



INFORMATION SHEET

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Hobby crafts and copyright

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In this information sheet, we give a brief overview of copyright law as it relates to:

- people who create original craft works; and
- people who want to copy other people's craft works, or use other people's patterns and designs.

The sorts of craft works we are referring to include pottery, glasswork, sewing, jewellery, tapestry, woodwork, lace work, embroidery, découpage, paper tolling, folk art, and handmade toys.

Check our website at <http://www.copyright.org.au/visart> to make sure this is the most recent version, and for information about our other information sheets, other publications and our training program.

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.

Key points

- Generally, handmade craft works will automatically be protected by copyright from the time they are created.
- Two-dimensional designs and patterns for craft works may also be protected by copyright.
- If you want to protect a three-dimensional design that can be used to create a functional item, you may need to register it under the *Designs Act 2003* (Cth).
- Generally, you will need permission to reproduce a craft work, or a design or pattern for a craft work, though you will generally be able to rely on an implied licence to make up a craft item from a pattern.

What is protected by copyright?

Copyright protects a range of materials, including:

- "works of artistic craftsmanship", which may include pottery, silverware, woodwork and other craft items;
- "artistic works" more generally, such as drawings, diagrams, photographs, paintings and sculptures; and
- "literary works", such as written instructions as to how to make a particular item.

Copyright protection for craft works

A craft work is usually protected if it is handmade, and its maker or designer intended it to be "artistic" rather than purely functional. Items that can be regarded as "works of artistic craftsmanship" for the purposes of copyright law include handmade knitted garments, toys, pottery, glasswork, jewellery, lacework, embroidery, tapestry, woodwork and découpage.

Copyright protection for diagrams & patterns

In addition to copyright protection for a craft item, a design or pattern for a craft item may also be protected by copyright (for example, templates and drawings of the shapes to make into a soft toy or piece of clothing, a design in a grid for a knitted garment, a sketch of a dress, or a diagram of a wooden toy). These designs or patterns may

be purchased as part of a kit, published in a book, or created by the person making the craft item. Copyright in designs and patterns may be infringed if a corresponding craft item is made without permission.

Copyright protection for instructions

The written instructions for making a craft item may be protected by copyright as a “literary work”, and copyright may be infringed if these instructions are copied – for example, by photocopying them. However, copyright in instructions is not infringed merely by making something following the instructions.

Copyright protection is automatic

There is no system of registration for copyright protection in Australia. Copyright protection is free and automatic. If something is within one of the categories of material listed in the Copyright Act, and it is “original”, it is automatically protected as soon as it is recorded in some way (for example, when a set of instructions is written out or typed, or when an artwork is created).

A work is “original” for the purposes of copyright law if it is not a mere copy of another work, and it results from the skill and labour of its creator.

Most foreign copyright owners are protected in Australia, and Australian copyright owners are protected in most other countries because of international treaties such as the Berne Convention.

The copyright notice

The copyright notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication: for example, © Papa Toll 2005.

This notice is not needed for protection in Australia, and something may be protected by copyright even if the notice does not appear on or with the item. The notice does, however, remind 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.

Copyright does not protect ideas or information

Copyright does not protect ideas, concepts or information. Nor does it protect styles or techniques or methods. Copyright protects the way in which an idea or concept is expressed – for example, as a drawing, as a craft item or as a piece of writing.

Thus, the idea of making a quilt showing the arrival of the First Fleet is not protected, but the actual quilt which embodies this idea may be protected; the technique of *découpage* is not protected by copyright, but a person’s written description of this technique is protected; the idea of making a moving wooden toy depicting a kangaroo is not protected, but drawings of the component parts are protected, as is the particular toy.

How long does copyright last?

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including where something was published anonymously or under a pseudonym, and the identity of the creator couldn’t reasonably be ascertained. In this case, copyright lasted for 50 years from the end of the year the work was published.

Under the Free Trade Agreement with the US, Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts for the life of the creator plus 70 years (or, where duration depends on the year of publication, until 70 years after the material is first published).

The terms of the Free Trade Agreement did **not** include any obligation to **revive** copyright if it had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

For detailed information on duration in Australia, see our information sheet *Duration of copyright*.

Who owns copyright?

Generally, copyright in a work is owned by the person who creates the work. The situation may be different if the person created the work as part of their duties of employment, or assigned (that is, transferred) copyright to someone else such as a manufacturer or a publisher. In these cases, the employer and the person to whom copyright was assigned will, respectively, be the owners of copyright.

For more information, see our information sheet *Owners of copyright*.

Infringement of copyright

Usually, copyright in an artistic work will be infringed if someone reproduces it without the copyright owner's permission. Copyright in a two-dimensional work may be infringed by making a three-dimensional version – for example, by making a toy from design drawings. Similarly, copyright in a three-dimensional work may be infringed by making a two-dimensional version – for example, by taking a photograph of a pottery vase.

Reproducing part of a work may also infringe, if the part is a “substantial part”. A substantial part is an important, essential or distinctive part of the work.

If the work is highly original, 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.

A person does not necessarily avoid infringement by making changes – whether or not copyright has been infringed depends on what has been copied, rather than what has been changed, and on whether or not the part that has been copied is an important or distinctive part of the copied item.

Copyright is not infringed just because a new work is based on the same idea as an earlier work, as ideas are not protected by copyright. For example, making a moving wooden toy depicting a kangaroo does not infringe copyright in another person's toy unless you reproduce important or distinctive elements of the other person's actual craft item.

When do you need permission from a copyright owner?

Unless copyright has expired, permission will usually be needed from a copyright owner to:

- make a craft work which is a copy of another person's craft work; or
- make a craft work incorporating another person's design, stamp or pattern.

Permission may be implied or express

In some cases, there may be an express statement in a craft book or magazine which says that you may make up the items and patterns shown. Sometimes, this permission might be limited – for example, where the statement refers only to non-commercial or personal uses.

In other cases, a permission to copy a craft item may be implied. For example, you will usually have implied permission to make a craft item where you have bought or otherwise acquired a pattern or design in a kit or from a craft book or craft magazine. Similarly, if you buy an ink-pad stamp, you will have an implied licence to use it to create designs or decorate items.

However, unless accompanied by a pattern, instructions or an invitation to do so, there is unlikely to be any implied permission to copy a craft item merely because a photo of it is published in a book, magazine or exhibition catalogue.

How to get permission

If you need permission, the first step is usually to contact the publisher of the book or magazine in which the item or pattern appeared. The publisher may be able to give you permission, or may be able to help you contact the copyright owner. If the item or pattern is shown in a kit, contact the producer or distributor.

For more information, see our information sheet *Owners of copyright: how to find*.

Designs for craft items which also have a function

Artistic works which are also functional – such as furniture, household appliances or crockery – are often registrable as designs under the Designs Act. Design registration protects the “look” or visual appeal of functional articles. Information about design registration is available from IP Australia, which has an office in most capital cities.

The Copyright Act contains various provisions which limit copyright protection for items that should really be registered as designs. These provisions – often referred to as the “design/copyright overlap” provisions – may affect you if you will be producing your item in commercial quantities and where your work (or each commercialised copy) may not be a “work of artistic craftsmanship”.

Therefore, if you have made something three-dimensional which is to be used as a design for something functional, you should read our information sheet *Designs for functional articles*. See also the information on design law available on IP Australia’s website at <http://www.ipaustralia.gov.au>.

Please note that the Copyright Council does not advise on this area of law. If you are concerned about the possible effects of the design/copyright overlap provisions on the legal protection of your craft item, you may need to get specific legal advice about whether to register the design under the Designs Act.

Re-using postcards, wrapping paper, lengths of material

Copyright law doesn’t prevent people using or re-using items which contain or bear copyright images. For example, in the case of découpage, merely cutting up wrapping paper or pages from magazines will **not** involve any of the exclusive rights which copyright owners are given under the Copyright Act. Similarly, merely appliquéing around the edges of material which has a printed design on it would not involve any of the copyright owner’s exclusive rights, unless the shape of the stitching itself which outlines the appliqué (for example, the outline or features of Thomas the Tank Engine) reproduces a distinctive part of the copyright work.

Photocopying artistic works (for example, for découpage) will, however, usually require permission from the relevant copyright owner if the artistic work is still in copyright.

Note also our comments about other areas of law (below), which can sometimes apply to the use or re-use of physical items in commercial contexts.

Other areas of law

Copyright does not prevent people using pre-printed material such as wrapping paper, postcards, or lengths of cloth in their craft items.

However, in some cases other areas of law may apply if you will be selling your craft. These areas of law may come into play if the item you are selling contains images or words associated with another person or company.

For example, the “passing off” action prevents people from profiting from the reputation created by someone else, such as by adopting the other person’s or company’s name or other distinctive features so as to misrepresent the origin or endorsement of the product to consumers. There are similar provisions in the *Trade Practices Act 1974* (1974) and legislation such as Fair Trading Acts in each State, concerning conduct which may mislead or deceive the public.

These areas of law may be relevant, for example, if you want to use Disney images in a way which suggests that the items you are selling are official Disney merchandise, or if you were to use a brand name or trade mark such as Harley Davidson on a T-shirt.

The Copyright Council does not advise on these other areas of law. If these areas of law are of concern to you, you should obtain advice from a solicitor with the relevant expertise.

Common questions

Can I use another person’s work without permission if I make changes?

Generally, you will need express or implied permission to copy someone else’s work even if you are making changes or additions to it (such as changing the colours). If you can put two works side by side and still identify important parts which have been copied, it is likely that you need permission.

Do I need permission to make things from items containing copyright material?

You generally do **not** need permission if you do not copy – for example, if you make a collage from photographs cut from magazines, or if you mount postcards on trays or teapot stands, you will not need permission from the copyright owner. Similarly, you do not need copyright permission to make things from fabric which contains pictures or designs (for example, cloth with Harry Potter printed on it).

You may, however, need permission if you subsequently wish to photograph or sketch the craft item containing the image (for example, in a catalogue). Generally, you will need permission from any copyright owner whose work you wish to substantially reproduce in the photo or sketch. In some commercial contexts, you may also need advice from a solicitor in private practice as to whether your use of images or logos gives rise to issues under other areas of law.

Can I sell craft items which I have made from another person's pattern?

Generally, unless the copyright owner has clearly indicated to the contrary, and whether or not you are working from a commercially published pattern, you will need permission to make commercial quantities of someone else's craft item.

If you are working from a pattern that has been published, the publisher will often be the best point of contact in getting permission. Otherwise, contact the relevant craftsman/designer.

If I buy an ink-pad stamp, can I use it to decorate cards or paper for sale?

In many cases, an implied permission to use an ink-pad stamp won't be limited just to making items for private and domestic use. Check, however, for any express limitations such as "for non-commercial use only" (for example, on the packaging which accompanied the stamp).

Also, it's unlikely that any implied permission will extend beyond using the stamp itself to decorate items. This means that you will usually need permission if you want to copy the design on the stamp into a printer or into other manufacturing equipment in order to decorate the items you want to sell.

If you need permission, the maker of the stamp will often be the first point of contact.

Can I sell craft items which I have made from items containing copyright material?

You will not generally infringe copyright by selling an item such as a coat hanger made from Bananas in Pyjamas material you purchased, or a play suit or cushion made from material which the manufacturer printed with The Simpsons or The Muppet Show designs.

However, you may need to consider other areas of law if your item looks as if it is authorised merchandise. If this area is of concern to you, you should consult a solicitor with the relevant expertise.

Can I borrow templates, designs or patterns, or buy them second hand?

You do not need permission from a copyright owner to buy, lend or borrow templates, patterns, kits and so on. This is because copyright law does not give copyright owners the right to control such uses of items in which they own copyright.

Generally, anyone borrowing or otherwise acquiring the item is likely to have the same right to use the item as the person from whom they acquired it.

Further information

For further information about copyright, and about our other publications and training program, see our website – <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 <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 <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



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