

INFORMATION SHEET – COPYRIGHT ISSUES FOR MARRIAGE CELEBRANTS

1. Why should marriage celebrants be aware of copyright law?

Marriage celebrants are often asked by couples to play specific pieces of music, recite poetry or to read from various literary pieces as part of a wedding or civil ceremony. They may also receive requests to record the music used during the ceremony onto a compilation CD or to produce a memento wedding video. Celebrants need to be aware that such activities may be an exercise of the exclusive rights of copyright owners and, unless appropriate licences are obtained, could potentially amount to an infringement of copyright for which legal action could be taken. Celebrants need to be aware of when it is their obligation to obtain a licence and when that responsibility may be that of others, such as in the case of owner-occupiers hiring out halls and other venues.

2. What is copyright?

Copyright subsists in original literary, dramatic, musical and artistic works; and in other subject matter, including films, sound recordings, radio and television broadcasts and published editions of works. Copyright is a bundle of exclusive economic rights granted to the copyright owner under the *Copyright Act 1968* (the Copyright Act) for a limited period of time. These exclusive rights can be sold, licensed or otherwise transferred and copyright is retained by the owner, irrespective of the fact that an individual may own the physical carrier, such as a book or Compact Disc (CD).

Copyright grants to owners different exclusive rights according to the type of material in which copyright subsists, which the copyright owner has the right to exercise, or licence others to do so.

Music:

It is particularly important for celebrants to be aware of copyright law in relation to the use of music during a civil wedding ceremony. Layers of copyright often simultaneously subsist in the one item. Eg, a pre-recorded romantic song played on a CD or tape as part of a civil service may contain copyright in the music, words (lyrics) and the sound recording. Any further recordings of a sound recording, such as taping or dubbing songs onto a blank CD (eg, to provide a memento compilation-CD, or including background music in a wedding video) may infringe all the various layers of music copyright, if not authorised by the relevant copyright owners.

The exclusive rights held by the copyright owner for musical works and sound recordings are the mechanical right of *reproduction* and the right of *public performance*. Public performance includes circumstances where music, or other material, is played in public using equipment such as CD-players, cassette recorders and TV and radio sets as well as live performances. However, if you wish to perform music or sound recordings within a wedding service (or funeral, baptism, or service of worship) you will not require the usual public performance licences for the playing of sound recordings (administered by the Phonographic Performance Company of Australia (PPCA)) or the public performance of live music (administered by the Australasian Performing Right Association (APRA)). Both exemptions apply as an acknowledgment of the traditional role of music in

ceremonial services and apply irrespective of the composition of the audience. The exemption also applies to all wedding locations (ie, to ceremonies conducted on church premises, in public parks or halls, or at other indoor and outdoor venues).

A celebrant needs to be aware that in terms of licensing the public performance of music, wedding *receptions* are treated differently from the wedding ceremony itself. While APRA *exempts* the performance of music at a wedding reception from the requirement to obtain a public performance licence, a licence *is* still required from the PCCA for *public playing of sound recordings at wedding receptions* (see 5, below).

Copyright in music and lyrics also includes additional rights to publish the work, to communicate it to the public (for instance, via the Internet or a television or radio broadcast); and to make an adaptation of it, for example, by arranging or transcribing music or translating lyrics. Copyright in a sound recording includes rights to communicate to the public and to rent it.

The term of copyright protection for works (including music and lyrics) generally lasts from the date of their creation until 50 years after the author's death. Note therefore, that copyright may have expired in traditional and other old hymns, in which case no permission is required to use them. The same would apply to older musical compositions such as hymn melodies, if they have not been subject to a modern arrangement or transcription that is still in copyright.

Film footage:

Copyright may also subsist in other material included in a wedding video, eg, additional film footage of subject matter related to the wedding's theme.

Poetry and other literary and dramatic works:

Statutory exceptions under the Copyright Act provide that a reasonable portion of a published literary or dramatic work may be read or recited in public without infringing copyright in the original material (provided the work is acknowledged). Note that these exceptions do not cover reproduction of the work on a printed order of service, for which a licence should be obtained.

Performers' rights:

A performer may bring an action under the Copyright Act (restraining the unauthorised use, or seeking damages) in relation to the 'unauthorised use' of his or her performance. It is irrelevant whether the 'performer' is well known or not. Unauthorised uses are extensively defined in the Act, but most relevantly for present purposes, include making an unauthorised sound recording or film of a live performance. The consent of any performer (but not a member of the audience) must be obtained prior to any audio or video recording to be made of the performance during a ceremony.

3. Why do I need to get permission or obtain a licence?

Unless permission to exercise any of the exclusive rights is granted by the copyright owner, (or a person authorised by the owner) and any necessary licence fees are paid, then copyright may be infringed. 'Authorising' others to do any act comprised in the copyright, (eg. encouraging a couple to burn their music off the Internet to provide the celebrant with music to be used during the wedding service) may also attract liability for infringement.

Even a small sample of copied music may be considered to be recognisable or distinctive enough to warrant the finding that a substantial portion has been copied and constitute an infringement.

4. How do I identify the copyright owner?

The following groups of people are usually the first owners of the various layers of music copyright, and should be initially contacted to obtain permission to use music in which copyright subsists:

- music publishers, for copyright in music (musical composition);
- music publishers, for copyright in the words (lyrics). Although songwriters are usually the first owner of this type of copyright, many have assigned their rights to publishers; and
- the record company who made the sound recording. (Some contact information for record companies is provided by the Australian Record Industry Association (ARIA), which is the main organisation representing owners of copyright in sound recordings: <<http://www.aria.com.au/member/companies.htm>>).

Screenrights, may be able to help with contact details for owners of film footage (<<http://www.screen.org/index.html>>).

5. Whom do I contact for a licence?

In some cases, licences for copyright material can be obtained from copyright collecting societies. Collecting societies have often negotiated equitable rates for licences covering common uses of copyright material ('blanket' licences) on behalf of copyright owners.

The responsibilities of the collecting societies administering the various layers of music copyright, are divided according to whether the mechanical or public performance rights are being exercised. The Australasian Performing Right Association (APRA) manages the performing rights of virtually all published music, and the Australasian Mechanical Copyright Owners' Society (AMCOS) manages the reproduction rights in music. Marriage celebrants should contact the following relevant collecting society to ensure proposed uses of music are covered by an appropriate licence.

- **Music, lyrics and sound recordings**

AMCOS administers licences for the mechanical reproduction of music and lyrics of many composers and publishers and should be contacted about a licence to make copies of recordings of music and words still in copyright. If a celebrant photocopies sheet music to be used by live performers as part of a ceremony then AMCOS would also need to be approached for a licence for the reproduction of the musical work. (See <<http://www.amcos.com.au/Licence/LicIntro.htm>>).

A separate licence must also be obtained from the record company or other owner of copyright as shown on the label for the reproduction of a sound recording, such as dubbing a recording onto a compilation CD. Alternatively, inquiries could be directed to ARIA.

APRA licences the public performance and communication to the public of music and lyrics. APRA represents composers, music publishers and other owners of copyright in music and lyrics. (See further <<http://www.apra.com.au>>). The PPCA similarly administers licences for the public performance of sound recordings (see, <<http://www.pcca.com.au/licensinginfo.htm>>). As mentioned above in relation to copyright in music, both APRA and PPCA have waived the requirement to obtain licences for publicly performing music or publicly playing sound recordings within a wedding service.

At *receptions* (as opposed to the civil/wedding service itself) a licence **is** required from the PPCA for the direct or indirect public performance of sound recordings (eg, playing CDs or tapes, DVDs etc.). However, APRA does not mandate a licence for the playing of music (eg, by live bands) as it regards a wedding reception as a quasi domestic event. While in most cases the owner/occupier of premises is responsible for obtaining a licence, celebrants should inquire into whether a licence has been obtained as the responsibility for obtaining a licence may have shifted to marriage celebrants under a lease/other agreement. A general licence applies to the public performance of sound recordings at indoor and outdoor receptions and the applicable fee falls under tariff A (as at September 2002, this was \$97.24 for an annual licence and \$42.35 per event, depending upon usage and audience). (See: <<http://www.pcca.com.au/tariffsmain.htm>>).

Soundtracks for videos

Where recorded music is used to accompany a special-event video, permission is required from the music publisher and the record company or other owner of copyright in the sound recording as shown on the record label. AMCOS, in conjunction with ARIA, licences the reproduction of musical works and sound recordings onto the soundtracks of videos, through its *special events licence* (available as a single or annual event licence). This licence is available for the private domestic viewing only of those appearing in the video, and does not extend to reproducing musical works or sound recordings as part of a public screening or any commercial activity associated with the video. (See <http://www.apra.com.au/Licence/RecSpecl.htm>).

6. Can I make a back-up copies of a sound recording or copy music onto a CD?

As the right to reproduce the work is one of the exclusive rights of copyright owners in those items, making a back-up copy of a sound recording or copying the music onto a compilation CD without obtaining the copyright owner's permission or a licence would infringe copyright. Infringement would occur even if the material is copied for personal use or to provide a back-up copy in the case of damage to the original. Charging a couple for unauthorised copies of recordings would also amount to the criminal offence of piracy.

7. Do I still need a licence if I obtain music off the Internet?

Although developments in digital technology make it easier to download and 'burn' (make) perfect copies of music from the Internet, if it has been made available there without copyright permission, the download and subsequent burning will infringe copyright. Internet sites such as Napster (until it was restrained by legal proceedings in the USA) and other 'peer-to-peer' or P2P file sharing/swapping facilities have made the unauthorised copying and distribution of music very widespread, but this still constitutes copyright infringement.

This fact sheet provides general information only and is not a substitute for professional legal advice.

For a summary of the above issues, see 'Copyright Issues for Marriage Celebrants – Summary Information Sheet'.

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