

## SECOND-HAND DIGITAL MUSIC PLAYERS AND HARD DRIVES – ARE YOU DOING THE RIGHT THING?

**This guide has been created to educate you on the dos and don'ts when you are buying or selling a digital music player, computer or other digital storage device.**

Many people enjoy listening to music while they are going for a run, sitting on the bus or walking to work. If you are looking to buy or sell a second-hand digital music player (e.g., an iPod or MP3 player) or a computer hard drive or any other device containing music there are some things which you need to consider beforehand.

### 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 the music in public; and
- perform the music in public; and
- communicate the tracks to the public.

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

#### ***Can I sell my old iPod, MP3 player or computer that contains music?***

No. The sale of devices that have been pre-loaded with music constitutes copyright infringement, except where permission is obtained from the copyright owners. This means that you should remove all music from your iPod, MP3 player, computer or any other device, unless you have permission from the relevant copyright owners to sell it with music on the device.

#### ***What if my iPod, MP3 player or computer has legitimate music downloads on it?***

Generally you will need to check the terms and conditions on the website of the digital music provider that you are downloading music from. Most digital music providers prohibit you to on-sell the tracks that you have downloaded, which includes selling devices containing these tracks.

#### ***I have copied music from my legitimately obtained CDs on to my iPod – can I sell my CDs?***

No. 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 music from a CD, without the permission of all relevant copyright owners, is an infringement of copyright except in limited circumstances. The Copyright Act allows you to copy legitimately obtained music for your **private and domestic use** onto another device that you own, for example, from CD to iPod. However, you must retain both the earlier and the later copies of the music. This means that you cannot copy music from your CDs to a digital music player and then sell your CDs – you must keep the CDs in your possession.

### **What about downloading music through file sharing?**

Unless specifically 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.

### **Are there things I should look out for if I am buying a second-hand iPod, MP3 player, computer or digital storage device containing music?**

Avoid buying devices such as iPods, MP3 players or computers containing music unless you know that permission has been given by the copyright owner for the device to be sold pre-loaded with music.

### **Can I buy a new digital music player that contains music?**

It depends. Some new digital music players which are pre-loaded with songs are available for purchase if the relevant licences have been obtained from the appropriate copyright owners. These devices are legitimate. However, if permission has not been obtained from the copyright owners, the sale of a device pre-loaded with music constitutes copyright infringement regardless of whether it is new or second-hand. Check the package label for anything that may indicate that the songs have been licensed.

In addition, you should examine the packaging for anything that indicates that the songs have NOT been properly licensed by the copyright owners. In particular, look out for the following signs:

- Packaging – look for spelling mistakes, poor quality, and colour distortion;
- An excessive number of pre-loaded tracks can sometimes be an indication that it is pirate product; and
- Price – use your judgment to ascertain whether the price is a reasonable one or not.

### **What do I do if I want to sell pre-loaded devices legally?**

In order to copy songs onto a CD, digital music player or any other device, you must obtain:

1. a licence from the owner or exclusive licensee of the sound recording (generally, a record label) for the reproduction of sound recordings; and
2. a licence from AMCOS for the reproduction of the musical works. Generally AMCOS will offer a "blanket" licence which allows you to be covered for all reproduction of musical and literary works for certain purposes. You can contact the Commercial Recordings department at AMCOS on 02 9935 7900 or by email at [nonretlic@apra.com.au](mailto:nonretlic@apra.com.au).

### **Can I be fined or jailed for music piracy?**

Music pirates can be fined up to \$60,500 and up to 5 years imprisonment for each offence. For companies the fines are up to 5 times as much. The police can also issue an on-the-spot fine of \$1320 and seize pirate music.

## **Respect copyright in music**

Stealing music is the same as stealing anything else. It is illegal and the consequences are real, for artists, songwriters, and for the future of music. And it's not free at all – it is the musicians, artists, sound technicians 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 is available for everyone.

## **Need more information?**

MIPI	<a href="http://www.mipi.com.au">www.mipi.com.au</a>	<a href="mailto:mipi@mipi.com.au">mipi@mipi.com.au</a>	(02) 8569 1177	1800 06 16 16
APRA AMCOS	<a href="http://www.apra-amcos.com.au">www.apra-amcos.com.au</a>	<a href="mailto:apra@apra.com.au">apra@apra.com.au</a>	(02) 9935 7900	