

:: Table of contents

1. About this guide	1
Who this guide is for	1
How this guide is set out	1
Some terms we use	2
2. Some practical pointers	3
Start early	3
Work out your budget	3
Get to know when a clearance will be needed	3
Get to know where there are hidden risks	4
Don't assume you'll get a clearance	4
Manage the process	4
Consider choosing content you can readily clear	5
Collecting societies	5
Services for getting licensed content	5
Services for getting clearances	5
Content available under "open" licences such as Creative Commons	5
Build up your knowledge of sources and providers	6
Develop alternative options for when you can't get a clearance	6
Assist colleagues & contractors to assist you	7
Remind your colleagues to be on the lookout for issues	7
Look at imposing obligations on contractors & other third parties	7
Educate colleagues, contractors & other third parties you're working with	8
Have guidelines & <i>pro forma</i> documents available	8
Manage your risks	8
3. Identifying when you'll need a clearance	10
Material protected by copyright	10
Things that are NOT protected by copyright	11
Ideas	11
Facts & information	11
Styles, methods & techniques	12
Names, titles & slogans	12
People, animals & plants	13
Plot lines	13
Characters	13
Is the material going to be used in a way controlled by the copyright owner?	14
The notion of "public"	14
A single activity may involve different uses controlled by a copyright owner	14
Additional activities that can give rise to copyright issues	15
Different language used in different industries	15
Has copyright expired?	15
Can someone who owns an out-of-copyright work restrict how we use it?	17

Are you using “enough” to raise a copyright issue?	17
Coincidental similarities	18
Can you rely on an exception to infringement?	19
“Fair dealing” for criticism or review	19
“Fair dealing” for parody & satire	20
Public art	22
Two-dimensional depictions of buildings & models of buildings	22
Filming & broadcasting artworks	22
Moral rights issues	23
The type of material to which moral rights apply	23
The rights that make up moral rights	24
Moral rights and “substantial part”	24
Creators who get moral rights	24
Exceptions to moral rights infringement	24
The relationship between the parody or satire defence & moral rights	25
Performers’ rights	25
Other areas of law that may be relevant in a clearances context	26
Confidential information	26
“Passing off” & Trade Practices legislation	26
Defamation	26
Trespass	27
Restrictions on taking or using photos taken in particular places	27
4. Copyright licences: how they work	28
Exclusive licences	28
Non-exclusive licences	28
Contractual licences	29
“Bare” licences	29
Express & implied licences	29
What to cover in a licence	30
5. Managing the clearance process	32
Identify what material is being used	32
Watch for “embedded” material	32
Be wary of paraphrasing	33
Look out for underlying works	33
Identify how the material is going to be used	33
Identify the extent to which a permission may be needed	34
Identify who can give you the clearance	34
Some general comments	34
Some tips on identifying & contacting copyright owners	35
Unlocateable copyright owners	35
Request the clearance	35
Document the clearance	36
Information about the material being used	36
The copyright status & ownership of the material	37

How the material is to be used	37
Information relating to the permissions process & outcome.	37
Compliance issues	37
6. More on identifying the copyright owner	39
Identifying the first copyright owner	39
The general rule.	39
The government ownership rule.	39
Work created by employees: the general rule.	39
Work created by employees: the “newspaper rule”	40
Commissioned material.	40
Subsequent copyright owners	40
Assignments	41
Inheritance	41
Anonymous Indigenous cultural works.	41
Some general tips on identifying & finding copyright owners	42
Searches	42
Copyright collecting societies	42
Published material	42
Material owned by an Australian company	42
Copyright in material owned by a defunct Australian company	42
Material produced in Australia between 1912 and 1966	43
Deceased copyright owners	43
Overseas copyright owners	43
7. Textual material	44
Common permissions issues.	44
Quotes & sayings.	44
Jokes	44
Basing a film, documentary or stage play on a book or short story	44
Statistics, tables and lists	45
Using a particular edition or translation of an out-of-copyright work	45
Old unpublished documents (such as letters, diaries, theses & conference papers).	45
Who to contact.	46
Books, ebooks & audiobooks	46
Newspapers & magazines	46
Reports	47
Unpublished textual material.	47
Plays & other dramatic works	47
8. Photos & other images	48
Common permissions issues.	48
People in photos & portraits	48
Using photos as a basis for illustrations	48
Setting up a scene to photograph in order to recreate an existing photo	48
Taking photos of out-of-copyright works in a gallery	49
Using other people’s photos of artworks	49

Images of artworks owned by museums & galleries	49
Logos & trademarks	49
Signs & symbols	50
Indigenous art and cultural material	50
Restrictions on taking or using photos taken in particular places	50
Who to contact	51
Photos	51
Drawings, illustrations, fine artworks & craft items	51
Cartoons, puppets & costumed characters	52
Olympic insignia	52
Red Cross symbol	52
Stamps	52
Logos & trademarks	52
9. Commercial products & clothing	53
Common permissions issues	53
Filming & broadcasting clothing & products	53
Photographing clothing & products	53
Packaging	54
Using shots of clothing & products in advertising	54
Trains, planes & automobiles	54
Making copies or replicas for stage or screen	54
Who to contact for permissions	55
Mass produced clothing & products	55
High-end designer clothing & products	55
Cars, other vehicles & machinery	55
10. Software, fonts, clipart & material on websites	56
Permissions issues for software	56
Screenshots	56
Permissions issues for clip art & font packages	56
Permissions issues relating to material on websites	56
Links and URLs	56
General statements on websites	57
Creative Commons-licensed material	57
User-generated material on websites	57
11. Government material	59
Legislation & judgments	59
Flags, emblems & coats of arms	59
The national anthem	59
Australian & foreign currency	60
Other contacts	60
Commonwealth	60
States & territories	60
Ongoing changes to licensing of government material	61

12. Music & recordings	62
Arranging music	62
Using “samples”	62
Appropriating parts of songs or lyrics	62
Songs that sound the same	63
Putting new words to existing music	63
“Pre-licensed” recorded music: production music	63
Capturing music on a soundtrack while filming	64
Sound effects	64
Worldwide release	64
Timing your clearances	64
Who to contact.	64
General comments	64
Stage productions	65
Concerts & other “public performances”	65
Cover versions: record releases	65
Film sound tracks: synchronisation	65
Films: soundtrack albums	66
Production music	66
Multimedia products	66
Changing lyrics to a song or advertising jingle	66
“Production” or “library” music	66
Setting a poem to music	67
Using music on websites	67
Material that will be broadcast	67
Material from unknown publishers and record companies	67
13. Footage from film & TV	68
Permissions issues	68
Performers’ rights	68
Permission for underlying works included within a film	68
Copying excerpts from a TV program	68
Footage showing a TV on in the background	68
Reproducing television commercials	69
Using stills from films & TV	69
Who to contact.	69
The copyright owner	70
Tracing copyright owners	70
Stock footage	70
14. If it all goes pear-shaped	71
Appendix	72
Endnotes	73