

UNIVERSITIES AUSTRALIA

THE LA TROBE UNIVERSITY MUSIC AGREEMENT



UNIVERSITIES
AUSTRALIA

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ALL 39 UNIVERSITIES AUSTRALIA MEMBERS HAVE A LICENCE TO COVER THEM FOR CERTAIN USES OF MUSIC AT THEIR INSTITUTION. THAT LICENCE IS GRANTED FROM APRA, AMCOS, ARIA AND PPCA FOR THE USE OF BOTH MUSIC AND SOUND RECORDINGS.

THIS DOCUMENT HAS THREE PARTS:

Part A – Music copyright

Part B – The agreement terms

Part C – Frequently Asked Questions

PART A - MUSIC COPYRIGHT

Music copyright is complicated. Unlike other kinds of works, musical works have many different layers of copyright that need to be considered.

THE COPYRIGHT IN THE MUSICAL WORK

- 1 Firstly, there is the copyright in the music itself, that is, the notes that make up the melody that form the work.



- 2 Secondly, there is the copyright in the lyrics – if there are any.



The person who wrote the music is not always the person who wrote the lyrics. And sometimes there can be multiple people who wrote the music and/or the lyrics. There could be one person who wrote the music and the lyrics all by themselves. Or there could be five people who wrote the music together and two people who wrote the lyrics which means there are seven possible copyright owners in total.

- 3 Thirdly, there is the copyright in printed edition. This is usually vested in the publisher that caused the work to be printed but these rights can sometimes change hands.



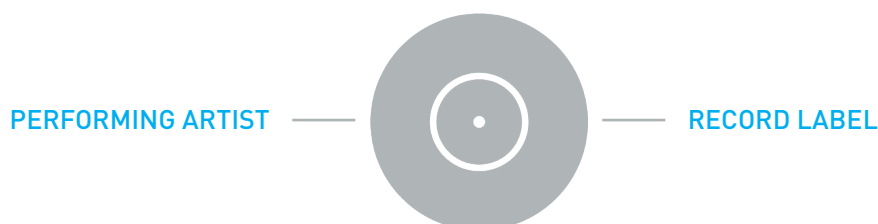
This means you could be dealing with multiple copyright owners who are individual people or who are publishers.



THE COPYRIGHT IN THE SOUND RECORDING

If a musical work is recorded, there is a separate copyright protecting the sound recording to the one protecting the musical work.

- 4 The owner of the sound recording copyright could be the performing artist. Just like with composers and lyricists, there could be one performing artist, or there could be a whole band of people.
- 5 Usually a record label is the one to make the sound recording available to the public so they too could have a share in the copyright in the sound recording. Again, there could be one label involved or maybe more.



To break it down, here are the possible rights holders to consider when it comes to music copyright ownership:

Musical notation	Composer(s)/songwriter(s)
Lyrics	Lyricist(s)
Musical work as a whole	Composer(s)/songwriter(s) lyricist(s) and publisher(s)
Sound recording	Recording artist(s) and record label(s)

THE LICENSORS

These four organisations are the licensors that are party to the agreement with Universities Australia:

APRA is the Australasian Performing Right Association and it has the exclusive right to license the public performance (and communication) of musical works on behalf of its songwriter/composer/lyricist members.

AMCOS is the Australasian Mechanical Copyright Owners Society and it has the exclusive right to license the reproduction of musical works on behalf of its composer/songwriter/lyricist and publisher members.

PPCA is the Phonographic Performance Company of Australia and it has the non-exclusive right to license the public performance (and communication) of sound recordings on behalf of its performing artist and record label licensors.

ARIA is the Australian Record Industry Association and it has the non-exclusive right to license the reproduction of sound recordings on behalf of its performing artist and record label members.

PART B - THE AGREEMENT

First it is important to understand some key terms that we use throughout this document.

EDUCATIONAL PURPOSE – This means that the use of music has to be connected with a particular course of instruction or study or for the research purposes of the University. It also includes the administration of the course. Things like entertainment, marketing and advertising do not fall into this definition. Similarly, University activities (defined below) are not always for educational purposes but sometimes they do cross over.

UNIVERSITY ACTIVITY – This means that the use of music is undertaken by the University for an activity it is organising or authorising. This includes teaching, learning, research, extra-curricular activities, community engagement and other activities undertaken by the University. These must be non-commercial activities so again, advertising and marketing do not fall into the definition of a University activity. Furthermore, this definition does not cover third-party activities such as art exhibitions put on by a third-party in a University space.

UNIVERSITY EVENT – This means an event or occurrence that you promote – to the University or wider community – such as a concert, recital, play, open day/week, NAIDOC week celebration, food truck night, movie night, alumni evening, patrons' dinner. It does not have to be a one-off occurrence to be an event – it may be a week-long O-Week that is made up of multiple events across the week and across the University. Events do not have to be held on the campus to qualify as University events but they must be organised/authorised by the University, not by a third party or a promotor. University events and activities may cross over, as may educational purposes and University events. While the definitions may not always clearly apply to what you are doing you should make the most accurate assessment that you can.

BACKGROUND MUSIC – This means music that is intended to be heard passively, not as the main feature. It is ambient music rather than music that is meant to be actively listened to.

FEATURED MUSIC – This means music that is meant to be actively listened to or forms a main part of the reason for the event. This includes things like concerts, recitals, DJs, karaoke, interactive music, etc.

SYNCHRONISATION – This means to put music together with video footage. Synchronisations can be made 'in-context' which means you are capturing the music at the same time as you are capturing the video footage (for example, you are recording a concert or recital). Synchronisations can also be made 'post-production' which means you have some video footage and you use editing software to put music behind that footage (for example, making a short film).

TIER ONE – PERFORMING AND RECORDING

If a musical work is recorded, there is a separate copyright protecting the sound recording to the one protecting the musical work.

Tier one covers the following kinds of uses:

- the performance of musical works and sound recordings
- the communication of musical works and sound recordings
- using musical works and sound recordings in audio-visual circumstances
- using musical works and sound recordings in audio-only circumstances.

PERFORMING MUSIC

The agreement allows Universities to perform music in the below circumstances.

When we say 'perform music' throughout this document we mean both perform musical works live such as at a concert, or to cause sound recordings to be heard by playing them over speakers.

You can perform music:

- at University events where ticket prices are less than \$40 (plus GST) per person
- at University graduation ceremonies (ticket price is irrelevant for graduation ceremonies)
- for educational purposes
- as background music in University spaces (these are businesses that are 100% owned by the University such as cafes, retail shops, health centres, galleries, canteens, etc)
- in a University childcare centre (as long the centre is only providing care for the children of University staff and students, not the general public)
- at a University gym (as long as the gym is only open to University staff and students, not the general public)
- in the workplace for the benefit of University staff (this includes putting music on your telephone hold system or playing music at staff events such as Christmas parties).



University performances can be live streamed if they are performances given at a University event, a graduation ceremony or for educational purposes. There are limitations around how these streams can take place and how long they can stay online. A live stream is considered to be a synchronisation so you need to consult the 'Synchronisation' section below regarding how you can make and use a live stream in reliance on this agreement.

Universities cannot:

- perform Grand Right Works in their entirety (Grand Right Works are usually musicals for which the music has been specifically written – like *Wicked* or *Les Miserables* or *Rent*)
- perform works in a Dramatic Context (this means that if you want to use music in a live stage production that uses a storyline and has one or more narrators or characters then you will need to seek further licensing from APRA)
- perform copyright choral works of more than 20 minutes' duration
- perform any copyright work to which they have changed the lyrics or turned into a burlesque
- use featured music in University businesses unless they are childcare centres or gyms (noting that those childcare centres and gyms are only covered if they are for staff and students only) (See the FAQs for the difference between featured and background music)

UNIVERSITY BUSINESSES

If the business is owned and operated 100% by the University then it can play background music. It is important to note that this only applies to non-profit University businesses that are not open to the public, except if they are:

- retail businesses
- art galleries
- museums
- food and beverage businesses.



These four kinds of businesses can be open to the public and still rely on this agreement but they must be owned and operated by the University.

For all other University businesses like health centres or administration areas to rely on this agreement they need to operate for staff and student use only, they cannot be open to the general public.

University businesses covered by this agreement can only play background music – they cannot put on events or play featured music. There are two exceptions to this rule though – gyms and childcare centres. If the gym or childcare centre is 100% owned and operated by the University for use by staff and students only then it may play music as both background or featured music. (In the case of a gym featured music would be used in a class. In the case of a childcare centre featured music may be used for dance time, concerts or plays put on by the children for example.)

Below are some checklists to assist.

Retail, art gallery, museum or food and beverage business:

Open to the public or for the University community?	✓
Owned and operated by the University?	✓
Playing background music only?	✓
	Covered!

Other kind of businesses:

Operating for staff and student use only?	✓
Owned and operated by the University?	✓
Playing background music only?	✓
	Covered!

Gyms or childcare centres:

Operating for staff and student use only?	✓
Owned and operated by the University?	✓
Playing background music only?	✓
	Covered!

USING AND MAKING RECORDINGS AND VIDEOS

Under the agreement, Universities can make audio or audio-visual recordings:

- to play at University events and graduations
- to use on hold on a telephone system
- of university events
- that will be used for University purposes.

Making audio recordings could include recording performances or digitising existing commercial sound recordings. Making audio-visual recordings is making a video with music in it (a synchronisation – there is more on this below), this includes recording lectures and lessons, or events, graduation ceremonies or University activities.

There are certain ways Universities can store or share the audio and audio-visual recordings they make for the purposes above. These are that Universities can:

- Store them on the University LMS or other system as long as it is password protected and only accessible by staff and students.
- Supply physical recordings of University events to staff and students and their immediate family for private and domestic use either for free or for a cost recovery price.

Audio-only recordings can also be:

- streamed via the University website

They cannot be:

- streamed via official University social media channels

SYNCHRONISATIONS

The restrictions regarding synchronisations – that is audio-visual recordings – are different to those regarding audio-only recordings. That is because the way the rights are being used is quite different and therefore the licensing parameters are different.



If you need a refresher on the definition of a synchronisation, it means to put music together with video footage. Synchronisations can be made 'in-context' which means you are capturing the music at the same time as you are capturing the video footage (for example, you are recording a concert or recital). Synchronisations can also be made 'post-production' which means you have some video footage and you use editing software to put music behind that footage (for example, making a short film).

As noted above, there are two kinds of synchronisations. There are in-context synchronisations and post-production synchronisations. These need to be treated differently. The reason for this is that ARIA only has the right from its members to license in-context synchronisations, not post-production synchronisations. Please refer to the outline above of what rights each organisation licences to refresh your memory on ARIA's rights if needed.

It is important to note that if you are making lessons or lectures that contain music available online in an audio or audio-visual format that means a synchronisation is taking place and these rules apply.

Synchronisations that use ARIA sound recordings

If the University makes an in-context synchronisation that uses a commercial sound recording it is allowed to:

- store it on a password-protected University platform like an LMS
- stream it on the University website (it must be the University website that ends with .edu.au or .edu)
- provide it to staff and students in a physical format for free or at a cost recovery price.

If the University makes a post-production synchronisation that uses a commercial sound recording it is only allowed to:

- store it on a password-protected University platform like an LMS
- provide it to staff and students in a physical format for free or at a cost recovery price.

You will note the difference is that in-context synchronisations can be made available on the University website while post-production synchronisations must be behind a password on a University platform (like an LMS).

Synchronisations that use non-ARIA sound recordings

If your synchronisation does not contain an ARIA sound recording, the rules are different. As you will know from reading Part A, ARIA represents the reproduction right in the sound recording and AMCOS represents the reproduction right in the musical work.

ARIA does not have the right from its members to license the use of their sound recordings in any synchronisation that is shared on social media as part of this licence (post-production or in-context). AMCOS however does have this right from its members in respect of the musical work.

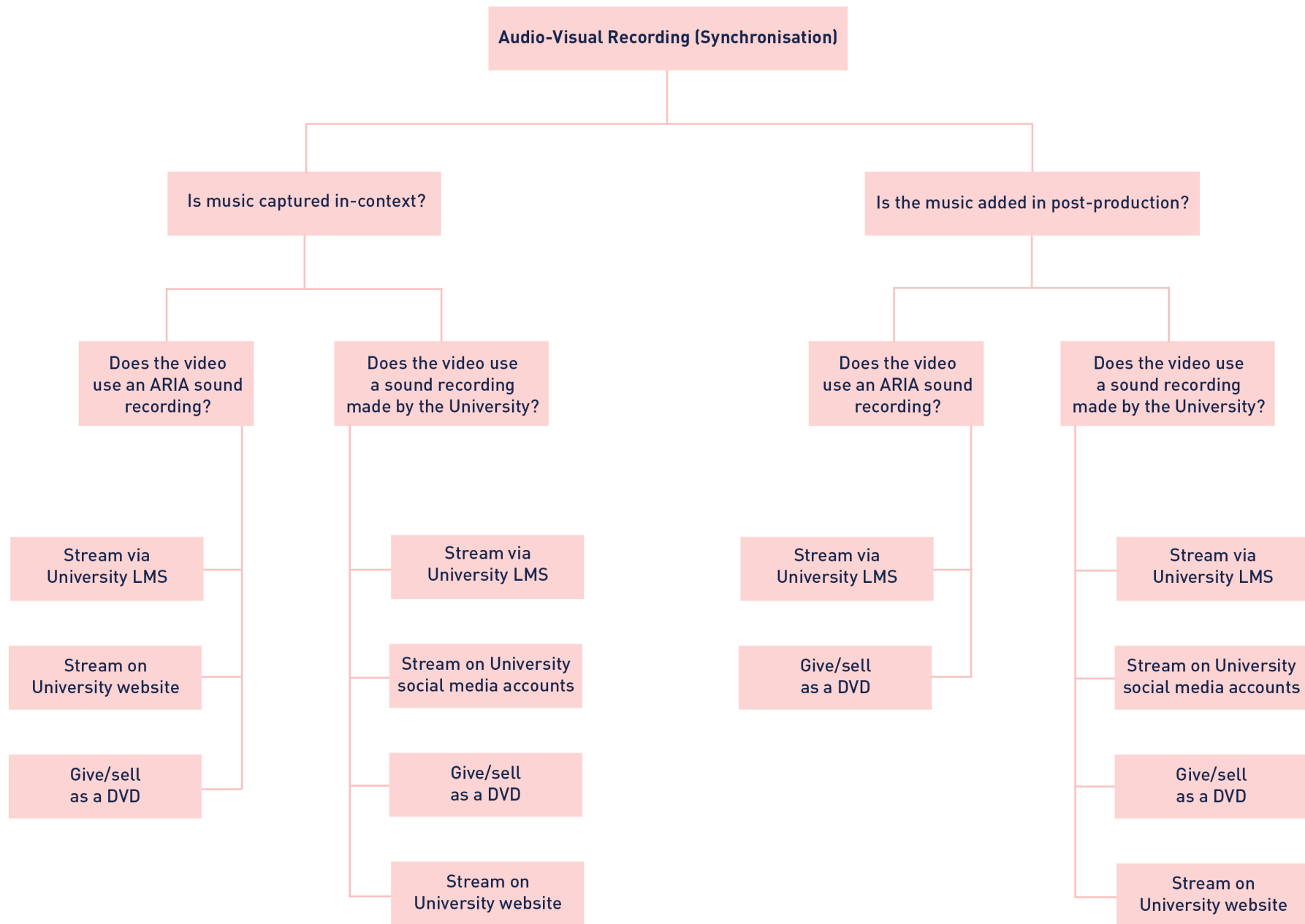
So, if you are using a recording in your synchronisation that you have made yourself (e.g. your University orchestra or jazz band was recorded playing the piece) then this is not an ARIA-controlled sound recording. That means the ARIA rights do not come into play, only the AMCOS rights in the musical work. This in turn means the synchronisation can be:

- stored on a password-protected University platform like an LMS
- streamed on the University website (it must be the University website that ends with .edu.au or .edu)
- streamed on the official University social media platforms
- provided to staff and students in a physical format for free or at a cost recovery price.

The table below sets things out a little more clearly:

Synchronisation type	Sound recording type	Usage type	AMCOS right	ARIA right
In-Context	Commercial sound recording	Stream on University website	✓ Covered	✓ Covered
In-Context	Commercial sound recording	Stream on University social media channels	✓ Covered	✗ Not covered
In-Context	Commercial sound recording	Store on University LMS	✓ Covered	✓ Covered
Post-production	Commercial sound recording	Stream on University website	✓ Covered	✗ Not covered
Post-production	Commercial sound recording	Stream on University social media channels	✓ Covered	✗ Not covered
Post-production	Commercial sound recording	Store on University LMS	✓ Covered	✓ Covered
In-Context or post-production	University- or staff- or student-made recording	Stream on University website	✓ Covered	Not applicable – no commercial sound recording used
In-Context or post-production	University- or staff- or student-made recording	Stream on University social media channels	✓ Covered	Not applicable – no commercial sound recording used
In-Context or post-production	University- or staff- or student-made recording	Store on University LMS	✓ Covered	Not applicable – no commercial sound recording used

The flow chart on the next page may also help.



There are quite a few limitations to these rights. These include (but are not limited to) that Universities cannot:

- remix, arrange, adapt, mash up or otherwise debase a work or recording
- make available recordings for download by way of the internet (the licence only allows streaming from the internet in the limited circumstances above)
- allow a stream of a graduation ceremony to be available online for more than 30 days after that graduation ceremony occurred
- include any advertising or promotional material on any recording made under the agreement.

PART C - FAQs

PERFORMANCES

What is a University event?

A University event is an event that is organised and authorised by the University. University events include concerts, recitals, alumni events, gallery exhibitions, O-Week celebrations, movie nights and other similar events. Events can be on or off campus to qualify and they can be open to the public. Events that are held by third-parties such as concert promoters are not considered to be University events even if they are held on campus for University students.

What is the difference between a University activity and a University event?

A University event is an event or occurrence that you promote – to the University or wider community – such as a concert, recital, play, open day/week, NAIDOC week celebration, food truck night, movie night, alumni evening, patrons' dinner.

A University activity is solely or jointly facilitated with students and their research collaborators, for the purpose of teaching, learning, research, extracurricular activities, community engagement and other activities required by the University to provide services to its staff, students and members of the University community. These include things like gallery showings, installations, museum walk-throughs, Vivid light shows.

University events and activities do cross over from time to time and the difference between them can be vague. The only reason they are to be treated differently under this agreement is that there is a ticket price threshold for University events (excluding graduations for which there is no threshold) and there is no threshold for University activities.

Both can be held on or off the University campus and still have coverage under this agreement.

What about online classes or events over Zoom or Teams?

The agreement covers music to be used in a course of instruction (with limitations as detailed above) whether that instruction is given in person or online. If the instruction is given online it is best practice that the class is password protected to ensure that only staff and students may access the lesson.

If the University is running an event online it must manage the synchronisation and stream in line with the rules detailed above.

What do we do if we want to use music in a dramatic context?

If you want to use music in conjunction with a presentation live on stage that has a storyline and one or more narrators or characters then you need to approach APRA directly for licensing. Make sure you give yourself a lot of lead time to get the appropriate licensing in place – it can take some time.

What do we do if we want to run an event – online or in person – where ticket prices are more than \$40 (plus GST)?

You need to get an event licence from OneMusic Australia (www.onemusic.com.au). Make sure you give yourself plenty of time to arrange this licence as it can take a few weeks to process.

Are we able to screen movies under this licence?

You need to make sure you have a licence from the film distributor to screen the movie itself. This agreement will cover the performance of the music that is contained in the film as long as the conditions of the agreement are met – including that ticket prices do not exceed \$40 (plus GST), that the film is from a legitimate source.

RECORDINGS AND SYNCHRONISATIONS

Where can we source legal sound recordings?

As long as you are not illegally downloading or streaming the recording – such as from The Pirate Bay or similar – but instead purchasing the recording or stream from a legitimate provider, then this is considered ‘legally sourcing’ the recording.

Can we give online lectures that contain music?

Yes– even if they are streamed via a platform like Zoom or Teams. You need to consider though that in making a recording of lecture that contains music you are making a synchronisation and you must treat that audio-visual file according to the limitations surrounding synchronisations above.

Can our marketing team put videos containing music on our social media channels?

Probably – but remember there are really specific rules about what you can do with synchronisations in an online context. See Part B above for information on this and make sure that if your video has music that you have added to it post-production, that you do not put it on any social media platform if you have used an ARIA sound recording.

What is an official University social media channel?

These are official pages on social media platforms (including educational platforms, LinkedIn, Facebook, YouTube, etc) that are in the University’s name and are managed by the University. Only authorised staff should be able to upload and edit posts on these channels – not students or people who are not employees of the University. They must be the official channel of the University and be sanctioned by the University. These are usually run by the University marketing and communications teams.

Can our marketing team put videos containing music on our website?

Probably – but remember there are really specific rules about what you can do with synchronisations in an online context. See Part B above for information on this and make sure that if your video has music that you have added to it post-production, that you do not put it on your website if you have used an ARIA sound recording. You can only stream a video containing an ARIA sound recording on your website if the music was captured in-context.

Can we make a playlist available from our website?

Yes – you can make audio-only recordings available from your website.

Can we stream graduation ceremonies to overseas students and families?

Yes, but you cannot make them available for download and the stream may only be available online for a period of 30 days from the date of graduation. After 30 days they need to move to your LMS and sit behind a password that is available to staff and students only.

Can I put a video of my students’ music recitals on the University website under this agreement?

Yes, but make sure you are adhering to the rules regarding online synchronisations. If the students are performing the works and not using any ARIA sound recordings then putting their recitals online would be covered for both the University website and official social media channels. If, however, your students have used any ARIA sound recordings (for example they have sampled some Queen recordings and looped them as an accompaniment to their recital), then the use of the ARIA sound recordings means that the student’s performance can only be streamed via the University website, not social media channels. It may be shared via the University LMS but not any public facing website.

OTHER QUESTIONS

Is this a OneMusic Australia agreement?

Technically, no. OneMusic Australia is the trading name of licences issues by APRA, AMCOS and PPCA but since our licence also includes rights from ARIA it is technically not a OneMusic Australia agreement.

How are student unions and guilds covered by the agreement?

Student unions, guilds and societies are covered by the agreement if they are owned and operated by the University. It is important to note though that there are two rights that do not extend to student unions, guilds and societies – print music rights and synchronisation rights. If a union, guild or society wants to copy print music or make a video containing music they need to contact AMCOS directly to seek licensing. They are not covered by this agreement to do those two things.

How can gyms rely on the agreement?

University gyms that are owned and operated by the University for the use of staff and students (not the general public) are covered to use music either as background music or featured music in classes.

How can childcare centres rely on the agreement?

University childcare services that are owned and operated by the University for the use of staff and students (not the general public) for the care of their children are covered to use music either as background music or featured music at events, activities or in class.

Are University businesses, gyms or childcare centres covered by the synchronisation or print rights?

No – they are not covered by synchronisation or print rights.

Can I use excerpts of musical works in my thesis that will be published?

Not under this agreement. Currently permission from the copyright owner is required to reprint excerpts of musical works in published theses.

What do we do if we want to use an ARIA sound recording in a synchronisation that will be streamed on our social media pages?

You need to seek permission directly from the record label for this use. You'll need to find out who the record label is and contact them directly to discuss your licensing requirements.



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