

KARAOKE COPYRIGHT: CLARIFICATION AND CORRECTION

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Karaoke Copyright: Clarification and Correction

Some readers may recall an article in Basecamp in August 2016 entitled "Karaoke Copyright." The article related to Karaoke evenings held by RSAs, copyright infringement and, in particular, the Australasian Karaoke Protection Authority (AKPA), covering the Australian and New Zealand Territories. It has been brought to our attention that we inadvertently made a number of errors in our article. We wish to correct those errors and apologise to AKPA.

Copyright is a property right which comes into existence automatically whenever a work is created that qualifies under the Copyright Act 1994 for protection. There may be more than one copyright holder in respect of any given piece of work. For example, a DVD may contain moving images, music and a screenplay. Each of these elements may give rise to a separate copyright held by a different person. In respect of a karaoke track, we understand that there are generally two separate copyright owners. Firstly, the karaoke producer, who manufactures/produces the backing music, backing vocals, and video content, and where the songs are not public domain, the other copyright owner is the writer/composer. The owner of a copyright has exclusive rights in respect of their work, including the right to play, perform or show the work in public.

If an RSA intends to hold a karaoke night for its members it must ensure that it does not infringe copyright. This will require the RSA to obtain licences from all the copyright holders in the karaoke work.

RSAs will be familiar with the licences sold by OneMusic (a joint initiative between APRA and Recorded Music NZ). These licences entitle the public performance of recorded music (as in DJ/background music) in respect of the copyright held by OneMusic's members.

However, OneMusic can only sell licences in respect of the copyright held by its members. Some writers and producers are not members of OneMusic and have not authorised OneMusic to sell licences on their behalf.

The OneMusic licence will not entitle an RSA to perform music or karaoke where a copyright in the work is held by someone who is not a member of OneMusic. In that situation, and in particular with regard to karaoke, the RSA must obtain approval from the person who holds the copyright (e.g. a karaoke producer) or their legal representative (e.g. AKPA).

In the Basecamp article referred to above, RNZRSA mistakenly said that licensing and copyright for karaoke music is done by OneMusic. This was an error. RNZRSA now understands that no karaoke producers are members of OneMusic and that OneMusic does not sell licences to publicly perform tracks produced by any karaoke producer. We were also under the impression that OneMusic were taking action against AKPA and/or Mr and Mrs Willis.

While the RNZRSA was not party to those proceedings and has limited information, it appears that our impression was incorrect. Ken and Leanne Willis have assured us that it was they who were suing APRA/AMCOS, not the reverse.

Since the article, RNZRSA has spoken with the directors of AKPA. They advise that AKPA represents several karaoke record labels and currently has authority to licence the public performance of over 95,000 karaoke tracks. RNZRSA has no reason to doubt that this is true.

In the article, we referred to correspondence received by RSAs from AKPA in which AKPA claimed the right to licence the public performance of karaoke tracks produced by its members. We said in the article that AKPA's correspondence was a scam and illegal. This was wrong and was based on a misunderstanding of copyright law. We no longer consider AKPA to be a scam or a hoax and we do not consider that it is illegal for AKPA to sell licences on behalf of the copyright holders that it represents. RNZRSA wishes to publicly apologise to Ken and Leanne Willis (the directors of AKPA), AKPA and the karaoke producers that they represent for the publication.

RNZRSA has no reason to doubt that AKPA represents the karaoke record producers listed on its website (www.akpa.co.nz/karaoke-producers/) and that it is entitled to collect licensing fees on their behalf. AKPA charges a public performance licensing fee of \$24.95 + GST per venue per night.

Unfortunately the legal position is complicated. RNZRSA is not in a position to give legal advice to RSAs. However, we encourage any RSA that intends to hold a karaoke event in the future, to check whether AKPA represents any of the copyright holders in the tracks that the club intends to perform. AKPA's member's karaoke tracks are easily identifiable by trademarked logos which appear at the beginning of each karaoke track. If you are unsure, please contact AKPA at info@akpa.co.nz

The RSA may also need a licence from any other copyright holder in the tracks who is not represented by AKPA. In respect of the musical composition embedded in a karaoke production, OneMusic may represent some of those copyright holders (i.e. writers) and therefore may be required to licence the performance also. But this is only after the karaoke producers have given permission / licence for their product to be publicly performed. If you are unsure we recommend that you contact both AKPA at info@akpa.co.nz and OneMusic at info@onemusicnz.com

AKPA has assured us, that in future, RSAs coming forward to them to acquire the correct licence to perform karaoke, are automatically under an amnesty for any past infringements that may have occurred prior to August 2016, which was when our incorrect publication was released.

So, in conclusion, it may be necessary to obtain a licence from both AKPA and OneMusic before an RSA holds a karaoke performance. We appreciate that this is an added complication for an RSA which wishes to hold a karaoke night, but RSAs need to be aware of their legal obligations and the consequences for breaching copyright. Once again, we offer our sincere apologies to Ken and Leanne Willis, AKPA and all karaoke producers involved.

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