

HOW TO HELP SAFEGUARD COPYRIGHT IN YOUR RECORDINGS

A GUIDE TO THE PROPER USE OF THE © NOTICE



AUSTRALIAN RECORDING
INDUSTRY ASSOCIATION



PHONOGRAPHIC PERFORMANCE
COMPANY OF AUSTRALIA LTD



TAKE ADVANTAGE OF SOME SIMPLE MEASURES TO PROTECT YOUR RIGHTS

LEGAL ACTION AGAINST COPYRIGHT INFRINGERS CAN BE BOTH COSTLY AND TIME CONSUMING IF YOU DON'T

It is more important than ever to use and include the correct © notice (e.g. © 2003 The Record Company Pty Limited) as part of the cover art for any recordings you release.

The Copyright Act 1968 now gives formal recognition to the © notice and also simplifies the evidentiary requirements necessary to prove copyright in a sound recording.

The © symbol and associated information are used to signify year of first publication (i.e. the year when the sound recording(s) were **FIRST RELEASED** for commercial sale to the public anywhere in the world) and copyright ownership of sound recordings (not the compositions or cover artwork, in respect of which the © notice is typically used).

The correct use of the © notice will:

- result in substantial savings in both time and legal costs for the copyright owner when pursuing copyright infringers; and
- assist in the determination of the person (copyright owner) who is entitled to remuneration for any authorised use (such as broadcasting by commercial radio).

This Information Sheet will assist you to take advantage of the new procedures available under the Copyright Act 1968. It also outlines recommended "best practice" procedures for the use of the © notice.

A. NEW RELEASES

A © notice containing the following information should be included in a prominent place as part of the cover artwork for every sound recording:

EXAMPLE

All recordings © 2003¹ The Record Company Pty Limited²

1. The year of first publication (i.e. the year when the sound recording(s) were **FIRST RELEASED** for commercial sale to the public anywhere in the world), not the date of re-issue, re-release or manufacture (see Section B below).

2. The name of the copyright owner or owners (e.g. the record company and/or other persons such as recording artists who **OWN** the copyright in the original sound recording) at the time that the copy (e.g. CD) was **MANUFACTURED**. Where the copyright owner is or includes a company, the full company name must be given, e.g. 'The Record Company Pty Limited.'

The © notice cannot be used to identify a licensee (whether or not an exclusive licensee) and you should not include a licensee's name in a © notice under any circumstances (see Section E below).

NB: The term 'licensee' includes Australian subsidiaries of multi-national record companies - such companies are still licensees under the Copyright Act for those recordings they obtain from (or through) their overseas affiliates.

B. RE-ISSUES/RE-RELEASES

If you have acquired the copyright in a recording or a series of recordings previously released, or propose to re-issue recordings that have been previously released by you, please read this section carefully to ensure that a proper © notice is included.

A © notice containing the following information should be included in a prominent place as part of the cover artwork for every sound recording:

EXAMPLE

All recordings © 1977¹ The Record Company Pty Limited²

1. The year of first publication (i.e. the year when the sound recording(s) were **FIRST RELEASED** for commercial sale to the public anywhere in the world - 1977 in the above example), **NOT** the date of re-issue, re-release or manufacture. Even if you have recently acquired a catalogue of recordings and have re-released them, the year of first publication (being the year of original release) should continue to be used.
2. The name of the **CURRENT** copyright owner or owners (e.g. the record company and/or other persons such as recording artists who **NOW**

OWN the copyright in the original sound recording) at the time that the copy (e.g. CD) was MANUFACTURED (even if this is different from the owner or owners of copyright at the time the recording was made or first published). Where the copyright owner is or includes a company, the full company name must be given, e.g. The Record Company Pty Limited.'

The © notice cannot be used to identify a licensee (whether or not an exclusive licensee) and you should not include a licensee's name in a © notice under any circumstances (see Section E below). **NB:** The term 'licensee' includes Australian subsidiaries of multi-national record companies - such companies are still licensees under the Copyright Act for those recordings they obtain from (or through) their overseas affiliates.

C. COMPILATIONS

Where a release is a compilation of previously released recordings, each track must have its own © notice. The notice must contain the year of first publication of that track and the current copyright owner of the track (as set out in Sections A and B above).

If the year of first publication and the copyright owner are the same for a number of the tracks, they can be grouped as long as they are identified:

EXAMPLE

Tracks 1, 2 and 5 © 2003 The Record Company Pty Limited

IMPORTANT NOTICE - COPYRIGHT IN COMPILATION.

A © notice should not be used for the compilation itself. In some cases, record companies which have created compilation albums (but do not, for example, own the copyright in all or any of the recordings themselves) have asserted copyright in the actual compilation by affixing a separate © notice in respect of the new compilation, such as 'This compilation © 2003 The Record Company Pty Limited.'

No such compilation right for sound recordings has been held to exist in Australia and a © notice for the compilation should **NOT** be used in Australia. Such a practice could cause confusion and be misleading when trying to determine copyright ownership of relevant tracks. If you wish to assert such a right, you should instead use a form of words such as 'This compilation was first published in 2003 and any and all copyright in the compilation is owned by The Record Company Pty Limited.' Whether or not this form of words is used, please ensure that the © notice for each of the tracks on the compilation is included.

D. REMIXES

Where a sound recording is a remix of a previously released sound recording and such remix is of a substantive nature such that a new copyright is claimed, it is necessary to affix a separate © notice in relation to the remix. There can also be an acknowledgement of the copyright in the original recording if you wish (or if you are contractually obliged to do so), but this acknowledgement should not be confused with the © notice for the remix.

EXAMPLE

© 2003 The Record Company Pty Limited,
(remix of [name of the original recording] © 2002 The Other Record Company Pty Limited)

E. LICENSEES

Whilst only the copyright owner can be identified in the © notice, it is nonetheless good practice to include a separate notification of any licensee or distributor:

This will apply, for example, where there is a P&D agreement or a licence agreement (exclusive or non exclusive) in place.

An example of this would be an album of original sound recordings by 'Brit Stars' owned by a UK company but exclusively licensed to a local company for Australia. In addition to the information already detailed above (i.e. the © notice for the UK copyright owner), the following information should be printed as part of the cover artwork:

EXAMPLE

All Recordings © 2003 The English Record Company plc.
Marketed in Australia by The Australian Record Company Pty Limited
under exclusive licence

NB: The term 'licensee' includes Australian subsidiaries of multi-national record companies - such companies are still licensees under the Copyright Act for those recordings they obtain from (or through) their overseas affiliates.

F. FILM SOUNDTRACKS

Copyright ownership in film soundtrack recordings is signified, like all other sound recordings, by a © notice.

However, many soundtrack albums are, in fact, compilations of previously released recordings. In such circumstances, the © notices should be applied in the same manner (and subject to the same qualifications) as for a compilation - (see Section C above).

It should be noted that if a soundtrack album includes a remixed recording, a © notice should be included for the remix, with an acknowledgement for the original recording, as set out above in Section D.

G. WEBSITES

Sound recordings made available via a website are protected by copyright in the same way as material in other media. It is best practice to ensure that correct and complete copyright information is used to prevent infringement and to put people on notice that use of the sound recording requires the prior consent of the copyright owner. Websites are accessible from all over the world and it is more important than ever that best practice procedures are adopted. As such, the © notice should be used on websites as part of the information available in respect of the recordings in the same manner as for CDs and other media.

H. THE © NOTICE

The © notice is used to signify different forms of copyright and should **NOT** be confused with, or used in place of, the ® notice.

In the context of sound recordings (e.g. CDs), the © notice is typically used:

- to identify the owner of copyright in the musical work (i.e. the composition as opposed to the recording) - this is usually a music publisher or songwriter or both (e.g. *All compositions © 2003 The Music Publishing Company Pty Limited*); and/or
- to identify the owner of copyright in the cover artwork - this is often the record company that releases the relevant CD.

It is very important that any © notices are kept separate from the ® notice - an attempt to combine the ® and © notices (for example, because the copyright in the sound recordings and the artwork is owned by the same company) could render the ® notice invalid.

EXAMPLES

INCORRECT

® & © 2003 The Record Company Pty Limited

CORRECT

All recordings ® 2003 The Record Company Pty Limited
Artwork © 2003 The Record Company Pty Limited

I. SUMMARY

DO ensure that the ® notice contains **ALL** requisite elements (for each sound recording) as detailed in this Information Sheet. An incomplete or inaccurate ® notice will be ineffective and will give rise to delays and additional legal costs when trying to prove copyright in an infringement action.

DO list the ® notice independently of the relevant © notices for the songwriters/publishers and/or artwork.

DO clearly and correctly set out the full company name as part of the ® notice.

DO ensure that the year in the notice is the first publication (i.e. the year when the sound recording(s) were **FIRST RELEASED** for commercial sale to the public anywhere in the world) **NOT**, for example:

- the year of manufacture; or
- the year you acquired ownership of copyright; or
- the year of reissue or re-release.

DO use only the copyright owner's name (not the licensee's or the distributor's), being the owner of copyright at the time of manufacture of the copy. If in doubt, always check the contract and/or seek legal advice.

DO identify the exclusive (or non exclusive) licensee or distributor separately from the ® notice.

DO, when dealing with compilations, take the time and follow the guidelines above carefully. No matter how lengthy the ® notice becomes, ensure that it is correct.

It is important that the ® notice is accurate to maximise your ability to protect your copyright. Having a misleading description of the rights owner could also be a breach of the Trade Practices Act 1974 (Cth).

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This edition published 2006

**FOR FURTHER INFORMATION:
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