

A FILMMAKER'S GUIDE TO MUSIC AND COPYRIGHT

Have you ever wondered whether it's ok to use other people's music in your film?

How do you get permission to use music in your film? This guide aims to answer these questions and give you an idea of how you can and can't use music in your films.

Some simple facts

What's copyright?

Copyright is an automatic protection that applies to the expression of original ideas. It protects your work from being used in an unauthorised manner. It also means that other people's films, music, photographs, artworks and written texts are protected from unauthorised use as well.

Who owns copyright?

Generally the author of a work – the principal director of a film or the composer of a song – owns copyright in the expression of their original ideas. However they may not be the sole owner of copyright in that film or song. For example, if you are the principal director of your film, you own copyright in the cinematographic film itself, but a number of other people may own copyright in elements of your film, like the music or soundtrack you use.

What rights does copyright give you?

Copyright gives the owner exclusive rights to generally:

- make a copy of their work;
- show or play their work to the public; and
- communicate their work to the public, for example by making it available on the internet.

This means that if you want to do any of these things with a protected work you must first get the copyright owner's permission. Likewise, other people need permission to use your work!

Are there any exceptions to copyright protection?

There are limited exceptions that allow you to use other people's work without their permission. For example, you can copy or use other people's work without infringing copyright if:

- one of the 'fair dealing' exceptions applies, namely:
 - it must be used for one of the following purposes: criticism and review, news reporting, parody and satire, or research and study; and
 - the use of the work must be 'fair'.

Fair dealing exceptions are quite narrow, so don't assume that they will automatically apply. It's often safer to ask for permission to use the work.

- you own a legitimate copy of a song and copy it for your own **private and domestic use** – this doesn't extend to using the song within your film.

When I am making my film how do I do the right thing with other people's music? Qs & As

What should I keep in mind when choosing music?

Music should be one of the first things you consider when planning your production – the last thing you want to do is limit the life of your film by making hasty music choices or leaving this until the last minute. It is a good idea to try to use local music in your film. This means that local musicians and composers can benefit and it is usually easier to organise and may be more economical. You should be aware that well-known and published music can be very expensive to use.

Can I use someone else's music in my film?

Yes, as long as you have obtained permission to use the music from all of the copyright owners. There is generally more than one owner of copyright in any given musical track. The composer who wrote the music owns copyright in the musical works. The lyricist who wrote the lyrics owns copyright in the literary works. The artist who performed the music owns copyright in a sound recording of their live performance. Finally, the maker of the recording (typically a record company) owns copyright in the sound recording.

As a practical guide, to use music legally in your film you should:

- contact the Australasian Mechanical Copyright Owners' Society (AMCOS) on 1300 852 388 to obtain the correct licence for the use of the musical work; and
- contact the licensing department of the relevant record company to obtain permission for the use of the sound recording.

Do I need permission to use someone else's music in my film?

Yes, even if you record your own cover version of a song, you must still get permission from the owner of copyright in the musical work in order to use it in your film. This can usually be done by contacting AMCOS on 1300 852 388 or by contacting the relevant music publisher directly. Similarly, if you arrange or transpose someone else's music you must first obtain their permission to include it in your film.

Do I need permission to film a live performance of music?

Yes, performers also have rights under the Copyright Act and permission must be sought to film a live performance of music, as well as live performances of dramatic and literary works, circus acts and dance. You should obtain written consent from all performers, by asking them to sign a release form.

Why should I bother to ask for permission to use music in my film?

There are a number of reasons why you might want to think twice about using music in your film without seeking permission. Firstly, as a filmmaker, you have first-hand experience of the time, effort and money that goes into creating, whether it is a film, a song or a painting. Using another creator's work without permission undervalues the blood, sweat and tears that have gone into the creation process, and while some artists may be happy for their music to feature in films, others may not – they have a right to be asked.

There are also legal implications. While using music without seeking permission may seem like the quick and easy option, you should be aware that under the Copyright Act, infringement of copyright by illegally copying protected music attracts maximum criminal penalties of \$60,500 or 5 years imprisonment per infringement.

Respect copyright in music

Copyright protects your film from being used without your permission. It also protects the work of numerous other creators who are similarly passionate about their music, artworks, literary works or films. Copyright protects your work – make sure you respect others!

Need more information?

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