



INFORMATION SHEET

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An introduction to copyright in Australia

July 2005

This information sheet gives general introductory information about copyright. The Copyright Council produces a large number of information sheets and a range of detailed practical guides that can give you further information. For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations, but is also available to staff of educational institutions, libraries and governments. For further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Copyright protection is free and applies automatically when material is created.
- There is NO registration system for copyright in Australia.
- Copyright does not protect ideas, information, styles or techniques.
- Copyright does not protect names, titles or slogans.
- There are no general exemptions from copyright law for non-profit organisations or for personal use.
- Generally, Australian copyright law applies to actions that take place in Australia, even if the material used was created or published in another country.

Copyright law

The *Copyright Act 1968* (Cth) is federal legislation, and applies throughout Australia.

The Act sets out how copyright applies for material created both before and after 1968, and has been regularly amended since 1968. The Act deals not only with copyright rights, but also with performers' rights and the "moral rights" of individual creators.

In many cases, Australian courts have had to decide how the Copyright Act is to be interpreted and applied. Therefore, in working out how copyright law applies to a particular situation, you need to be aware not only of what is in the Copyright Act but also of how courts have approached the issues and interpreted the Act.

What does copyright protect?

Copyright protects:

- **textual material** (“literary works”) such as journal articles, novels, screenplays, poems, song lyrics and reports;
- **computer programs** (a sub-category of “literary works”);
- **compilations** (another sub-category of “literary works”) such as anthologies, directories and databases—the selection and arrangement of material may be protected separately from the individual items contained in the compilation;
- **artistic works** such as paintings, drawings, cartoons, sculpture, craft work, architectural plans, buildings, photographs, maps and plans;
- **dramatic works** such as choreography, screenplays, plays and mime pieces;
- **musical works**: that is, the music itself, separately from any lyrics or recording;
- **cinematograph films**: the visual images and sounds in a film, video or DVD are protected separately from any copyright in works recorded on the film or video, such as scripts and music;
- **sound recordings**: the particular recording itself is protected by copyright, in addition to, for example, the music or story that is recorded;
- **broadcasts**: TV and radio broadcasters have a copyright in their broadcasts, which is separate from the copyright in the films, music and other material which they broadcast; and
- **published editions**: publishers have copyright in their typographical arrangements, which is separate from the copyright in works reproduced in the edition (such as poems or illustrations or music).

Something that is a literary, dramatic, musical or artistic work for copyright purposes will be protected if it is “original”. In copyright terms, it’s not hard for something to be original: it really just means that the work isn’t merely copied from something else.

It is also important to note that a physical item can contain a number of different and separate copyrights. For example, a CD will usually be made up of at least one sound recording as well as a number of musical works and song lyrics: each of these may be separately protected. Similarly, a DVD or video will usually contain not just moving images and sounds on the soundtrack, but also a screenplay and music, each of which may be separately protected.

What is *not* protected by copyright?

Ideas, concepts, styles, techniques and information

Copyright does not protect ideas, concepts, styles, techniques or information.

For example, if you write an outline of your idea for a TV show, the outline will be protected by copyright. However, someone else could write their own script, using your ideas, without necessarily infringing your copyright.

The other person would only infringe your copyright if they copied or paraphrased enough of the way you had structured your plot, or if they copied or paraphrased enough of your dialogue (see “Infringement”).

In some cases, however, people using your ideas or information or styles could be in breach of other laws (see “Other areas of law”, below).

Names, titles and slogans

Some “works” are too small or unoriginal to be protected as copyright works. For example, single words (even invented words such as “Exxon”), names, titles, slogans and headlines are unlikely to be protected by copyright.

In some cases, however, someone using a name, title or slogan which is already being used by someone else may run into problems with other areas of law, such as trade marks. For further information, see “Other areas of law”, below, and our information sheet *Names, titles and slogans*.

People

People and people's images (images of their face or body) are not protected by copyright. Sometimes, however, other areas of law, such as defamation and the Trade Practices Act, can affect whether or not a person's image can be used (see "Other areas of law", below).

Copyright protection is automatic

You do not apply for copyright in Australia, and there is no system of registration here. Nor are there any forms to fill in, or fees to be paid.

You do not need to publish your work, put a copyright notice on it, or do anything else before your work is covered by copyright—the protection is free and automatic, from the time a work is first written down or recorded in some way. For example, as soon as a poem is written, or a song is recorded, it is protected.

The "copyright notice" and "©"

The copyright notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication: for example, "© Gus O'Donnell 1968". For sound recordings, the letter "P" (for phonogram) in a circle or in brackets is used instead of the "C" in a circle.

The "copyright notice" does not need to be on something to ensure that it is protected by copyright in Australia or in most other countries, but it does remind people that the work may be protected. It also lets people know who is claiming copyright.

Copyright owners can put the notice on their work themselves; there is no formal procedure.

Generally, while there is no legal problem under Australian law in using a pseudonym or "nom de plume", you should use your real name. As one well-known commentator has stated, "the use of a pseudonym would frustrate the intent ... of making traceable the copyright proprietor" (Arpad Bogsch, *The Law of Copyright under the Universal Convention*, Sijthoff, Leyden, 1972, p. 28).

If a company owns copyright, the copyright notice should include the name of the company. However, if someone trades under a business name, the correct name to put in the copyright notice is not the business name but the names of the relevant individual or individuals. The reason for this is that copyright is a form of property, and a business name is not a legal entity, and therefore cannot own property; only individuals and incorporated bodies such as companies can own property (including copyright).

If you are regularly updating a work (such as material on a website, or a computer program), you can include all the years from first publication to the present: for example, "© Gus O'Donnell 1998–2004".

Sometimes you will see the words "All rights reserved" as well as, or instead of, the copyright notice. This is not necessary under Australian law, nor in most other countries.. However, If the first publication of your work will be in a country outside Australia, you should seek advice from a solicitor with the relevant expertise.

How do I prove I'm the copyright owner if there's no registration system?

If there's a dispute about who created something protected by copyright, it may need to be resolved by a court. A court would look at all the relevant evidence. The most important evidence would usually be oral evidence from the creator and from people who saw the material being created or who saw early copies. Other evidence may include drafts of the work.

Such cases are, however, extremely rare.

There are a number of reasons for this. First, someone who goes to court claiming they own copyright when they don't runs very large financial risks, as they might have to pay not only compensation but also both their own and the other side's legal costs. Second, if someone claims in court that they have created a copyright work when they haven't, they risk perjury charges (a criminal charge for lying to the court). Third, there are provisions in the Copyright Act which allow people who have been groundlessly threatened with copyright infringement to take action against the person making the threat.

For further information on this issue, see our information sheet *Protecting your copyright*.

How long does copyright last?

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including:

- where a work was not published, performed or broadcast during a creator's lifetime; and
- where something was published anonymously or under a pseudonym, and the identity of the creator couldn't reasonably be ascertained.

(In each of these cases, copyright lasted for 50 years from the end of the year the work was, with permission, first published, performed or broadcast.)

Under the Free Trade Agreement with the United States, Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts for the life of the creator plus 70 years (or, where duration depends on year of publication, until 70 years after it is first published).

However, the Free Trade Agreement did not include any obligation to revive copyright if copyright had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

Note, however, that the duration of copyright varies from country to country. Where copies of a translation are to be reproduced or sold overseas, the translator may need to determine whether the underlying work is still protected by copyright both in Australia and in the relevant countries. Relevant permission must be obtained in respect of countries in which the copyright is still extant; without such permission, you will only be able to deal with the underlying work in those countries where the copyright has expired.

For further information, see our information sheet *Duration of copyright*.

Who owns copyright?

The Copyright Act sets out rules about who will own copyright. However, people involved in creating copyright material can reach agreement about who will own copyright.

It's generally a good idea to have a written agreement about who will own copyright if there is more than one person involved in the creation of the material or where material is commissioned, whether or not the rules in the Copyright Act will be followed.

The general rule under the Act is that the first owner of copyright is the creator of the work, or the person responsible for making the sound recording, film, broadcast or published edition.

There are, however, important exceptions to this general rule. Both the general rule and the exceptions can be excluded or varied by agreement.

- **Employees.** Where a work is made by an employee (rather than a freelancer) as part of that person's job, the employer will usually own copyright. For staff journalists and photo-journalists, however, while the employer will own most of the copyright, the employee will usually own copyright for some purposes (photocopying and publication in books).
- **Freelancers generally.** Freelance creators will usually own copyright in what they create. Someone who pays for the work to be made can generally use the work for the purposes for which it was created, but may not be entitled to use it for other purposes.
- **Freelance photographers, engravers and people doing portraits.** There are a number of rules for commissioned photographs, and which rule applies depends on when the photo was taken, but if a photograph was taken on or after 30 July 1998, the photographer will own copyright unless the photo was commissioned for a private or domestic purpose. Someone who pays for the making of an engraving or portrait will usually own copyright.
- **Films and sound recordings.** The first owner of copyright in a film is usually the producer or the person who paid for it to be made. The first owner of copyright in a sound recording is usually the person who paid for the recording to be made. However, in some cases, performers recorded on sound recordings own a share of the copyright in those sound recordings.
- **A State, Territory or Federal Government** will usually own copyright in material created, or first published by it or under its direction or control.

See our information sheet *Ownership of copyright* for more detailed information, including information about how the ownership rules have changed over time (this is particularly relevant to material created by people working for periodicals such as newspapers and magazines and to photos taken by freelance photographers).

The copyright owner's exclusive rights

Owners of copyright have a number of exclusive rights over their material. Anyone who wants to use someone else's material in any of these ways generally needs permission.

Different rights apply to different types of material.

Literary, dramatic, artistic and musical works

Owners of copyright in "works" have the exclusive right to:

- reproduce the work (including by photocopying, copying by hand, filming, recording and scanning);
- make the work public for the first time; and
- communicate the work to the public (for example, via fax, email, broadcasting, cable or the internet).

Owners of copyright in literary, dramatic and musical works have two additional exclusive rights:

- to perform the work in public (this includes performing a work live, or playing a recording or showing a film containing the work, in a non-domestic situation); and
- to make an adaptation (for example, a translation or dramatised version of a literary work, a translation or "non-dramatic" version of a dramatic work, or an arrangement or transcription of a musical work).

Films, sound recordings, broadcasts and published editions

Owners of copyright in films, sound recordings, broadcasts and published editions have the exclusive right to copy their material. In addition, there are rights relating to:

- showing films and playing recordings in public;
- transmitting films and sound recordings to the public using any form of technology (via email, broadcasting, cable or the internet, for example); and
- rebroadcasting television and sound broadcasts.

Rental rights

Some owners of copyright also have the exclusive right to rent out articles such as compact discs and CD-ROMs. Rental rights only apply, however, to **computer programs, sound recordings and works on sound recordings** (such as music).

See our information sheets *Renting items protected by copyright* and *Lending items protected by copyright* for further information.

Control over importation

In some cases, copyright owners can also control who imports copies of their material into Australia. This can be the case even if the material was legitimately made overseas.

See our information sheet *Importing copyright items* for more information.

Assigning and licensing rights

Copyright owners can "assign" (generally, sell) or license their rights. Assigning rights means someone else becomes the copyright owner; licensing means another person can use the copyright material.

Assignments and licences can apply to all the rights in the material, or to just one or some of the rights. For example, a writer can assign or license just the right to reproduce his or her story in a book, but keep all other rights. In addition, a copyright owner may restrict an assignment or licence in various ways: to particular

countries; or to a particular period of time; or to a set number of copies; or to a particular format (for example, hard-copy only, or in brochures but not in posters), for example.

A copyright owner may also set certain conditions, such as payment, as part of their agreement to assign or license rights.

While assignments and exclusive licences **must** be in writing and signed by or on behalf of the copyright owner to be fully effective, it is good business practice to put all agreements relating to copyright into writing.

For further information, see our information sheet *Assigning and licensing rights*.

Infringement of copyright

Using copyright material in one of the ways exclusively reserved to the copyright owner without permission

People usually need permission to use copyright material in any of the ways exclusively controlled by the copyright owner. Someone who doesn't get permission will usually be infringing copyright.

Using **part** of a work without permission may also infringe copyright if that part is an important part—it doesn't need to be a large part. In this context, the issue is not whether you have **changed** or **added** something to the copyright material, but whether the part you have used is an important or distinctive part of the original material.

For more detailed information, see our information sheet *Quotes & extracts*.

Other ways in which copyright can be infringed

People may also infringe copyright if they:

- authorise an infringement (that is, endorse or sanction someone else's infringement);
- import certain types of items containing copyright material (see our information sheet *Importing copyright items*); or
- sell infringing articles or certain types of items containing copyright material which were imported without permission (see our information sheet *Importing copyright items*).

You can find further information on what to do if you think your copyright has been infringed or if you have been accused of having infringed copyright in our information sheets *Infringement: what can I do?* and *Infringement: actions, remedies, offences, penalties*.

Hacking, cracking, "mod chipping" and decoding

Copyright owners and broadcasters sometimes use technology to try to protect digital material from unauthorised use (for example, by encrypting material or encoding broadcasts). In some cases, copyright owners also use technology to identify and monitor digital copies of their material ("electronic rights management information").

Under the Copyright Act, copyright owners can take action against people who make, sell, import or rent devices which are used to circumvent technological protection measures (TPMs) without the copyright owners' permission, where the TPMs protect their material. In one case, someone "mod chipping" computer games for commercial purposes was held to have breached some of these provisions. The "mod chips" circumvented an access code in the game console—the code would otherwise have prevented the console playing infringing copies of computer games, or games without the correct geographical area code.

Copyright owners can also take action against people who remove or alter electronic rights management information.

It is also a criminal offence to deal commercially with circumvention or decoding devices, to offer decoding or circumvention services, to alter or remove electronic rights management information, or to deal with copyright material knowing that rights management information has been removed from it. A number of these offences are being "beefed up" as a result of the Free Trade Agreement with the United States.

For further information, see our information sheets *Digital Agenda amendments: an overview* and *The Australia/US Free Trade Agreement*.

Activities which don't infringe copyright

There are a number of situations in which people can use copyright material without permission. The provisions in the Act which cover these situations (referred to as "defences" or "exceptions") are mostly very specific.

For example, there are provisions that allow reviewers and students to use copyright material without permission provided their use is "fair" (for further information, see our information sheets *Research or study* and *Fair dealing*). There are also special provisions for copying by libraries, educational institutions and government bodies. In some cases, certain procedures must be followed, and in some cases fees must be paid (for more information, see our information sheets and practical guides).

There are, however, **no** provisions in the Act that give non-profit organisations a **general** exemption from having to comply with copyright obligations merely because they are non-profit, and there are **no** exceptions based simply on "personal use" of copyright material.

Moral rights

Individual creators have rights called "moral rights", whether or not they own copyright. These are the rights to:

- be attributed as the creator of their work;
- take action if their work is falsely attributed as being someone else's work or is altered by someone else but attributed as if it were unaltered; and
- take action if their work is distorted or treated in a way that is prejudicial to their honour or reputation.

For more information, see our information sheet *Moral Rights*.

Performers' rights

The Copyright Act also gives some rights to performers. These rights are in addition to the rights of the copyright owners and creators of the material performed.

Under the Act, people need to get consent from a performer to record or broadcast a live performance. The performer's consent may also be needed to use an unauthorised recording of a performance, or to use an authorised sound recording of a performance on a film soundtrack. As a result of the Free Trade Agreement Australia has entered into with the United States, performers on audio recordings have gained some additional rights. The Commonwealth Parliament has passed an Act granting moral rights to such performers, but the Act has not yet come into effect.

For more information, see our information sheets *Performers' rights* and *The Australia/US Free Trade Agreement*.

General advice to creators and copyright owners

Creators and owners of copyright should regard their copyright as valuable property and deal with it in a business-like way. It is a good idea to keep dated copies of material such as manuscripts, negatives, footage and recordings, as well as copies of all letters or other communications with people who have access to the work.

Generally, it is a good idea for any agreements about copyright to be in writing. It is also a good idea to get legal advice before signing any document dealing with copyright, or before finalising any other arrangement relating to copyright.

Other areas of law

"Intellectual property" is a general term covering a number of areas of law. Copyright is one of these areas. Some other areas of law are sometimes confused with copyright. They are briefly outlined below.

Trade marks

If you are using a name or logo (and in some cases, a colour, sound or smell) in your business, you may be able to register it as a trade mark. Unlike copyright, trade mark protection requires registration and paying a fee. Registration gives you protection against other people using a substantially identical or deceptively similar mark in the course of trade. Trade marks are registered with IP Australia (www.ipaustralia.gov.au).

“Passing-off” and Trade Practices actions

The law known as “passing off” protects business reputation or goodwill. It can be used to stop people “cashing in” on someone else’s name (including a brand name) or image, or on other distinctive features of someone else’s “business”. There are similar provisions about misleading the public in Part V of the *Trade Practices Act 1974* (Cth) and similar legislation in the States (Fair Trading Acts, for example).

Designs

Designs law may be used to protect articles that do not come within the scope of copyright law or where copyright protection is limited. Designs protection covers the appearance or shape of articles that have some functional purpose, not how they work. To get design protection the design must be registered with IP Australia (www.ipaustralia.gov.au).

For further information, see our information sheet *Designs for functional articles* (August 2004 revision).

Confidential information

Copyright does not protect ideas or information. However, someone using information or ideas they have got from someone else in confidence may have breached a duty of confidentiality. For further information, see our information sheet *Ideas: legal protection*.

Patents

Unlike copyright, patents protect ideas (as embodied in things such as processes, methods and techniques). However, the protection will only be granted for the device, substance, method or process if it is new, inventive and useful. Patent protection requires registration with IP Australia (www.ipaustralia.gov.au).

Defamation

The law of defamation protects people’s reputations, and concerns the way you speak about or refer to people and how you use their images. For an introductory overview, see the “InfoSheet” on the website of the Arts Law Centre of Australia (www.artslaw.com.au).

Some common questions

Where do I register my copyright for protection in Australia?

Under Australian law, there is no registration of copyright. Copyright rights come into existence at the same time as someone creates something which is a type of material that copyright protects. For example, copyright is automatically created by writing down a story; typing up a poem; shooting film footage; recording music; and taking a photo. Copyright protection is free: there are no procedures to follow or fees to pay.

How many changes to something do I need to make to avoid infringing copyright?

Generally, making changes to something won’t avoid a copyright infringement.

If, for example, you want to use something someone else has created—on your website, or in a brochure, or even for purely personal purposes—you might need permission even if you are using only a small part of that material, or if you make changes to it.

When working out whether or not you will need to get permission, it is more important to look at what is still the same, rather than what has been changed. You will usually have a copyright issue to deal with if you are using any important, distinctive or essential part of the original material—this may or may not be a large proportion of that material.

Is material from overseas protected by copyright?

As a result of Australia’s obligations under a number of international treaties, almost all copyright material created overseas is also protected in Australia under the Australian Copyright Act.

Is material from Australia protected overseas?

As a result of a number of international treaties, copyright in material created by Australian residents, citizens and nationals will be recognised in most countries overseas. For more information, see our information sheet *Copyright protection in other countries*.

Can children own copyright?

Copyright material can be created (and owned) by anyone, no matter what their age: children or centenarians.

Further information

For further information about copyright, see our website—<http://www.copyright.org.au> or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone 02 93562566.

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Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright; and
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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