

# PERFORMING ARTS FORUM

## MUSIC LICENSING FOR THEATRE COMPANIES // FACTSHEET

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## **Performing Arts Forum Music Licensing for Theatre Companies Factsheet**

Most Performing Arts Forum members will need at some stage to license music, whether for use as part of a production or for background use at the venues in which their productions are staged. This guide is intended to provide a brief overview of the law relating to music licensing and some of the practical procedures involved.

### **1. Copyright Law**

The purpose of copyright law is to protect various forms of intangible work, including literary, dramatic, musical and artistic works. Copyright is a statutory right (deriving primarily from the Copyright and Related Rights Act, 2000) which is designed to protect the expression of an idea rather than the idea itself. Copyright in a work is infringed if the work is copied, published, performed or adapted without the consent of the copyright owner. In the area of music licensing the principal types of copyright work that Performing Arts Forum members will encounter are:

- musical works, with or without lyrics, the copyright in which lasts for the life of the composer or song-writer plus seventy (70) years; and
- sound recordings, the copyright in which lasts for fifty (50) years after a recording is first made publicly available.

For the purposes of this guide it is assumed that the relevant musical works and sound recordings continue to enjoy copyright protection; it is not necessary to obtain licences to use any copyright works that have entered the public domain as a result of the expiry of copyright protection.

It is important to understand the distinction between a piece of music and a recording featuring music, in which separate rights of copyright subsist. The composer of a piece of music is generally the first owner of copyright in that work, while the producer of a sound recording featuring the same music owns the copyright in the recording. Hence when using a piece of recorded music, as opposed to music performed live, it is usually necessary to obtain two separate licences.

In relation to pre-existing pieces of music, as opposed to music specifically commissioned for a particular production, which will normally be governed by separate arrangements, the copyright will normally be controlled by the composer's music publisher. On the other hand, the copyright in a sound recording is usually controlled by the record company which produced it.

In many cases, however, Performing Arts Forum members will find themselves dealing with so-called "collecting societies" which act on behalf of the composers/publishers or record companies who constitute their membership.

### **2. Licensing Musical Works**

Most composers delegate control of the copyright in their musical works, known as publishing rights, to one or more music publishers, which specialise in exploiting and deriving income from music. However certain elements of the copyright tend to be handled by specialist collecting societies, which due to their global affiliations can efficiently collect royalties on behalf of the composer/publisher wherever in the world their music is used. For an Irish theatre company two most relevant collecting societies are IMRO and MCPS.

#### **a. IMRO**

IMRO is a national organisation that administers the so-called “performing right” in copyright music in Ireland on behalf of its members, i.e. composers and music publishers, and on behalf of the members of its affiliated societies around the world. Its function is to collect and distribute royalties arising from the public performance of copyright music. This means that it collects from broadcasters, venues where music is performed and indeed from every business and other organisation that plays music in public, whether or not the venue or organisation in question charges for entry. Such organisations may apply to IMRO for the issue of licences permitting the playing of music.

Most venues will hold IMRO “blanket” licences which permit the use of music that is unconnected with the productions being staged at the venues, including music heard before the show and in the intervals and music played in foyers, bars and other areas. However, where the music forms part of the production being performed additional licences may be required, as discussed further in 5 below.

<http://www.imro.ie/about/>

#### **b. MCPS**

This collection society administers the so-called “recording right” in musical works. It collects and distributes to its members “mechanical” royalties generated from the recording and re-recording of music onto various formats. Although somewhat less relevant to theatre companies and venues than IMRO, it is likely that most Performing Arts Forum members will come across MCPS at some point. For example, if you wish to create your own recording of a copyright musical work to use in a production, you will need to obtain a licence to do so from MCPS, or directly from the music publisher. Alternatively, if you wish to dub, re-record, music from an existing recording onto your own tape or other recording device, again such a licence will be required, as will a licence from the owner of the existing recording – see 3 below. <http://www.mcps.ie> .

### **3. Licensing Sound Recordings**

Where the music being played at a venue, whether heard as part of a show or played in the venue before or after performances, is taken from a CD or other existing recording it will be necessary to obtain a licence in respect of the recording in question in addition to a licence of the music itself. As is the case with the public performance of musical works, it is possible to license the public performance of sound recordings through a collecting society. In Ireland the collecting society for the public performance of sound recordings is Phonographic Performance Ireland (PPI). PPI and its international affiliates collect performance income

from users and distribute that income to their member record companies.

<http://www.ppiltd.com/>

Most established venues will hold blanket licences from PPI, as well as from IMRO, and in such circumstances there should be no requirement to obtain further public performance licences in respect of the recording. However, where the recording being used is itself dubbed or re-recorded from another recording, a licence from the owner of the original recording should be obtained.

#### **4. Clearing Performers' Rights**

If you make a recording or other fixation of a performance, whether musical or otherwise, the consent of the performer is required. Although performers' rights are not property rights in the same way that copyright is, a performer has similar rights to authorise or prohibit recordings of his/her performances to the rights of a copyright owner in respect of his/her copyright works. Consequently, where for the purposes of a production it is necessary to record a performance it is essential that the performer's contract expressly authorise this.

#### **5. Music in Productions**

Some Practical Examples This section describes some of the different scenarios in which Performing Arts Forum members may need to license music for the purposes of their productions.

##### **a. Commissioned music in a stage musical**

Where the production is a musical incorporating specially commissioned music, the necessary licences should be contained in the agreement with the composer(s) of the music. That agreement should give the producer such licences as the producer may require to stage the show in whichever territories it requires and may also give the producer an interest in ancillary rights. For example, the producer should generally ensure that it is entitled to record and release a so-called "cast album" and may also want to secure an option over motion picture and/or other audio-visual rights.

##### **b. Existing music incorporated in the performance**

If the producer wishes to interpolate existing music into the action of the production, whether sung or played by a performer or heard from a radio or CD player as part of a scene, it will need to obtain separate consents and licences in respect of each separate piece of music. Although it may be possible, depending on the circumstances and in particular the nature and duration of the use, to obtain the necessary licences from IMRO, the first port of call in such circumstances should be the publisher of the music. It should be possible to ascertain the publisher's identity by looking at a copy of the sheet music or the sleeve notes on a CD or other recording of the music. Where the music heard on stage is a recording, as opposed to a live performance, the producer should also ensure that the venue has a valid licence from PPI.

### **c. Using music in dance performances**

This will almost certainly require a licence from the music publisher, although in some circumstances IMRO may be able to grant a licence. Again the approach should be made to the music publisher in the first instance.

### **d. Use of dubbed/edited recordings**

If the production involves the creation of new recordings of existing recorded music it will be necessary to obtain consent from the record companies which own the copyright in the existing recordings. This is in addition to any clearances required in respect of the music itself, see b above.

### **e. Performances in an unlicensed venue**

Where the venue does not hold licences from IMRO and PPL, in order to use copyright music and/or recordings it will be necessary for the show's producers to obtain temporary licences from either or both of those organisations. Additionally or alternatively, where the music is incorporated in the performance b and/or c above may apply.

### **f. Rehearsals**

Provided that no audience is present it should not be necessary to obtain licences in respect of the use of music and/or sound recordings during rehearsals.

## **6. Conclusion**

It will be clear from the foregoing that the licensing of music for theatre productions is a complex area. The fact that the venue for the production may be licensed by IMRO and PPL, while helpful, does not necessarily mean that further licences are not required. Section 5 above sets out in simple terms some of the scenarios in which additional licences may be necessary but every production is different and it is advisable to seek professional legal advice in all but the most straightforward circumstances.