

## SELLING MUSIC ON EBAY – ARE YOU DOING THE RIGHT THING?

This guide has been created to let you know the do's and don'ts of selling music on eBay and other online auction websites.

### 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 have a number of exclusive rights, including the right to:

1. make copies of the tracks;
2. perform music in public; and
3. communicate the tracks to the public.

**This means that without the permission of the relevant copyright owner you cannot:**

- burn music CDs or DVDs (including with music downloaded from the internet) and sell them on eBay;
- record a live performance and sell the recording on eBay; or
- sell devices such as iPods, mp3 players or computers containing music.

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

#### **Can I copy legitimate CDs that I own to sell on eBay?**

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. Recent changes to the Copyright Act allow you to copy music legitimately obtained for your **private and domestic** use on another device that you own eg. from CD to iPod. **However, this does not extend to copying music and selling it on eBay or elsewhere.**

#### **Can I sell CDs that I legitimately obtained?**

Yes. However you cannot make copies of your legitimate CDs for your own private and domestic use and then sell the original copy of the CD. The personal use exception to copying music only applies where you retain both the earlier and the later copies of recordings for your own private and domestic use.

#### **Is it illegal for me to copy music from the internet onto CDs and sell them?**

The basic legal principle is that you cannot copy or distribute music, including from the internet, without the permission of all relevant copyright owners. So, you cannot sell CDs with music burnt from file sharing networks such as Limewire or from other unauthorised sites. Nor can you copy tunes downloaded from legitimate music sites like iTunes onto CDs and sell those CDs.

#### **Can I sell my old iPod, mp3 player or computer that contains music?**

No. The sale of devices pre-loaded with music constitutes copyright infringement, except where permission is obtained from the copyright owners.

#### **Can I record a live performance or sell an unauthorised version of a live performance?**

No. You cannot record live performances without the permission of all of the relevant copyright owners. The sale of bootlegs is copyright infringement and the civil and criminal penalties set out below apply.

### **Can I sell ring tones containing part or whole songs on eBay?**

You cannot sell “true” or “real” tones - that is, ring tones containing songs performed by well-known artists - without the permission of the relevant copyright owners.

### **What about polyphonic ring tones or MIDI files?**

You cannot sell polyphonic ring tones or MIDI files of musical works without the permission of the relevant copyright owners. This is because copyright exists in the music itself, not just in the recorded version of a song.

### **Can I sell backing tracks that I have recorded myself?**

In order to sell backing track CDs on eBay you must obtain permission or a licence from the owner of copyright in the musical work (usually through AMCOS). This is the case even if you and your band have recorded the tracks yourself.

## **Consequences of selling pirated music on eBay**

### **Civil and criminal laws**

Under Australian law, copyright and trade marks are protected by both civil and criminal law. For example, the Copyright Act provides severe penalties for copyright infringement. Penalties range from injunctions, damages and costs through to fines of up to \$60,500 for individuals and up to \$302,500 for corporations for each infringement and/or up to 5 years imprisonment per offence.

### **Your user agreement with eBay**

When you register as an eBay seller, you agree to abide by the user agreement and any applicable domestic and international laws, including those relating to the protection of copyrights and trade marks. You agree not to offer for sale any of the items that appear on the eBay Prohibited and Restricted Items list available at <http://pages.ebay.com.au/help/policies/items-ov.html>. This list refers to products that infringe copyright. eBay reserves the right to suspend or terminate your account if you breach the user agreement or engage in illegal activity such as selling copyright infringing materials.

### **VeRO program**

eBay's Verified Rights Owner (**VeRO**) Program allows intellectual property rights owners to identify copyright or trade mark infringing material offered for sale on eBay and request that it be removed. MIPI vigilantly monitors music-related material offered for sale on eBay to ascertain which items infringe copyright or trade marks. If you offer for sale any illegal bootleg, counterfeit or pirate CDs you are likely to receive a Take Down notice for your auction.

## **Respect copyright in music**

Music piracy has a major effect on the music industry. The makers of the music, the composers, lyricists and all the other people involved in the music industry are paying the price with less legitimate music being sold. People's livelihoods are affected. Honest eBay sellers may be forced out of business because they can't compete with the pricing of the pirate operators. As a result of piracy there is less money to be invested in making new music, which ultimately means less music for you to legitimately sell.

**If you suspect a person is selling pirated music on eBay or elsewhere, call 1 800 06 16 16 toll free, visit our website [www.mipi.com.au](http://www.mipi.com.au) or email [mipi@mipi.com.au](mailto:mipi@mipi.com.au).**

### **Need more information?**

MIPI

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