

GUIDE TO THE AUDIO MANUFACTURE LICENCE APPLICATION



BACKGROUND

The Commonwealth Copyright Act provides a statutory right to make copies of musical works (the original tune and lyrics as composed and written) onto audio recordings providing:

- the sole purpose is for retail sale;
- that a prior notice of the intention to make the recording is made to the copyright owner or their authorised representative; and
- an appropriate royalty is paid to the copyright owner.

The Australasian Mechanical Copyright Owners Society Limited (AMCOS) is a copyright collection society that represents virtually all the music publishers based in Australia and New Zealand for the reproduction ("copying") right and by way of reciprocal agreements with similar societies worldwide many millions of international works. AMCOS acts as the 'copyright owner' in all these musical works for copies made under this statutory right.

If you intend making an audio recording of a copyright musical work you will always require a licence from the person or entity that controls the relevant rights in Australia. In the vast majority of cases, this is AMCOS.

In order to make the licensing process as easy as possible, AMCOS has a specific licence for people who wish to manufacture audio recordings – the Audio Manufacture Licence Application. The following is a guide to the AMLA. It does not have legal effect and cannot be used in any way to limit or define the terms and conditions of the agreement. In any situation where there is an inconsistency between the agreement and this guide, or where something is unclear, the agreement must be referred to.

AMCOS' rights have been administered by the Australasian Performing Right Association Limited (APRA) since July 1997 under a management arrangement between the two Boards. Both AMCOS and APRA are non-profit member-based organisations, that distribute to their respective members all royalties, less the costs of administering those licence schemes.

WHY DO I NEED A LICENCE?

When you make a record (e.g. CD, cassette or vinyl) of songs you reproduce the musical work – that is, the original tune and lyrics. The reproduction of musical works is one of the rights – set out in the Copyright Act – that requires you to notify the copyright owner and pay the appropriate royalties. AMCOS - through its membership-base and reciprocal agreements with overseas copyright collecting societies - provides access to a vast number of local and international musical works.

WHAT TYPES OF RECORDINGS ARE COVERED BY THE AMLA?

You can use recordings made under the AMLA for the following purposes

Retail Sale	For you to supply record shops or distribution companies with the recording for the purpose of sale.
Sale at Performances	For you to sell the recording direct to customers at performances etc.
Demo/audition	For you to submit the recording to music publishers, record companies, artists, orchestras, bands, radio stations and booking agents etc to promote the artist or composers of the works on the recording.
Background music	For you to use the recordings as background music to a performance or other event. (Note that this licence does not cover any public performance including but not limited to performances in a dramatic context.
Educational	For you – if you are a bona fide educational institution - to provide the recordings free of charge to your students.

RECORDINGS NOT COVERED BY THE AMLA

No other use of the musical works is covered or authorised by the AMLA, and you should seek permission directly with the copyright owner PRIOR to reproducing the musical work(s). By way of example this includes:

Advertisements	You may not use the recordings for advertising purposes or to promote an event, product, service, line of conduct or an organisation. The use of music in advertisements must be licensed directly by the copyright owner. See Advertisements . We do provide a research service to help you identify the copyright owner. A small fee applies.
Premiums	You may not package a recording that is given away with an unrelated or third-party product or service (e.g. a magazine or a personal loan) to encourage the purchase of that third-party product or service. If you wish to manufacture a recording for premium purposes, you will need permission from the owner of copyright in the music. See Advertisements .
Samples	You may not use a sound recording as a sample either from another recording to use in your own recording or to provide to someone else to use as a sample. This requires permission directly from the copyright owner in the musical work and the record company that owns the copyright in the sound recording.
Lyric changes/Parodies	Lyric changes and parodies of works must have been cleared directly with the copyright owner. If you have obtained this permission, you can manufacture the recording under the AMLA, provided you provide us a copy of the written approval for the changes from the copyright owner when you submit your form to us.

HOW DOES THE LICENCE PROCESS WORK?

By completing the AMLA, you provide us with details about the recording and the works you want to use. This information is used to determine the fees payable (a royalty and a separate processing fee) and research the works in order to verify copyright ownership.

Once we have completed processing your application – which usually takes between 3 to 6 weeks depending on the complexity of the research process - we will issue you with:

1. A **Prescribed Notice** (PN). The PN will show you which of the works on your recording are administered by us and the names of the copyright owners in Australia that control those works. We will also advise you which of the works, if any, are out of copyright and which are not controlled by us.
2. A **tax invoice** for the royalty and the processing fee. Once we have received payment of the tax invoice – this will constitute our granting to you a licence to reproduce AMCOS controlled musical works in your sound recording.
3. **Two further invoices** (three and six months later) providing your application meets the criteria for our staggered payment option (i.e. total manufactured units greater than 999, total AMCOS Royalty greater than \$150 and you provide a copy of invoice/statement from the manufacturer)..

WHAT FEES APPLY?

The Royalty

The compulsory licence provisions of the Copyright Act, provide for a default rate of 6.25% (exclusive of GST) of the record's GST-exclusive retail selling price. However the Australian Recording Industry Association (ARIA) has negotiated a preferential rate of 6% (6.6% including GST) on behalf of its members, which we have extended to AMLAs.

Mechanical Royalties are calculated on a pro rata basis according to the number of works* we control on your recording. For example, if your recording consisted ten works with nine 100% controlled by AMCOS and the remaining work was out of copyright, the fee would be calculated by reference to:

$\text{Selling Price} \div 10 \text{ works (all works on the recording)} \times 6\% \text{ (the royalty rate)} \times 9 \text{ (the AMCOS Works on the recording)} \times \text{Quantity Manufactured plus GST.}$

These royalty calculations are subject to a minimum fee per work per unit of 5.5 cents (inclusive of GST).

* Please also note that a work may have several copyright owners (sharers) and the AMCOS Royalty for each work is calculated by reference to AMCOS representation in that work.

Processing Fee

We also charge a processing fee to help offset the costs of researching copyright ownership and establishing the licence. Once researched, details of your recording will be submitted to our electronic clearance facility in order that our members can confirm or update ownership details. The processing fee relates to the number of works (but excluding those you have written that are not AMCOS-controlled works) on the recording. The table of fees is:

No. of works on the recording	Processing fee (inc GST)	No. of works on the recording	Processing fee (inc GST)
1-5 works	\$22	16-20 works	\$77
6-10 works	\$44	More than 20 works	\$93.50
11-15 works	\$60.50	Variation to existing application	\$22

OTHER FREQUENTLY ASKED QUESTIONS ABOUT MAKING RECORDS

Why do I have to provide details of the manufacturing and distribution facilities I have used?

We undertake compliance checks from time to time and by completing the AMLA you authorise us to verify the manufacturing quantities you have supplied, with the manufacturing facility.

When do I get my licence?

The Prescribed Notice (**PN**) will be sent to You with the tax invoice once we have processed the AMLA. The PN serves as notice of a grant of licence for those works on Your Recording that AMCOS controls and as identified on the PN, but only becomes valid once the invoice sent with the PN has been paid.

Do I have to pay for all units upfront?

For larger production runs (i.e. where you manufacture more than 1,000 units and the AMCOS royalty is greater than \$150), AMCOS provides a staggered payment scheme (60% of the royalty payable when the PN is issued, 20% in three months time and a further 20% in another three months). In order to gain the benefit of these staggered payment you must provide us with a copy of the manufacturer's invoice/statement no later than when you make your first payment.

How do I vary my AMLA?

If you wish to make more copies of the recording than you indicated on the initial application form, you must complete a new application form and indicate your existing licence number in the space provided. You will also need to pay an additional administration fee of \$22 as well as any further royalties required. . If you make an application for more copies of a production within the staggered payment period, the full amount of the royalty on the initial application will become immediately due and payable.

If you wish to alter a previously submitted form in any other way (e.g. to make changes to the track listing) you must submit a new form, indicating the alterations you have made in the space provided. You must also pay an additional \$22 administration fee.

Do I have to pay for promotional copies?

Yes, you must report all units manufactured even if some of them are for promotional use. However, if you qualify for the staggered payment terms AMCOS will only charge a royalty on 95% of the units manufactured on the basis that 5% of the units are promotional copies/ Please note that AMCOS may require you to provide evidence of the promotional nature of those copies.

What happens if I do not go ahead with making the recording?

Please notify us of this in writing as soon as possible. If we have not yet sent you the invoice and PN, we will not invoice you for the AMCOS royalty (as no manufacturing has occurred), however you will still be liable to pay the processing fee. If you have already received an invoice and PN and paid your fees, you will not be refunded the processing fee and will only be refunded the AMCOS royalty providing it has not already been distributed to our members.

What happens if the work is out of copyright?

In general a work remains in copyright until 70 years after the death of the composer. There are no royalties payable on a work that is out of copyright but you must include details of any work you think is in the public domain. This is because musical arrangements made of public domain works are subject to copyright and we need to research which version you have recorded, to determine whether a royalty is payable.

The PN will detail which works are in the public domain.

What happens if AMCOS does not represent the works I want to record?

Our repertoire is vast (over 10 million songs) but in some circumstances the work (or a share in the work) you want to record may either be written by a composer who is not represented by AMCOS, either because:

- they are not published by AMCOS;
- they are not a member of AMCOS in their own right; or
- they are an AMCOS Member but have opted to directly license the use of music used on AMLAs,

and in which case you will need to obtain permission directly from each separate copyright owner.

The PN will detail which works (and which shares of those works) are represented by AMCOS and which are not.

I would like to print the lyrics on my CD inserts. Can I do this?

This will require permission directly from the copyright owner.

Does the AMLA cover me if I want to copy music from another recording?

In part, yes. The AMLA only covers the copying of musical works, it does not cover the copying of sound recordings. Sound recordings are separately protected under the Copyright Act. You will usually need to obtain permission from the record company that owns the rights in the recording, but in any event should contact the Australian Recording Industry Association on 02 8569 1144.

More information

For more information, please contact Commercial Recordings on 02 9935 7900 or email: mechlic@apra.com.au.