



## INFORMATION SHEET

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# Recipes: legal protection

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In this information sheet, we outline some issues you need to understand if you want to copy other people's written recipes, or protect your own recipes.

For information about our other information sheets, other publications and training program, see our website [www.copyright.org.au](http://www.copyright.org.au).

**The purpose of this information sheet is to give general introductory information about copyright. If you need to know 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

- The written form of a recipe is likely to be protected by copyright, once it is recorded in some way, for example, written down or recorded onto a tape.
- Copyright does not protect information about the ingredients or methods of making a type of food or drink. You will not need permission to follow a recipe.
- You will not infringe copyright if you watch someone prepare a dish and then you write down the ingredients and method in your own words.

## Copyright protection

### How does copyright affect recipes?

Copyright protects a range of materials, including works comprising words—such as written recipes, setting out a description of the type and amount of ingredients and the method for making the type of food.

Other things protected by copyright include “artistic works” (such as drawings and photographs), music and films. For more information about what copyright protects, see our information sheet *An introduction to copyright in Australia*, available at [www.copyright.org.au/introductory](http://www.copyright.org.au/introductory).

### *What are the copyright owner's rights?*

The rights of a copyright owner in a recipe are limited. The copyright owner cannot prevent people from making the dish, or from writing their own descriptions of how to make it. The copyright owner has the right to control the use of the written recipe in particular ways, including:

- reproduction (for example by photocopying, copying by hand, scanning, copying a digital file, or printing out a digital file);
- communication (by faxing, emailing or broadcasting it, or putting it on a website); and
- translation into another language.

## What is not protected by copyright?

Copyright does NOT protect:

- ideas (such as the idea of using blue cheese to make ice-cream);
- information (such as the list of ingredients and quantities used in chocolate chilli mud cake); or
- styles, methods or techniques (such as a method of preparing chicken and casserole).

Therefore, if you watched someone preparing a dish they had created and then wrote down in your own words the ingredients and method, you would not have infringed copyright even if they had not granted permission (although you might infringe their rights under other areas of law, as discussed below).

## How do you get copyright protection?

For work to be protected by copyright, it must be **“original”**. In this context, an “original” work need not be novel or unique, it simply must result from the exercise of skill or labour on the part of its author. A work that is merely copied from an earlier work is not protected.

Copyright works are only protected by copyright once they are put into **material form** (for example, by being written down, saved as a digital file, or recorded in audio or audiovisual form).

Therefore, if you write your own description of how to make a soufflé, this “literary work” is protected by copyright, even though you did not invent the combination and proportion of ingredients and the method is not new.

However, merely following a recipe (for example, by making a cake) does not reproduce the recipe in material form.

There is no system of registration for copyright protection in Australia. Copyright protection does not depend upon publication, a copyright notice, or any other procedure—the protection is free and automatic. However, it is a good idea to use the “copyright notice”. This is simply a statement in the form “© J. Oliver 2005” which is written on physical copies of the work. Although it is not necessary in order to get copyright protection, use of this notice alerts the reader to the fact that the work is protected by copyright and the person named claims to be the copyright owner.

## 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. 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](http://www.copyright.org.au/introductory).

## Who owns copyright?

The general rule is that copyright in a work is owned by the author of the work. The situation may be different if the person created the work as part of their job, or assigned copyright (for example to a music publisher). For further information, see our information sheet *Ownership of copyright*.

## When do you need permission to reproduce a written recipe?

In general terms, you need permission to reproduce written recipes, unless one of the exceptions to infringement applies or copyright has expired.

For example, if you photocopy a written recipe or put a digital file of it on the internet without permission, you may be infringing copyright.

Copying part of the instructions may also infringe, if the part is important. A part may be important even though it is not a large portion of the original. If the way in which instructions have been expressed is highly original, then copying even a small part may infringe copyright. On the other hand, if a work is very simple, copyright is unlikely to be infringed unless the work is copied exactly or very closely. You will not necessarily avoid infringement by making changes.

## Moral rights

Creators of copyright works have moral rights in relation to the works. These are the right to:

- be attributed as the creator of the work;
- not have the work falsely attributed; and
- not to have the work treated in a way that prejudices the creator's honour or reputation.

In relation to recipes, these rights apply to the person who created the literary work constituted by the written instructions, or the recorded description of the dish or how to prepare it, not to the person who invented or prepared the dish. For further information, see our information sheet *Moral rights* available at [www.copyright.org.au/introductory](http://www.copyright.org.au/introductory).

## Other areas of law that may protect recipes

### Confidential information

If you want to prevent other people making food products from a combination of ingredients and/or method devised by you, you may need to keep this information a secret. For example, the manufacturers of the soft drink Coca Cola have kept secret certain key ingredients to protect the product from being copied by competitors.

If someone tells another person secret information on a confidential basis, and the second person passes on the information without permission, the owner of the confidential information may be entitled to make a legal claim for breach of confidence. To succeed, he or she would need to show that:

- the information is confidential in nature (information that is trivial, or is public knowledge, is not protected);
- the obligation of confidence was made known and accepted at the time the information was disclosed, or was implicit from the context; and
- there has been an unauthorised use or threatened use of the information.

Employees will generally be bound to keep secret any confidential information they acquire as part of their jobs. Similarly, if you engage a manufacturer to manufacture a product on your behalf, a duty of confidence is likely to be imposed on them.

If possible, it is a good idea to keep written evidence of the fact that the idea or information 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 people such as publishers who are commonly offered such material may decline to do so.

For further information, see our information sheet *Ideas: legal protection* available at [www.copyright.org.au/introductory](http://www.copyright.org.au/introductory).

### Passing off

If you represent a recipe you have invented as being associated with someone else's name (including a brand name) or image, you may be breaking the law of "passing off", which protects business reputation or goodwill.

## Further information

For further information about copyright, see our website [www.copyright.org.au/information](http://www.copyright.org.au/information).

## Reproducing this information sheet

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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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