



INFORMATION SHEET

G016

Games & copyright

February 2006

This information sheet is primarily for people who create games such as board and card games, and computer games. We discuss the elements of a game which are covered by copyright law, and refer to other areas of legal protection which may apply.

For information about our other information sheets, publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

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

- There is no special category of copyright protection for games as a whole.
- Many of the elements or components of a game (such as the artwork for a board game) are likely to be protected by copyright.
- Names, ideas and concepts are not protected by copyright.
- In some cases, you may be able to rely on other areas of law, such as trade practices, trade marks and confidential information, to protect aspects of a game.

Copyright protection and games

Elements of games that may be protected by copyright

The categories or types of material protected by copyright include:

- literary works (such as written text, compilations of questions, words or symbols, and computer programs);
- artistic works (such as photographs, drawings, diagrams and designs);
- musical works;
- sound recordings; and
- films (moving images and accompanying soundtrack, including in films, videos and animated computer games).

For further information on what is protected by copyright, and the rights of the copyright owner, see our information sheet *An introduction to copyright in Australia*.

Written components

Written materials included in the game, as well as rules or instructions, may be protected by copyright. If a person makes a copy of the written instructions for a game without the copyright owner's permission, this would generally be an infringement of copyright.

However, copyright does not prevent another person expressing or describing the same rules in a completely different way, or describing the concept or idea behind a game.

Compilations

Compilations of words and other material may be protected by copyright, if the selection or arrangement of items is the result of some skill or labour. For example, the compilations of questions and answers in *Trivial Pursuit* would be protected by copyright.

Therefore, if a person reproduced a number of the questions and answers on a particular topic from the published *Trivial Pursuit* game, they might infringe copyright in the compilation (even if they reworded the questions and answers).

A person who invents or organises a game based on a similar "idea", but researches and compiles their own list of questions and answers, will not infringe copyright, although they may in some cases be in breach of other laws (see "Other areas of law that may be relevant", below).

Artistic components

Components of a game may be protected by copyright if they are "artistic works". The design on the board of a board game, for example, would be protected as an artistic work, as would the logo or other artwork on the box or container for the game and images on counters or cards.

Computer games

Computer games normally include a number of different kinds of copyright material. For example, they may contain:

- computer programs;
- "films" (moving images and any sound track or sound effects);
- artistic works (including "clip-art" and other digital images);
- music; and
- sound recordings.

A person creating a computer game may need to get permission to incorporate any of these materials into the game. The creator of a computer game will also need to pay attention to the licence he or she grants to people buying the game. In particular, note that a person who purchases computer software actually acquires a **licence** to use the software in the ways set out in the licence agreement. Such licences are likely to limit the purchaser's rights to make commercial use of the computer software incorporated in the game.

It is usually a good idea to get legal advice on drafting an appropriate licence.

What is not protected by copyright?

Copyright does not protect the idea or concept behind a game, nor does it protect the information as to how the game is to be played (although it may protect a particular written expression of such rules). Ideas, information and styles are not protected by copyright. Therefore, if you have invented a game and wish to prevent others from using the same concept or ideas, you may need to look at whether other areas of law can help you. This is discussed below under the heading "Ideas for games".

Names and titles of games are not protected by copyright; nor are slogans or phrases. Again, in some cases, other areas of law may be relevant: see "Names and titles", below.

How do you get copyright protection?

There is no registration procedure nor any other formal procedure involved in obtaining copyright protection in Australia. Material is automatically protected as soon as it is written down or recorded in some way.

However, in some cases, if you need to take action for infringement in other countries, there are some benefits to having registered with the government copyright office in those countries (for example, the United States Copyright Office: <http://www.copyright.gov>).

However, in Australia, you get the same advantages by using the “copyright notice” on your work. We therefore recommend that copyright owners use the “copyright notice” on their work to remind users that the material protected and that the person named is claiming the rights. Copyright owners can put the notice on their material themselves. The notice consists of the symbol, followed by the name of the copyright owner and the year of first publication: for example, © Gus O’Donnell 1968. However, the notice has no legal effect: copyright material is protected whether or not the notice appears on it.

When do you need permission to use games?

“Back-up” copies

There is no general provision allowing a purchaser of a computer game to make a “back-up” copy without the permission of the copyright owner.

The Copyright Act includes a special provision allowing purchasers of computer programs to make back-up copies, but this applies only to the **computer program** itself. Since computer games also involve other copyright material, such as films, music, sound recordings and artistic works, computer games cannot be copied under this provision.

If you wish to make a back-up copy of a computer game, you should check whether or not the licence allows you to. If there is nothing stated in the licence about backup copies, you will generally need permission from the copyright owner to make a backup copy.

Lending or renting games

Copyright law does not restrict people from lending items. However, owners of copyright in computer software and sound recordings have the right to control **rental** of these items. If money changes hands in connection with lending an item which includes computer software or a sound recording, the transaction may infringe copyright unless the copyright owner has given permission. For further information, see our information sheets *Renting items protected by copyright* and *Lending items protected by copyright*.

Note that if you lend a game to someone knowing that they intend to copy it, you might both be liable for copyright infringement, since it is an infringement to *authorise* another person to infringe copyright. For further information, see our information sheet *Infringement: actions, remedies, offences and penalties*.

Playing infringing copies of computer games

When we talk about “infringing” copies, we generally mean copies that were made **without** the permission of the copyright owner and where no exception to infringement applies. It does not matter whether the copies were made by individuals for their own use or by pirates on a commercial basis).

Prior to 1 January 2005, owning, lending or playing infringing copyright items did not generally create legal liability for copyright infringement. However, as a result of changes to the Copyright Act that came into effect on 1 January 2005, someone who **plays** an infringing copy of a DVD, CD, CD-ROM, MP3 or other digital material, may now infringe copyright.

“Mod chips” and other circumvention devices

Copyright owners increasingly rely on “technological protection measures” (TPMs) to control access to, and use of, their material. Such measures include digital access codes, encryption and copy-protection.

It is not currently an offence to **purchase** or **use** a device for circumventing TPMs, but a person may infringe copyright by copying or communicating the material that has been accessed by using the device.

It is, however, an offence to **make, sell, advertise, distribute or import** devices (including software) that circumvent TPMs.

In the Free Trade Agreement with the US (AUSFTA), the Australian government agreed to amend the Copyright Act to increase legal protection for TPMs. These changes are to come into effect by 7 January 2007.

For further information, see our information sheet *Free Trade Agreement amendments* and our book *Australia/US Free Trade Agreement Amendments*.

Other areas of law that may be relevant

Ideas for games

For copyright purposes, a distinction is made between an idea and the expression of an idea. Ideas or concepts in themselves are not protected by copyright. If the idea is expressed in writing, the piece of writing may be protected by copyright as a literary work, but people are still free to use the idea as long as they express it in a different way.

The law of confidential information provides some protection for an idea while it is still a secret. If you tell somebody (such as a publisher or manufacturer) your idea, on the understanding that the other person will not use the idea without your permission, the law will protect the relationship of trust or confidence between you and the other person.

Three elements are necessary to take legal action for breach of confidence:

- the information must have the necessary quality of confidence or secrecy;
- the information must have been disclosed in circumstances that give rise to an obligation of confidence; and
- there must be an unauthorised use of the information (or at least a threat or likelihood of such use) which may disadvantage the person who disclosed the idea.

If possible, it is a good idea to have written evidence that the idea was communicated in confidence. Such evidence could be in the form of letters, or a document that you ask the person to sign before you tell them your idea. However, there is no legal obligation to sign such a document, and games manufacturers may refuse to do so, particularly if it is commonly offered ideas for games.

For further information see our information sheet *Ideas: legal protection*.

Registrable designs

Generally, copyright protects design drawings on which three-dimensional articles are based. However, articles made from the design may not be protected once produced. The only form of protection for them may then be registration under the Designs Act, **before** the design is advertised or offered for sale.

A design for a three-dimensional article (such as a chess piece or Monopoly token) may need to be registered with IP Australia: <http://www.ipaustralia.gov.au>. See further our information sheet *Designs for functional articles*.

Names and titles

Names and titles are not protected by copyright, but they may be given some protection by other areas of the law, such as trade mark laws. Trade mark registration gives monopoly rights over brand names or symbols. Enquiries about registration of trademarks should be directed to IP Australia: <http://www.ipaustralia.gov.au>.

A name may also be registered as a business name. Business name registration does not give monopoly or exclusive rights in a name. Its purpose is to assist people dealing with the business to find the identity of the individual people behind the business name.

See further our information sheet *Names, titles & slogans: legal protection*.

Trade practices and "passing off"

If you have established a reputation in a particular name, you may be able to take legal action for "passing off" against a person who uses that name (or a similar name) in a way which exploits or damages the reputation associated with the name, for example by giving the impression that the person is connected with your business. There are also consumer protection laws in the Trade Practices Act, for example, which provide protection in relation to conduct which is misleading or deceptive, and in relation to false representations as to sponsorship, approval or affiliation.

Further information

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

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop—<http://shop.copyright.org.au>—or direct from us.

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.



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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