

# RADIO NARROWCASTERS AND MUSIC COPYRIGHT

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## WHAT IS COPYRIGHT?

Essentially, copyright exists as a means to encourage creativity and to protect the artistic and intellectual efforts of composers, artists, authors and other originators of creative works. Copyright is the lifeblood of the music industry. It is designed to ensure that composers of musical works, the authors of lyrics and makers of sound recordings are appropriately paid when their work is used.

## COPYRIGHT IN A MUSICAL WORK

Despite the intangible nature of copyright it is still treated under law as property. When a composer writes any musical work, the Copyright Act grants that person a bundle of exclusive rights over its use.

Of all the rights for a musical work (there are seven in total), a radio narrowcaster is potentially concerned with two: reproduction (copying) onto any audio-only format, such as tape, cartridge or CD; and broadcast, meaning any 'wireless' transmission to the public including all forms of 'narrowcast' and satellite transmission.

## COPYRIGHT IN A SOUND RECORDING

As well as the copyright in a musical work, a distinct and separate copyright exists in any sound recording made of the musical work. A person making a sound recording may own the copyright in the actual recording, but not own the copyright in the musical work itself.

In addition to the two licences for musical works, a radio narrowcaster potentially needs to concern itself with the same two rights for sound recordings. Making a copy of a CD, tape or record requires a licence for the copying of the sound recording as well as the underlying musical work. A licence is also required for the 'broadcast' of the sound recordings.

## WHAT ARE 'EPHEMERAL' RIGHTS?

The Copyright Act provides for specific situations where a 'broadcaster' (radio or television) may not need to secure a licence for the reproduction of musical works and sound recordings. These specific situations are extremely limited and, in most cases, will not apply, but are mentioned here as the term is often referred to throughout the industry.

A radio or television station is entitled to make a reproduction of a musical work or sound recording specifically for the purpose of 'broadcast' on its station only, provided certain conditions are met:

- the station must have a licence to 'broadcast' the musical work or sound recording;
- the station must destroy the reproduction before 12 months has expired or—and this rarely applies—the reproduction is delivered to the Australian Archives with the consent of the Director-General of the Australian Archives before 12 months has expired; and
- the station is not permitted to make copies of the reproduction for any other purpose, such as to supply to another narrowcast station or to supply to listeners who have requested a copy of a program.

Where a station makes a copy of a recording for storage purposes to use for broadcast periodically, the copy is usually kept for longer than the 12 month 'ephemeral' period and, consequently, the reproduction must be licensed. Commercial radio stations traditionally call this 'carting' because the copies were made from the original record or CD and put on a cartridge. These days some stations are even 'carting' to CD and computer hard drive and storing their entire libraries this way.

To rely on the 'ephemeral' provisions, a radio narrowcaster will need a licence with APRA, PPCA and, if using production music recordings, AMCOS.

## AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY (AMCOS)

Private Box 2135, North Sydney NSW 2059. Tel: (02) 954 3655 Fax: (02) 954 3664.

AMCOS looks after reproduction rights for musical works and the broadcast and reproduction rights for the production musical recordings. If making copies of copyright musical works onto audio tape, either by recording a musician playing the work or copying from a CD, tape or record, you will require an AMCOS licence. If using production music recordings, you will also require an AMCOS licence.

## AUSTRALASIAN PERFORMING RIGHTS ASSOCIATION (APRA)

PO Box 567, Crows Nest NSW 2065. Tel: (02) 922 6422 Fax: (02) 9250314.

APRA looks after performance rights for musical works. These performance rights include all forms of broadcast and transmission. Any transmission of copyright musical works whatsoever will require an APRA licence—no exceptions. An APRA licence is one of the prerequisites required to enable a station to take advantage of the ephemeral provisions.

## PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA (PPCA)

PO Box Q20, QVB NSW Sydney 2000. Tel: (02) 267 7996 Fax: (02) 264 5589.

PPCA looks after the performance rights for sound recordings. If broadcasting sound recordings, you will need a PPCA licence. The PPCA licence is one of the prerequisites required to enable a station to take advantage of the ephemeral provisions.

## AUSTRALIAN RECORD INDUSTRY ASSOCIATION (ARIA)

PO Box Q20, QVB NSW Sydney 2000. Tel: (02) 267 7996 Fax: (02) 264 5589.

ARIA looks after reproduction rights for commercially released sound recordings. If copying from a CD, tape or record and you are operating outside of the ephemeral provisions, an ARIA licence as well as the AMCOS licence is required.

