

Who owns the copyright to musical works?

By [Thando Zibi](#)

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Brenda Fassie. Fifi Cooper. One being a legend whose works has lived on long after she has, and the other - a rising star in the hip hop music industry. These are two very different musicians, from vastly different times and who were and are in different stages of their careers, respectively. So what do these dynamic artists have in common? Both been involved in disputes as to whether or not they own the rights to the music they created.



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This recently came to the fore in the battle for the rights to create the autobiography of Brenda Fassie's life; as well as in the recent court battle in which Fifi Cooper was interdicted, by her former record label, from claiming any rights to the music that she created during her tenure with them. This raises the question, who owns the copyright in musical works?

Copyright may be broadly defined as the exclusive right, in relation to work embodying intellectual content, to do or to authorise others to do certain acts in relation to that work, which acts represent in the case of each type of work the manners in which that can be exploited for personal gain or profit. The copyright in works subsists automatically and vests in the author as and when the work is reduced to material form. However, an exception to this rule includes works which are created in the course of an author's employment by another person under a contract of service or apprenticeship. Copyright cannot subsist in an idea until it has been written down, recorded, represented in digital data or signals, or otherwise reduced to material form.

A "musical work", as defined by the Copyright Act No. 98 of 1978 ("the Act"), is a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music, of which the words that accompany the musical work would be defined separately as a "literary work". Such an original work need not be formally registered in order to be protected, as the rights related to the copyright of a musical work vest in the author of the work, once it has been recorded and/or written in material form.

However, the vesting of copyright in a work should not be confused with registering the music with a music rights association, such as the Southern African Music Rights Organisation (SAMRO). The effect of registration with such an association is that you will be issued with a Certificate of Notification which will serve as a form of proof of ownership of the rights in a musical work.



I own the copyright of my tattoo... don't I?

Rob Richardson 9 May 2018



In instances where you, as the author of a musical work, make use of a Publisher or Record Label to manage the distribution of your music, certain measures must be put into place so as to ensure the protection of your work and any financial gain or benefit which is derived from it. The issue of ownership of the musical work must be clarified from inception, in terms of an agreement between parties, when working with a Publisher or Record Label. In circumstances where the copyright in a musical work has been assigned, whether by you or the Publisher or Record Label, this assignment must be in writing. An Agreement of Assignment is an agreement which encompasses the transfer of the rights held by one party, the assignor, to another party, the assignee.

The Publisher or Record Label will also be responsible for marketing the music, negotiating transactions with other artists, producers and users as well as administering any royalty income earned from the music. This means that a licensing agreement is essential in this relationship in order to determine, beforehand, important issues such as the percentage of revenue from the sale of CDs as well as from downloads to which each party is entitled, the scope of use, exclusivity, the transfer of copyright, as well as the duration of use, as you do not want to sign away your rights in perpetuity.

As a musician, the protection of and ownership in your work is as important as its conception. In order to avoid costly mistakes, it is prudent that you consult with a suitably skilled attorney from the inception of the creation of your musical works. This is so that sufficient measures may be taken to ensure that any agreements into which you enter are fair and that the ownership of your works remains vested in you, as the author.

ABOUT THE AUTHOR

Thando Zibi is a candidate attorney in the Commercial Department of Kisch IP.

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