



INFORMATION SHEET

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Copying services

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In this information sheet, we give a brief overview of copyright as it relates to copying services such as those provided by copy shops and photolabs. We give more detailed information in our books *Photographers & Copyright* and *A User's Guide to Copyright*.

Phrases in [blue](#) are links to further information.

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

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

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Unless copyright has expired, or a special exception applies, permission is needed from the copyright owner to reproduce copyright material.
- There are special exceptions which allow people to make copies for personal use in certain cases – for research or study for example.
- None of the exceptions is likely to apply to copying for another person for profit.

What does copyright protect?

In Australia, copyright law is dictated by the Copyright Act 1968 (Cth) and **decisions** of courts. Materials protected by copyright include:

- **Written material:** such as articles, song lyrics, novels, reports, charts & tables.
- **Artistic works:** such as drawings, photographs, graphic art, maps.
- **Musical works:** that is, the music itself, separately from any lyrics or recording.
- **Films and videos:** the visual images and sounds in a film, DVD or video are protected separately from any copyright in works recorded on or in the footage or soundtrack, such as scripts and music.
- **Sound recordings:** the particular recording itself is protected by copyright in addition to, for example, any music or story that is recorded.
- **Published editions:** publishers may have copyright in the typographical arrangement of a published edition which is separate to the copyright in works reproduced in the edition.

Copyright is automatic and international

There is no system of registration for copyright protection in Australia. Copyright protection does not depend upon publication or any other procedure – it is free and automatic. Because of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia.

The copyright notice

The copyright notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication: “© Ian Fringement 2006”, for example. The copyright notice is not required for protection in Australia. However, it does notify people that the work is protected and identifies the person claiming the rights. Copyright owners can put the notice on their work themselves; there is no formal procedure.

How long does copyright last?

The period of copyright protection varies according to the type of material. In most cases, copyright lasts from the time the material is created until 70 years after the year of the author's death.

Before January 2005, the periods of protection were shorter – usually 50 years from the author's death, but even shorter in some cases (for example, for photographs). Copyrights in photographs taken before 1955 have expired. Copyright in a work whose creator died before 1955 is likely to have expired, if the work was published before then.

For more information, see our information sheet *Duration of copyright*, available at www.copyright.org.au/introductory.

When is copyright infringed?

Copyright owners have the exclusive right to deal with their material in certain ways, including:

- reproducing it by photocopying, photographing or copying by hand;
- audio and video recording it;
- scanning into computer memory; and
- placing it on the internet.

Dealing with a “substantial part” of copyright material in one of the ways reserved to the copyright owner, without their permission, will usually infringe copyright. A “substantial part” of a work means a part that is important, distinctive or essential to the work and it need not be a proportionally large part. A person who authorises someone else to infringe copyright may also be liable for the infringement.

There are also provisions in the Copyright Act which allow copyright owners and broadcasters to take action against people who, for example, provide services or devices to circumvent technological protection measures (such as “Mod chips” for computer games and DVD players), which copyright owners use to protect digital material or which allow encoded broadcasts to be decoded. There are also provisions that allow copyright owners to take action if electronic rights management information which they have embedded in digital copies of their material is removed or altered. In some cases, dealing commercially with circumvention or decoding devices, offering decoding or circumvention services, altering or removing electronic rights management information, and knowingly dealing with copyright material in which the rights management information has been removed, is a criminal offence.

What are the special exceptions?

The Copyright Act does allow the use of copyright material without permission in some limited and special circumstances – for example by people reviewing the material and by students who are using it for their study. There are also special provisions for copying by libraries, educational institutions and government bodies.

While a customer may be entitled to make copies under one of these exceptions, copy shops, photolabs and other commercial copying service providers are unlikely to be able to rely on these provisions and will not have the right to make the copies on behalf of the customer as the purpose of **their** copying is to make a profit. However, if the copying service provider makes photocopiers available for its customers, the customers may make the copies themselves in reliance on these provisions. If such equipment is made available, the appropriate notices should be displayed: see our information sheet *Notices on photocopiers and other equipment*.

Licence from copyright owner

In some circumstances, a copyright owner may be regarded as having given **implied** permission to copy a protected work. For example, if a craft or hobby book gives instructions about how to enlarge a pattern in order to make items based on it, it may be reasonable to infer that permission is granted to make an enlarged copy. The scope of such

permission will, however, generally be very limited. In other cases, the copyright owner may give an **express** permission on the document or item itself.

Licence from Copyright Agency Limited

For print material, copy shops should investigate whether the “document delivery” licence offered on behalf of its members by Copyright Agency Limited (www.copyright.com.au) will enable them to copy the sorts of material they may be asked to copy.

Contacting copyright owner for permission

If none of the above situations applies, either you or the customer will need to get permission from the copyright owner: see our information sheet *Copyright owners: how to find*, available at www.copyright.org.au/permission.

How can you be sure your customer has permission?

Copying services can only copy material for customers if:

- the customer owns copyright in the material; or
- copyright in the material has expired; or
- permission to copy has been granted by the copyright owner.

You cannot always be sure that your client can authorise you to copy the material they bring to you. However, you can minimise risk to your business by setting up certain procedures. First, where a customer states that he or she is relying on written permission, you can ask to sight the document. Second, you can include a clause in a written contract with the customer under which the customer warrants (promises) that the customer owns copyright in the material or has obtained permission to copy it, and which gives an undertaking to indemnify you if loss is suffered due to a breach of that warranty.

The warranty signed by the customer will not prevent a copyright owner taking action against the copying service provider if the appropriate permissions have not been obtained. However, if such an action were successfully brought, the copying service provider would generally be able to rely on the undertaking from the client to indemnify it for any loss suffered.

The Photo Marketing Association has developed material to assist stores which develop photographs minimise their copyright risks when copying material brought to them by members of the public. This material may also be of interest to other types of stores copying material for members of the public.

Moral rights

There are legal obligations, under the Copyright Act, to:

- attribute the creator of a work;
- not falsely attribute a work; and
- not do something with a work which is prejudicial to the creator’s reputation.

These obligations are owed to the creator even if the creator is not the owner of copyright. For more information, see our information sheet *Moral rights*, available at www.copyright.org.au/introductory.

Common questions

What are the penalties for copyright infringement?

Copyright owners generally have the right to bring action against people who infringe their copyright, and to recover damages or an account of profits. (The term “damages” refers to a sum of money intended to compensate the copyright owner for money lost, or spent, in respect of the infringement and will vary with the circumstances. An account of profits is the profit made by the infringer in selling the infringing copies).

In some circumstances, infringement of copyright is a criminal offence to which fines and jail terms may apply. The criminal provisions generally apply to commercial piracy of records, videos and computer software.

The remedies and penalties are much higher where an infringement involves the reproduction of print or analogue material into digital or other electronic forms.

For more information, see our information sheet *Infringements: actions, remedies, offences and penalties* available at www.copyright.org.au/permission.

Does a copyright stamp on a photo mean that the photographer owns copyright?

Photographers should not put the copyright notice on their photographs unless they own copyright. However, if a photographer does put the notice on the photograph when he or she doesn't own copyright, then putting the notice on will not transfer copyright to the photographer. Any transfer of copyright must be done in a written document signed by the copyright owner.

For a photographer to be the owner of a commissioned photograph taken before 30 July 1998 or taken for a private or domestic purpose after 30 July 1998, the client must have agreed, before the photograph was taken, that the photographer would own copyright.

Does the fact that someone owns negatives and prints mean that they own copyright?

Merely owning a negative, transparency or print does not mean that that person is entitled to copy the image. In some cases, one person can own copyright (and have the right to reproduce the image) and another person can own physical items such as the negative, transparency or print that embodies the image.

Can I convert vinyl records that my clients own onto CD?

There is a new provision which allows an owner of a CD to copy the contents of a vinyl record or CD for personal use, subject to certain conditions – see our information sheet *Music: copying MP3s, CDs, & audio-cassettes* available at www.copyright.org.au/music.

There is, however, no special exception in the Copyright Act that allows you to copy someone else's vinyl records for them. In most cases you will need to get permission from the owners of copyright in the music (usually a music publisher) and the owner of the separate copyright in the recording of the performance of the music (usually a record company).

Can I make a back-up copy of a CD-ROM for a client?

You should check the CD-ROM licence to see if it allows the owner of the CD-ROM to make a back-up copy. If the CD-ROM contains computer programs only, you may be able to rely upon the provisions in the Copyright Act that allow the owner of the copy, or someone acting on their behalf, to make a back-up copy. These provisions only apply to the copyright in the computer program. Therefore, if the CD-ROM contains other copyright material, such as graphics or text, you will need to get copyright clearance to make the copy.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au> or contact us.

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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.

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