



## **COPYRIGHT FOR REPLICATORS**

### **HOW TO PROTECT YOUR BUSINESS**

#### **Introduction**

BIEM and IFPI are the international associations representing the principal owners of rights in music. BIEM represents collecting societies that administer mechanical reproduction rights on behalf of authors/composers and music publishers, and IFPI represents record producers.

BIEM, IFPI and their members are taking vigorous steps to try to combat the growing problem of optical disc piracy. In addition to bringing criminal and/or civil proceedings against any replicators and distributors found to be involved in piracy, IFPI and BIEM want to work with the replication industry to help replicators understand their responsibilities under copyright law. This will help them avoid infringements that will damage both their business and that of the legitimate music industry, which is one of the major sources of business for replicators worldwide.

These guidelines, prepared for replicators by IFPI and BIEM, are intended to provide a basic explanation of the principles of copyright law and how they apply to the mastering and manufacture of optical discs. They explain, in general terms, your obligations and they highlight what you can do to avoid claims for infringement of copyright. You should note, however, that these guidelines are only an introduction and you are urged to seek detailed independent legal advice, particularly as specific elements of copyright laws do vary between countries.

#### **What is Copyright ?**

The basic function of copyright is to encourage creativity and the production of creative works by ensuring that creators are rewarded for their efforts. Copyright achieves this by granting those creators various rights, including the right to control the copying (or other exploitation) of their works. A copyright owner (who will not always be the creator) can therefore choose how their work is to be used, if at all, and can take legal action to prevent the work from being used in a way that they have not permitted; alternatively, they may be entitled to receive payment for certain uses specified by copyright laws.

## What does Copyright apply to ?

Copyright can apply to a variety of creative works, from books, sculptures, paintings, films, music, sound recordings and photographs to computer programmes, technical designs and databases.

For optical disc replicators, the most important of these are likely to be music, films, computer games and business software. These guidelines concentrate on music.

## What rights are there in a recording of music?

It is important to understand that when reproducing a recording of music, there are two separate copyrights to consider:

- **The right of the producer of the sound recording itself; and**
- **The right of the author/composer (or their publisher) in the underlying composition (*ie.* the song or musical work and/or the lyrics)**

Depending on the country in which you are located, the rights of the producer of a sound recording may be protected as “related rights” or “neighbouring rights”, rather than as copyright. Such copyrights or neighbouring rights are usually owned by the record company which produced and commercially released the sound recording.

The right to reproduce the composition is often known as the “mechanical copyright” and such rights are usually administered by collecting societies representing the authors/composers who created them and their publishers.

## What rights does the owner of a copyright or neighbouring right have ?

The owner of a copyright or neighbouring right will have the right to control the exploitation of its composition and/or sound recording and prevent a number of acts which relate to the ways in which the composition and/or sound recording can be exploited. These include:

- **The right to copy or reproduce on a commercial basis;**
- **The right to distribute copies to the public;**
- **The right to import or export copies; and**
- **The rights in public performances.**

Therefore, it is only the owner of a copyright or neighbouring right in a sound recording that can, for example, copy a sound recording on a commercial basis (subject to clearance of the mechanical copyright), and the copyright owner can take legal proceedings to stop anyone else from copying that sound recording. Alternatively, the copyright owner may grant a licence to another person to copy the sound recording, usually for a fee. The same principles apply to the owner of the mechanical copyright. It is usually collecting societies that grant the licence to copy the composition.

## How do copyrights or neighbouring rights affect me ?

When you manufacture (and therefore reproduce) sound recordings, whatever the format (eg. CD, DVD, CD-ROM), if the owners of the copyright or neighbouring rights which apply to those sound recordings and/or the underlying compositions have not granted a licence for that reproduction, **you** (the replicator) will have infringed those copyright(s) or neighbouring rights. Even if you have obtained a warranty and/or declaration from your customer that he has obtained all the necessary rights for the order, or even an indemnity regarding any legal claims, it is **you** who will be performing the actual copying and **you** who will be responsible for it, as well as perhaps also the distribution and exportation.

Remember as well that if you are dealing with a sound recording that has been released by a record company, there will need to be clearance of two separate rights, in the composition and the sound recording itself.

If you fail to check that **both** of these rights have been cleared, you may find yourself the subject of either a criminal prosecution or a civil claim for damages. Either way, the penalties, both financial and commercial, can be severe.

## What can you do to avoid infringing copyrights or neighbouring rights ?

You need to ensure that, before you process any order involving content that may be protected by copyright or neighbouring rights, the owners of those rights have granted a licence for that reproduction.

When dealing with sound recordings, this means that your customer needs to **show you evidence** that he has a licence from the owner of the rights in the composition **AND** from the owner of the rights in the sound recording. In addition, that evidence must be reasonable in the circumstances if you are to protect your position; for example, it will not normally be reasonable to accept a mere declaration from your customer that he owns, or has a licence from the owner of, the producer's rights.

Usually, the mechanical copyrights will be licensed to your record company customer by a collecting society in the country where you are based or in the country where your customer is based, and will be provided in the form of either (i) a standard contract between your customer and that society or (ii) a specific authorisation to your customer from that society. But if the record company customer has failed to obtain a license, you risk being held responsible for infringing reproduction (manufacture).

Collecting societies often have agreements or codes of practice with replicators, dealing with the rules for verification and exchange of information, and it is vital that you observe those agreements or codes if you are to avoid problems. However, it is important to understand that these agreements or codes will not cover the owner of the rights in the sound recording, and your customer will need to either produce satisfactory evidence of a licence from that owner or show that he is the owner.

To avoid any possible doubt, although IFPI and BIEM concluded in 1996 a Memorandum of Understanding on Anti-Piracy, (providing for cooperation between the two organisations on anti-piracy matters) that agreement does not in any way affect or lessen the obligation on replicators and their customers to ensure that both the rights in the composition and the sound recording have been properly cleared.

To be specific, if you receive an order from a customer that has a mechanical licence from a collecting society, this does **not** mean that you can assume that a licence has been obtained from the owner of the rights in the sound recording. You must still ask for and obtain evidence of authorisation from the owner of the rights in the sound recording before you process the order. Likewise, if you receive an order from a customer that has a licence from a record producer you must still ask for and obtain evidence of a licence from a collecting society for the underlying composition.

### How do you do this ?

As regards rights in sound recordings, IFPI recommends that you follow the guidelines set out in its Good Business Practices for CD Mastering and Manufacturing Plants.

As regards mechanical copyrights, whilst many of the principles contained in the Good Business Practices are equally applicable, you should also consult with your local collecting society (or other relevant society) to clarify its specific licensing procedures

In addition, the optical disc replication industry has produced the IRMA (International Recording Media Association) Anti-Piracy Compliance Standards & Procedures, which have been put together in consultation with the recording, film and computer software industries. These guidelines and procedures will help you to ensure that adequate checks are carried out to detect any suspect orders, before they are processed, and therefore avoid infringing copyrights.

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