

BACKGROUND MUSIC – ARE YOU DOING THE RIGHT THING?

Music is an integral element in the success of your restaurant, café, pub, hotel or retail store. It's possible to attract different types of customers with the right mix of music – for example in restaurants, soft jazz music for executives by day and funky music with drinks by night attracts different people.

Likewise in the retail environment, different types of music will attract different customers and encourage them to stay longer.

But are you doing the right thing? This guide has been created to educate you on the dos and don'ts of using background music whether you own a restaurant, café, pub, hotel or any type of retail store.

Some simple facts

What's copyright?

When someone creates a piece of music (or a piece of text, a graphic, a photo, a film or anything else that is protected under copyright laws), a whole system of legal rights and obligations comes into play. These rights and obligations outline what someone can and can't do with the material.

Who owns the copyright in a piece of music?

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.

What rights do the copyright owners have?

The copyright owners (i.e., the owner of the work and the owner of the recording respectively) have a number of exclusive rights, including the right to:

- make copies of the tracks;
- perform music in public (e.g., by playing the tracks in hotel, café or retail store); and
- communicate the tracks to the public.

How do I know if I am doing the right thing?

I bought a legitimate CD. Can I make copies for use in my café, restaurant, hotel or retail store?

The purchase of a CD only gives you the right to own the physical disc, to play it privately, and to pass on the same physical disc to another person. This means that copying the music from a CD including onto an iPod, without the permission of all relevant copyright owners, is an infringement of copyright except in very limited circumstances. Recent changes to the Copyright Act allow you to "format shift" music for **personal use**, for example, to copy from CD format to MP3 format in certain limited situations.

However, this does not extend to use of the music in a café, restaurant or retail store.

If you want to copy your legitimate CDs onto an iPod or onto other CDs to play as background music in a commercial setting, you must get:

- a licence from the relevant record company for the reproduction of the sound recording (contact the licensing department of the relevant record company). ARIA and PPCA offer "blanket" licences for these purposes; and
- a licence from AMCOS for the reproduction of the music. Generally, AMCOS will offer a "blanket" licence which allows you to be covered for all reproduction of musical and literary works for certain purposes.

Is it illegal for me to download music from the internet and play it in my café?

The basic legal principle is that you cannot copy or distribute music including from the internet without the permission of all relevant copyright owners. There are a number of legitimate download sites in Australia which are listed on the MIPI website under "Links". If you are unsure of whether a particular website is appropriately licensed, you can contact MIPI.

If you legitimately buy music from iTunes or other legal online distributors you should check their relevant terms and conditions to make sure that you are licensed for the relevant purpose, including for use as background music in a café or retail store.

What about downloading music through file-sharing?

Unless authorised, the vast bulk of P2P 'file sharing' is considered illegal copying and transmission of copyright material. This activity hurts sales of music and the livelihoods of people in the business including your favourite artists.

What if I download music to use in my café from a site overseas where the law might be different?

Internet activities of this sort typically involve acts of copying, transmission, or distribution in both the 'receiving and sending' countries and laws of each will apply. Be aware that if you download music files to your PC located in Australia, without the copyright owners' permission, you are committing an infringement of copyright under Australian law.

Do I need any licences to play legitimately purchased music in my café, restaurant or shop?

Yes, there are a number of licences that may apply depending on how you are using the music. Basically the owner or operator of the café, restaurant or retail store needs a PPCA public performance licence to play protected sound recordings and an APRA public performance licence to play the musical and literary works. Further, the sound recordings used must be licensed copies.

Can I be fined or jailed for music piracy?

Music pirates can be fined up to \$60,500 and up to five years imprisonment for each offence. For companies the fines are up to five times as much. The Copyright Act also allows police can also issue an on-the-spot fine of \$1320 and seize pirate music in certain circumstances.

Respect copyright in music

Stealing music is the same as stealing anything else. It is illegal and the consequences are real for you, for artists, for songwriters and for the future of music. As a business owner, you wouldn't sit by and let somebody steal products from your store or restaurant. Unauthorized copying or downloading of music, whether from CDs or the internet, for use in your business has a major effect on the music industry. And it's not free at all – it is the musicians, artists, sound technicians, legitimate background music providers and all the other people involved in the music industry who are paying the price with less music being sold. People's livelihoods are affected. Further, as a result of piracy there is less money to be invested in new talent, which ultimately means less music available for all of us to enjoy.

Need more information?

MIPI	www.mipi.com.au	(02) 8569 1177
APRA AMCOS	www.apra-amcos.com.au	(02) 9935 7900
PPCA	www.pcca.com.au	(02) 8569 1111
ARIA	www.aria.com.au	(02) 8569 1144