



Trellis Legal, LLC

5149 Butler St., Suite 300, Pittsburgh, PA 15201

www.Trellispgh.com

Key Considerations for Music Copyright

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Securing copyright protection for your music can be a complicated process. Songwriters should have some familiarity with copyright laws so they can better understand their rights and how to protect them.

It's helpful to first understand what copyright is and how it's different from other types of intellectual property. A registered copyright is the federally registered protection for creative works in a fixed tangible medium (such as music, art, film, photography, and more). Copyrights exist without registration, but registration offers the best option for protection and securing damages if your copyright is misused or used without your permission. Read our resource breaking down the differences between copyright, trademarks, and [other types of IP here](#).

This guide provides a few key considerations for music copyright.

- 1. Copyrightability.** Not all works are eligible for copyright protection. Copyright law recognizes music as a protectable work but that does not mean that all music meets the legal requirements for copyright protection. For a work to be copyrightable, it must be an original work of authorship that is fixed in a tangible medium of expression. This means that the work cannot be copied from something else and must be independently created. Also, the work must be tangible in the sense that it must be permanently preserved so that it can be perceived. Physical things like sheet music and vinyl records are clear examples of a tangible medium of expression, but digital files also meet this requirement. Again, the idea is that whatever the medium, it allows for the work to be kept in a permanent state so that it can be perceived. For example, a fireworks display can be an original artistic work based on different design, color, and timing choices, but because the fireworks fade away, a fireworks display would not meet the "fixed" requirement for copyright protection.
- 2. Exclusive Rights.** Copyright ownership comes with certain "exclusive rights." Depending on the artistic medium, these exclusive rights include the right to copy or reproduce, the right to distribute, the right to publicly perform, and the right to make a new work based on the copyrighted work (also known as "derivative" works). With the rights being exclusive, copyright owners generally have the final say in how they are carried out and owners can give permission to others to exercise these rights ([often, called a 'license'](#)). This also means that copyright owners have the right to control who uses their work and how.
- 3. The Two Works in Every Song.** Generally, every song has a composition, or some form of written music, and a sound recording. Under copyright law, each of these is a protectable work because the law recognizes written music and sound recordings as different artistic works. A composition, often sheet music with lyrics, is

a separate work with certain exclusive rights, like the right to copy and publicly perform the work. On the other hand, a sound recording which is a series of sounds and audio in a fixed state, is different from a composition. Most notably, each medium is perceived differently; like reading a composition compared to listening to a recording. With there being two underlying works, artists can secure copyright protection for the composition and the sound recording of the same song. Not only does this give artists more protection for their work, but it also creates more avenues for artists to bring in revenue through licensing and publishing royalties.

4. **Mechanical Licensing and Compulsory Licensing.** Did you know that copyright law allows anyone to record a cover without the owner's express permission? Under a licensing scheme called compulsory licensing, anyone can pay the legally set rate for a mechanical license to make a cover, or a new recording of the same song by another artist or performer. A mechanical license is a license granting the right to reproduce a composition. It is important to note that when creating a cover, the cover must be of the actual composition. It cannot be substantially different, like many remixes, or it will exceed the scope of the license and could be viewed as a derivative work. For example, a cover that includes an interpolation of another song would exceed the scope of a mechanical license because the licensed composition does not include the interpolation. To continue with the cover, the artist would have to go to the owner of the composition *and* the interpolated work and get permission from each owner. Remember that the compulsory licensing does not cover sound recordings! It applies only to musical compositions.
5. **Live performances.** The ability to publicly perform a work is another right exclusive to a copyright owner. What makes a performance public generally hinges on whether the performance is in a private setting (think a backyard performance for friends and family) or whether the performance is where the public has access (like a bar or concert hall). To publicly perform a work, a performer needs permission from the copyright holder in the form of a public performance license. These rights are administered by performance rights organizations like ASCAP and BMI (known as "PROs"), and they issue what is called a "blanket license." A blanket license covers the PRO's entire catalog, meaning that you can perform any song in the catalog without needing extra permission. Remember, though, because a song has two copyrightable works, there are different rights (and therefore different licenses) involved in publicly performing a composition and publicly performing a sound recording. Notably, most music venues, bars, and restaurants already have blanket licenses in place, but if you are a commercial space and do not, [be sure to read our blog on this topic](#).

Additional Resources:

- **Read some additional Trellis resources and blogs on copyright and music:**
 - [Blog: Artificial Intelligence and Music Copyright](#)
 - [Blog: Press Pause: Is Your Business Paying License Fees for Your Daily Playlists?](#)
 - [Resource: Legal Health Checklist for Creatives](#)
- **United States Copyright Office:** The Copyright Office has a variety of resources about copyright law and the application process. <https://www.copyright.gov/>
- **The Harry Fox Agency:** The Harry Fox Agency is a music rights management organization that issues mechanical licenses and collects royalties on behalf of artists. <https://www.harryfox.com/>
- **Volunteer Lawyers and Accountants for the Arts:** A nationwide network of programs providing legal assistance to artists. <https://vlaa.org/get-help/other-vlas/>