

When you publish in printed, electronic or any other form there are several legal issues you must consider in order to ensure that:

- your rights in relation to the material you publish are adequately protected; and
- you do not infringe anyone's right in relation to existing material.

What is copyright?

Copyright is a bundle of economic rights which give their owner the exclusive right to do certain things.

Copyright only protects specific "works", i.e. literary, dramatic, musical and artistic works.

It also protects "subject-matter other than works", i.e. films, sound recordings, broadcast and published editions.

Copyright does not protect information, ideas, concepts, styles and methods, only their expression in a material form.

In order to attract copyright protection the work must be original, i.e. attributable to the author's skill and labour, and not copied.

Copyright protection is automatic upon creation of the work, without any need for registration. The symbol © is used to notify people that the work is protected by copyright.

How long does copyright last?

In general, copyright lasts for 70 years after the death of the author of the work. Specific periods apply for subject-matters other than works.

Who owns copyright?

General principle

- The author of a literary, dramatic, musical or artistic work owns copyright in the work.
- The maker owns copyright in a sound recording, a film, a television or sound broadcast.

- The publisher owns copyright in the published edition of a work.

Exceptions

Contract

The author or maker does not own copyright if he/she has assigned, i.e. transferred it to another party.

Employment

The employer owns copyright in a work created by an employee in the course and within the scope of the employment.

If the author is a contractor or freelancer, or a volunteer, the exception does not apply.

Some commissioned works

The commissioner does not own copyright in commissioned works, unless they are portraits, including photographs made against payment for private or domestic purposes.

The commissioner owns copyright in a film or a sound recording made against remuneration.

Crown rights

The Commonwealth or a State owns copyright in any subject-matter of copyright created by, or under the direction or control of the Commonwealth or the State.

Contracts affecting ownership

The general principle as well as the exceptions mentioned above can be modified by agreement.

Joint authorship

Two or more people can own copyright jointly if they are joint authors, i.e. if their contribution to the copyright material is inseparable, or if they have entered into an agreement to that effect.

Works or other subject-matters containing copyright material by third parties

Copyright material often contains material by third parties which is itself protected by copyright. Ownership of copyright in the newly created work does not affect ownership in the original material.

Copyright in translated works

You need permission from the copyright owner of a literary work to translate it as well as exercise any of the other rights of a copyright owner.

If you want to use an existing translation, you need permission from both the owner of copyright in the underlying work and in the translation.

Use of copyright material

Rights of a copyright owner

Copyright owners have exclusive rights in relation to the use of their copyright material. Those are the right to reproduce, publish, perform, adapt as well as communicate (i.e. make available online or transmit electronically, for example by broadcasting, by email or on the internet) one's work to the public.

Assigning and licensing

By assigning your copyright, you transfer it to a third party which then owns it.

By licensing your copyright, you grant a third party permission to exercise some or all of your exclusive rights.

Common terms of licence

If you licence copyright material, it is important to determine:

- the permitted uses: Which rights of a copyright owner can the licensee exercise?
- the territory: In which area (eg. State, country, region of the world) can the licence be exercised?
- the term of the licence: For how long is the licence valid?

- any sub-licensing right: Can others use the material in the manner contemplated by the licence?
- the nature of the licence (see below Nature of the licence);
- any payment by the licensee (eg. flat fee, periodic fee, royalty).

Nature of the licence

There are three main types of licence:

- Exclusive licence: only the licensee can exercise an exclusive right of the copyright owner;
- Sole licence: only the licensee and the copyright owner can exercise an exclusive right of the copyright owner; and
- Non-exclusive licence: the licensee as well as the copyright owner can exercise an exclusive right of the copyright owner, who can authorise others to do so.

Form of licence

Exclusive licences must be in writing and signed by the copyright owner. There is no requirement to enter into any other licence in writing, although it is advisable to do so.

Implied licences

In some circumstances, a licence to use copyright material is implied even in the absence of any contract.



Creative Commons

Creative Commons is a flexible system of electronic licences and associated databases that allows for creators to selectively grant and retain rights in innovative ways.

There are four main types of creative commons licences, which all imply attribution of authorship:



by Attribution: you allow any use of your work;



nd No Derivative Works: your work may be used except in a subsequent derivative work;



nc Non-Commercial: you allow any use of your work except a commercial one; and



sa Share Alike: you allow any use of your work. Any derivative work must be distributed under the same licence.

Creative Commons licences are irrevocable for the term of copyright.

Copyright infringement

The use of another's copyright material without the copyright owner's consent amounts to a copyright infringement if:

- there is an unauthorised use of a substantial part; and
- an exception permitting the use does not apply.

Exceptions

The use of a substantial part of another's copyright material without the copyright owner's consent is allowed in limited situations such as fair dealing purposes.

Remedies

If a court agrees that your copyright has been infringed, you can obtain remedies (eg. injunction and damages).

Moral rights

What are moral rights?

Moral rights are personal rights that connect authors to their work. Moral rights arise automatically. There are 3 types of moral rights:

- Right of attribution: your right to be identified and named as the author of your work;
- Right against false attribution: your right to prevent others to be identified and named as the author of your work; and

- Right of integrity: your right to ensure that your work is not subjected to derogatory treatment, i.e. in any manner harmful to your honour or reputation.

Who owns moral rights?

The author of a work has moral rights in relation to that work. Moral rights cannot be given away, sold or otherwise.

How long do moral rights last?

Moral rights last for the lifetime of the author and 70 years following the author's death

Moral rights infringement

In principle, any act which is contrary to your moral rights is considered an infringement unless:

- you have consented to the action or omission; or
- the defence of reasonableness or an exception applies.

Consent regime

You can consent in writing to other people's specific actions or omissions which would otherwise amount to an infringement of your moral rights.

Defence of reasonableness

There is no infringement of the moral right of attribution and of integrity if it was reasonable in the circumstances not to identify the author or to subject the work to derogatory treatment.

Remedies

If a court agrees that your moral rights have been infringed, you can get remedies (such as injunction, public apology, damages)

Other relevant issues

Defamation

If you publish material about people who are identified by name or who can be identified, you must ensure that the material is not defamatory. You may be liable for defamation if:

- you make a communication to a third party;
- the communication is about an identified or identifiable person; and
- the communication is defamatory.

A communication is defamatory if a reasonable person would think less of the identified or identifiable person because of what was said about him/her.

Defences to a claim for defamation, include honest opinion, justification/truth and qualified privilege.

For more information, see the Information sheet Defamation of the Arts Law Centre of Australia.

Film projects

If your publishing project includes the production of a film, you must obtain all the necessary authorisations (or clearances) to incorporate copyright material belonging to others.

For more information, see the Short Film Competition - Producer's Guide of the Arts Law Centre of Australia and the Australian Copyright Council's information sheet Filmmakers & Copyright.

Checklist

- Who owns copyright in the material you intend to publish?
- Is a copyright assignment necessary?
- Do you have the permission to use third party copyright material? Did you obtain any other clearance you need?
- Is your exclusive licence in writing?
- Have you covered all important terms of your licence?
- How are you dealing with moral rights?
- Is any material defamatory?

For more information, please contact the *Plain Language Law Unit* on 02 8227 3200 or visit www.lawfoundation.net.au/information

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Further information and resources

Arts Law Centre of Australia
www.artslaw.com.au

Australian Copyright Council
www.copyright.org.au

Copyright Agency Limited (CAL)
www.copyright.com.au
CAL manages copyright on behalf of creators.

Viscopy
www.viscopy.org.au
manages the rights of its visual artist members.

Creative Commons
www.creativecommons.org.au

Disclaimer

This fact sheet is general. It does not constitute, and should be not relied on as, legal advice. The Law and Justice Foundation recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

The information in this fact sheet is current at 1 August 2010.

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