

SELLING SECOND-HAND MUSIC – ARE YOU DOING THE RIGHT THING?

This guide has been created to let you know the dos and don'ts of selling music second-hand.

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:

- make copies of the music;
- perform music in public; and
- communicate the tracks to the public.

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

Can I sell second-hand CDs or DVDs?

Yes, but you may need a licence from the Office of Fair Trading or equivalent department in your State or Territory to sell second-hand goods, including CDs and DVDs.

Can I sell burnt copies of CDs that I own?

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 music legitimately obtained for your **private** and **domestic** use on another device that you own e.g., from CD to iPod. **However, this does not extend to copying music and selling it.**

Can I copy my CDs and sell the original discs?

No, you can only copy CDs for your own private and domestic use on another device that you own and you must retain both the earlier and the later copies of the music.

Can I sell burnt copies of CD-Rs or DVD-Rs provided to me?

You should treat all CD-Rs and DVD-Rs suspiciously as it would be extremely unusual for it to be a legitimate copy. Keep in mind that:

- the back of a legitimate disc is likely to be silver, however a burnt CD/DVD may be on a CD-R or DVD-R with a blue, green or gold back; and
- the back centre hole of a legitimate CD/DVD carries the manufacturer's identification number and bar code hologram, whereas a burnt CD-R/DVD-R may be labelled as a CD-R or DVD-R.

Can I sell unauthorised versions of live performances?

No, the sale of unauthorised recordings of live performances, known as "bootlegs" is illegal and the civil and criminal penalties set out below may apply.

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 music 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 second-hand iPods, MP3 players or computers that contain music?

No, the sale of devices pre-loaded with music constitutes copyright infringement of the sound recordings and musical works contained in the MP3 player or computer, except where permission is obtained from the copyright owners.

Can I be fined or go to jail for music piracy?

Under Australian law, copyright and trade marks are protected by both civil and criminal law. 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. There are also new strict liability copyright offences which allow the police to issue on-the-spot fines of \$1320 per offence and seize any pirate product.

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 second-hand dealers trying to make a living out of second-hand music 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 sell.

If you become aware of the sale of pirated music call 1800 06 16 16 toll free or visit our website.

Need more information?

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