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## Websites & Copyright

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This information sheet is for web developers, bloggers, website designers, start-ups, businesses and anyone interested in copyright issues relevant to creating and managing websites. We assume you are familiar with the basic copyright principles set out in our information sheet [An Introduction to Copyright in Australia](#).

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

See also our information sheet [Websites & User-Generated Content](#) for more information on managing user contributions to your website.

### Key points

- A whole website in itself is not protected by copyright, however its component parts (videos, text, images, underlying source code, etc.) will each be protected by their own individual copyright.
- When a website designer is paid to create a website, it's a good idea to have a written agreement that, among other things, specifically deals with copyright and moral rights.

### Copyright protection and websites

A website, as a whole, is not protected by copyright. What is protected by copyright are the website's components parts, such as:

- articles, blog posts and most content in written form ("literary works");
- photos, logos, illustrations, charts, graphical elements and other visual content ("artistic works");
- recorded audio such as songs and podcasts ("sound recordings") and any underlying music scores ("musical works");
- video and animation ("cinematograph films"); and
- tables of words or symbols ("compilations").

### Using third party material in websites

In most cases where you are posting material to your website that you or your organisation didn't create, you will need permission.

If a client owns copyright in material and supplies it to you to use on a website you are creating for him or her, you will have "implied permission" to use it for this purpose (see below).

## When can you use material without permission?

You won't need to get copyright permission if:

- the material is not protected by copyright (eg., ideas, information, names\*);
- copyright has expired (eg., a photograph taken before 1955);
- you are not using a "substantial part" of the material (eg., one sentence from a 300-page novel); or
- an exception applies (eg., your use of the material is a fair dealing for criticism or review, for reporting news, or for parody or satire). For more information on copyright exceptions, please see our information sheets [Fair Dealing: What Can I Use Without Permission?](#) and [Parodies, Satires & Jokes](#).

\* *NB: although copyright doesn't apply to names, titles, or slogans, other areas of law such as trade mark or consumer law may be relevant.*

## When will you already have permission?

### *Express permission*

In some cases, you may not need to directly contact the copyright owner because they have already granted express permission for anyone to use the material in certain ways. For example, statements about how the reader is entitled to use a PDF document downloaded from a website may be included as part of the document or at the location on the website from where the document is offered for download.

Similarly, material available on the internet is sometimes covered by a generic licence such as those promoted by Creative Commons. Many of these permit commercial and non-commercial uses. For more information, see our information sheet [Creative Commons Licenses](#).

In each case, check that the licence covers what you want to do. Such permission may be subject to terms and conditions (eg., acknowledgment of the material's source or creator). If you want to use the material in ways that aren't covered by the express licence, you will have to ask for further permission directly.

### *Implied permission*

In some cases, you may have permission (a licence) that is implied from the circumstances, even though the copyright owner has not expressly granted permission. For example, if you commission an artist to create a logo for use on your website, you will have implied permission to use the logo for that purpose.

The scope of an implied licence is the **minimum** necessary to make sense of the situation. For this reason, and because it can be hard to work out the precise limits of an implied permission, it's generally preferable to get **express permission in writing** for all uses you are likely to want to make of the material.

The fact that material is already easily available on the internet does **not** mean you have implied permission to download or otherwise use it.

## Getting permissions (clearances)

### Identifying and locating a copyright owner

Generally, the creator of the material (or their employer, if it was created as part of that person's job) owns copyright in that material. However, in many cases, the creator may

have assigned or licensed some or all of the rights to someone else. For example, book authors often grant publishers extensive rights to negotiate on their behalf.

The following points will help you to find and contact the person who can give you permission:

- if the material has been published, contact the publisher for permission or information;
- if you find the material on a website, contact the person operating the website for permission (unless it appears that the material is on the site without the copyright owner's permission – for example, a website offering unauthorised film and music downloads);
- if the material is in hard copy, look at the information on the packaging, cover or imprint page for information about the copyright owner, publisher or the appropriate person to contact;
- if the material was published or commissioned by a government, contact that government for permission; and
- relevant collecting societies or professional bodies may be able to help you contact copyright owners.

For more detail, see our information sheets [Permission: How To Get It](#) and [Artworks: Getting Permission](#).

### Collecting society licences

Copyright collecting societies will in some cases, be able to grant you a licence to use various material. In such cases, you won't need specific permission from copyright owners to use material within the scope of your licence.

Collecting society licences can cover an extensive range of material, including material created in other countries. This is because most collecting societies have reciprocal arrangements with similar organisations in other countries.

APRA|AMCOS ([apraamcos.com.au](http://apraamcos.com.au)) can grant licences for certain online uses of **music**.

The **sound recording** of a piece of music is protected by its own copyright, meaning that if you wish to use pre-existing sound recordings (like commercially released MP3s or CDs) you will need a separate licence. Licences for sound recordings can be granted by the PPCA ([ppca.com.au](http://ppca.com.au)).

Copyright Agency|Viscopy ([viscopy.org.au](http://viscopy.org.au)) can grant licences for online use of artworks created by members.

### Points to note when getting permission

It's important to get permission from the person or organisation entitled to grant that permission in the first place. In practice, if you have any doubts as to whether or not the person or organisation purporting to give you permission is the right person to be doing so, you could ask for evidence or for a warranty and indemnity from the person granting permission. If you remain unsure, consider using alternative material.

Make sure the rights you ask for "match up" with what you want to do with the material. For example, if you want to allow visitors to your site to print out copies of the material or you wish to sell copies or make translations, you will need to ensure the clearance you get allows you to do so.

For further details, see our information sheet [Assigning & Licensing Rights](#).

## Moral rights

Creators of copyright material have the following rights:

- to be attributed when their work is used;
- not to have their work falsely attributed to someone else, nor to have the altered work attributed as if it were unaltered; and
- not to have the work treated in a manner that would prejudice the creator's honour or reputation.

In some cases, you may be able to defend yourself against a claim by arguing it was **reasonable** not to attribute a creator or to treat the work in a way that could prejudice the creator's honour or reputation. However, in most cases it is preferable to get the creator to consent to the way you want to use his or her material, if possible.

For further details, see our information sheet [Moral Rights](#).

## Linking to third party websites

### The legal position

Subject to the comments below, it's unlikely that simply providing a link raises copyright issues under Australian law. However, the legal implications of providing links are not entirely settled.

Providing a link to a website's home page is unlikely to raise objections. Many website operators may, however, object to "deep linking" (ie., providing links to pages within a website bypassing the website's home page). There may be a number of reasons for this, including a wish to ensure visitors to the website see the home page and are counted for revenue purposes, and a wish to ensure that links to out-of-date material are not maintained. Note also that, in some circumstances, linking may raise issues under areas of law such as trade practices law.

We understand there are **technology-based** methods available to make it difficult or impossible to link to particular pages on a website or to limit access to particular parts of a website. However, it would currently appear difficult for a website proprietor to use **legal** arguments to attack deep linking unless all visitors agree not to make deep links as a condition of access to the website (or particular sections of it).

The laws around linking can differ overseas. In September 2016, the European Court of Justice ruled that publishing a link was a "communication to the public", and that a person who publishes a link knowing that it leads to copyright infringing material, or is seeking to profit from such a link, will have infringed copyright in the linked-to material.

### When can linking get you into trouble?

#### *"Authorising" infringement*

If your website links to material that infringes copyright or to websites that you know contain infringing material, you could be held liable for authorising infringements by visitors to your website who follow the links.

In 2005, the Federal Court held that a website operator was liable for authorising infringements because the website encouraged users to post links to music files and download these files by clicking on the links. The website operator hadn't placed the links on the site himself but was aware that many linked to material that infringed copyright. He

took no steps to check the legality of the linked files and encouraged his users to access and download material.

#### *“Framing” material from other websites*

It is possible to “frame” material from other websites within your own, so that visitors to the site see the material without being aware they are actually looking at a different website. Although it is not entirely clear, this practice may raise issues under copyright law.

Aside from the copyright aspects, this technique may also put you at risk of action under other areas of law, such as consumer and competition law (especially if you are framing material from a commercial rival’s website).

It is generally preferable to make it clear to the user that he or she is looking at a different website, and therefore it is probably a good idea not to frame material from other websites without permission.

### **Agreements between website designers & clients**

As with any situation where someone is commissioned to produce material, it is strongly recommended that you have a written agreement setting out exactly what is required of each party and what rights each party will have in relation to the completed material. If you are a professional web designer who regularly works on commission, it is a good idea to get a lawyer to create a standard contract for you that you can use with your clients.

Some issues that are particularly relevant to agreements relating to the construction of websites are:

- who is responsible for clearing third party material and getting any necessary moral rights consents (this may depend on who provides the material);
- whether or not the client is entitled to revise or update the site;
- whether the designer is required to hand over any digital files (or physical media on which such material is stored) relevant to the website;
- credits for the designer & creators of website material; and
- who will own copyright in any material created for the site (including any material not ultimately used).

### **Protecting your website**

#### **Copyright protection**

Any copyright material you create for your website (such as text, photos and artworks) is automatically protected by copyright as soon as it is saved to disk, USB drive, hard drive or otherwise in “material form”.

Copyright protection gives the copyright owner a legal basis for taking action if his or her copyright is infringed. However, it is up to the copyright owner to identify infringements and take action: there is no organisation set up to investigate or prosecute infringements on behalf of copyright owners.

#### **Contracts**

Legally binding agreements can be a useful way to set legally binding conditions on people accessing information or services on your site. A common way to achieve this is to require

users to tick a click-box agreeing to stated terms and conditions of use in order to get access to the material or service.

### **Other legal protection**

In some cases, you may be able to rely on other areas of law to protect your website. For example, consumer and competition law and the law on passing off may allow you to take action against a competitor who creates a website with a similar “look and feel” in order to mislead your customers into thinking they are using your website.

### **Practical approaches**

Legal methods of protection give you a right to take legal action when your copyright is infringed, but do not physically prevent people from infringing your rights (eg., downloading material without permission). There are, however, various practical or technological approaches you can consider to make it more difficult or less appealing for people to infringe your rights. These include:

- using a “copyright notice” on your site, together with clear statements as to what people can or cannot do with material on the site;
- making it clear how people can contact you for permission to use material on your site;
- preventing users from making direct links to particular pages or areas;
- considering whether there are pages you should make unavailable to search engine indexing “bots”;
- using low-resolution images;
- watermarking images;
- deciding whether material should be available to download or limited to streaming only; and
- restricting access to particular pages or areas of your website (eg., a password-protected members only space).

## **Frequently Asked Questions (FAQs)**

### ***My work has appeared on a website without my permission. Does this infringe copyright?***

Generally, yes. As the owner of copyright you are the only person who has the right to communicate your work to the public using any form of technology, including the internet. If no exceptions apply to allow the use, you may want to contact the person responsible for the website and ask them to remove your work or pay a fee for the use. Your moral rights (eg. attribution) may also be relevant. If the website owner doesn't respond, you could also try contacting the web host to request that the content be removed.

### ***Can I link to third party sites without infringing copyright?***

Yes, so long as the website to which you are linking to is a legitimate site with legitimate content (and not, for example, an illegal file sharing site).

Also, if the site to which you are linking to is not affiliated in any way with you or your site, it is generally best to make it clear that there is no relation between you.

Finally, there is a difference between html linking (which usually does not raise any copyright issues) and other kinds of linking, such as embedding or framing (which may require permission from the copyright owner of the content to which you are linking to).

### ***When is copyright in a website infringed?***

There is no single copyright in a website. Rather, a website is protected by copyright as a combination of different copyright materials. For example, a website will usually consist of text (protected as a literary work), images (protected as artistic works), source code (also protected as a literary work) and so on. In determining whether an infringement has occurred, it will be necessary to look at each component part of the website separately to determine whether a “substantial part” of any of these separate copyright materials has been used without the permission of the copyright owner.

### **Further information**

We have published detailed practical guides *Websites, Blogs & Social Media* and *Copyright & Online Technologies*. Both are available from our bookstore: [copyright.org.au/bookstore](http://copyright.org.au/bookstore).

For further information about copyright, and about our other publications and seminar program, see our website [copyright.org.au](http://copyright.org.au)

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is 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 and libraries.

### **Reproducing this information sheet**

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

### **About Us**

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia’s creative industries and Australia’s major copyright collecting societies.

We are advocates for the contribution of creators to Australia’s culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



**Australian Government**



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

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