

# Information sheet G10

## Copyright in Australia: an introduction

March 2001

### What does copyright protect?

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and decisions of courts.

Copyright protects:

- **Written material** such as journal articles, novels, screenplays, poems, song lyrics and reports.
- **Artistic works** such as paintings, drawings, cartoons, sculpture, craft work, photographs, maps and plans.
- **Musical works**
- **Dramatic works** such as dance, plays and mime.
- **Computer programs**
- **Compilations** such as anthologies, directories and databases – the selection and arrangement of material may be protected separately from the individual items contained in the compilation.
- **Cinematograph films**: the visual images and sounds in a film or video 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**: broadcasters have copyright in broadcasts of television and radio programs. This is separate from the copyright in the films, music and other material which is transmitted.
- **Published editions**: publishers have copyright in the typographical arrangement of a published edition. This is separate from the copyright in works reproduced in the edition (such as poems or illustrations or music).
- **Performers**: The Copyright Act also says you must get consent from a performer to record, broadcast or cable a live performance. 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 soundtrack to a film.

### Moral Rights

Recent changes in the law have introduced moral rights for creators. The creator of a work has the right to:

- be attributed as the creator of the work;
- take action if his or her work is falsely attributed as being the work or someone else;
- take action if his or her work is distorted or treated in a way that is prejudicial to his or her reputation.

See our information sheet *Moral Rights* for more information.

### Protection is automatic

There is no system of registration for copyright protection in Australia. You do *not* need to publish your work, to put a copyright notice on it, or to do anything else to be covered by copyright – the protection is free and automatic. There are no forms to fill in, and there are no fees to be paid.

A work is protected automatically from the time it is first written down or recorded in some way, provided it has resulted from its creator's skill and effort and is not simply copied from another work. For example, as soon as a poem is written, or a song is recorded, it is protected.

As a result of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia, and Australian copyright owners are protected in most other countries.

## The “copyright notice”

The “copyright notice” does not *need* to be on something before it is protected by copyright in Australia or in most other countries, but it does remind people that the work may be protected and identifies the person claiming the rights. Copyright owners can put the notice on their work themselves; there is no formal procedure. The 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”.

## How do I prove that I am the copyright owner if there is no system of registration?

If there is a dispute about who created a copyright work which cannot be resolved by negotiation, it may need to be resolved by a court. A court would consider all the relevant evidence when determining a dispute. The most important evidence is usually the creator's oral evidence and the evidence of witnesses to the creation of the work. Other evidence may include drafts of the work.

Such cases are extremely rare: someone else alleging they own copyright generally runs large financial risks in bringing such a case without any basis.

## How long does copyright last?

This varies according to the type of material. In most cases, copyright lasts from the time the material is created until 50 years after the year of the creator's death.

## Who owns copyright?

The Copyright Act sets out who owns copyright if the people involved in creating something didn't have any agreement about ownership. It is generally a good idea, however, 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 the creation of the material is commissioned.

The general rule under the Copyright Act is that the first owner of copyright in a “work” is its creator. “Works” include written material, artistic works, musical works, dramatic works, computer programs and compilations. There are some exceptions to this general rule. These exceptions may be excluded or varied by agreement.

- **Employees.** Where a work is made by an employee (rather than a freelancer) in the course of employment and as part of the employee's usual duties, the first owner of copyright will usually be the employer. If the employer is a *newspaper or magazine publisher*, the employee usually owns copyright for some purposes, including publication in books, and the employer usually owns copyright for other purposes.
- **Freelancers.** Generally, a freelance creator is the first owner of copyright. The person who paid for the work to be made is generally entitled to use the work for the purposes for which it was created, but may not be entitled to use the work for other purposes. However, a person who pays for the making of a photograph, engraving or portrait is usually the first owner of copyright. If the commissioned photograph was taken after 30 July 1998, the photographer will own copyright unless the photograph is commissioned for a private or domestic purpose.
- **Films & sound recordings.** The first owner of copyright in a film is usually the person who arranged for it to be made, 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.
- **A State, Territory or Federal Government** is usually the first owner of copyright in material *created, or first published*, under its direction or control.

## Legal rights of copyright owners

Owners of copyright have the exclusive right to do certain things with their material. This means that anyone who wants to use copyright material in any of these ways needs the copyright owner's permission. There are different rights for different types of material. Owners of copyright in “works” (see above) 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;

- Communicate the work to the public (for example, via broadcasting, cable or the Internet).

Owners of copyright in literary, dramatic and musical works also have the exclusive right 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
- Make an adaptation. This means: a translation or dramatised version of a literary work, a translation or “non-dramatic” version of a dramatic work, and an arrangement or transcription of a musical work.

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;
- Communicating films and sound recordings to the public using any form of technology;
- Re-broadcasting television and sound broadcasts.

Owners of copyright in *computer programs*, *sound recordings*, and *works on sound recordings* (such as music) have the exclusive right to rent articles such as compact discs and CD-ROMs.

Except in relation to items such as records, CDs and tapes, owners of copyright also generally have the right to control who imports articles embodying their copyright material.

## Assigning & licensing rights

Copyright owners can assign or license their rights. Assigning rights means someone else becomes the 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 may give an assignment or licence to reproduce their story in a book, but keep all other rights. In addition, a copyright owner may restrict an assignment or licence to particular countries or to a period of time, or both. A copyright owner may also require certain conditions, such as payment or attribution (that is, that their name appear with reproductions of the work), as part of their agreement to assign or license rights.

All transactions relating to copyright should be in writing. Assignments and exclusive licences must be in writing and signed by or on behalf of the copyright owner to be fully effective. For further information, see our information sheet *Assigning and Licensing Rights*.

## Infringement

Using copyright material in a way which is exclusively controlled by the copyright owner usually requires permission. Failure to get permission will usually be an infringement of copyright. Using part of a work may also infringe copyright, if that part is important to the work – it does not need to be a large part. You may also infringe copyright if you authorise an infringement, if you import articles containing copyright material (other than records, CDs and tapes), or if you sell infringing articles or articles (other than records, CDs and tapes) imported without permission.

It is important to remember that one article may contain a number of separate copyrights. For example, a CD may contain a sound recording as well as a number of musical works, each of which is separately protected. Similarly, a videocassette may contain moving images, music and a screenplay – all of which may be separately protected by copyright.

There are some defences, or exceptions, to infringement which allow some uses of copyright material without permission – for example by reviewers and students. 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.

Copyright owners and broadcasters may choose to use technological measures to protect digital material. Provisions in the Copyright Act allow these owners and broadcasters to take action against people who, for example, make, sell, import or rent devices which are used to circumvent these measures or which allow encoded broadcasts to be decoded. Copyright owners who embed electronic rights management information in digital copies of their material may take action, pursuant to the Act, if this information is removed or altered. In some cases, dealing commercially with circumvention or decoding devices, offering decoding or circumvention services, altering or removing electronic rights management information, and knowingly dealing with copyright material in relation to which rights management information has been removed, is a criminal offence.

## General advice

Creators and owners of copyright should regard their copyright as valuable property and deal with it in a businesslike way. It is a good idea to keep dated copies of material such as manuscripts, tapes and letters or other communications with people who have access to the work. In most cases, people should get legal advice before signing any document, or before finalising any other arrangement, dealing with copyright.

## Further information about copyright

We publish a large range of information sheets which you print from [www.copyright.org.au](http://www.copyright.org.au) or buy from us in printed form. A list of some of our information sheets is printed below. We also publish a range of book titles – see [www.copyright.org.au](http://www.copyright.org.au) or contact Customer Service for further information.

*Artworks & copyright*

*Assigning & licensing rights*

*Australian Copyright Council: who we are, what we do*

*Copying for research or study*

*Copying services*

*Copyright collecting societies*

*Copyright in Australia: information sources*

*Copyright obligations: notices on equipment*

*Copyright protection in other countries*

*Designs for functional articles*

*Digital Agenda amendments: an overview*

*Duration of copyright*

*Education institutions: introduction to copyright*

*Family histories & copyright*

*Games & copyright*

*Government & copyright*

*Hobby crafts & copyright*

*House plans & copyright*

*Ideas: legal protection*

*Importing copyright items*

*Infringement: actions, remedies, offences and penalties*

*Infringement: what can I do?*

*Internet: copying from*

*Lending items protected by copyright*

*Libraries (non-profit): introduction to copyright*

*Line dancers & copyright*

*Logos: legal protection*

*Moral rights*

*Music & copyright*

*Music: playing music, APRA & PPCA*

*Music: use by choirs, bands, music teachers & students*

*Music: use by churches*

*Music: use in film & multimedia*

*Music: use in student films & home videos*

*Names, titles & slogans: legal protection*

*Newsletters & copyright*

*Owners of copyright: how to find*

*Ownership of copyright*

*People with a disability: using copyright material*

*Performers' copyright*

*Photographers & copyright*

*Photographs: copying photos you paid for*

*Quotes & extracts: copyright obligations*

*Recipes: legal protection*

*Renting items protected by copyright*

*Sewing patterns: legal protection*

*Training materials: legal protection*

*TV programs: home-taping*

*Videos & film: screening in class*

*Videos & film: screening in public*

*Videos: home taping*

*Web sites: creating & publishing on the Internet*

*Writers & copyright*

## Legal Advice

The purpose of this information sheet is to provide 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 legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations and is also available for people working in educational institutions and libraries. For further information about the service, see our information sheet *Australian Copyright Council: who we are, what we do* or see [www.copyright.org.au](http://www.copyright.org.au) (click the Advice button).

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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;
- 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. The Copyright Council also gratefully acknowledges the support of the Australian Film Commission. The Australian Copyright Council is solely responsible for the editorial content and accuracy of this information sheet.*

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