



INFORMATION SHEET

G29

Names, titles and slogans

April 2006

In this information sheet, we give a brief overview of laws that may be relevant to the protection of names (such as names of people or companies), titles (such as book, film or song titles) and slogans (such as advertising or political slogans).

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au>.

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.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue 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 further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Generally, names, titles and slogans will not be protected by copyright.
- Company names, business names, domain names and trade marks can often be protected under other areas of law.

Copyright and names, titles and slogans

Copyright protection generally

Copyright law in Australia is contained in the Copyright Act 1968 (Cth) and in decisions of courts. Copyright is free and automatic. There is no registration procedure and there are no fees to pay.

The Act lists the categories of material that are protected by copyright. One of these categories is “literary work”, which includes novels, poems, newspaper articles and reports.

If something can be classified as belonging to a category of material listed in the Act it will be protected, if it is:

- “original”; (for copyright purposes, a work is “original” if it has not been merely copied from another work, and it results from its creator’s skill and labour); and
- recorded in “material form” (for example, on paper, on an audio recording or on computer).

Application of copyright law to names, titles and slogans

The Act does not specifically exclude names, titles or slogans from being “literary works” for copyright purposes. However, there have been a number of cases in which courts have held that particular names, titles and slogans are **not** protected and so one can now state that it is highly unlikely that a name, title or slogan will be protected by copyright. In these cases, the courts have generally arrived at their decisions because the name, title or slogan concerned is not an “original literary work” for copyright purposes. Factors that have influenced courts in reaching these decisions include:

- the word or phrase was not of sufficient substance to constitute a “work” for copyright purposes; or
- the phrase or sentence was commonplace.

Examples of names, titles or slogans which courts have held were **not** protected by copyright include:

- *Exxon*, a word invented as the name of a corporation;
- *Opportunity Knocks*, the title of a television program;
- *The Man who Broke the Bank at Monte Carlo*, the title of a song; and
- “The resort that offers precious little”, an advertising slogan.

The courts have not said that a name, title or slogan can never be protected by copyright. However, other areas of law will usually be more relevant. We outline the main areas below.

Company names

Companies must be registered with the Australian Securities and Investments Commission (ASIC). When applying for registration, you may apply to reserve a name. For further information, visit the ASIC website <http://www.asic.gov.au> (see links under the heading “Services”).

The fact that you have registered a company name does not, however, necessarily mean you can stop another person using the same name or a similar name.

Business name registration

Laws in each State and Territory require you to register a business name if you carry on business using a name other than your own or that of a registered company. If you are trading in more than one State or Territory, you may need to register in each of them. However, the fact that you have registered a business name does not necessarily mean you would be able to prevent another person using the same or a similar name.

For further information, contact the office in your State or Territory which registers business names:

- in NSW, the Department of Fair Trading (<http://www.fairtrading.nsw.gov.au/business/businessnames.html>);
- in the ACT, BusinessACT (<http://www.business.act.gov.au/businesslicences/businessnameregistration.html>);
- in Victoria, Consumer Affairs Victoria (http://www.consumer.vic.gov.au/cbav/fairsite.nsf/pages/of_bnames);
- in Queensland, the Office of Fair Trading or Smartlicence (<http://www.sd.qld.gov.au>);
- in SA, the Office of Consumer and Business Affairs (<http://www.ocba.sa.gov.au/businessnames/index.html>);
- in WA, the Department of Consumer and Employment Protection (<http://www.docep.wa.gov.au>);
- in Tasmania, the Department of Justice and Industrial relations (<http://www.justice.tas.gov.au/breg/index.htm>); and
- in the NT, the Department of Justice (<http://www.nt.gov.au/justice>).

Trade marks

The Trade Marks Act 1995 (Cth) provides a formal system of registration for “marks”, such as names and logos, which are used in the course of trade. Unlike copyright, protection under the Trade Marks Act requires registration and payment of a fee. Only names and marks capable of distinguishing the trader’s goods or services from another trader’s mark or name can be registered. Registration stops other individuals or companies using

the same or a deceptively similar name or mark in the course of trade. Trade marks are registered with IP Australia.

Even if a name, logo or other mark has not been registered but is being used in the course of trade, the person using the mark may have rights to prevent others from using the mark.

Registration of a name as a company name or business name does not necessarily entitle you to use the name as a trade mark, or to prevent others from registering and using your name as a trade mark.

More information is available from IP Australia, which has its head office in Canberra and a sub-office in each State capital city. IP Australia can be contacted on: 1300 651 010 or <http://www.ipaustralia.gov.au>.

“Passing off” and consumer protection laws

A person may be able to take legal action against someone who “cashes in” on his or her reputation in a market, for example, by using the name of a product in a way that misleads customers about where the product came from, who has endorsed it, or who made it. In such situations, legal action may be available under laws such as “passing off”, the Trade Practices Act 1974 (Cth) or State or Territory fair trading legislation.

Domain names

You can register an internet domain name with one of the accredited registers; they are listed at <http://www.ausregistry.com.au> and <http://www.auda.org.au>.

Note, however, that registration of a domain name does not necessarily enable you to stop another person using the same or a similar name.

Common questions

Can I stop someone else using my pen-name?

Generally, copyright does not protect a name, whether it is the real name of an author or a pen-name. However, if the writer has established a reputation in a pen-name, he or she may be able to prevent others from using the name in a way which causes confusion by relying on the law of passing off, or fair trading laws. A distinctive name may also be registrable as a trade mark.

Can I use the title of a song as the name of my shop?

Song titles are generally not protected by copyright. However, if the title of a song is also a “substantial part” of the lyrics of a song, you are likely to need the copyright owner’s permission to reproduce it. In copyright law, any part of a work which is important, distinctive, essential or recognisable is likely to be “substantial”.

Other areas of law, such as passing off, may also restrict your right to use the title of someone else’s song for the name of your shop, even if this would not be a copyright infringement.

Can I get any legal protection for the title of my book?

Book titles are generally not protected by copyright, so you will need to look to other areas of law for protection. You may, for example, be able to register your title as a trade mark. You may also be able to use passing off laws, or the Trade Practices Act or fair trading laws to prevent someone else from using your title in a way which would mislead or deceive consumers into thinking that you had authorised the use of your title for that product or service or were endorsing that product or service.

Do I need permission to use a few words from a book as the title of my own book?

You will not need to get permission unless the words you are using are a “substantial part” (that is, an important, distinctive, essential or recognisable part) of the work that you are taking them from. For further information, see our information sheet *Quotes & extracts: copyright obligations*.

How can I prevent someone else using the title of my book before it is published?

As discussed above, it is unlikely that your title is protected by copyright. Generally, you can't prevent someone using your book title before it is published, unless you disclosed it to them on a confidential basis (for further information see our information sheet *Ideas: legal protection*). If someone else thinks of the same title independently and publishes before you do, there is generally nothing you can do under copyright law to stop them. However, the title of the book will be protected if it has been registered as a trademark.

How do we protect our band name?

Band names are generally not protected by copyright, although other laws may apply. A band name may be registrable as a trade mark, and may need to be registered as a business name. If someone has established a reputation in connection with a band name, they may be entitled to prevent others from using the same or a similar name in a way that is misleading or confusing. For example, a band which has established a reputation in Sydney may be able to prevent another band in Sydney from using the same, or a deceptively similar name.

Can I protect the title of a show?

The title of a show is unlikely to be protected by copyright. However, a distinctive title may be registrable as a trade mark and/or a business name. You may also be able to prevent another person from using that title in a way which would mislead or deceive consumers under fair trading legislation and under the law of passing off.

Can I use a song title that someone else has already used?

In general terms, you will not need permission in order to use the same song title as someone else, unless the title is also a "substantial part" of the lyrics (see our information sheet *Quotes & extracts: copyright obligations* for information on what constitutes a substantial part). However, as noted earlier, if the person or band has established a reputation in connection with the song title, they may be able to prevent others from using the title in a way which causes confusion (for example, by relying on the law of passing off or fair trading laws), or to register the title as a trade mark.

Further information

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

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.

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.



Australian Government



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.

© Australian Copyright Council 2006