



## INFORMATION SHEET

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# Ideas: legal protection

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In this information sheet, we briefly outline areas of law that are relevant to the protection of ideas.

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

### Key points

- Copyright does not protect ideas, but rather particular works – for example, a screenplay or a drawing.
- A person who discloses a secret idea to another person on a confidential basis may have a legal claim for breach of confidence if the second person uses the idea in ways that were not permitted.
- A design for a functional article may be registrable under the Designs Act.
- An idea which is an invention or a new method of manufacture may be registrable under the Patents Act.
- A trader who has established a reputation in a market with a certain image or “get up” may be able to take legal action against another person who uses that image or “get up” in certain ways.

### Copyright does not protect ideas

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and decisions of courts. Copyright protection applies automatically to certain subject matter and has a limited duration based on the date the material is created or made public.

An idea or concept, in itself, is not protected by copyright. Nor are facts, information, systems, methods or techniques protected by copyright. Copyright therefore does not protect things like: a marketing idea; a teaching technique; an idea for a game; or an idea for a new device or product.

Rather, copyright protects the way the idea or information is expressed:

- in writing – for example, as a written report, a novel, a play, a newspaper article;
- as a table or chart;
- as a drawing or other visual representation, such as a painting, sculpture or work of artistic craftsmanship;
- as a compilation of words, figures or symbols – for example, a directory;
- as a computer program;
- as a piece of music; or
- in moving images – for example, in a film on a video or DVD.

For example:

- The information in a textbook about an aspect of organic chemistry is not protected by copyright, but the text of the book is protected, as are any illustrations or charts.

- The idea of writing a biography of Miles Franklin is not protected by copyright, and nor is information about her life, but a particular literary work describing her life is protected.
- The idea of making a film about the Eureka Stockade is not protected by copyright, but the screenplay for the film is protected, and the visual images and sounds embodied in the film are protected.
- The idea for a television series is not protected by copyright. However, the text of a document describing the idea is protected by copyright, as is the screenplay based on the idea, and a program based on the screenplay.
- The basic plot for a play is not protected by copyright. However, a written synopsis recording the plot and a play based on a plot are both protected by copyright.
- A “character” in itself is not protected by copyright. However, a drawing of a character (such as Ginger Meggs, Bart Simpson or B1 & B2) is protected by copyright. A written description of a character is also likely to be protected by copyright. In addition, other areas of law (including trade marks law) may be relevant to the “character”.

As explained further below, copyright gives very limited protection against copying of ideas, but other areas of law offer legal protection in some cases.

### **Copying ideas or information does not infringe copyright**

Copyright is not infringed if a work is used as a source of information or ideas, and the facts or ideas are expressed in a new way in a new work. For example, writing a book based on a real event described in a newspaper article does not infringe copyright if the article is only relied on as a source of facts about the event.

Copyright is generally infringed when a person, without the copyright owner’s permission and where no defence or exception applies, uses the way in which another person’s ideas or information have been **expressed** – for example, by copying the words in a book.

However, in some circumstances, copyright may be infringed by “non-literal” copying; that is, where the words are not copied exactly, but important elements of the work such as its structure and plot are copied in a detailed way and unfairly appropriated. For example, the film studio which made the film *Jaws* successfully sued another film company which made a similar film using the same combination of situations, events and scenes.

### **Legal protection for secret information**

If a person discloses secret information to another person on a confidential basis, that person may have a legal claim for breach of confidence if the information is misappropriated. To succeed, the person would need to show that:

- the information is of a confidential nature (trivial information or public knowledge will not be protected);
- the information was given in circumstances where the obligation of confidence was made known and accepted or was implicit from the context; and
- there was an unauthorised use or threatened use of the information.

For example:

- a film producer successfully sued a television network for making a television series about millionaires describing their success, based on the idea the producer had discussed with the network;
- a company successfully sued another company for misappropriating research information about a preparation believed to be a remedy for rheumatoid arthritis.

An obligation of confidence will generally exist in the relationship between employer and employee. In this situation, an employee is bound to keep secret confidential information disclosed to the employee by the employer in the course of employment. Similarly, a duty of confidence is likely to be imposed on a manufacturer who is engaged to manufacture a product on behalf of a designer.

An obligation of confidence can last long after information has been exchanged or a working relationship has ended.

If possible, it is best to have written evidence of the fact that the idea was communicated in confidence. This may be, for example, by exchange of letters or an acknowledgment which the person to whom the idea is communicated is requested to sign. However, there is no legal obligation to sign such a document and many organisations may decline to do so, particularly if they are frequently offered unsolicited material.

## Protection for image or “get up”

A person may have a legal claim against another person who misappropriates an “image” or “get up” established in a market by the first trader. The second person may be “passing off” or breaching provisions of the Trade Practices Act 1974 (Cth) or a State Fair Trading Act.

For example:

- Paul Hogan and the makers of the film “Crocodile Dundee” successfully sued two shops selling articles such as hats with teeth in the band, sleeveless vests and T-shirts depicting a koala dressed like the character Mick Dundee from the film. The shops were called “Dundee Country”. The court found that there had been a wrongful appropriation of the reputation in the invented characters and a wrongful association of the shops' goods with images from the film.
- A court held that the ABC was “passing off” by making a television series called *Alvin*, based on the character “Alvin Purple” from a series of films.

## Protection of designs for functional articles

The Designs Act 2003 (Cth) protects the visual appeal or “look” of articles. Protection under the Designs Act requires registration with IP Australia.

Registration protects “features of shape, configuration, pattern or ornamentation” of functional articles. The term of protection is up to 10 years. For further information, see our information sheets *Designs for functional articles* and *Fashion design* available at [www.copyright.org.au](http://www.copyright.org.au).

If you wish to find out whether something has already been registered as a design, see IP Australia’s website: [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au) or telephone 1300 651 010.

## Protection for inventions

Methods of new manufacture can be registered under the Patents Act 1990 (Cth). A “method of new manufacture” is an invention, such as a new process or an advancement in current technology.

Registration under the Patents Act gives the patent owner a monopoly right (up to 20 years) to exploit the invention in the patent specification and to prevent others from doing so. The specification is a description of the features of the invention; it becomes a public record in the patent application process. If you wish to apply for a patent or ascertain whether a patent has been granted for an invention, you should contact IP Australia: see [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au).

## Further information

For further information about copyright, and about our other publications and training program, see our website – [www.copyright.org.au](http://www.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, libraries and governments. For information about the service, see [www.copyright.org.au/advice](http://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](http://www.artslaw.com.au) or telephone (02) 9356 2566.

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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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