



INFORMATION SHEET

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Duration of copyright

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This information sheet with duration tables is for people who want to work out whether or not copyright has expired under Australian law.

For background information about the duration of copyright protection, see our discussion paper *Australia–US Free Trade Agreement Amendments*.

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

- In Australia, there is no register of copyright material, and no list of what material is in the “public domain”. Sometimes, you will need to do some detective work to find out whether or not something is still protected.
- One item (such as a film or CD) may include a number of underlying “works” and other subject matter protected by copyright. You may need to check that **all** the copyrights have expired before you can, for example, copy the item.
- As a result of the Australia–US Free Trade Agreement (AUSFTA), on 1 January 2005 the period of protection for copyright material was extended. There was, however, **no revival** of any copyright that expired before 1 January 2005 under the pre-AUSFTA rules.

Copyright and related rights in general

Copyright law in Australia is set out in the *Copyright Act 1968* (Cth) and in court decisions.

The Act lists categories of material which are protected by copyright, including:

- “literary works” (such as stories, poems, song lyrics and compilations);
- “dramatic works” (such as plays, film scripts, mime and choreography);
- “musical works” (such as notated music);
- “artistic works” (such as cartoons, drawings, photographs, models and sculptures);
- “sound recordings” (in addition to copyright in the works that are recorded);
- “cinematograph films” (the recording of moving images and accompanying sounds); and
- “broadcasts” (a broadcast is protected separately from the content of the broadcast).

There is no registration procedure for copyright protection in Australia. Except for broadcasts, if something can be classified in one of the categories of copyright material, it is automatically protected as soon as it is “fixed” in material form – for example, written down, drawn, photographed, recorded on audio or video tape, or saved to computer disk.

You generally need permission to use copyright material in particular ways – for example, to copy it or put it on a website – during the life of the copyright. Once copyright has expired, anyone may use that material without needing copyright clearances or permissions. Material in which copyright has expired is sometimes referred to as being in the “public domain”.

For information on what is protected by copyright, and what copyright protection means, see our information sheet *An introduction to copyright in Australia*.

When you use copyright material, you also generally need to attribute the creator, and not treat the material in a derogatory way. For information on the duration of **moral rights**, see our information sheet *Moral rights*.

There are also provisions in the Act which generally require you to get consent from performers to record, broadcast or cable a live “performance”. Consent may also be required to deal with an unauthorised recording of a performance, and to use a sound recording on a soundtrack. For information on the duration of **performers’ rights** see our information sheet *Performers’ rights*.

How the AUSFTA changed the rules on duration

Finding out whether copyright in a particular item has expired became more complicated as a result of the AUSFTA changes. This is because one of the requirements of the AUSFTA was that both countries set minimum periods of copyright protection that are longer than those previously in place in Australia.

Generally, the rules prior to 1 January 2005 were that copyright lasted until 50 years from the end of the year in which the creator died, or for some material, until 50 years from the end of the year in which the material was first published. This period was extended, in most cases, to 70 years from the end of the year in which the creator died or 70 years from the end of the year in which the material was first published.

No revival of expired copyright

If copyright expired before 1 January 2005, it was not revived, even if it was less than 70 years since the end of the year in which the creator died or the first publication of the material. For example, the Australian author Miles Franklin died in 1954. Under the pre-AUSFTA rules, copyright in those of her works which were published during her lifetime expired 50 years from the end of the year in which she died – that is, at midnight on 31 December 2004. The copyright in these works has not been revived as a result of the AUSFTA.

Changes to duration of copyright in photographs

The duration of copyright in photographs was significantly extended as a result of implementing Australia’s obligations under the AUSFTA. This made protection for photographs consistent with protection for other types of artistic works. For photographs in which copyrights still subsisted on 1 January 2005, or which are created on or after that date, copyright lasts until 70 years from the end of the year in which the photographer died.

No change for government-owned copyright, for broadcasts or for published editions

The AUSFTA did not require any changes to the rules on duration of copyright where State, Territory or Commonwealth governments own copyright.

Similarly, the period of copyright protection for broadcasts and published editions was not affected by the AUSFTA.

Working out whether copyright has expired

If any of the material was created before 1 January 2005, you first need to work out whether copyright expired before that date, by applying the pre-AUSFTA rules.

If the material was still in copyright on 1 January 2005, or the material was created on or after that date, the current rules apply (as outlined in the tables below).

The pre-AUSFTA rules: up to 1 January 2005

If copyright expired under the following pre-AUSFTA rules, which applied up to 1 January 2005, the material remains in the public domain and may be freely used.

Unpublished literary, dramatic and music works

If such material was never published, copyright would not expire. (This continues to be the case.)

Published literary, dramatic and musical works

For this material, the duration of copyright protection was 50 years from the end of the year of the creator's death. However, if the material was published after the creator's death, or was published anonymously or under a pseudonym, the rule was 50 years from the end of the year of first publication.

Artistic works

Generally, the rule was that copyright lasted until 50 years from the end of the year of the artist's death. However, different rules applied for:

- photographs (if taken **before** 1 May 1969, 50 years from the end of the year they were taken; **on or after** 1 May 1969, 50 years from the end of the year of first publication); and
- engravings (duration the same as for literary works).

Films and sound recordings

Copyright in sound recordings made **before** 1 May 1969 lasted until 50 years from the end of the year the recording was made.

Films made **before** 1 May 1969 were protected as a combination of photographs, dramatic works and sound recordings.

For a film or recording made **on or after** 1 May 1969, copyright lasted until 50 years from the end of the year in which it was first published.

Broadcasts

The rule for duration of copyright in a broadcast was 50 years from the end of the year the broadcast was made; the AUSFTA did not change this rule.

Published editions

The rule for duration of copyright in a published edition 25 years from the end of the year of first publication; the AUSFTA did not change this rule.

Government-owned copyright

If the copyright owner **is** the Commonwealth, or a State or Territory government, or one of these governments **would have** owned copyright but for an agreement with the creator or maker of the material giving someone else ownership, you need to look at the rules set out in Table 2 (see below).

(Generally, a government will own copyright in material either created or first published under its direction or control. For further information, see our information sheet *Governments: Commonwealth, State & Territory*).

The duration of copyright in these cases has not been changed by the AUSFTA and, depending on the type of material, generally continues to last until 50 years from the end of the year in which it was made, or from the end of the year of first publication.

The current rules

The following tables will help you work out both whether or not copyright in a particular item has already expired, and, if not, for how much longer it will be protected. Table 1 sets out the rules for all material, except material in which a State, Territory or Commonwealth government owns copyright (or would own copyright, but for an agreement to the contrary). Table 2 sets out duration in these cases.

Note that where duration depends on the year of publication, copyright will continue to last indefinitely if the material is never published.

Note also that material such as music, scripts and text included within a **film, sound recording, broadcast** or **published edition** may be separately protected, and you will have to apply the relevant duration rules to work out if copyright in these elements has also expired.

Table 1: General rules (except where a government owns/would have owned copyright)

	<i>Type of material</i>	<i>Factors affecting duration</i>	<i>Copyright expired IF</i>	<i>Otherwise, duration is</i>
A	Works first published anonymously or under a pseudonym¹ (except B)		first published before 1 January 1955	year first published + 70 years
B	Photos first published anonymously or under a pseudonym		taken before 1 January 1955	year first published + 70 years
C	Photographs (except B)		taken before 1 January 1955	life of "author" ² + 70 years
D	Engravings (except A)	published during engraver's life	engraver died before 1 January 1955	life of engraver + 70 years
		not published during engraver's life	first published before 1 January 1955	year first published + 70 years
E	Artistic works (except A, B, C & D)		creator died before 1 January 1955	life of creator + 70 years
F	Computer programs (except A)		creator died before 1 January 1955	life of creator + 70 years
G	Literary, dramatic and musical works (except A & F)	made public ³ during creator's life	creator died before 1 January 1955	life of creator + 70 years
		NOT made public during creator's life	made public before 1 January 1955	year made public + 70 years
H	Cinematograph films (sound recordings accompanying films made before 1 May 1969 are separately protected, as are underlying works such as screenplays and music for all films)	made before 1 May 1969 and regarded as "dramatic work" ⁴	creator/s of film as dramatic work died before 1 January 1955	life of either creator of dramatic work or "author" ² of images (whichever is longer) + 70 years
		made before 1 May 1969 and not regarded as "dramatic work"	made before 1 January 1955	life of "author" ² of images within the footage + 70 years
		made on or after 1 May 1969	(none in public domain)	year first published + 70 years
I	Sound recordings		made before 1 January 1955	year first published + 70 years
J	Broadcasts	made before 1 May 1969	(not protected)	(not protected)
		made on or after 1 May 1969	(none in public domain)	year of broadcast + 50 years
K	Published editions⁵		first published more than 25 years ago	year edition first published + 25 years

¹ Where the identity of the author is not known and cannot be ascertained by reasonable inquiry.

² For photos taken between 1 January 1955 and 1 May 1969, the "author" means the **individual who owned the film** on which the photos were taken or, if a company owned the stock, the **photographer**. The footage of films shot before 1 May 1969 is protected as a series of photographs, not as a "cinematograph film" – hence our references here to the "author" of the images within the footage.

³ "Made public" here means published, performed, broadcast, or recorded and offered for sale.

⁴ Films made before 1 May 1969 are regarded as "dramatic works" if "the arrangement, the acting form or the combination of incidents represented gives the work an original character".

⁵ A "published edition" means the typographical arrangement and layout of a published work.

Table 2: Material made, or first published, by a Commonwealth, State or Territory

Note: These rules don't only apply where a government is the copyright owner; they also apply where a government that would have owned copyright under the general rules of government-owned copyright reached some other agreement with the creator or maker of the material.

	<i>Type of material</i>	<i>Factors affecting duration</i>	<i>Copyright duration</i>
L	Photographs and engravings	made before 1 May 1969	year made + 50 years
		made on or after 1 May 1969	year first published + 50 years
M	Artistic works (other than L)		year of making + 50 years
N	Literary, dramatic and musical works		year first published + 50 years
O	Cinematograph films (sound recordings accompanying films made before 1 May 1969 are separately protected, as are underlying works such as screenplays and music for all films)	made before 1 May 1969 and regarded as "dramatic work"	year first published + 50 years
		made before 1 May 1969 and not regarded as "dramatic work"	year made + 50 years
		made on or after 1 May 1969	year first published + 50 years
P	Sound recordings (underlying works are separately protected)		year first published + 50 years
Q	Broadcasts (underlying works are separately protected)	made before 1 May 1969	not protected
		made on or after 1 May 1969	year made + 50 years
R	Published editions ⁵ (works in editions are separately protected)		year edition first published + 25 years

Common questions

What happens when copyright expires?

Once all copyright has expired, anyone can use that material without infringing copyright, and permissions are no longer needed. If a person is paying for the use of copyright material (for example, by royalties), there will be no basis in **copyright** law for continuing these payments. In some cases, however, they might have obligations under a **contract** to keep paying to use material.

In some cases, other laws may also be relevant. For example, if copyright in a logo has expired but the logo is still being used as a trademark, reproducing the logo won't infringe copyright but may infringe the trademark.

If copyright has expired, can you revive copyright by republishing it?

Once copyright has expired, it cannot be revived by subsequent publication or in any similar way. Copyright can only be renewed or extended if the parliament amends the Act (as it was obliged to do as part of its obligations under the AUSFTA).

A publisher who publishes an edition of a "public domain" work (such as the poems of Keats) may own copyright in the typographical arrangement of that particular edition (and thus be able to prevent another publisher making an exact copy of that edition). However, the copyright in the work itself (in this case, the poems) is not revived by republishing; anyone can still reproduce all or parts of it.

Is there a list of works in the public domain?

We do not keep a list of public domain works, and we are not aware of such a list in Australia. Generally, if you want to know whether something is in the public domain, you need to apply the rules in the Act to the particular case. You may need first to find out information such as who the creator was, when the creator died and whether the work was first published during the creator's lifetime.

The Australasian Mechanical Copyright Owners Society (AMCOS) publishes a list of Christmas carols and their copyright status in the publication *Music copyright for schools*, which is available at http://www.amcos.com.au/music-users/apra_publications.asp.

Can I use a work that is still in copyright overseas, if copyright has expired here?

If you are using material in Australia, then Australian copyright law applies. For example, if copyright in a photo has expired in Australia because it was taken, say, in 1926 or 1953, then you may reproduce it in a book in Australia. If, however, you wanted to print or distribute the book overseas, you would need to check that copyright in the photograph has expired in each country where the book is to be printed or distributed. The same rules apply to material in electronic form and on the internet in Australia.

The law of the relevant country will determine the rules that apply to the use of material outside Australia. We are unable to advise on the rules that apply overseas.

How long does copyright last if a company is the copyright owner?

For companies and other organisations other than government, duration of copyright is generally determined by reference to an individual creator's lifetime, even if that person never owned copyright (for example, because they created the material as an employee). In particular, there are **no** copyright duration rules that depend on how long a company lasts.

How do I work out whether something is "published" for copyright purposes?

You will see from the duration tables that, in many cases, the event that triggers the "copyright countdown" is the publication of the material. In this context, something is "published" if copies have been made available to the general public, whether by way of sale or otherwise. (As noted in the tables, in some cases the countdown can also be triggered by the material being "made public" by being performed, broadcast or recorded and sold.) In many cases, if something is not "published", copyright continues indefinitely.

The material has to have been made available with the permission of the copyright owner. If the material has been circulated without permission, or copies have been made by an educational institution, government or library relying on the Act, the material will not have been "published".

The fact that something is held in the collection of a library or a public institution does **not** mean that it has been "published" in the sense relevant to duration of copyright.

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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- 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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