

SAMPLING MUSIC – ARE YOU DOING THE RIGHT THING?

This guide has been created to educate you on the dos and don'ts of sampling music – sampling is using someone else's music as part of the music which you create.

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 (the owner of the musical work and the owner of the sound recording respectively) have a number of exclusive rights, including the right to:

- make copies of the tracks;
- adapt or change the work;
- perform the music in public; and
- communicate the tracks to the public.

Are there any exceptions to copyright protection?

There are limited exceptions to copyright that allow you to use other people's work without their permission. For example, you can copy or use other people's work without infringing copyright if you own a legitimate copy of a song and copy it for your own **private and domestic use** (e.g., copying a CD onto your computer or digital music player). However, this does not extend to using the song as a sample, even if you acquired the music legitimately.

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

What's sampling? How is it different from piracy?

Sampling involves the use of a portion of a sound recording (and the underlying music/lyrics) by another artist or DJ to create a remix or other derivative work. For example, if a hip hop artist uses a couple beats or sounds of a soul classic to create a beat that is looped throughout the hip hop song, he or she has "sampled" the soul artist's song.

On the other hand, piracy generally refers to the verbatim, mechanical reproduction of music or other works subject to copyright. For example, someone who manufactures counterfeit or "bootleg" CDs engages in piracy. Someone who uploads or downloads copyright songs to a file sharing or P2P network is also committing acts of piracy.

I want to sample another artist's song. Do I need any licences?

Yes, in order to sample someone else's song, you need permission from both the owner of the sound recording copyright (typically a record company or artist) and the musical work copyright (typically a music publisher or songwriter). As a practical guide, to legally sample you should:

- contact the licensing department of the **relevant record company** to obtain permission for the use of the sound recording; and
- contact the licensing department of the **relevant music publisher** to obtain permission for use of the musical work.

What if I am only using a very small part of someone else's music?

You will need permission to use someone else's music if it is a "substantial" part of their work. This does not necessarily mean that you only need permission if you are using a large part of their music – a "substantial" part refers to anything that is distinctive or essential to the work. So if the section of the work you want to use is recognisable you will require permission to sample it, irrespective of how small or large it is. You should keep in mind that the section of the work you want to use may only be recognisable by the artist who originally recorded it, and this is enough to satisfy what is considered "substantial".

I bought a legitimate CD. Can I sample the songs from the CD?

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. The Copyright Act allows you to "format shift" music for **personal use**, for example, to copy your personal CD into MP3 format in certain limited situations. **However, this does not extend to use of the music as a sample or to adapt the songs.**

Is it illegal for me to download music from the internet and use it as a sample?

The basic legal principle is that you cannot copy or distribute music including from the internet without the permission of all relevant copyright owners, even if the music is legally purchased. There are a number of legitimate download sites in Australia which are listed on the MIPI website under "Links". If you are unsure of whether a particular website is appropriately licensed, you can contact MIPI.

If you legitimately buy music from iTunes or other legal online distributors you should check their relevant terms and conditions to make sure that you are licensed for the relevant purpose, including for use of the music as a sample. However, you still must obtain licences from the copyright owners to sample the legally purchased music.

What about downloading music through file sharing?

Unless 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 and songwriters.

I am a music producer who has been commissioned by an artist to record songs. Can I be held liable for copyright infringement if sampled music is used without permission?

If you are producer who has been asked to sample songs in the tracks you are recording, it is best to ensure that copyright clearances have been obtained before including the music in the recordings.

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 available for use on your website.

Need more information?

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