
Community Broadcasters & Copyright

In this information sheet, we give a brief overview of copyright issues affecting community broadcasters. We outline the issues that community radio and television broadcasters need to be aware of in preparing and broadcasting programs, and give contact details for sources of further information.

Makers of television programs can find more detailed information in our practical guide *Film & Copyright* or our information sheet *Film & Copyright*.

Check our website at www.copyright.org.au to make sure this is the most recent version of this information sheet, and for information about our other information sheets, other publications and our training program.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Key points

- You generally need permission to broadcast material protected by copyright. There are, however, some exceptions to this rule.
- All community broadcasters are likely to need licences from the copyright collecting societies APRA-AMCOS and PCCA, which allow them to broadcast music and recordings, and to archive programs.
- Broadcasters may, in some circumstances, also need specific permissions from performers.

What does copyright protect?

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and decisions of courts.

Copyright protects a range of material including novels, plays, lyrics, poems, speeches (protected as “literary works”), music (protected as “musical works”), “artistic works”, “cinematographic films”, “sound recordings” and “broadcasts”.

A **sound recording** is protected by copyright in addition to any underlying works that are recorded, such as music and lyrics. Similarly, a **film** is protected separately to underlying works used in the film. **Broadcasts** are also protected separately to the underlying works, sound recordings and films being broadcast.

Material is protected regardless of the format in which it is recorded. For example, music, lyrics and sound recordings may be protected whether they are recorded onto tape, MP3, CD or DVD.

The Copyright Act also gives certain rights to **performers**, discussed below under the heading “Performers’ rights”.

Several copyright interests may exist in one item

One physical item or digital file may contain a number of separate copyrights. For example, in a music CD:

- the music may be protected (the arrangement of the music may also be separately protected);
- the lyrics may be protected (if the lyrics have been translated, the translation may also be separately protected); and
- the sound recording may be protected.

To broadcast the CD without infringing copyright, permission is needed for each of these rights (unless the copyright has expired, or an exception to infringement applies). In practice, all of the rights are likely to be covered by licences from collecting societies (see “Broadcasting music and sound recordings” below).

How long does copyright last?

The general rule is that copyright lasts for the life of the creator plus 70 years (or, where duration depends on year of publication, until 70 years after the year of first publication).

Copyright in literary, dramatic, musical and artistic works created by people who died before 1 January 1955 has now generally expired.

The rules on how long copyright lasts are complex, and there are a number of important exceptions to these two general rules; we discuss these in detail in our information sheet *Duration of Copyright*.

Who is the copyright owner?

The general rule is that the creator of the work is the first owner of copyright in that work. However, there are some exceptions. For example, where an employee creates a copyright work as part of his or her job, copyright is generally owned by the employer. In most cases, freelancers and volunteers own copyright in what they create, unless they reach an agreement to the contrary.

If the material has been commissioned and there has been no agreement to the contrary, the creator will retain copyright ownership but the commissioning party will have the right to use the material for the purposes for which it was commissioned.

For further information, see our information sheet *Ownership of Copyright*

Ownership of copyright in a sound recording

In some circumstances, the first owners of copyright in a sound recording of a live performance are the performer and the person who owns the recording medium (such as the master tape).

For more information, see our information sheets *Performers’ Rights* and *Music & Copyright*

When do you need permission to use copyright material?

Unless an exception to infringement applies, anyone wishing to use copyright material in any of the ways protected by copyright generally needs to obtain permission from the copyright owner (or from an authorised person, such as a collecting society).

Depending on the type of material, the exclusive rights of the copyright owner may include the right to:

- “reproduce” the work in material form (including taping, scanning, digitising, filming, and CD burning);
- “perform” the work “in public” (including screening, reciting, playing or performing the work, except in a private and domestic setting);
- “communicate” the work to “the public” (including broadcasting, streaming or uploading material online); and
- “adapt” the work (including translating a work into a different language or arranging a piece of music).

Generally a community broadcaster will need to get permission to broadcast copyright material and, in some cases, to reproduce it (for example, if the broadcaster will make a copy of the program for archival purposes). If you want to stream the material, you will also need permission (this permission will need to relate both to the reproduction of the material, and to communication and is not covered under a licence to “broadcast”).

In most cases, community broadcasters will not need to get permission from individual copyright owners as they can get licences to record, broadcast and stream music by paying annual licence fees to relevant collecting societies. See “Licences from collecting societies” below. However, if you are broadcasting live music from a community concert, or broadcasting recordings of such an event, you may also need to ensure that you have consent from the performers (see below, under “Performers’ rights”).

Implied permission

In some circumstances, permission to reproduce or broadcast copyright material may be implied from the circumstances. For example, if an organisation sends you a media release, you would generally have an implied permission to broadcast its contents, even if the document does not specifically state that you may do so.

The scope of an implied permission is narrow, and it only applies where the circumstances make the implication clear. For example, an implied licence to use a media release might not extend to reproducing it in a book (since this would be outside the obvious purpose of the release). In another example, the fact that material is available on a website does **not** give you permission to broadcast it (although you may have implied permission to access the material and print a copy for your personal use). You should also note that many people use copyright material without permission, and if the website proprietor does not have the right to use the material, any use you make of it may also infringe copyright.

Licences from collecting societies

Photocopying

Copyright Agency

If you photocopy or otherwise make copies of written or artistic material, you should get an “Associations Licence” or “CopyrightAccess” Licence from Copyright Agency. Copyright

Agency collects annual licence fees and distributes them to authors, illustrators and publishers. Copyright Agency's website is at www.copyright.com.au

Broadcasting music and sound recordings

Community broadcasters will usually need licences from the copyright collecting societies APRA and PCCA. These organisations can also grant annual licences to stream recorded music. Once you have paid the annual licence fees to these organisations, you can broadcast any recorded music covered by these organisations, provided that you keep within the terms and conditions of the licences. As a result of their agreement with equivalent organisations overseas, these organisations cover virtually all music and lyrics, regardless of where they originated.

Music: Australasian Performing Right Association (APRA)

APRA is a non-profit association of authors, composers and music publishers that licenses anyone wishing to broadcast, perform in public, or cable music; it then remits royalties to the relevant copyright owners. APRA's website is at www.apraamcos.com.au

APRA grants blanket licences permitting broadcasting of music and lyrics. The licence fee is based on the broadcaster's use of music and other factors. A special APRA licence is available for broadcasters operating under temporary community broadcast licences from the Australian Communications and Media Authority (ACMA).

APRA's Broadcast and Online Licensing Department provides a kit for new community radio services explaining the obligations and licence requirements.

Sound recordings: Phonographic Performance Company of Australia (PPCA)

PPCA performs a function in relation to sound recordings similar to that performed by APRA in relation to music and lyrics. It is an association of owners of copyright in sound recordings that licenses the public performance rights in those sound recordings. PPCA is also able to license broadcasters to keep archive copies of sound recordings which have been used on programs.

PPCA's website is at www.pcca.com.au

Community broadcasters also need a licence from PPCA, permitting broadcast of sound recordings. PPCA has an industry-based agreement with the Community Broadcasting Association of Australia (CBAA). Community broadcasters may use this agreement, negotiate their own licence with PPCA, or get individual licences from copyright holders. You should contact the CBAA for details of the industry agreement. CBAA's website is at www.cbaa.org.au

Recording music & programs

Music: Australasian Mechanical Copyright Owners' Society (AMCOS)

If a community broadcaster wishes to record music or programs, and use the recordings in ways that go beyond what is permitted under the statutory licence discussed later in this information sheet (for example, to keep recordings of broadcast programs for more than 12 months, or distribute the recordings to other radio stations), it will generally need a licence from AMCOS.

AMCOS is a society of music publishers and administers, on behalf of its members, licences for recording music and in relation to "production music" (music specially composed and recorded for use in radio, film and television productions, including in ads and station promos).

Two levels of licence are available for community broadcasters, depending on whether or not the broadcaster wants to use production music. Flat annual fees are charged for the licences. Holders of temporary community broadcasting licences are charged at a lower rate. Although it is a separate entity, AMCOS is administered by APRA. AMCOS' website is at www.apraamcos.com.au

Some music publishers (especially Christian music publishers) are not members of AMCOS, and you may need to contact individual publishers to use their music beyond the statutory period, or for purposes not otherwise covered by provisions in the Copyright Act.

Sound recordings: Australian Recording Industry Association (ARIA)

Where you are copying sound recordings for purposes other than those covered by the statutory "ephemeral" copying provisions discussed below, you will generally need a licence from ARIA, which represents most record labels.

Note, however, that AMCOS licences sound recordings in relation to "production" music; and that you will need to contact the relevant record company if you want to use sound recordings not owned by an ARIA member and in a way that is outside the scope of the statutory provisions.

When can you use copyright material without getting permission?

The Copyright Act allows certain uses of copyright material without permission. Copyright may have expired, for example, or an exception may be available to you under the Copyright Act. Some of the exceptions are free, while others either require the payment of a fee or depend upon certain permissions to use the copyright work having already been obtained.

When copyright has expired

If copyright has expired, you do not need permission to use the material. If an item includes several copyright interests, it is often the case that some, but not all of them, have expired. For example, the published works of Charles Dickens are now out of copyright, but a sound recording of *Bleak House* may still be protected by copyright. If the recording were of an abridged version, or a translation of the novel, the abridged version or translation (literary works), or the dramatisation (a dramatic work) might itself be protected and still be in copyright. In this case, permission might be needed to broadcast the sound recording and the abridged version, translation and/or dramatisation, although not to broadcast a reading of the original novel.

Broadcasting extracts of literary and dramatic works

The Copyright Act allows a person to read or recite (without needing permission) "an extract of reasonable length from a published literary or dramatic work" for a broadcast, provided the author and title of the work are acknowledged. The Act does not define "reasonable length". If you wish to broadcast all or most of a work (in our view, whether during one broadcast, or over a period of time) you should seek permission from the copyright owner.

Note that this exception only covers the **work** and not any **sound recording** of the work, so it does not allow you to broadcast an extract of a talking book for example. (In such cases, you could rely on the exception for the book itself, but you would need permission from the owner of copyright in the sound recording to broadcast any "substantial part" of that recording.)

Note also that this exception relates only to **broadcasting** the extract. Permission will generally be needed to **record** the broadcast for purposes other than, for example, "ephemeral" use (discussed below).

Statutory licence to copy for the purpose of broadcasting (“ephemeral rights”)

In most cases, you will want to make a recording of the material you broadcast – either because a pre-recorded version of the program is to be broadcast or because you want to keep copies of programs for archival purposes. Where you have permission to broadcast the material – whether as a result of your licences with the collecting societies or an agreement with an individual copyright owner – the Copyright Act permits you to:

- reproduce the **work** for the purpose of broadcasting; and
- reproduce the **sound recording** for the purpose of broadcasting.

Such copies must be destroyed within 12 months of the broadcast. If you wish to keep the recordings for a longer period, you will need to get relevant licences (for example, from AMCOS, ARIA or copyright owners directly). See further “Broadcasting music and sound recordings” above.

The print disability radio licence

A radio station which holds a print disability radio licence may broadcast published literary or dramatic works (for example, newspaper articles, or readings from plays). A print disability radio licence is a licence granted under the *Broadcasting Services Act 1992* or the *Radiocommunications Act 1992*:

for the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literary problems are unable to handle books or newspapers or to read or comprehend written material.

For more information, see our information sheet *Disabilities: Copyright Provisions* or contact the CBAA.

Fair dealing for reporting the news

Broadcasters can reproduce, broadcast and communicate copyright material for the purpose of reporting the news – provided the use is “fair”. In this context, fairness refers to uses that do not unduly affect the rights of the copyright owner: relevant issues include the length of the extract used and the nature of the use. The purpose of using the material must be genuinely for the purpose of reporting news: if there is an underlying purpose (especially if the purpose involves competing with the copyright owner’s use of the material), the exception may not apply.

Broadcasting a brief extract of a performance of a play as part of a report on recent community arts events is likely to be regarded as a fair dealing for reporting the news, even if it is not part of a regular news bulletin, but part of an arts or current affairs program. However, a broadcaster could **not** rely on this rule to broadcast the whole concert; it is highly unlikely it could even rely on the exception to broadcast a whole song.

The performers’ consent would not be required for recording or broadcasting an extract in the context of reporting the news. However, if the performers’ permission had not been obtained for the recording, their permission would be needed before the performance could be broadcast for other purposes, even if copyright permission had been granted.

For further information, see our information sheet *Fair Dealing*.

Fair dealing for criticism or review

The Copyright Act allows broadcasters and others to reproduce and broadcast copyright material without permission for the purpose of criticism or review, provided the use is “fair”.

You can rely on this rule to reproduce parts of other works, as well as the work that is being reviewed. For example, in reviewing a film you might be able to broadcast extracts of other films or books, to compare against the film that is being reviewed. Again, the use must be fair in the sense that it does not unduly interfere with the rights of the copyright owner, and the purpose of using the work must genuinely be for criticism or review.

When relying on this rule, you must give “sufficient acknowledgement” of the material you are using. For “works”, this means the title and author of the work being used.

For further information, see our information sheet *Fair Dealing: What Can I Use Without Permission*.

Fair dealing for parody or satire

Broadcasters can also make a fair dealing of material for the purposes of parody or satire, provided the use is fair and acknowledgement is given.

This defence hasn't been tested in an Australian court and the terms “parody” and “satire” are not defined in the Copyright Act. It is likely that a court would look at dictionary definitions of the words to work out what they mean. The *Macquarie Dictionary* includes the following definitions:

“Parody”:

1. a humorous or satirical imitation of a serious piece of literature or writing.
2. the kind of literary composition represented by such imitations.
3. a burlesque imitation of a musical composition.
4. a poor imitation; a travesty.

“Burlesque” (used as an adjective):

involving ludicrous or debasing treatment of a serious subject.

“Satire”:

1. the use of irony, sarcasm, ridicule, etc in exposing, denouncing, or deriding vice, folly etc.
2. a literary composition, in verse or prose, in which vices, abuses, follies etc are held up to scorn, derision, or ridicule.
3. the species of literature constituted by such composition.

A parody is an *imitation* of a work, and may include parts of the original. In some cases, a parody may not be effective unless parts of the original are included so as to comment on the imitated work or on its creator.

The purpose of satire, on the other hand, is to draw attention to characteristics or actions – such as vice or folly – by using certain forms of expression – such as irony, sarcasm and ridicule.

It's unlikely that simply reproducing or broadcasting humorous sound, radio or film excerpts, or television footage, would satisfy this fair dealing defence. Note also that, where the defence applies, you will have to be careful that your parody or satire doesn't infringe the moral rights of the creator.

For more information, see our information sheet *Parodies, Satire & Jokes*.

Moral rights

Creators of copyright works have moral rights in relation to these works, whether or not they own the copyright. Moral rights are:

- the right to be attributed as the author of the work;

- the right not to have the work falsely attributed; and
- the right not to have the work treated in a way that would prejudice the creator's honour or reputation.

In general terms, the practical requirements for community broadcasters are to:

- acknowledge the authors of copyright works that are being broadcast (for example, announce the name of the composer and lyricist before or after playing a piece of music); and
- be careful about making cuts to works being broadcast, and the context in which they are presented (for example, when editing a speech for broadcast, taking care not to distort its meaning).

For further information, see our information sheet *Moral Rights*, or for more detail, our practical guide of the same name.

As discussed below, performers also have moral rights.

Performers' rights

Copyright rights

In some cases, a performer will retain a share of copyright in a sound recording of a performance they have given. Generally, this will not give rise to any additional issues for a community broadcaster, provided it has all the relevant licences (for example, from PPCA and ARIA). However, where a specific, individual permission to deal with a recording is required for copyright purposes, it is important to be aware that you might need permission not only from the producer of the recording, but also from relevant performers.

Right to consent to being broadcast or recorded

Performers have certain rights under the Copyright Act to control the recording and broadcasting of their performances. Performances protected under the Act include live performances of plays, music and dance works, reading or recitation of literary works such as poems and stories, and performances of improvised works.

Certain activities are **excluded** from the definition of performance. These include: reading the news, taking part in a sporting activity, participation in a performance by members of an audience, and certain performances in the course of educational instruction.

If a performer has consented to his or her performance being recorded, the broadcaster does not need to obtain the performer's permission to broadcast the recording. This will normally be the case for commercially released recordings.

However, if a performer has **not** consented to his or her performance being recorded, the broadcaster may need to get his or her permission for the recording to be broadcast. For example, broadcasting a "bootleg" recording without the performer's permission is likely to infringe the performer's rights. Other examples of where performers' permission may be necessary are:

- people reading or reciting in a broadcast (for example, reading out books or newspaper articles);
- musicians, singers, actors, dancers, acrobats and other performers whose performance is to be recorded and/or broadcast by the community broadcaster; and

- comedians and sports commentators whose improvised performances will be recorded and/or broadcast by the community broadcaster.

Note that, in many cases, you will also need permission to broadcast the **work** that is being performed.

Performers' moral rights

Performers have moral rights in relation to both live and recorded performances (audio only). These came into effect when the World Intellectual Property Organisation Performances and Phonograms Treaty came into force in Australia on 26 July 2007.

The rights only apply to recordings of live performances that take place on or after that date. As a result, a performer has the right:

- to be attributed as the performer;
- not to have a performance falsely attributed; and
- not to have a performance treated in a way that prejudices the reputation of the performer.

These rights may be held by groups of performers (such as bands, choirs and orchestras). In such cases, attribution may be given to the group rather than the individual performers.

For more information, see our information sheet *Performers' Rights*.

Frequently Asked Questions (FAQs)

Do we need permission to broadcast readings of poetry, plays and books?

As noted above, you can broadcast a live reading or recitation of an **extract** of one of these works without getting permission (see "Broadcasting extracts of literary and dramatic works" above). However, unless copyright has expired, you will need permission to broadcast the whole of a work, or more than an "extract of reasonable length". You will also need the consent of the person performing the reading (see "Performer's rights" above).

Can our community radio station broadcast people reading out newspaper articles for the print disabled?

The Copyright Act permits radio stations holding special licences to broadcast published literary or dramatic works provided they meet certain requirements (discussed above under "The print disability radio licence").

The licences, issued under broadcasting legislation, are "granted for the purpose of authorising the making of sound broadcasts to persons who by reason of old age, disability or literacy problems are unable to handle books or newspapers or to read or comprehend written material".

If you are unsure whether your radio station's licence meets this description, you may be able to get some assistance from the CBAA. For general information on copyright issues for people with disabilities, please see our information sheets at www.copyright.org.au

Do we need permission to broadcast hired or purchased films to members of our language group?

Permission will be needed from the copyright owners before you can broadcast films – there are no special provisions allowing community broadcasters to do this without permission.

The first point of contact for getting permission will be the film's producer (the production company will usually be identified on the film's cover) or their Australian agent. For further information, see our information sheet *Permission: How to Get It*.

Can we stream our community radio or TV programs over the internet?

In general, you need to get separate permissions to upload material online, even if you already have permission to broadcast it. You can get licences from at least some of the collecting societies for use of music (for example, from APRA-AMCOS).

In general, before you make programs available online, check what copyright material is included in each program and ensure that you have the permission of the copyright owners for this use.

In addition, you should be aware that if people visiting the site can download the material (making further copies), you could be "authorising" them to make these uses of the material. If these other uses are not authorised by the copyright owner, ensure that the material is available only as a stream, not a download.

Can our community broadcaster record programs from other stations and re-broadcast them?

In general, **recording** a program from pay or free-to-air television, or from the radio, is likely to infringe copyright in the broadcast and in the script for the program, as well as in any copyright works and other material included in the program. (There are certain limited exceptions, applying to educational institutions and governments acting within the terms of statutory licences, or to people and organisations relying on the fair dealing and private use exceptions.)

Broadcasting the recording, or making further copies of it, is likely to be a further infringement unless, for example, one of the fair dealing provisions applies.

Unless an exception is available, a community broadcaster generally needs to get permission to record and re-transmit such material from the other broadcaster and from the owners of copyright in the underlying material (for example, any volunteer announcers who have written scripts, as well as from film producers, publishers and record companies). Note that they may refuse permission, or may charge you a licence fee.

Further information

For further information about copyright, and about our other publications and training program, see our website – www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations, but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/legal-advice/>

The Community Broadcasting Association of Australia (CBAA) is the national representative organisation for community broadcasters and can provide information and other assistance to its members. It publishes a handbook for its members that covers a range of issues including copyright. The CBAA can be contacted on (02) 9310 2999 or via its website at www.cbaa.org.au

Information on radio broadcasting for people with print disabilities can be found at www.rph.org.au

Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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