

What is Copyright?

Copyright basics

Copyright is a set of rights granted by the government to protect the particular form, way, or manner in which information or concepts are expressed. Copyright does not protect ideas, concepts, styles, techniques, or information, but rather the form in which these things are expressed. Other subject matter that is not able to be protected with copyright includes names, titles, slogans, people, and people's images.

Copyright is administered and enforced on a country-by-country basis. In Australia, the relevant law is the Copyright Act 1968. Although many aspects of copyright law have been harmonised internationally, it is important to follow the laws of the country (or countries) in which you wish to protect your copyright.

Copyright protection generally divides into two categories: 'works' and 'other subject matter'.

Examples of works include:

Literary works: In this category, copyright protects the written word, irrespective of any literary quality of the work. Examples include books, journal articles, poems, song lyrics, compilations, instruction manuals, reports, computer programs, directories, and databases.

Artistic works: This category includes paintings, drawings, cartoons, sculptures, craft work, diagrams, architectural plans, buildings, photographs and maps. As with literary works, considerations of artistic quality do not affect the ability of the work to be protected.

Dramatic works: This category includes choreography (dance), screenplays, plays, and mime pieces.

Musical works: This category includes music itself, separate from any lyrics or sound recordings.

The 'other subject matter' category covers sound recordings, films, and TV and radio broadcasts.

Owners of copyright have several exclusive rights to control the use of their material, and different rights apply to different types of material. In general, anyone who wants to use copyrighted material needs to obtain permission from the copyright owner.

Criteria for protection

Copyright protection is free and automatic. You do not need to apply for copyright in Australia as there is no system of registration in the country. For the purpose of copyright protection, a work must be 'original': original does not mean that the information that a work presents is novel or that it never has been expressed before. Instead, original simply means that the work has not been copied from another source.

Exclusive rights

The owner of copyright for a work has the exclusive right to:

- reproduce the work (including copying, filming, recording, and scanning);
- make the work public for the first time; and
- communicate the work to the public (including via online media).

Copyright owners of 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 sharing a film containing the work); and
- make an adaptation of the work (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).

Duration of copyright protection

In general, the term of copyright protection in Australia lasts for the life of the creator plus 70 years. This is the case even when the creator never actually owned the copyright. Notably, however, the duration of copyright varies from country to country.

Who owns copyright?

The general rule 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 some important exceptions to this general rule. Both the general rule and the exceptions can be altered by agreement.

Employees: where a work is made by an employee (rather than a contractor or freelancer) as part of that employee's job, the employer usually owns the copyright.

Contractors and Freelancers: Contractors and freelancers usually own the copyright in their creations. Someone who pays for work to be created generally will not own the copyright but will be able to use the work for the purposes for which it was commissioned. However, where a person commissions a freelance photographer, engraver, or portrait maker to create material for a private or domestic purpose (e.g., wedding photographs, family portraits), that person will own the copyright in the commissioned material, not the creator.

Film and Sound Recordings: The first owner of copyright in a film is the producer or the person who paid for it to be made or controls the master. However, in some cases, performers recorded on sound recordings own a share of the copyright in those sound recordings.

State, Territory, or Federal Government: A government usually owns the copyright for material created, or first published by it or under its direction or control.

Infringement of copyright

Copyright is infringed when a person uses (or authorises another to use) copyrighted material in any of the ways exclusively reserved to the copyright owner without permission, unless a special exception or defence to infringement applies. The most common type of infringement for literary and artistic works is the unauthorised reproduction of a substantial part of the work. The determination of 'substantial part' is qualitative rather than quantitative. That is, the question is not about how much of the work was copied, but the nature of what was copied. Furthermore, the issue is not whether the copyrighted material has been changed or expanded, but whether the part used is an important, essential, or distinctive part of the original material. Copyright can also be infringed by selling, distributing or importing infringing copies of copyrighted material in Australia. For a court to find infringement, there must be actual copying.

Defences to infringement

Several defences or exceptions to infringement allow certain people to use copyrighted material without the owner's permission. In Australia, these include 'fair dealing'. This exception allows reviewers and students to use copyrighted material without permission for the purposes including criticism, review, research, study, or news reporting. To claim fair dealing, only a reasonable portion of the material may be used, and the use of that portion must be 'fair'.

There are also special provisions that allow Australian libraries, educational institutions, and governments to use copyrighted material without permission. In some cases, certain procedures must be followed, and fees must be paid to the copyright owner. Notably, the *Copyright Act 1968* does not grant non-profit organisations a general exemption to use copyrighted material without authorisation.

Fact Sheet 6: What is Copyright? September 2022

This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.