



INFORMATION SHEET

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Family histories and copyright

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In this information sheet, we give a brief overview of copyright law as it relates to preparing family histories. It includes information on copyright protection for what you create and on using source materials and materials that other people have created.

More detailed information is available in our practical guides [Historians & Copyright](#) and [Writers & Copyright](#).

We update our information sheets from time to time. Check our website – www.copyright.org.au – to make sure this is the most recent version.

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.

Phrases in [blue](#) indicate a link.

Key points

- The first owner of copyright in a family history is usually the person who wrote it.
- Unless copyright has expired, or a special exception applies, you need permission to use all or an important part of someone else's copyright material in your family history.
- There are some special exceptions that may sometimes allow you to use copyright material in your family history without permission.
- It is not an infringement of copyright if someone else writes a family history which incorporates the same information found in a family history you wrote, as long as they have not copied the way you expressed or described the information.

What does copyright protect?

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and decisions of courts.

Copyright protects a range of materials which may be used or created in preparing family histories including:

- **literary** works (such as reports, biographies, diaries, newspaper articles, interviews, recorded oral histories, tables, charts, and compilations of material); and
- **artistic** works (such as paintings, photographs, maps and plans).

It is important to remember that one physical item may have a number of separate copyrights in it. For example, a book may contain photographs, maps, drawings, text and tables, each of which may be separately protected.

For information on other types of material protected by copyright, see our information sheet *An introduction to Copyright in Australia*.

Ideas and styles not protected

Copyright does not protect information, ideas, styles or techniques. Therefore, facts such as the names of relatives, places of birth, what jobs people had, who married whom and so on, are not protected by copyright.

Individuals are free to research material and to take information, facts and ideas from other sources to write about a topic. It is only when someone copies the way somebody has expressed themselves on a topic (for example, by copying that person's words or structure) that there may be an infringement of copyright.

Protection is automatic

Copyright protection in Australia does not depend upon registration, publication, a copyright notice, or any other procedure – the protection is free and automatic. However, it is a good idea to use the copyright notice to identify the person claiming the rights (see below).

Generally, copyright material is automatically protected from the moment it is written down or otherwise recorded (for example, on a computer disk or dictaphone).

For information on copyright in other countries, see our information sheet *Copyright protection in other countries*, available from www.copyright.org.au/introductory.

The copyright notice

The copyright notice is not necessary for protection in Australia and in most other countries, but it lets people know that the work is protected and who is claiming the rights. 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 the work was first made or published, for example: "© Bruce Windsor 2006".

Has copyright expired?

The period of copyright protection varies according to the type of material. In most cases, copyright lasts from the time the material is created until 70 years after the year of the author's death.

Before January 2005, the periods of protection were shorter – usually 50 years from the author's death, but even shorter in some cases (for example, for photographs). Copyrights in photographs taken before 1955 have expired. Copyright in a work whose creator died before 1955 is likely to have expired, if the work was published before then.

For more information, see our information sheet *Duration of copyright*, available at www.copyright.org.au/introductory.

Issues to consider when preparing family histories

Who owns copyright in material used to prepare my family history?

The general rule is that copyright in a work is owned by the person who creates it. The situation may be different if the person creates the work as part of their duties of employment or for a government, or if they assigned copyright to another person (for example, to a book publisher).

If the copyright owner has died

As with any other form of property, copyright passes to another person (or organisation) when the owner dies. If no beneficiaries are named in the copyright owner's will, it is inherited by the person who inherits the residue of the estate, or to the next of kin if there is no will.

If someone receives the manuscript of an **unpublished** literary, dramatic or musical work, or an unpublished artwork as a bequest under a will, it is presumed that that person also inherits the copyright. This rule only applies however, if the testator was the copyright owner at his or her death and provided the will does not give the copyright to someone else.

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

When do I need permission to use copyright material in my family history?

Permission is needed from a copyright owner if:

- you want to use a substantial part of his or her copyright material;

- you want to use the material in one of the ways exclusively reserved to the copyright owner; and
- there is no special exception which applies to your use.

We discuss each of these in further detail below.

Permission may be needed whether you intend publishing the work through a book publisher or only intend to provide copies to relatives and friends.

Substantial part

There is no particular amount which has to be used before you need to consider the copyright implications. Rather, you will have to consider copyright issues anytime you use a “**substantial part**”. As a result of the way this phrase has been interpreted by the courts, the question is whether or not the particular part used is a **distinctive, important or essential** part of the original work.

Depending on the nature of the work, using small parts might raise a copyright issue. Generally, the more original or recognisable the part taken, the greater the likelihood of it being a “substantial part”. However, if the first work consists of commonplace elements, the degree of similarity required between the two works will be greater.

For further information, see our information sheet *Quotes and extracts: copyright obligations* available from www.copyright.org.au/permission.

Exclusive rights of copyright owners

Copyright is a bundle of different rights. Owners of copyright in literary, artistic and dramatic works have exclusive rights including the rights to:

- “**reproduce**” the work (such as by making photocopies, copying it by hand, reciting it onto an audio tape, scanning it onto a computer disk or printing out a copy of a digital file);
- “**communicate**” the work to the public (such as by putting the written work onto a website, broadcasting or faxing it or emailing digital files containing the work); and
- “**publish**” the work (that is make the work public for the first time).

Unless an exception applies, you will need permission from the copyright owner if you are dealing with all or a “substantial part” of copyright material in any of these ways.

Does a special exception apply to your use?

In some circumstances you do not require permission.

For example, you do not infringe copyright if you make a **fair dealing** with a work for the purposes of your **research** or **study**. Generally, it is “fair” to deal with copyright material for research or study if you copy no more than:

- 10% of the number of pages or words;
- one chapter (such as from a book or report); or
- one article from a magazine, newspaper or journal (although you may copy more than one article if each article relates to the same subject matter).

If you want to reproduce more than these amounts, or if you want to use other material (including drawings, photographs and unpublished material), you will need to consider certain factors listed in the Act to work out whether in all the circumstances it is “**fair**” to use the material or whether you will need to get permission. For further information, see our information sheet *Research or study*.

This exception will only be available to you, however, at the research stage. When it comes to publication, there is another “fair dealing” exception you may be able to rely upon – the **criticism** or **review** exception. To be able to rely on this exception, you must acknowledge the author and title of the work and the purpose of the criticism or review must be genuine. For further information, see our information sheet *Fair Dealing*, available from www.copyright.org.au/permission.

Also, an **unpublished** work may be **copied** and communicated to you by a **library** for a patron’s research or study if:

- it forms part of the collection and is available for public inspection; and
- its author died more than 50 years ago.

There are no administrative or paperwork requirements associated with this provision.

You may also **publish** a **literary, dramatic or musical** work if:

- it is unpublished, is held in a library or archive open to public inspection, and 50 years have elapsed since the death of its author;
- the identity of the copyright owner is unknown; and
- a notice is published in the Commonwealth Government Gazette between two and three months before the date of publication of the work (for information about the content and form of the notices, see regulation 5 of the Copyright Regulations).

How do I get permission?

If you need permission for material which has appeared in a published source, the first step is usually to contact the publisher of the item in which that material appeared. The publisher may be able to give you permission, or refer you to the person or organisation that can.

If you need permission for unpublished material, such as personal letters, sketches, photographs or diaries, you should contact the copyright owner (generally the creator). If the creator has died, copyright may have passed to that person's next of kin. Copyright can be bequeathed to a number of people under a will. If this is the case, you will need to get permission from each of the joint copyright owners.

For more information, see our information sheets *Owners of copyright: how to find* and *Artworks: getting permission*, available from www.copyright.org.au/permission.

When is copyright infringed?

Generally, copyright is infringed if you should have gotten permission to use material protected by copyright but didn't.

Note, however, that copyright is not infringed just because a new work is based on the same idea or the same information as an earlier work. For example, writing about the same family or the same events does not infringe copyright in another person's work, unless you reproduce original elements of the way the other person has expressed themselves (including the way the other person has selected and arranged their information).

Authorising other people to infringe copyright can itself be an infringement (for example, by asking a printer or publisher to make copies of something which infringes).

Moral rights

Creators of copyright works have "moral rights" in their works, whether or not they also own copyright. These are separate from copyright, and impose certain obligations on people who use a copyright work. These obligations include:

- attributing the creator as author of a work;
- not falsely attributing something to someone; and
- not degrading a work or treating it in a way that will damage the creator's honour or reputation.

Therefore, if you are using someone else's copyright material you will need to properly attribute the work and treat the work with respect.

For more information, see our information sheet *Moral rights*, available from www.copyright.org.au/introductory.

Copyright in your work

Who owns copyright in the family history that I have prepared?

The general rule is that copyright in a work is owned by the creator of the work. Therefore, if you write about your family history, you will own copyright in what you have written.

Generally, commissioning a copyright work does **not** make you the owner of copyright unless you reach an agreement to the contrary. There are exceptions to this general rule (for example in relation to some commissioned photos). For more information, see our information sheet *Ownership of copyright* available from www.copyright.org.au/introductory.

What rights do I have as the copyright owner?

As the copyright owner, you will have the rights discussed above under the heading “*Exclusive rights of copyright owners*”.

Providing a copy of a family history to a library

Even if you give a copy of your family history to a library for its collection, you will still own copyright in the work you created. However, there are situations in which material, including material in libraries, may be copied for research or study.

If your family history is likely to be copied by governments or educational institutions, you should consider joining Copyright Agency Limited (CAL). This organisation administers a range of schemes in the Act under which material can be copied without permission, provided payment is made. For more information see CAL’s website: www.copyright.com.au.

Common questions

My sister is using information which I have researched for my family history book in her book. Can I stop her?

No. Copyright protects the expression of ideas or information, not the actual ideas or information themselves. Therefore individuals are free to research material and to take information, facts or ideas from other sources to write about a topic. In some cases, however, people who acquire information can be prevented from disclosing it without consent under the law of confidential information. You would need to get specific advice from a lawyer in private practice if you wanted to investigate whether this area of law might apply here.

Who owns copyright in an oral interview?

Where an oral history is given as a monologue which the interviewer merely records, copyright in the interview will be owned solely by the person being interviewed. However, where an interview is structured, or where the taking down of the history has involved some skill on the part of the interviewer, copyright may be owned by both the interviewer and the person being interviewed, or even by the interviewer alone.

It is unclear what degree of prompting will “convert” a monologue oral history into a literary work created by more than one “author”. It is always advisable to seek an interviewee’s permission to use material and it is advisable to have some form of written agreement with the person giving the interview which states the uses you may make of the interview. Generally, to make the grant of permission binding, you should give an interviewee something in exchange for their permission – for example, a copy of the recording on a cassette or a transcript on paper or disk.

Who owns copyright in a sound recording of an oral history?

There are two distinct copyrights in an oral history recording: one in the words of the oral history and one in the recorded sounds.

As a result of changes to the Act following the AUSFTA, in the absence of an agreement to the contrary, the first owners of copyright in a sound recording of a “performance” (such as the recitation of an oral history monologue) are the performer/s (for example, the person reciting the oral history monologue) and the person who owns the master recording medium.

However, performers will not own a share in the copyright in the sound recording if:

- the interview was given in the course of their employment; or
- the recording was commissioned (for example, a museum pays a freelancer or company to record the interview).

Great Aunt Agatha has told me all about the family. Will she own copyright in the history I am preparing?

Merely contributing information to a family history does not mean that Great Aunt Agatha will own copyright.

Generally, Great Aunt Agatha would only own copyright in the history you are writing if you were writing her story down as she dictates it. Where you are using information given to you by relatives, but writing the history in your own words, you will own copyright.

Your ownership of copyright will not, however, prevent someone else writing their own version of the family history.

Are personal letters protected by copyright and, if so, who owns copyright in them?

Generally a personal letter is protected as a “literary work” and copyright in it will usually be owned by the person who wrote the letter. If the writer has died, copyright will usually be owned by his or her spouse or children. You may be able to check this if you can get a copy of the writer’s will (in Australia, contact the Probate Division of the Supreme Court in the State where the author died).

I have commissioned someone to write our family history. Do I own copyright?

Even if you provide all the information for the history, the writer of the history will generally own copyright, unless you reach some arrangement to the contrary.

This is because the general rule is that the “author” of a work is the first owner of copyright. When a work is commissioned, the person who creates the work is the owner of the copyright but the paying client has a licence to use the work for the purpose(s) for which it was commissioned. This general rule can be altered by an agreement.

If you want to own copyright in a particular written version of your family history, you will need to persuade the writer to assign the copyright to you. An assignment must be in writing and signed by the copyright owner to be legally effective.

For more information, see our information sheet *Ownership of copyright*, available from www.copyright.org.au/introductory. See also the standard contracts promoted by the Australian Society of Authors in *Australian Book Contracts* (3rd ed, Keesing Press, Sydney, 2001).

Can I use family photographs to illustrate my history?

Photographs taken prior to 1 January 1955, are now in the public domain. As a result, you can reproduce them without permission. However, you may need permission to gain access to the photographs if they are owned by someone else.

If a photograph was taken on or after 1 January 1955, it is still protected by copyright and you will generally need to get permission from the copyright owner before publishing your history.

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

Making changes to someone else’s work does not mean that you will necessarily have avoided any copyright issues. In copyright law, it is not a matter of what you change but what you have copied that is relevant. If the part you use is an important or distinctive part of the original, you still have a copyright issue to deal with even if it is proportionally small.

I am writing a family history book to distribute amongst relatives. Do I need to get permission to use quotes in the book?

You will need to get permission if a quote is a “substantial part” of something which is protected by copyright. It may be, however, that some quotes and extracts are not protected by copyright or do not constitute a “substantial part”.

For further information on using quotes, see the above heading “*Substantial part*” and our information sheet *Quotes and extracts: copyright obligations* (available at www.copyright.org.au/permission)

Note that, even if a part is not a “substantial part” for copyright purposes, you may still need to attribute it to the person who wrote it (see “*Moral Rights*” above).

While researching for my family history, I found a Copyright Certificate from 1917. What does this mean?

Prior to the operation of the Copyright Act 1968 (Cth), people could voluntarily register their copyright with the Australian Intellectual Property Office. The current Act does not provide for a copyright registration system.

For further details, write to the National Archives of Australia: website www.naa.gov.au.

Further information

For further information about copyright, and about our other publications and training program, see our website – 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 www.copyright.org.au/advice.

Information from the Arts Law Centre of Australia may also be of interest to you: see www.artslaw.com.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.



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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