

COPYRIGHT COMPLIANCE
Copyright issues when using music for the teaching and performing of dance

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Introduction

This resource is a guide* to the legal obligations that New Zealand dance practitioners have with respect to the copyright of music when used for dance performances, rehearsals or workshops.

Terms

- **Song/Music** refers to all types of music, e.g. pop songs, classical works or music composed specially for a dance syllabus.
- **Public Performance** refers to the public performance of music - both live performances of a composition and the playing of recorded music (or the exhibition of a music video) in public.

According to the Copyright Act, all music played outside the domestic environment (at home) is classed a *public performance*, e.g. when discussing copyright, music played on the radio is classed as a public performance.

In this document a public performance does NOT mean a performance which people (or an audience) come to see but rather any situation in which music is performed or played in the public arena.

So for instance, because the playing of recorded music during a dance class, or dance rehearsal, happens in public (i.e. not at home) it is a *public performance* of that music (regardless of whether or not people have paid to attend the dance class or are getting paid to rehearse).

New Zealand's Copyright Act

The Copyright Act 1994 makes songwriters and composers the exclusive owners of their original music and lyrics. It is therefore necessary to get their permission if you want to use their music for a public performance, and pay corresponding fees.

There are two organisations authorised to permit the public performance of copyright music and collect payments on behalf of the music industry in New Zealand – **APRA** and **PPNZ**.

This resource sets out to explain the legal obligations that dance practitioners have in respect to both organisations.

****Disclaimer: This resource has been produced by DANZ as a guide only. Up to date information is publicly available on both the APRA and PPNZ website. This guide was up to date at the time of writing. It is strongly advised to contact APRA and PPNZ for confirmation of your obligations as these may change. DANZ is not responsible for such changes.***

Overview

When there is a public performance of music (when it's played outside of the domestic environment), permission must be gained from the music's copyright owners.

Festivals and venues for hire often state that performing groups are responsible for their own copyright clearances - so it is important to understand your legal obligations when using copyright music.

There are two types of copyright

- one for the owner of the song/music (composer/lyricist/publisher)
 - one for the owner of the recording of the music (record labels/registered recording artists).
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- **APRA** is the organisation that represents the owners of the copyright of a song or piece of music. Its members are songwriters and composers of original music.
 - **PPNZ** represents the owners of the copyright of the master sound recording, and therefore deals with recorded music only.

Both organisations are not-for-profit.

Both organisations act as links between users of music and the creators of music.

Both organisations work under the same copyright law.

Both organisations are affiliated with similar organisations internationally.

Both organisations collect copyright fees by issuing **licences**.

Using music with dance

For dance practitioners there are two different contexts in which music is most often used:

1. to accompany a dance class
2. to accompany a dance performance.

In both instances dance practitioners will likely have legal obligations to both APRA and PPNZ.

The Copyright Act 1994 provides for a maximum \$150,000 fine and/or 5 years imprisonment for breaches of the law. Penalties may vary depending on the type and circumstances of the offending.

APRA and PPNZ

APRA – Australasian Performing Right Association

APRA represents songwriters and their publishers who own the **copyright of a song or piece of music**.

APRA collects royalties for composers, lyricists and music publishers.

The reason behind APRA's establishment is that it is impossible for individual composers and publishers to license their music and collect royalties each time their work is publicly performed or broadcast. It is similarly unrealistic to demand that persons wanting to use copyright music be required to seek permission from individual copyright owners.

From APRA Information Booklet.

When music is used in public performance the composer is legally entitled to a performance royalty. APRA ensures this happens through issuing **licences**.

Licences must be obtained from APRA, and a fee paid. There are different types of licences depending on the different ways the music is used.

APRA has separate licences for the use of music in a dance class and the use of music in performance contexts.

NOTE: APRA licences are between the users of the music and APRA.

PPNZ – Phonographic Performances NZ

PPNZ represents the owners of the **copyright in a sound recording** (owners of the master copy of a sound recording). Any venue where recorded music is played must pay an annual licence fee to PPNZ.

PPNZ is responsible for licensing and collecting income from the broadcasting and public performance of sound and video recordings. PPNZ can grant licences to any individual or business playing or using recorded music in the public arena.

From www.ppnz.co.nz

Any use of recorded music in public will require possession of a licence from PPNZ.

Examples of organisations that must legally have a licence with PPNZ include:

- Dance studios, dance/aerobic class venues
- Restaurants, cafés & bars
- Sports grounds, racetracks, recreation centres
- Theatres & cinemas
- Public transport e.g. aeroplanes, ferries, taxis, limousines and buses
- Function centres, art galleries, exhibition centres
- Telephone (on-hold music)

NOTE: PPNZ licences are between the venue where the copyright music is played and PPNZ.

SECTION ONE – Dance teachers’ obligations

This section outlines dance teachers’ obligations in respect to both APRA and PPNZ when using copyrighted music for the teaching of dance.

A. Dance teachers’ obligations’ – APRA

APRA has developed a specific licence to cover the use of music for dance classes. Dance teachers must take out a licence and pay an annual fee. The licence application is online at:

<http://www.apraamcos.co.nz/MusicConsumers/MusicinBusiness/DanceSchools.aspx>

The annual rate from 1 July 2010 is \$49.86 per annum for the first day per week upon which classes are held, plus \$24.94 per annum for each additional day per week upon which classes are held. The prices are inclusive of GST.

If you were teaching 7 days a week then the annual licence would be \$199.50 including GST.

A licence with APRA may still be necessary when the only music played is syllabus music. Dance teachers should check with their syllabus organisation in the first instance to find out the copyright status of their syllabus music.

NOTE: This licence does NOT cover the public use of music in dance performance contexts such as a dance school's end-of year recital. It is for the use of copyright music in dance classes only.

B. Dance teachers’ obligations’ – PPNZ

PPNZ issue Public Performance licences for premises/venues - the licence is for public performances of recorded music in that venue and is between PPNZ and the legal occupant of the premises. What is important is who is the legal occupier of the venue in which the recorded music is played as they are responsible for the PPNZ licence.

PPNZ issues licences according to how the recorded music is used and has a licence tailored for dance studios.

If ALL music that occurred in a venue were performed live then it would not be necessary to take out a PPNZ licence – however as soon as any recorded music is used a PPNZ licence must be taken out.

Dance teachers who own their own studios, or are the main leaseholder of a studio (the legal occupier) will need a Public Performance licence. (Remember that according to copyright law dance classes and dance rehearsals are classified as public performances of music).

PPNZ licences are issued on an annual basis and cover ALL public performances of recorded copyright music that occur in that venue. The current fee for dance studios is \$150 (+gst) per annum for up to 20 classes per week, and \$300 (+gst) per annum for 21+ classes per week.

Note: PPNZ do not make a distinction between dance classes that people pay to attend, dance classes that are taught for free, or rehearsals for dance shows.

PPNZ is concerned with the public performance of recorded music in dance studios – therefore the distinction that dance practitioners make between a dance ‘class’ and a dance ‘rehearsal’ is not applicable when working out if you are required to take out a PPNZ licence.

Venue based licences

PPNZ licences are between the venue where the copyright music is played and PPNZ. If a dance teacher uses their own studio as well as hiring a community hall then they are responsible for the PPNZ licence for their own studio only.

If a dance teacher who owns their studio subleases to another teacher, then the second teacher will be covered by the studio owner's PPNZ licence.

Likewise if a dance teacher hires a studio from an organisation such as a gymnasium or the local Council then they will be covered by the venue owner's licence.

Because the licence is venue-specific dance teachers would not have to take out an additional PPNZ licence for end-of-year dance shows that happen in a venue where they are not the legal occupier, e.g. the local theatre.

Syllabus music and PPNZ

Although dance teachers have to pay for syllabus music this does not necessarily mean that their copyright obligations have been met when it comes to the public performance of that music (A dance class is a public performance).

It is usually necessary to have a PPNZ licence when syllabus music is used to teach dance. This responsibility rests with the owner of the premises in which the dance classes take place.

Dance teachers are advised to check with their syllabus organisation in the first instance to find out the copyright status of their syllabus music in relation to PPNZ (there are indications that special arrangements are being made between some Syllabus organisations and PPNZ).

C. Summary of dance teachers' obligations

- Dance teachers are required to take out a Dance School licence from APRA.
- Dance teachers who own their own studio, or are the legal occupier of a studio are required to take out a Public Performance licence from PPNZ if they use recorded music in their dance teaching.
- Dance teachers who use syllabus music should consult with their syllabus organisation regarding the copyright status of their syllabus music.

As all recorded music is subject to two areas of copyright - licences with both APRA and PPNZ will ensure that dance teachers are copyright compliant.

SECTION TWO – Dance practitioners’ obligations when using music in a dramatic context

This section explains the obligations dance practitioners have when using music *in a dramatic context*, for example to accompany a theatrical dance performance that an audience pays to see. When checking to see if you are copyright compliant it is helpful to familiarise yourself the terms the music industry uses.

When reading this resource it is important to keep in mind the term ‘public performance’ refers to the public performance of music only.

When music is used in dramatic context music users have obligations to APRA, PPNZ and also to record companies, as copyright clearance must be given by them

This section is relevant for dance teachers who have end-of-year recitals, freelance dancers who mount their own productions and dance companies.

A. Dance practitioners’ obligations to APRA

When music is played to accompany a dance performance an APRA licence will be necessary. The licence ensures that the composer of the music receives a performance royalty for the public use of their music.

APRA has a range of licences available to cover the performance or playing of music at events or in theatrical contexts. It is important to contact APRA every time you are putting on a dance performance to obtain the correct licence. The suggested timeline is eight weeks before your production premieres.

Who should take out the APRA licence?

The person *authorising the performance* must take out the licence –

- A. If you are performing at a venue you have hired then it is likely that your contract or venue hire agreement will state that you are responsible for obtaining all copyright licences. You must approach APRA as it is you authorising the performance by hiring the venue and mounting the production.
- B. If you are performing as part of a Festival or at an event organised by someone else, then it is often that organisation’s responsibility to take out appropriate licences with APRA (it makes no difference if the event is free to attend).

If the Festival or event hiring your performance has obtained the appropriate APRA licence for your production they will have provided you with APRA forms to fill out detailing the names of the songs, the name of the composer(s) and the duration of each piece of music to be used in your work.

Types of APRA licences

The most common APRA licence dance practitioners use is a ***Dramatic Context Performance Licence***. The fee for this licence is worked out by comparing the duration of each piece of music used with the duration of the overall production and then calculating this ratio against the gross box office income of the production. This way the composer receives a performance royalty based on the income you earned when using their music. The licence fee will vary depending on the determination from the music publisher. There are four categories with regards to licence fees and APRA can always give you an estimate based on your projected gross box office.

This licence is issued BEFORE the production premieres, but the fee worked out once the show is over as the licence fee is calculated based on the gross box office of the production. It is important to contact APRA before your show premieres.

However, the way you are using music, or the music you want to use, may meet different criteria than that needed for a Dramatic Context Performance Licence, so you must contact APRA to ascertain exactly which licence is required.

B. Dance practitioner' obligations to PPNZ

If you are the legal occupier of a venue where public performances of recorded music take place you must hold a Public Performance Licence. If you do not then you are in breach of copyright law.

If you are hiring the venue for a dance show then it is NOT your responsibility to hold a PPNZ licence, however it is good practice to check that the venue has one.

This is also the case if an arts festival programmes your show. It is the venue in which the performance takes place, not the performer or festival organiser that must hold the licence – though the Festival should ensure the venues they are using are licensed.

C. Copyright clearance fees

The PPNZ licence is for the venue and covers the venue's use of recorded music.

However, it does not cover dance practitioners' use of copyrighted music for their particular show that may be taking place within that venue. Even if the venue you are performing in has a PPNZ licence, you are still legally obliged to have individual copyright clearances from the specific copyright owners of each piece of music you are using. You do this by contacting the record companies.

It is up to the copyright owner, represented by the record companies, to determine the fee charged for featured usage, i.e. how much they will charge you to use their piece of music in your show. PPNZ can assist in identifying the copyright owner and their contact details.

This clearance fee is for the copyright owner of the music, and therefore is NOT the same as an APRA licence which is for the composer only.

When you contact the record companies they will want to know the track, artist, and duration of each piece used as well as the number of shows planned and expected revenue. If your show is non-profit or free of charge there may exemptions or fees waived.

If you do not know who the copyright owner of the music you are planning to use is, or do not know how to get hold of them contact Jacque Kendall at PPNZ:
0800 88 77 69, email jacque@ppnz.co.nz or see PPNZ's website:
http://www.rianz.org.nz/rianz/ppnz_copyrightclearances.asp

D. Summary of dance practitioners' obligations when using music in a dramatic context

Dance practitioners using music in a dramatic context, for example to accompany a theatrical dance production, are obliged to:

- Have an appropriate licence with APRA
- Check that their performance venue has a PPNZ licence
- Contact record companies for specific copyright clearances from the individual copyright owners of music they wish to use. PPNZ can assist with this by identifying the correct copyright owner and giving you their contact details.

Summary

The information in this resource pertains to dance teachers and freelance dance practitioners working in New Zealand.

The Copyright Act does not favour any artistic discipline but instead protects all creators from unfair use or exploitation of their copyright material. The Act protects artists from having other people profit from their work without payment and/or having their work misrepresented.

Being copyright compliant as a dance practitioner is not only a legal obligation it also means you are respecting the musicians who complement and enhance your dance practice.

For further information on copyright issues it is recommended you visit the websites of both APRA and PPNZ, especially their Frequently Asked Questions pages.

CONTACT DETAILS FOR APRA AND PPNZ

APRA|AMCOS

Unit 113, Zone 23, 21-23 Edwin St, Mt Eden, Auckland
PO Box 6315, Wellesley St, Auckland
Phone (09) 623 2173
Toll Free 0800 692 772
www.apra-amcos.co.nz

Phonographic Performances NZ Ltd (PPNZ)

Level 1, 2A Hakanoa St, Grey Lynn, Auckland
Private Bag 78 850, Grey Lynn, Auckland
Phone (09) 360 5085
Toll Free 0800 88 77 69
www.ppnz.co.nz

See also, www.musicinbusiness.co.nz

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For further professional resources see DANZ website resources page,
www.danz.org.nz/resources.php

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