



AUSTRALIAN
COPYRIGHT
COUNCIL



TABLE OF CONTENTS FOR BOOK

To order:

- click or go to <http://shop.copyright.org.au>, or
- click or go to <http://www.copyright.org.au/books> and download an [order form](#), or
- send us your contact details, payment details and order by:
 - email info@copyright.org.au
 - fax: +61 2 8815 9799
 - post: PO Box 1986, Strawberry Hills NSW 2012 Australia
- contact Customer Service at info@copyright.org.au or tel +61 2 8815 9777

Table of contents

| | |
|--|----------|
| 1. About this book..... | 1 |
| Why copyright matters to writers..... | 1 |
| Sources of copyright law..... | 1 |
| How the book is set out..... | 1 |
| Information, not legal advice..... | 1 |
| Other publications that may be relevant to you..... | 1 |
| 2. Protecting your work..... | 2 |
| How do you get copyright?..... | 2 |
| Most written material is protected..... | 2 |
| The work must be in material form..... | 2 |
| The work must be “original”..... | 2 |
| That’s all..... | 2 |
| Are you the copyright owner?..... | 2 |
| If you create it as part of your job..... | 2 |
| Academics..... | 3 |
| If you create material for a government..... | 3 |
| If you assign your rights..... | 3 |
| Co-owners of copyright..... | 3 |
| Separate copyright owners in the same item..... | 3 |
| What does copyright protection do?..... | 4 |
| Moral rights..... | 4 |
| Attribution..... | 4 |
| False attribution..... | 4 |
| Derogatory treatment..... | 5 |
| Exceptions to infringement of moral rights..... | 5 |
| Practical ways to protect your work..... | 6 |
| The “copyright notice”..... | 6 |
| Proving copyright ownership..... | 6 |
| Registration of copyright in some countries..... | 6 |
| Be careful with licences, especially online..... | 6 |
| Technological protection measures (TPMs)..... | 7 |
| Assertion of moral rights in some countries..... | 7 |
| Other areas of law that may be relevant..... | 7 |
| Business names and trade marks..... | 7 |
| Information and ideas..... | 7 |
| Confidential information..... | 7 |
| 3. Using pre-existing material..... | 8 |
| Working out if you need permission..... | 8 |
| Is the material protected by copyright?..... | 8 |
| Names, titles and slogans..... | 8 |
| Material from the internet..... | 9 |
| Ideas and information are not protected by copyright..... | 9 |
| Things to look out for..... | 9 |
| Has copyright expired?..... | 10 |
| General rule: life (or publication) + 70 years..... | 10 |
| Photographs taken before 1955..... | 10 |
| Government material: publication + 50 years..... | 10 |
| Unpublished material: copyright can be indefinite..... | 10 |
| Things to look out for..... | 11 |
| Are you using a substantial part of the material?..... | 11 |
| Industry practices..... | 12 |
| Popular myths..... | 12 |
| Isn’t it always OK to use 10 per cent?..... | 12 |
| Do you still need permission if you acknowledge the source?..... | 12 |
| What if you make changes?..... | 12 |
| Can you rely on an exception to copyright infringement?..... | 12 |
| Parody or satire..... | 12 |
| Reporting news..... | 13 |
| Criticism or review..... | 14 |
| Research or study..... | 14 |
| Special provisions for governments..... | 14 |

| | |
|---|-----------|
| Getting permission..... | 14 |
| Who can give permission?..... | 15 |
| How do you find the person who can give permission?..... | 15 |
| What rights should you ask for?..... | 15 |
| How much will you have to pay?..... | 15 |
| What if you can't get permission?..... | 16 |
| Moral rights obligations..... | 16 |
| Re-using your own material..... | 16 |
| Material created as part of your job or for government..... | 16 |
| Material in which you no longer own rights..... | 16 |
| Where a contract restricts you from using your material..... | 16 |
| 4. Licensing and exploiting your work..... | 17 |
| Assigning and licensing rights..... | 17 |
| Things to consider if you're assigning or licensing rights..... | 17 |
| What rights are you selling or licensing?..... | 17 |
| Assignment or licence?..... | 18 |
| Duration and termination of rights..... | 18 |
| Territory..... | 18 |
| Attribution and copyright notice..... | 18 |
| Payment..... | 18 |
| Contracts..... | 18 |
| What should I insist on in a contract?..... | 18 |
| Contracts covering multiple works: freelance journalists..... | 19 |
| Get advice before signing..... | 19 |
| Statutory and other payments..... | 19 |
| Statutory licences under the Copyright Act..... | 19 |
| Copyright Agency Limited (CAL)..... | 19 |
| Screenrights..... | 19 |
| PLR and ELR schemes..... | 20 |
| AWGACS: payments for screenwriters from overseas schemes..... | 20 |
| Competitions..... | 20 |
| 5. Enforcing your rights..... | 21 |
| Has your copyright been infringed?..... | 21 |
| Coincidental similarity does not infringe copyright..... | 21 |
| Has a "substantial part" of your work been used?..... | 21 |
| Could the user rely on an exception to infringement?..... | 21 |
| Is the use covered by a licence?..... | 22 |
| Moral rights infringements..... | 22 |
| Consent..... | 22 |
| Reasonableness..... | 22 |
| Sorting out disputes..... | 22 |
| Get legal advice..... | 22 |
| Contact others who may be affected..... | 22 |
| Contact the infringer..... | 22 |
| Infringement on the internet..... | 23 |
| Mediation..... | 23 |
| Arbitration..... | 23 |
| Starting court proceedings..... | 23 |
| Remedies..... | 24 |
| 6. Book publishing..... | 25 |
| Current developments in book publishing..... | 25 |
| Marketing, promotion and attention-getting..... | 25 |
| Electronic publishing and print-on-demand..... | 25 |
| Search engine book digitisation projects..... | 26 |
| Copyright Act exceptions..... | 26 |
| Before signing a contract..... | 26 |
| What rights am I granting the publisher?..... | 26 |
| What do I get in return?..... | 27 |
| Who is responsible for clearing rights?..... | 28 |
| What warranties and indemnities do I have to give?..... | 28 |
| Can the publisher decide not to publish? If so, what happens?..... | 28 |
| What happens if the publisher is taken over by another publisher?..... | 28 |
| Will I be able to terminate the contract (eg if the book goes out of print)?..... | 28 |
| "Out of print" and the electronic world..... | 29 |
| What happens when the contract is terminated?..... | 29 |

| | |
|---|-----------|
| Negotiating changes | 29 |
| After a contract has been signed..... | 29 |
| What if the publisher breaches the contract? | 29 |
| How do I get out of it? | 29 |
| After a contract has terminated | 30 |
| Can I republish my book online or with a different publisher?..... | 30 |
| CAL payments | 30 |
| 7. Writing for theatre, film and TV..... | 31 |
| Protecting your work | 31 |
| Ideas 31 | |
| “Concepts” and “formats” | 31 |
| Scripts and screenplays..... | 32 |
| Agreements for use of your work..... | 32 |
| Agreements with theatre companies | 32 |
| Agreements with film producers..... | 32 |
| Option and purchase agreements | 32 |
| Payments: a percentage of what? And when? | 33 |
| Credits..... | 33 |
| Screenrights payments | 33 |
| Sequels, prequels and spin-offs | 33 |
| Agreements with TV producers | 33 |
| 8. Writing for clients | 34 |
| Slogans, names and phrases | 34 |
| Managing your risk of infringement..... | 34 |
| Relationships with clients: a contract, like it or not..... | 34 |
| What is the situation if there’s no written contract?..... | 34 |
| Who owns copyright? | 35 |
| What rights does the client have to use the material?..... | 35 |
| Can I stop the client using the material if I don’t get paid? | 35 |
| What should be covered in a written contract? | 35 |
| Business structure: implications for copyright and moral rights | 36 |
| Self-employed writers operating under business names..... | 36 |
| Writers operating as employees of their own companies | 36 |
| 9. Writing for the internet | 37 |
| Copying third party material onto your site | 37 |
| Internet navigation and copyright issues | 37 |
| Linking and framing | 37 |
| When can linking get you into trouble? | 37 |
| “Framing” material from other websites | 37 |
| Licensing use of material from your site | 38 |
| Standardised licences such as the “Creative Commons” licences | 38 |
| Useful organisations | 39 |
| Arts Law Centre of Australia..... | 39 |
| Australian Copyright Council | 39 |
| Australian Society of Authors | 39 |
| Australian Writers’ Guild..... | 39 |
| AWGACS | 39 |
| Copyright Agency Ltd (CAL) | 39 |
| Media Entertainment & Arts Alliance (MEAA)..... | 39 |
| National Tertiary Education Union (NTEU) | 39 |
| Screenrights..... | 39 |
| Some copyright-related terms | 40 |
| Endnotes | 41 |