

The aim of this essay is to investigate, research and describe the issues of intellectual property and copyright which practitioners of sound production should understand and be aware of.

How copyright arises.

Copyright arises when an original work is authored at the date of creation. This work must be expressed in material form and the date of creation must be proven. Material form of the work could be a recording on physical media such as tape, cd, or vinyl and the date of creation can be proven by registering the work with an appropriate agency or simply by posting the material form by recorded delivery to oneself. Copyright is granted to the author at the date of creation, proof is granted through due diligence, *"only the owner or his exclusive licensee can bring proceedings in the courts against an infringement."* UK copyright law: An introduction (2024)

The Copyright, Designs and Patents Act (1988) is the legal document which defines copyright in the United Kingdom. Copyright is one part of Intellectual Property law, the others being trademarks and design patents. Intellectual Property law exists to encourage artists, musicians, performers, designers and inventors to create original works or designs without the work being copied, stolen or falsely attributed.

Creative works can be protected in a way that differs from traditional forms of property. The author would be covered by what is known as moral rights.

There exist four moral rights.

1. The right to attribution. Being identified as the author of the work. For example, as the composer of a musical piece.
2. The right not to have the work subject to degrading or derogatory treatment. Such as altering the work, adapting or distorting the work to bring the author's reputation into disrepute.
3. The right to object to false attribution. Being named or credited as the author of a work you did not create.
4. The right to privacy in photograph or film, which applies to commissioned works publicly exhibited without your permission, such as wedding photography or sporting events.

The author of a copyrighted body of work has the right to be identified as the creator when the material is presented, performed or issued to the public and this identification must be clear and prominent, to not acknowledge the author would constitute a copyright infringement.

Copyright infringement can take many forms as defined by the Copyright, Designs and Patents Act (1988) Direct or primary infringement would constitute reproduction of a work, distribution of copies to the public and public performance which includes television and radio.

Indirect or secondary infringement would be a presentation or performance of the work in a public venue such as club or pub. Also providing a platform to exhibit the work through electronic means, such as streaming. In addition, enabling apparatus or machinery to reproduce copy or distribute an original work. *"The main difference between primary and secondary copyright liability is that for secondary infringement, the person is not liable unless they knew or*

had reason to believe that they were handling infringing copies, or, in the case of a performance, that the performance would infringe copyright.” Boshier,H 2021.

The author of the work owns the copyright and still does 70 years after their death of the creator. The copyright on sound recordings differs in that it lasts for 50 years from creation or 70 years for recordings released 50 years prior. This ensures the work cannot be falsely attributed, that is, unless the work was created in employment, or the work is transferred by assignment. This distinguishes the work between author and owner.

Protected acts from the Copyright, Designs and Patents Act (1988) are stated in three categories. Moral rights, ownership and authorship. As defined previously, the moral right to be correctly attributed as the author of an original work is an important and protected part of copyright law, which itself exists to protect the intellectual property of the author, and to extend to the payment of royalties.

The collection of royalties is the responsibility of a royalty society, if the author has registered with one. In the United Kingdom, there are three royalty collection agencies. The performing rights society (PRS), the mechanical copyright protection society (MCPS) and phonographic performance limited (PPL).

The PRS pays royalties *“when a member’s music is played in public, broadcast, downloaded, streamed, or performed live both in the UK and around the world.”*
<https://www.prsformusic.com/what-we-do>. (2022)

The PRS pays quarterly throughout the calendar year in April, July, October and December. The dates are estimates and any payments are based on royalties due from the work played before that date.

The MCPS collects royalties from physical copies of works, such as cd, vinyl, tape, extending to digital streaming services. MCPS pays monthly, membership is £400 for the life of the author and the MCPS has an international reach through collaboration with global affiliate agencies. *Protecting and licensing their rights as their works are reproduced worldwide: whether via streaming, downloads, broadcast, international, vinyl/CD/DVD and more.*
<https://mpaonline.org.uk/about/mcps/> (2024)

The PPL licenses and collects royalties from the public performance of recorded music on behalf of record labels and performers when the author's work is played in public spaces such as pubs, clubs, bars and restaurants. They also collect from streaming services. The PPL pays quarterly, the next due date being 17/12/24. PPL issues international standard recording codes, which are required for independent music publishers. Distrokid, a service for musicians that puts music into online stores & streaming services, can also issue **International Standard Recording Codes** which then goes through PPL at a cost of £37 per year. ISRC embeds metadata in digital tracks which contain important information regarding the author's work, such as date of creation, which can prove the author's copyright. *You do not need to be a member of the International Federation of the Phonographic Industry or a national music industry trade association in order to apply for a Registrant Code and assign ISRCs to your recordings.*
<https://isrc.ifpi.org/en/get-isrc> (no date)

For clarity and collection of royalties to parties involved, there arises the need for contracts. Three typical contracts related to the field of sound production could be, but not limited to, a producer contract, a record contract and a mix contract. Each with their own terms and clauses.

A producer would be responsible for ensuring the final product is produced to the relevant industry standard. They would answer to the record label and rights assigned to the company, if based in the UK. Typical clauses would be a fee or advance, a royalty rate, a credit on the release and/or metadata. The producer would also be responsible for the timescale, release and contract relating to the product. Royalty rate is described in points as a percentage, typically 2% or 3%, up to 10% for better known producers.

Three record contract clauses could be a term when the artist delivers a given number of tracks or albums as agreed. The budget for these recordings could also be agreed in a term, which the artist would be bound to. Finally, the ownership of the of the master recordings as stated in terms, could be attributed to the company, and they could use them how they want indefinitely. Production costs me be recouped from royalties in two ways. An album sold and costs recovered at between 10% to 16% of the sale. Secondly, by net revenue of the album after remuneration of production and marketing costs.

Mix contracts, which bear similarity to a producer contract albeit without the scope of administrative duties. Clauses being a fee, adhering to contemporary value, a rate of 1-2% and statement that it is from the artists rate. A credit, which can be included on the mix engineers CV and allows for future employment prospects.

These areas covered are essential guidelines and rules for any authors, practitioners, artists or those embarking on a career in the creative industries.

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