



Copyright protection in other countries

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In this information sheet, we give a brief overview of copyright protection given to Australian works being used overseas. We give more detailed information in our book *International Copyright Protection*.

If you would like information on protection for copyright material being used in Australia, please see our information sheet *Copyright in Australia: an introduction*.

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 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.

International treaties

Treaties to which Australia is a party

Australia is a party to a number of international treaties dealing with copyright:

- Berne Convention for the Protection of Literary and Artistic Works (members are listed on www.wipo.int/copyright);
- General Agreement on Tariffs and Trade or GATT, which includes the agreement on Trade Related Aspects of Intellectual Property Rights, or TRIPS (members of WTO are listed on www.wto.org);
- Universal Copyright Convention or UCC (members are listed on www.unesco.org—follow links to “culture”, “copyright” and “UCC”);
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, known as the Rome Convention (members are listed on www.wipo.int/copyright); and
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, known as the Geneva Convention or Phonograms Convention (members are listed on www.wipo.int/copyright).

In addition, Australia has bilateral treaties covering matters including copyright with Singapore, Indonesia and the United States, and is negotiating similar treaties with countries including China, ASEAN and New Zealand, and the United Arab Emirates.

Multilateral agreements between geographically related countries are becoming increasingly important. For example, European Union countries are required to implement Directives setting minimum standards in copyright and other areas of law, as determined by the member countries.

WIPO treaties

Two international treaties were adopted in Geneva on 20 December 1996, following the World Intellectual Property Organisation (WIPO) Diplomatic Conference on Certain Copyright and Neighboring Rights Questions. The treaties are:

- the WIPO Copyright Treaty; and
- the WIPO Performances and Phonograms Treaty.

Members of these treaties are listed at www.wipo.int/copyright.

The Treaties supplement the provisions of both the Berne Convention and the Rome Convention by providing expanded rights for copyright owners, performers and phonogram producers, including a right of communication to the public to cover online transmissions of copyright material, such as over the internet, a right of “distribution” and moral rights for performers.

Both treaties are now in force. Australia has not yet signed or ratified either treaty. However, Australia is required to ratify the treaties under its Free Trade Agreements with the United States (AUSFTA) and Singapore. Legislation intended to bring Australia into compliance with the WIPO treaties was passed in 2004. Most of these amendments came into effect on 1 January 2005. For further information, see our information sheet *Free Trade Agreement amendments*.

Effects of international copyright treaties

In order to become a party to the international copyright treaties, a country must legislate to achieve a minimum standard of copyright protection.

In most cases, it must also give protection for copyright material from all the countries which are party to the treaty (“national treatment”).

Most countries grant copyright protection to Australian material under international treaties. The countries that do this include: Canada, China, France, Germany, Hong Kong, Indonesia, Japan, South Korea, Malaysia, New Zealand, Singapore, the United Kingdom and the United States. Countries which do **not** grant protection to Australian material include Taiwan.

Minimum standards of copyright protection ensure that there is a basic level of copyright protection in all member countries, although the ways in which the legislation is implemented need not be uniform. Some examples of the kinds of minimum protection required are set out below. Many countries provide more extensive protection than the minimum required by treaties.

Type of material protected

The Berne Convention and TRIPS require countries to protect a range of material, including:

- written material such as books and reports;
- music;
- dramatic works such as plays and choreography;
- artistic works such as paintings, drawings and photographs;
- architectural works; and
- cinematograph works such as films and videos.

TRIPS expressly requires protection of computer programs and certain databases; there appears to be international agreement that the Berne Convention also requires protection of computer programs and certain databases.

Rights reserved to copyright owners

The treaties require certain rights to be granted in relation to the material covered by the treaty, such as rights relating to reproduction, public performance and communication of copyright works.

Types of people and activities protected

The Rome Convention and TRIPS require protection for performers, phonogram producers and broadcasting organisations. The Phonograms Convention requires protection for phonogram producers.

Period of copyright protection

The treaties require minimum periods of protection for the material they require to be protected. For example, the Berne Convention requires most works to be protected for the life of the author plus 50 years. However, some bilateral and multilateral agreements require longer periods of protection. For example, European Union countries are required to protect most works for the life of the author plus 70 years. As a result of the AUSFTA, the duration of copyright in Australia has been extended to the life of the author plus 70 years (with some exceptions, such as where the author died before 1955). For more information, see our information sheet *Duration of copyright*.

Protection for overseas material — “national treatment”

All the major copyright treaties require party states to give “national treatment”. This means that member states agree to extend the same copyright protection to works first published in, or created by nationals of, other member states as they do to works first published in their own country or created by their own nationals. This is called “national treatment”. This means that if copyright in an Australian work is infringed in, say, Japan, the copyright owner will be able to take an action under Japanese law.

Requirements for protection overseas

Most of the treaties require automatic protection, without formalities such as registration. The UCC, however, allows member countries to deny protection if the copyright notice does not appear on copies of published works. This is only relevant in practice if the country is party to the UCC and **not** party to the Berne Convention or GATT. Countries in this category at the time of writing include Cambodia, Iran, Iraq, Mozambique and Sierra Leone.

Before 1989, the United States denied protection to certain materials published without the copyright notice. However, copyright protection in the United States is now free and automatic. (See also our comments below concerning registration systems in other countries.)

The “copyright notice”


The “copyright notice” does **not** need to be on something before it is protected by copyright in Australia or in most other countries, but it does remind people that the work may be protected and identifies the person claiming the rights. In some cases, in Australia and some other countries, the notice can be used to provide evidence of ownership of copyright (although this is not conclusive). Copyright owners can put the notice on their work themselves; there is no formal procedure. 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”.

For a work that is constantly updated, such as material on a website, it is possible to include the years from the time of first publication to the present: for example, “© Gus O’Donnell 1998–2005”.

Sometimes you will see the words “All rights reserved” as well as, or instead of, the copyright notice. This is not necessary under Australian law. However, if you will be publishing or distributing in some South American countries, use of this phrase may be advisable.

If you think that the first publication of your work will be in a country outside Australia, you should seek advice from a suitably qualified solicitor in private practice.

Phonograms notice

For sound recordings, the letter “P” (for phonogram) in a circle or in brackets is used instead of the “C in a circle”. The Phonograms Convention allows a member country to require the symbol  and the year of first publication

to appear on copies of sound recordings (CDs or audiotapes, for example) in order to be protected in that country. Whether or not such a notice is **required** depends on the legislation in the particular country in which the sound recording will be published.

Countries with registration systems

Some countries, such as the United States, have systems for registering copyright material. As discussed above, it is not necessary for Australian material to be registered in order to receive copyright protection, if the country is a party to one of the copyright treaties. In some cases, however, there may be practical advantages in getting registration if the work will be published or distributed in a country with a registration system. In Australia, evidence of registration of copyright in another country may (like use of the copyright notice) be used as evidence of copyright ownership in legal proceedings, although it is not conclusive.

For information about registration of copyright in the United States, go to www.copyright.gov.

Moral rights protection overseas

In Australia, creators automatically have moral rights in relation to works they create. No procedure is required. For further information, see our information sheet *Moral rights*.

However, in some countries (including the United Kingdom and New Zealand), it is necessary to assert the attribution right in order to be able to enforce it. This is usually done by including in a published work a statement such as "The moral rights of the author(s) have been asserted" or "The author's right to be identified has been asserted". If your work will be published or distributed outside Australia, you should seek advice on this issue from a suitably qualified solicitor in private practice.

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.

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