to collect royalties from them. This is because the PRS needs to know what music is being used and by

whom in order to collect the royalties for the appropriate musicians. Music users that are licensed by the PRS range from small local bars and cafés to huge organisations such as the BBC and British Airways. The larger music users send detailed reports to the PRS outlining all the music which they have played. In the case of smaller music users, the PRS normally send out researchers to obtain first hand information. By obtaining a PRS licence a music user is able to use every piece of music registered with the PRS without infringing copyright. This means that individual clearance for every piece of music used does not have to be sought.

It is difficult for the PRS to track every single performance of every piece of music due to the fact that there are an estimated 8 billion public performances of music in the UK every year. So, the PRS has to use statistical methods to extrapolate the use of music based on actual performance information. The PRS is a non-profit making organisation, and as such, only recovers its fees before distributing the remainder to the musicians.

12. Why should a musician join the PRS?

There are a number of benefits of PRS membership, but joining the PRS is not essential. There are five groups that are able to join:

- Composers, producers and authors of musical works
- Authors of poems or lyrics which are then set to music
- Arrangers of non-copyright music
- Music publishers
- Families of deceased members

There is no annual membership fee. However, in order to join an initial payment of £100 is required by all of the above except for music publishers, who have to pay £400. The primary benefit for a musician in joining the PRS is that their royalties are credited directly into their bank account, as opposed to first passing to their music publisher. The PRS is also the fastest and most efficient way for royalties to be collected and distributed in the UK. It also facilitates the receipt of due royalties from overseas. Every member receives a detailed statement on all the royalties collected and distributed on their behalf.

In addition to the above, the PRS also offers a registration service for its members. Their pieces of music can be registered, as well as their agreements with their music publishers. The registration service is designed to remove any doubt as to whether a particular piece of music attracts royalty payments. In the event of a dispute, the PRS also offers a referral service for musicians, which can put them in touch with external legal or accountancy services.

13. What is the Mechanical Copyright Protection Society and how does it work?

In a similar way to the PRS, the MCPS is a non-profit organisation which is funded by the commission levied on licence fees. It is principally concerned with the collection and distribution of royalties arising from musical works protected by copyright which are professionally recorded. It arranges agreements with music

users who wish to record and distribute media containing copyright musical works. In exchange for being able to use a registered piece of music, the music user is charged a licensing fee. The fees are subsequently distributed to MCPS members as mechanical royalties.

Music users that are granted a licence by the MCPS have to supply a detailed list of all the music which used in their professional recordings. There are many different forms of professional recordings which include, but are not limited to, CD, DVD, tapes of all kinds, websites, films, TV programmes, computer games, ring-tones and novelty products. Details of all the music used in these recordings must be supplied to the MCPS. For example, if a compilation CD is to be manufactured, a list of all the pieces of music to be included on the compilation has to be sent to the MCPS. The list is then compared to the registered pieces of music held on the MCPS databases, and the musicians then receive their royalties accordingly. As a result, every time a piece of music is copied or distributed to the public, the royalties generated from the licensing will be collected and distributed by the MCPS.

For more information visit <http://www.mcps.co.uk>

14. Why should a musician join the MCPS?

Composers, producers or authors that have assigned their rights in a piece of music to a music publisher do not need to join the MCPS with regards to that piece of music. This is because the music publisher will collect and distribute royalties to the musicians for the use of that piece of music in professional recordings.

However, if a musician did choose to join the MCPS the musician would receive the following benefits:

- The MCPS offers superb administrative efficiency due to their expert knowledge of the music industry.
- The MCPS ensures that all royalties due to a musician are levied at their highest possible rate.
- It protects its member's rights by running a UK-wide anti piracy scheme to prevent the illegal copying of member's works.
- The MCPS is one of the largest and most influential collection societies in the world.
- There is a wide range of schemes to cover all types of music usage. These licensing schemes are continually updated to reflect the changing uses of music and the development of new technology.
- Royalties are itemised to indicate to the musician how their music is being used. Royalties are distributed on a monthly basis.
- The MCPS regularly audits music users to ensure compliance.
- There is no annual membership fee. An initial payment of £50 is required to join as well as an average rate of commission of 6.4%.

15. What is the MCPS-PRS Alliance?

The MCPS and the PRS are separate societies. Their income, constitution, membership, guardianship of different rights and responsibilities are different. In order to get the most for their members in terms of facilities and strengths available, they started to work together under the banner of 'The MCPS-PRS Alliance'. The alliance has been lobbying for the support of musicians rights since 1998.

For more information visit <http://www.mcps-prs-alliance.co.uk>

16. What is a recording contract?

A recording contract is the agreement that is made between the musician and a record label. The recording contract is usually prepared by the record label's solicitors, and is often biased towards them due to the fact that they usually have more bargaining power than the musician – unless the musician is already very well established, in which case the roles are often reversed!

The recording contract gives the production company (which is often part of the record label) rights to use the recording of the music. This works by way of a licence. When the contract is signed by the musician, this allows the musician to license the rights in the music to the record label. The recording of a piece of music and the copyright in that piece of music is dealt with in the recording contract, whereas the sale of that piece of music is dealt with in the music publishing contract.

It is also usual to include in a recording contract that the record label would be given the responsibility of developing a musician's career through the promotion of their material.

17. What is a music publishing contract?

A music publishing contract is the agreement between the musician and the publishing company. In a similar way to a recording contract, it is usually prepared by the publishing company's solicitors. The music publishing contract ideally aims to cement a mutually beneficial financial relationship between the musician and the publishing company. By signing the contract, a musician licenses or assigns his or her rights in the music to the publishing company for commercial exploitation. It allows the publishing company to print copies of the music for sale in shops etc.

Publishing companies are not normally expected to promote a musician's material – this is normally the responsibility of the record label. Another distinction between the two is that a music publishing contract often gives the publishing company rights to control the sale of a piece of music for a long time, whereas record labels will sign a musician for a comparatively shorter period. This is due to the fact that most musicians' commercial lives only last a number of years. After a musician leaves the limelight, they are not as much value to a record label as they are to a publishing company. A record label will not want the responsibility of promoting an

artist that is no longer popular, whereas a publishing company may continue to make money from their back catalogue.

Music publishing contracts place a responsibility on the publishing company for the collection of royalties on behalf of the musician. As mentioned above, this is mostly carried out by the MCPS.

For more information please visit <http://www.mpaonline.org.uk>

18. What should I look for in the contracts?

Due to the very nature of contract law, both sides of the contract will be trying to achieve different objectives. This means it is important to strike a balance between the two parties to ensure the contractual relationship results in a fair outcome. The points below apply equally to recording and publishing contracts.

Musicians should consider the following terms as the most important aspects of any contract they enter into:

- Provisions for the highest possible remuneration for the pieces of music written under the contract. The most common methods of payment include royalties, salaries and commissions. This is discussed below.
- Recognition for the pieces of music written under the contract. These are known as 'moral rights' and are discussed below.
- Promotion of their names in relation to the pieces of music written under the contract.
- A mechanism by which to cancel the contract in the event they would like to terminate the contract early.

A record label or music publisher should consider the following as the most important aspects of any contract they enter into:

- Obtaining the rights to the music written by the musician.
- Promotion of the musician's name in order to increase the use of their music.
- Ensuring the musician is obliged to write a number of pieces of music to a suitable level of quality under the contract.

19. Why should a musician enter into a recording contract or publishing contract?

Every recording or publishing contract is different depending on the terms contained in it, but you expect to find standard provisions that would apply in each case. This means that there can be radically different incentives for a musician for entering into such contracts. However, the most obvious reason for a musician to enter into a recording or publishing contract is that of payment. By the very nature of contract law, if a record label or music publisher does not fulfil his or her obligations under a recording contract (for example by failing to pay the musician), the musician in question would be able to rely on the terms of the

contract to his or her benefit (for example seeking damages due to breach of contract).

A musician who enters into a recording or publishing contract is most commonly paid either by the collection and distribution of royalties relating to pieces of music written by them, by being 'employed' indefinitely by the record label or music publisher and therefore being offered a salary to write music for them, or by being commissioned by the record label or music publisher to write a certain number of pieces of music in exchange for a fixed sum. In this respect it is highly advantageous for a musician to enter into a recording or publishing contract as it provides a legally enforceable method of remuneration. If they are not paid, they are able to rely on the contract to enforce payment.

As mentioned above, recording contracts also usually deal with aspects of promotions. Publishing contracts do not normally deal with this. It is in the interests of both the musician and the record label to promote the musician's name in connection with the music. By entering into a recording contract, it is usually the responsibility of the record label to promote the musician's music in an effort to increase its usage, and consequently its potential earning capability. In this way, the musician's 'moral rights' are realised. A musician has a 'moral right' to be recognised for the creation of his or her music. This recognition through the promotion carried out by the record label should be aimed at improving the musician's popularity. This is obviously to both the record label's and the musician's advantage.

20. Why should a record label or music publisher enter into a contract?

The most important reason for a record label or music publisher to enter into either a recording or publishing contract is to try to ensure a consistent source of revenue. As mentioned above, most contracts attempt to oblige a musician to write a certain number of pieces of music which would then be released for general use by the record label or music publisher. Once they enter into a contract with a musician, it makes sense to try to develop that musician and his or her music in order to create a larger 'fanbase' and therefore a larger source of income.

By entering into a contract, a record label or music publisher can also take advantage of having a popular (or hopefully soon to be popular) artist on their books.

21. Where can I get more information?

The UK Patent Office: <http://www.patent.gov.uk>

The UK Patent Office IP website: <http://www.intellectual-property.gov.uk/resources/copyright/index.htm>

The Music Publishers Association: <http://www.mpaonline.org.uk>

The Performing Rights Society: <http://www.prs.co.uk>

The Mechanical Copyright Protection Society: <http://www.mcps.co.uk>

The MCPS-PRS Alliance: <http://www.mcps-prs-alliance.co.uk>

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