



INFORMATION SHEET

G039v08

Sewing patterns: legal protection

May 2008

In this information sheet, we give a brief overview of copyright as it relates to the protection of sewing patterns for people who want to make garments and other sewn items using patterns or designs commercially available in a package (for example, patterns published by Vogue Patterns and Butterick) or appearing in books and magazines.

We also give some brief information about the legal issues which can arise if you are copying a garment or other sewn item from the physical item itself or from photos or drawings of the physical item.

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

- Sewing patterns, the written instructions for how to make something such as a garment, and the finished item itself may each be protected by copyright.
- You will usually need permission to reproduce a paper pattern, including using it to make a garment. However, you will usually have that permission if you are making up a garment or other item from a sewing pattern.

How does copyright affect sewing patterns?

Copyright protects a range of materials, including:

- “literary works” (such as written instructions for making a garment); and
- “artistic works” (including a grid design for a knitted garment, a paper sewing pattern, or a sketch for a dress).

For copyright purposes, the category “artistic works” includes what the Copyright Act refers to as “works of artistic craftsmanship”. Examples of items that are “works of artistic craftsmanship” would generally include handmade knitted garments, jewellery, lacework, embroidery and tapestry.

When do you need permission to use a pattern?

Unless copyright has expired, or an exception applies, permission is needed to “reproduce” a pattern – for example, by tracing or photocopying it, or by cutting out fabric or other material in accordance with the pattern. However, if you buy a commercially produced sewing pattern, you will normally be able to use the pattern to make the garment without needing to contact the copyright owner.

The copyright owner may have granted **express** permission to use the pattern in such a way, by including a statement about the way the patterns may be used. In some cases, an express licence may limit what can be done with the pattern – for example, it might state that the pattern may only be used for private or for non-commercial purposes.

If there is no express statement about ways you can use the pattern, you will normally be able to rely on an **implied** licence. This means that it is clear from the circumstances that you can use the pattern in a particular way, although not expressly stated. For example, you may normally make a garment or other item from a pattern or design that was sold to you for that purpose. You are also likely to have an implied permission to make up a garment or other item from a pattern or design that has been published in a sewing book or sewing magazine.

In practical terms, an implied permission to make up a garment or item from a pattern will usually be limited to making items for private and domestic use. This is because the licence will only cover use of the pattern to make the garments, not to make up any intermediate or commercial-grade pattern blocks, particularly as these usually have to be produced in different size ranges. Each case, however, will depend on all the circumstances.

Who to contact if you need permission

If you need permission (for example, because the copyright owner has expressly stated that the pattern may only be used for private use and you want to make commercial quantities, or because you want to re-publish the pattern itself), you will have to identify and contact the copyright owner.

Often the designer or the company he or she works for will own copyright. Where a pattern has been published in a book or in a magazine, the publisher may have relevant contact details.

When don't you need permission from a copyright owner?

Using ideas, information, techniques and methods

Copyright does not protect ideas 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, or a piece of writing.

Therefore, if you are simply using someone else's idea, information, technique or method to create a garment, you will not be infringing copyright. For example, the original idea of making a swimming costume in two pieces was not protected, but it is likely that the first bikini and the pattern for that bikini were protected as artistic works. Also, while a particular pattern for flared pants may be protected, the general idea of pants being flared is not.

Material no longer in copyright

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years, or where duration depended upon publication, the year of publication plus 50 years.

As a result of the Free Trade Agreement Australia entered into with the United States, the duration of copyright was extended, with effect from 1 January 2005. The general rule now is that copyright lasts for the life of the relevant creator plus 70 years, but only for material that was still in copyright under the old rules on 1 January 2005.

In summary, sewing patterns that fall into one of the following categories are now no longer protected by copyright and may be freely copied:

- patterns created by someone who died before 1 January 1955; and
- patterns published before 1 January 1955 either anonymously or under a pseudonym (including initials), where you don't know or can't reasonably discover who created them.

For detailed information, see our information sheet *Duration of copyright*.

Fair dealing for research or study

The Copyright Act allows a fair dealing to be made with copyright material for the purposes of research or study. Using a "reasonable portion" of a literary, artistic, dramatic or musical work is deemed to be fair.

For example, it may be considered a fair dealing for individual students to copy a design or a garment they have seen in a magazine for the purpose of a pattern-making class. Note that this exception would not cover making copies of the pattern or garment for the purposes of selling them.

For more information, see our information sheet *Copying for research or study*.

Copying by educational institutions

The Copyright Act provides a procedure under which educational institutions may make multiple copies of certain amounts of print material for distribution to students. Institutions relying on this scheme must undertake to pay “equitable remuneration” to the copyright owners. This is done through a collecting society, the Copyright Agency Limited (CAL), which collects the licence fees and distributes the money to the relevant copyright owners.

A sewing teacher working in a school, TAFE or other type of educational institution, who wants to make multiple copies of a pattern for his or her students, will be able to do so under this procedure, unless the pattern is commercially available.

For more information, see our information sheet *Educational institutions: introduction to copyright*.

Infringement of copyright

Copyright in a work is infringed if someone reproduces all or a “substantial part” of a work where no exception applies and the copyright owner has not given permission. Copyright in a two-dimensional artistic work may be infringed by making a “reproduction” – for example, by making a garment from drawings or by downloading a pattern from the internet. Copyright in a three-dimensional work may be infringed not only by copying in three-dimensions, but also by making a two-dimensional version – for example, by taking a photograph of a garment.

Reproducing part of a work may also infringe, if the part is important. A person does not necessarily avoid infringement by making changes – a court will look at what has been copied, rather than what has been changed.

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. Copying “stock” elements of a design, such as a Peter Pan collar or a princess line will not infringe copyright as those elements are unlikely to be protected by copyright. However, while stock elements will generally lack sufficient originality to be protected by copyright, a combination of stock elements in a particular garment or pattern may be protected if some skill and effort was used in creating something which is not a mere copy of a prior design.

As noted above, copyright is not infringed just because a new work is based on the same idea as an earlier work, because ideas are not protected by copyright. Further, you do not infringe copyright in a literary work that consists of a written set of instructions by making something following the instructions.

Making up garments and other sewn items by “reverse-engineering”

There are a number of provisions in the Copyright Act which limit the scope of copyright protection where an item might also be protected as a registered design under the Designs Act. These provisions are often referred to as the **design/copyright overlap** provisions.

These provisions may be relevant to you if you want to commercialise copies of someone else’s garment or sewn item by “reverse-engineering” it (for example, by taking the item apart to work out how to make copies.)

Prior to 17 June 2004, an individual or company producing a mass-produced item could generally take action for infringement if someone copied their work without permission. They could take such action, not on any copyright in the mass-produced item itself, but on the basis of copyright in underlying artistic works, such as a pattern or sketch or a design or manufacturing drawing, or even a prototype.

Generally, they were able to make such infringement claims not only where the relevant underlying artistic work was copied **directly** (for example, by copying their own pattern or design drawing), but where it was copied **indirectly** (for example, by taking the item apart to copy it).

Since 17 June 2004, however, unless the item satisfies the definition of a “work of artistic craftsmanship”, the owner of copyright in any underlying artistic work has **not** generally been able to take action for copyright infringement against competitors who “reverse engineer” a mass-produced item. Instead, the copyright owner has had to rely on the protection provided by design registration under the *Designs Act 2003* (Cth).

(The copyright owner can, however, still take action for copyright infringement if the person producing the copy of the item has **directly** copied one or other of the underlying artistic works – for example, from stolen patterns or from unauthorised copies of the pattern provided by a disgruntled employee.)

This area of law is complicated, and how the law applies depends on the particular facts and circumstances. Please note that the Australian Copyright Council does not advise on designs law. There is more information on the design/copyright overlap provisions in our information sheet *Designs for functional articles* and on IP

Australia's website (see *Further information* below). For advice on your situation, however, you should contact a lawyer in private practice with the relevant expertise.

Some common questions

If I change 10% of a pattern do I avoid infringing copyright?

Some people think that if they change a certain percentage of a pattern they avoid infringement. However, it is not what is changed that is relevant, but whether or not the part that remains, and that is copied, is an important or distinctive part of the original work.

How do I prove a design is my own?

People often ask how they prove that a design is their own when there are similarities in most designs. There are stock elements to many designs which are unlikely to be protected by copyright. For example, a design for an average T-shirt would not be protected by copyright. As explained above, a work must be "original" to be protected by copyright. A court may be asked to determine a dispute about who owns a design when it cannot be resolved by negotiation. The court considers all the evidence, which will include evidence from the designer as to how the design was created and perhaps evidence such as drafts of the design and sketches made at the time the design was created. It is therefore a good idea to keep copies of drafts and working drawings.

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.

Information about designs law, and online access to the Australian designs register, is available at IP Australia's website – <http://www.ipaustralia.gov.au>.

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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.



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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