



Corinne Blumsky

# What tune are you playing?

Music is great for creating ambience for retail businesses – whether played in-store or on your phone messages. But some businesses do not realise that music is intellectual property and subject to copyright.

**Y**ou can only use music in your business with the permission of the copyright owners. Without permission, you risk breaching the law – as well as depriving the copyright owner of rightful income.

A licence is required by anyone who plays music via audio or video recordings in public. This includes:

- Playing music in any area that is accessible to the public – played from a PC, MP3 device, CD player, jukebox or played by a DJ. It excludes radio and TV sets;
- Playing music or radio through your telephone 'on-hold' system; and
- Hiring your premises to others who then use it to play music. This includes events centres, halls and clubs.

## What rights are at play?

Recorded music is protected by two separate copyrights. First, copyright exists in the song itself – the composition and lyrics. This is often referred to as the 'musical work'. Second, there is copyright in the recorded version of the musical work captured in the 'sound recording.'

The composers, or their music publishers, own the copyright in

musical works while the recording companies own the copyright in sound recordings. Permission from both copyright owners is required before a sound recording can be played or copied.

## New Zealand and international copyright

Copyright is protected in New Zealand by the Copyright Act 1994 and entitles composers and publishers to be paid when their work is performed in public. The same protection is afforded to overseas composers as New Zealand is a member of the International Berne Convention. This means that music composed overseas can be breached in New Zealand if the composer who wrote and recorded the original music comes from another country that is also a member of the Berne Convention.

## Why do you need a licence?

In the privacy of your own home, you are free to listen to whatever music you like. But when music is played on radio, television, CD or tape outside a private environment, it is a performance 'in public'. Once music is played in public, care needs to be taken to ensure that

appropriate licences are obtained.

In most situations, a blanket licence may be available so your business can play whatever music you want, when you want, without worry.

A common misconception is the playing of a CD in a store. When you buy a CD, you do not purchase the right to perform that musical work in public. Without a licence, you breach copyright. So, getting a licence will give you peace of mind.

## Where to go for a licence

Businesses that choose to play copyright music to their customers need permission from the copyright owners. However, you do not need to contact the individual copyright owners. Instead, you can apply for appropriate licences from the Phonographic Performances NZ Limited (PPNZ) and Australasian Performing Right Association Limited (APRA). The two organisations protect and exercise



these rights on behalf of their members.

Both organisations aim to help businesses comply with the law. And they are more than willing to help with any queries. Their websites are: [www.ppnz.co.nz](http://www.ppnz.co.nz) and: [www.apra.co.nz](http://www.apra.co.nz). They contain a lot of useful information.

You may also need to make sure that any applicable mechanical rights associated with the use of music are obtained from The Australasian Mechanical Copyright Owners Society (AMCOS). AMCOS represents almost all music publishers in New Zealand and Australia and a significant number of the world's composers, writers and music publishers. APRA also administers the rights of AMCOS.

With two separate copyrights involved, PPNZ and APRA have joined forces and are developing a one-stop shop with information available through a new website at: [www.musicinbusiness.co.nz](http://www.musicinbusiness.co.nz). This website is not yet operational – but watch this space!

### Risky business

So, what are the risks of not obtaining a licence? If you play music in your retail store without a licence, you are breaking the law. The penalties you risk facing are up to five years in prison and/or a fine of up to \$150,000. While penalties at the extreme end of the scale are rare, particularly for first-time offenders, that does not mean that such penalties will not be handed out.

**“If you play music in your retail store without a licence, you are breaking the law.”**

And don't forget about the adverse publicity and your legal fees! Once you have a licence, you do not need to reapply each year. PPNZ/APRA will automatically send you a renewal notice. When

paying the renewal fee, you can identify any changes you have made to the music you play.

### How much?

How much does a licence cost? How much you pay for a licence depends on the size of your store and the type and number of media players. Also, you may need multiple licences depending on the kind of business you operate.

### And on a final note ...

Copyright compliance gives your business access to popular music from around the world. Paying a licence fee to use the music you play in your store or as a backdrop to your telephone recordings, recognises the talents of the music creators and rewards them for their efforts. It also encourages them to continue making great music.

We want that, don't we?

Just because prosecutions have been rare, does not mean that you won't be caught out.

PPNZ, APRA, AMCOS usually first contact retailers who are playing music without a licence, to outline the legal position and invite them to purchase a licence. But, if that approach does not result in compliance, the matter may escalate to enforcement actions.

Apply for your licences now and sing to the tune of your customers – without depriving music composers and publishers of their fees. ■

□ By **Corinne Blumsky**, a partner at A J Park and a regular columnist for *NZRetail*. Contact her on: (04) 498 3445 or by e-mail at: [Corinne.blumsky@ajpark.com](mailto:Corinne.blumsky@ajpark.com).



## 239 Archers: The Most Exciting New Retail Development on Auckland's North Shore.

Located in Glenfield's Wairau Valley adjacent to Pak n Save, 239 Archers is scheduled for completion in September 2010.

We have two retail units remaining for lease. Contact the owners directly to secure your future at the heart of the regenerated Wairau Valley.

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