



ARTICLE

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An introduction to copyright law in Australia

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What is copyright?

The purpose of copyright law is to reward and provide an incentive for creative activity by giving creators, and those who invest in their work, legal rights which enable them to exploit their work commercially. Copyright also gives creators and copyright owners an ability to control, for example, the context and way in which their work is used.

Australian copyright law is contained in a federal statute, *the Copyright Act 1968 (Cth)*, and in case law that has interpreted provisions of the Act.

Material protected by copyright

Copyright protects a range of material including works, such as literature, that are the result of the skill and labour of a creator, and subject matter which is the result of the investment of a producer, such as film. Material must come within one of the following categories:

- **literary works:** such as short stories, novels, poems, magazine articles, instruction manuals, reports, compilations, tables and computer programs;
- **dramatic works:** such as plays and film scripts, scenarios, choreography and any other work intended to be performed;
- **musical works:** that is, the music itself, separately from any lyrics or recording;
- **artistic works:** such as paintings, sculptures, photographs, drawings, graphic designs;
- **films:** that is, 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:** that is, 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).

More than one copyright

In a single article there may be more than one copyright. For example, in a book, the text may be protected as a literary work, each illustration may be separately protected as an artistic work, and the published edition may also be protected.

Material not protected by copyright

Names, titles and slogans are generally not protected by copyright. These are generally regarded as too insubstantial to be protected as literary expressions or literary works.

Ideas and information are also not protected by copyright. It is the expression of the idea in the form of a novel, for example, which attracts copyright protection. Therefore, the idea to write a novel based on the life and times of Ned Kelly and the dates and information used in the novel are not protected by copyright, but the particular novel is.

Requirements for copyright protection

There is no system of copyright registration in Australia. Copyright protection does not depend upon publication, a copyright notice or any other procedure. Protection is free and automatic. A “work” is protected from the time it is first written down or recorded, provided it has resulted from its creator's skill and effort and is not merely copied from another work. Therefore, as soon as your manuscript has been written (or typed into a computer) it is protected.

The copyright notice

Copyright owners are entitled to put the copyright notice on all copies of their work. The use of this notice is not a legal requirement for protection in Australia, but it serves as a warning that the work is protected, and as a claim to ownership of copyright. The notice comprises the copyright symbol © followed by the name of the copyright owner and the year of first publication. For example: © Anne Author 2006.

International protection

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. For the most extensive international protection available, the copyright notice should be placed on all copies of published works.

Duration of copyright

The duration period for copyright protection varies according to the type of material. For works, the general rule is that copyright lasts from the time the material is created until 70 years after the year of the creator's death.

For more information, see the Australian Copyright Council's information sheet *Duration of copyright*, available from www.copyright.org.au.

Ownership

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. If there is more than one person involved in the creation of the material or where material is commissioned, it's generally a good idea to have a written agreement about who will own copyright.

The general rule under the Act is that the first owner of copyright is the creator of the work. Under the Act, however, there are important exceptions to this general rule:

- **Employees:** Where a work is made by an employee (rather than a freelancer) as part of that person's job, the employer will own copyright. For staff journalists and photo-journalists, however, while the employer will own most of the copyright, the employee will 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 own copyright.
- **Films and sound recordings:** The first owner of copyright in a film is the producer or the person who paid for it to be made. The first owner of copyright in a sound recording is 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 own copyright in material created, or first published, by it or under its direction or control.

For more information, see the Australian Copyright Council's information sheet *Ownership of copyright*, available from www.copyright.org.au.

The owner of an object is not necessarily the owner of copyright

It is important to distinguish ownership of copyright from ownership of the manuscript or other physical embodiment of the work. One person may own the manuscript, and another person may own the copyright in the manuscript.

Legal rights of copyright owners

Owners of copyright have the exclusive right to do certain things with their material. The type and extent of the rights differ according to the type of copyright material. Owners of copyright in literary, dramatic, artistic and musical works have the exclusive right to:

- **reproduce** the work: including by photocopying, copying by hand, recording and producing a computer-readable version
- make the work **public** for the first time
- **communicate** the work to the public by electronic transmission (such as by email) or by making it available online (such as on a website).

Owners of copyright in literary, dramatic and musical works also have the exclusive right/s to:

- **perform** the work in public: performing a work live, or playing a recording or showing a film containing the work, in a non-domestic situation
- **make an adaptation:** defined as a translation or dramatised version of a literary work, a translation or "non dramatic" version of a dramatic work, or an arrangement of a musical work.

Owners of copyright in other subject matter, such as film, have the exclusive right to copy their material and other rights.

For more information, see the Australian Copyright Council's information sheet *Writers and copyright*, available from www.copyright.org.au.

Dealing with the rights

The rights of copyright owners can be assigned or licensed, with or without limitations (such as the type of use, or period of time) and with or without conditions (such as payment or attribution). It is advisable that all agreements and transactions relating to copyright 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. It is advisable to obtain legal advice before you sign a contract which assigns or licences copyright, such as a book publishing contract.

For more information, see the Australian Copyright Council's information sheet *Assigning and licensing rights*, available from www.copyright.org.au.

Infringement

Dealing with copyright material in one of the ways exclusively controlled by the copyright owner, without their permission, will usually infringe copyright. Dealing with part of a work may also infringe copyright, if that part is important to the work – it need not be a proportionally large part. This can particularly be the case with quoting from song lyrics and poetry.

Copyright may also be infringed by authorising infringement, by importing articles containing copyright material and by selling infringing articles.

There are 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.

For more information, see the Australian Copyright Council's information sheets *Infringement: what can I do?* and *Infringement: actions, remedies, offences and penalties*, available from www.copyright.org.au.

Moral rights

Moral rights are associated with a creator's artistic and creative reputation. Creators have the right:

- to be attributed (or credited) as the author of their works when their works are reproduced and used in certain other ways;
- not to have their work treated in a derogatory way where that treatment prejudices their honour or reputation;
- not to have their works falsely attributed to someone else.

These rights belong to the creator and cannot be bought or sold the way that copyright can. They remain with the creator generally until the author's death. After the creator's death they can be exercised by the creator's executor or administrator. Moral rights generally last for the same length of time as copyright.

Moral rights will not be infringed if the failure to attribute the creator or the derogatory treatment was "reasonable" in all the circumstances. Also, a creator can consent in writing to dealings with a work that would otherwise infringe his or her moral rights.

For more information, see the Australian Copyright Council's information sheet called *Moral rights*, available from www.copyright.org.au.

Some common questions

How do I protect my idea for a novel?

Copyright protects the expression or form that ideas take, for example, in a manuscript. Ideas, concepts, techniques and styles themselves are not protected by copyright. A document describing an idea for a novel is protected and so is the novel itself, once it has been written. However, if others read the document describing the idea or the novel itself and they use the idea to write their own novel, they will not have infringed copyright.

The law of confidential information provides some protection for ideas while they are still secret. If you disclose the idea for your novel to another person, such as a publisher, on a confidential basis, you may have a legal claim for breach of confidence if the information is taken and used by the publisher in a way that you did not allow.

How do I protect the title of my work?

Titles are generally not protected by copyright because they are not literary works. Other laws may provide you with some protection for your title. You may, for example, be able to register your title as a trademark under the Trade Marks Act. Also, if you have established a reputation in a title (because, for example, your work under the title has been on the market for a considerable time), you may be able to prevent others from using it if the use would mislead consumers.

How can I prove that I own the copyright in my work?

You will generally only need to prove this if a claim to copyright is disputed in court. If you own copyright as a result of having created the work, the evidence of witnesses who know that you wrote the work may be relevant, as may material such as your drafts and manuscripts. It is therefore a good idea to keep drafts and manuscripts and preferably date them. Generally, however, in a court action your own statement will be sufficient.

Can someone copy my work without infringing copyright by making changes?

Copyright in your work will usually be infringed if someone copies it without your permission. The copy does not have to be exact. If the copy is the result of substantial reliance on your work, it is likely to infringe copyright. Changes to the work are unlikely to avoid infringement.

Do I need permission to quote from another work?

You will need to obtain the permission of the copyright owner of a work from which you wish to quote if the extract to be quoted is a “substantial part” of the work. Any part that is important, distinctive or recognisable is likely to be regarded as “substantial” for the purposes of copyright law – it need not be a large proportion of the work. If you are quoting a work for the purpose of reviewing or criticising it, you may be able to do so without permission. You do, however, need to name the creator of the work you are quoting, and give the title of the work, if it has one.

For more information, see the Australian Copyright Council's information sheet *Quotes & extracts: copyright obligations*, available from www.copyright.org.au.

What can I do if I see my manuscript (or parts of it) in print under someone else's name?

If another author or publisher has reproduced or published your manuscript or a “substantial part” of it without your consent and no special exceptions apply (such as the provision allowing a fair use of a work for the purposes of criticism or review), that person will have infringed your copyright and you may be

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entitled to bring a copyright infringement action against them. Most cases of alleged copyright infringement are settled between the parties without having to go to court.

You may also have the right to bring a moral rights infringement action for false attribution.

If you think that your copyright or moral rights have been infringed it is a good idea to get advice from a copyright lawyer who can tell you whether your rights have been infringed and what to do about it. The legal advisers at the Australian Copyright Council may be able to assist you. See below for details of the Council's legal advice service.

* This article was first written in 2003 by Virginia Morrison, who was a senior legal officer with the Australian Copyright Council at the time. It was updated in 2006 by Shehana Wijesena, who is a legal officer at the Australian Copyright Council.

Further information

For further information about copyright, and about our other information sheets, publications and training program, see our website – www.copyright.org.au.

The purpose of this article 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.

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, libraries and governments. For information about the service, see www.copyright.org.au/advice or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see www.artslaw.com.au or telephone (02) 9356 2566.

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.



Australian Government



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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