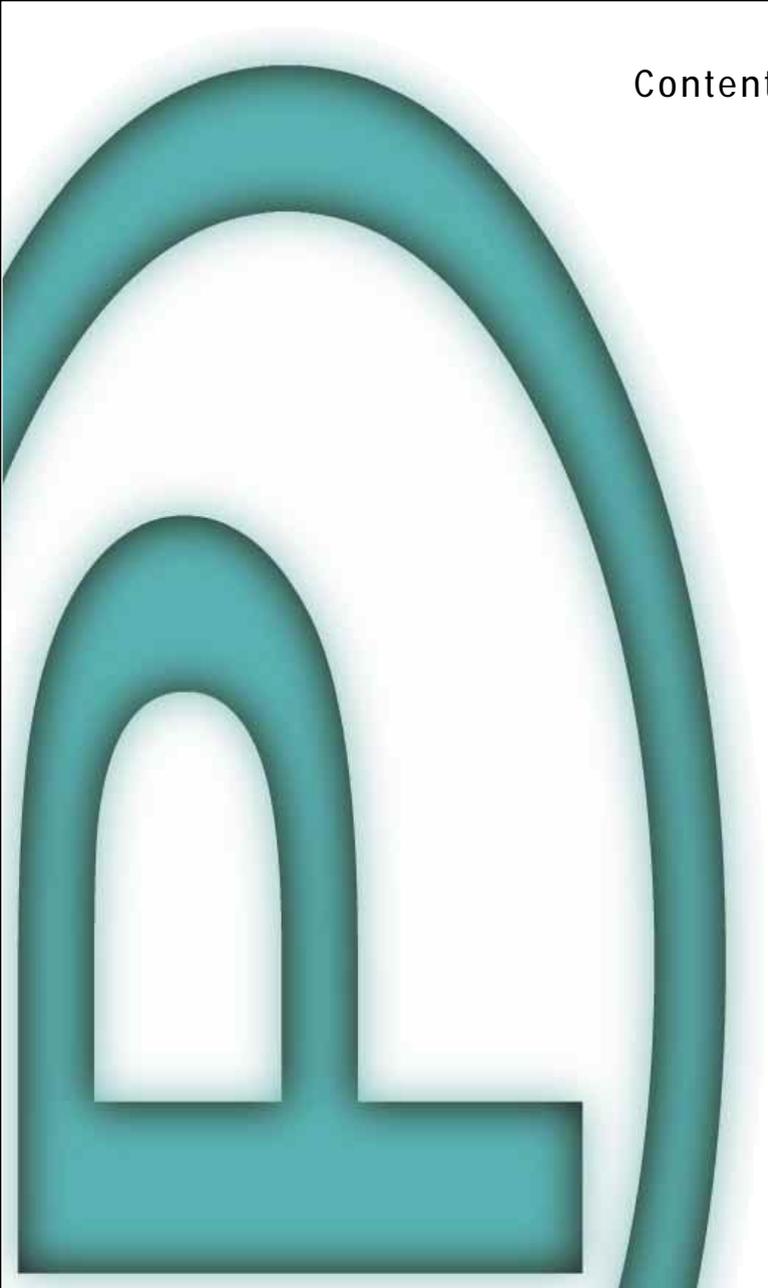


By Ian Dustry 1999



This article  
explains  
how to protect  
your original  
musical compositions  
and recordings  
from theft  
and clear samples  
of other artists  
work  
for use in  
your own  
recordings.

COPYRIGHT  
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**Introduction** Musicians seeking to produce and distribute their music independently need to know how to protect their copyrights from piracy and how to utilise those of others without incurring their wrath. These are legitimate concerns and need to be addressed early on in the creative process in order to avoid at best wasted effort in the recording studio and at worst legal action.

This article seeks to introduce a few of the basic concepts of copyright law, outline how you might best use them to your advantage, and then explain how the law may be enforced in practice.

NOTE: The primary source of research material for this article came from US publications on copyright law. However, the basic concepts expressed are true for UK readers too. Readers from other countries might wish to check with the relevant institutions before taking action to copyright their work.

## Piracy

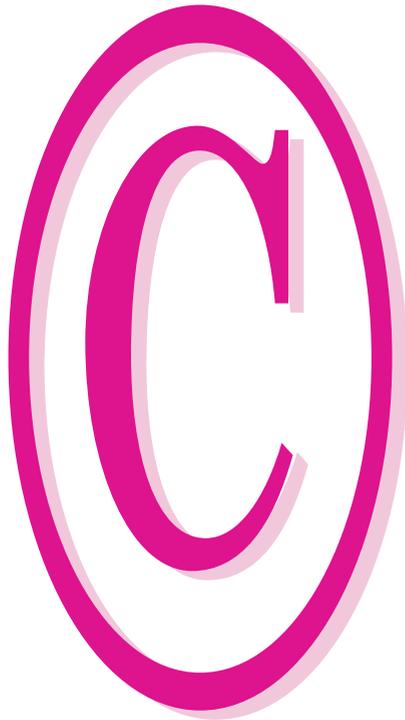
Copyright law protects copyright owners against musical theft, usually called piracy. There are three principal forms of piracy, although with the rise of the internet no doubt one or two new ones will emerge.



- 1 Piracy. The unauthorised duplication of a sound recording for commercial gain usually involving repackaging and distribution.
- 2 Counterfeiting. The unauthorised duplication and distribution of a sound recording for commercial gain such that its packaging is indistinguishable from the original.

- 3 Bootlegging. The unauthorised duplication and distribution of a live performance or broadcast work for commercial gain.

## What is copyright?



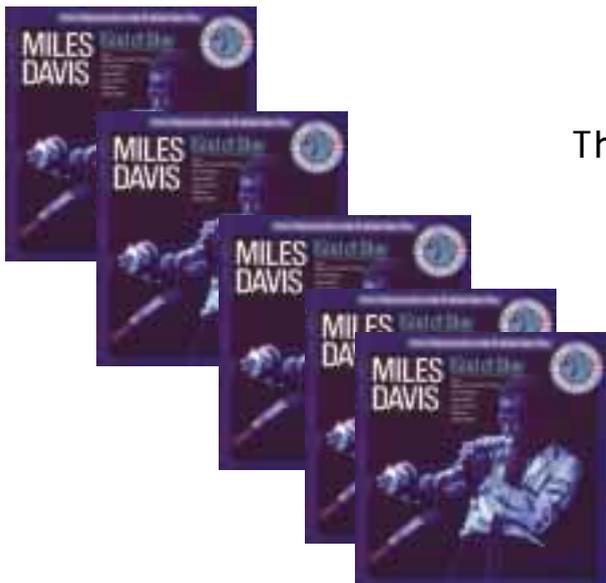
Copyright law was created to protect ownership of the expression of original creative ideas, in our case musical compositions. According to US law copyright protection is granted to "original works of authorship". Such a work must be "fixed in any tangible medium of expression, now known or later developed from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device". In short copyright can only be granted to musical compositions which have in some way been recorded either as musical scores (or in another written form) or sound recordings.

Such "works of authorship" include:

- Musical works
- Pictorial, and graphical works
- Motion pictures and audiovisual works
- Sound recordings
- Literary works

This means that it is possible to copyright not only our recorded compositions but the artwork we produce for CD inlays and posters etc, and any video or multimedia productions we produce to promote them. As I understand it we should also be able to copyright our web sites too.

It must be emphasised that there can be no copyright in a title or an idea itself but only in the expression of that idea. For example it would be impossible to claim copyright of a musical form, such as drum 'n' bass, but perfectly possible to



copyright a specific composition in which that musical form is encapsulated provided it was not derivative of another preexisting copyrighted work.

**The five exclusive rights** If you are the composer or owner of a copyrighted work you may exercise, or authorisation the exercise of, the following rights:

- 1 To reproduce the copyrighted work in copies or phonorecords.
- 2 To prepare derivative works based on the copyrighted work.
- 3 To distribute copies of phonorecords of the copyrighted work to the public by sale or transfer of ownership, or by rental, lease or lending.
- 4 To perform the copyrighted work publicly.
- 5 To display the copyrighted work publicly.

The term "phonorecords" actually extends to any medium past present or future thereby including CD, DVD and any formats not yet invented.

If you duplicate your recordings, for example by pressing CDs, and sell them commercially, the ownership of the CD itself will pass from your hands. However, the ownership of the copyright of the compositions and the recordings of those compositions encapsulated in that CD does not. The purchasers are not free to duplicate and sell your work on.

**Recording / publishing distinction** Copyright law protects both original compositions (and their composers) and the sound recordings of the compositions (and their owners). Typically, a record company will own the sound recording,

having paid for its production, whilst a publisher will own the copyright to the compositions. Thus the publisher must grant a licence to allow the record company to record and duplicate its copyrights in return for a royalty payment (so called "mechanical royalties") on each duplicate sold.

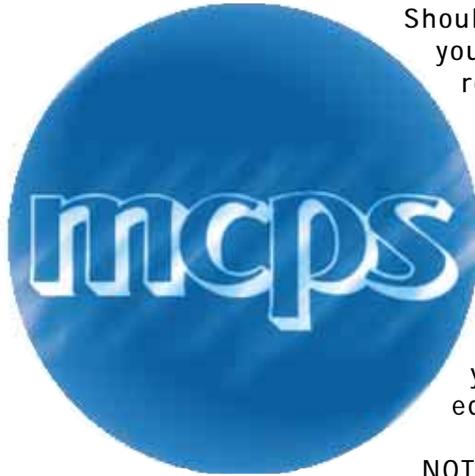
For us this distinction is less important. As the composers, manufacturers and distributors of our recordings we will own both copyrights and therefore collect all the money generated by a sale.

**Performance rights** If an original composition is performed live or a sound recording of an original composition is broadcast a performance royalty will be due to the copyright owner. Copyright law specifically excludes a record company from collecting any part of this royalty which should go directly to the composers.



In the UK the PRS (Performing Rights Society) is the agency responsible for collecting and distributing performance royalties on behalf of its members. The US equivalent is ASCAP (American Society of Composers, Authors and Publishers). Any author may join the PRS providing they meet certain criteria. This brings us to an important point.

**Collecting royalties** Owning copyright is one thing, collecting royalties generated by the sale or public performance or broadcast of those copyrights is another. Assuming that you are duplicating and selling your recordings yourself, you need only register your recordings with the PRS. They keep records of the performance or broadcast of their members copyrights, collect royalties, deduct a fee and pass the rest on.



Should someone else want to record a composition of yours you will need an effective way of collecting your mechanical royalties due from the sale of their recording. You could assign your copyright to an established music publishing company who will collect the royalties for you and take a percentage.

You could collect them yourself by becoming a composer-member of the MCPS (Mechanical Copyright Protection Society) in the UK, who will collect and pay them to you direct. However, an advantage in assigning your copyrights to a publisher is that they will be better equipped to collect royalties for you throughout the world.

NOTE: The web URLs for the PRS, ASCAP and MCPS together with other important agencies may be found on the [LINKS & DOWNLOADS](#) page at [planetoftunes.com](http://planetoftunes.com)

**Joint copyright** It is perfectly possible for one author to share copyright ownership in a composition with another author. For example songwriting partnerships in which one author writes the music and the other the words may split the copyright ownership 50/50. There are actually no set rules about how you divide up shares but experience shows that splits should be agreed as soon as possible and formalised in some kind of written agreement signed and witnessed by all concerned.

**Duration of copyright** Copyright protection usually lasts for 50 years after the composers death although there are some exceptions resulting from several amendments to the law over the years. When the copyright period has expired the work is said to be in the "public domain" and may be freely

used by anyone.

**Notice of copyright** If you are creating artwork for a CD inlay and label you will need to display some information about its copyright. A typical copyright notice will read:



Ⓟ & © JOE BLOGGS 1999. THE COPYRIGHT IN THIS SOUND RECORDING AND ARTWORK IS OWNED BY JOE BLOGGS. UNAUTHORISED COPYING, HIRING, LENDING AND PUBLIC PERFORMANCE AND BROADCASTING OF THIS RECORDING IS PROHIBITED.

The Ⓟ refers to phonorecords (a term which also covers CDs). Audiovisual works (such as CD ROMS and videos) do not require the Ⓟ symbol to be displayed because they are not considered phonorecords and instead display a © symbol. However, it is common practise to include both symbols on inlay artwork and the CD label itself.

**Sampling** If you want to use a sample of another artists work in your recording you will have to get permission from whoever owns the copyright in the composition (typically a publishing company) and from whoever owns the copyright of the recording (typically a record company). Failure to do so could result in dire legal and financial penalties should your copyright infringement be discovered.

There is an old saying in the music industry, "where there's a hit there's a writ". This roughly translates as "if you steal a copyright and make money you'll be sued. If your record flops no one will bother".

Clearing samples for use before recording starts is therefore

advisable. It is possible that you will be able to negotiate payment of a flat fee rather than a royalty percentage. Leave it too late and you may well be forced to give up a disproportionate percentage of your royalties to appease a copyright owner.

In the UK the MCPS have a sample clearance team who will be able to advise you.

**How can you copyright your music?** Copyright in a composition exists as soon as it is recorded or written down. Composers own the copyright in their compositions unless they assign them to another person (or publishing company) by selling them, licensing them, or giving them away.

However, it is one thing to own a copyright and quite another to prove ownership. Experience has shown that it is sensible for all copyright owners to make safeguards such that they can prove ownership should a dispute over "originality" arise. It will be helpful if a composer can produce evidence to establish when a work was composed should the need arise, perhaps in a court of law for example.

Many composers choose to deposit a copy of their work, in recorded form, with a solicitor or bank manager and keep a dated receipt. You could also send a sealed copy of your work by registered post to yourself, or a responsible person, and keep it safe and unopened. Should the need arise it can then be opened in a court of law.

It is also possible to register a work with an institution that specialises in copyright. In the UK Stationers Hall Registry provides a registration service and claims that their word is



ASCAP logo

accepted in a court of law. They can be contacted at Stationers Hall, Ave Maria Lane, Ludgate Hill, London, EC4M 7DD Tel (0171) 248 2934.

You might also consider assigning your compositions to a publishing company who would then act on your behalf in the case of a dispute.

**Enforcing copyright** It's a sad fact of life that no matter how many steps you take to protect your copyrights from piracy, if you do not have the financial wherewithal to enforce them in a court of law your efforts may be in vain.



However, if you are a member of the Musicians Union in the UK you will be eligible for some free legal help and advice.

Also you could seriously consider assigning your copyrights to a publisher. Although this requires very little administrative work on their behalf they are unlikely to deal with you unless you agree to let them take between 10 and 20% of your royalties.

Despite these reservations it is still worthwhile taking steps to protect your copyrights in any way you can.