



## INFORMATION SHEET

G056v06

# Internet: copying & downloading material

February 2008

This information sheet is for people who want to copy or download material from the internet or “swap” files over the internet using P2P software and networks. (P2P software connects individual users with each other over networks, allowing them to share files directly, without those files being stored centrally.) We also provide some comments on copyright issues relating to email.

If you want to know about creating a website or publishing on the internet, see our information sheet *Websites: creating & publishing on the internet* and our practical guide *Websites & Copyright*.

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

- Material on the internet may be protected by copyright, as may emails.
- In many cases, permission to download material from a website is given on the site itself, but the fact that material is available to be viewed on a website, or is accessible using P2P software or networks over the internet, or is contained in an email, does not, by itself, mean that you can use it as you wish.
- Do not assume that everything on the internet or in an email was put there or copied with the permission of the copyright owner: if the material was pirated, or the person hosting the site or sending the email was not in a position to give a permission on behalf of the copyright owner, you will infringe copyright if, for example, you download or copy it.

## What does copyright protect?

In Australia, copyright law is set out in the *Copyright Act 1968* (Cth). In many cases, courts have made decisions on how the Act is to be interpreted and applied in various situations.

The types of material which can be protected by copyright include:

- “literary works” (such as novels, poems and lyrics, reports, instruction manuals, newspaper articles and letters);
- “artistic works” (such as drawings, paintings and graphic art, as well as more technical works, such as industrial photographs, buildings, design drawings, maps and plans);
- “musical works” (such as notated music);
- “dramatic works” (such as screenplays and choreography);
- “computer programs” (includes both object and source code, including code and programs underlying websites, as well as programs for spreadsheets, word processing and other applications);

- “compilations” (such as anthologies, directories and databases);
- “cinematographic films” (such as feature films, TV programs and music videos); and
- “sound recordings” (such as music or voice recorded on audio cassette, on compact disc or in digital files).

Material which fits into these categories can be protected whether it is in hardcopy form, such as in a book, or in digital form, such as on a CD, a file or in an email. Even very simple emails of text might be protected: in one case concerning printed material, the instructions on a seed packet were held to be protected as a literary work.

Copyright protection generally lasts for the life of the creator plus 70 years. However, under Australian law, copyright has expired in material created by people who died before 1955, provided it was also published before then. For detailed information see our information sheet *Duration of copyright*.

## How do you get copyright protection?

Copyright protection is automatic; there is no system of registration in Australia. A work doesn't need to be published, or have the copyright notice on it, to be protected. As soon as something like a literary work or a musical work is written down or recorded in some way it is protected, provided it has resulted from its creator's skill and effort and is not simply copied from another work.

As a result of international treaties such as the Berne Convention, most foreign copyright owners are also protected in Australia, and Australian copyright owners are protected in most other countries. For more information about international protection, see our information sheet *Copyright protection in other countries*.

## When might you infringe copyright?

Copyright owners have a number of rights, including the right to control the “reproduction” of their material and the right to control the “communication” of that material “to the public”.

The right of “communication” is a relatively recent right within the Copyright Act; it subsumes the broadcast and cable diffusion rights which existed in the Act between 1969 and 2001, and ensures that making material available online and transmitting over the internet is within the scope of a copyright owner's legal rights.

Generally, you will infringe copyright if you use copyright material in one of the ways that copyright owners control, without permission, in circumstances to which no exception applies. For example, you might infringe copyright if you do any of the following:

- print material from a website or a bulletin board without express or implied permission;
- upload or download a pirated version of a movie or pirated copies of a song or software;
- save material from a website or a bulletin board onto your hard drive without express or implied permission;
- make material such as songs, software, TV programs or movies in which someone else owns copyright available from your computer over a P2P system or through the use of P2P software;
- email material from a website or a bulletin board to other people without express or implied permission.

## What's the difference between “express” and “implied” permissions?

You will have an “express” permission if, for example, there is a statement on a website which states that you may do certain things (for example, where it states that you can download a document for personal or non-commercial uses). Some material made freely available on the internet is distributed by its creators under *Creative Commons* licences. There are several versions of the licences containing express permissions to use the material in certain ways, usually indicated by the Creative Commons' logo, and a link to the relevant terms or conditions. For further information see our information sheets *Creative Commons licences* and *Assigning & licensing rights*.

You will also have an “express” permission if, for example, you email a request for permission and get a reply which expressly allows you to use the material. Your right to use the material, however, may be limited by the terms of the permission granted, and/or by any conditions that the copyright owner imposes.

An “implied” permission, on the other hand, is a permission which is not spelled out, but which is implied from all the circumstances. Generally, implied permissions are very limited in scope.

For permission to be implied, a website has to be very clear. For example, it could have a button that says “printer friendly version” or “email to a friend”. In the case of these two examples, it is unlikely that you could imply a

permission to use the material on the site for a commercial purpose, but you could at least print out a copy, and email the material to friends. Generally, if you want to use the material from the internet for a commercial purpose, look for an express permission on the site, or email the website administrator in the first instance for permission.

Remember, however, that before you can rely on a permission – whether express or implied – you need to be sure that the copyright owner of the material on the internet has either given or authorised it.

## Common questions

### Is everything on the internet in the “public domain”?

The term “public domain” is used in a couple of different ways: for material in which all copyright has expired, and for material, such as software, where the copyright owner gives very broad permissions to people to use it.

The fact that something is on the internet does not mean that it is “copyright-free” or “in the public domain” in either of these senses.

#### *Material in which copyright has expired*

On 1 January 2005, the general term of copyright protection changed from being the life of the creator plus 50 years to the life of the creator plus 70 years; protection for material still in copyright on that day was extended by 20 years. Once copyright has expired, the material may, from the copyright perspective, be freely used.

For detailed information on the duration of protection, see our information sheet *Duration of copyright*.

#### *Broad permissions*

If something like software is labelled “public domain”, it is likely that the label refers to a very broad permission given by the copyright owner. In these cases, you may be able to do a variety of things with the material, including copying and downloading it.

However, you should not assume that you can do anything at all with the material. Rather, you should check the terms of the “public domain” statement to see whether or not what you want to do is permitted. There is at least one case we are aware of where a company infringed copyright by bundling software labelled “public domain” with other software and selling copies as part of a package.

### Can I print and/or download material from the internet?

In general, you shouldn't assume that you are entitled to print or download everything you can access on or over the internet. Some material on the internet is infringing material – it is there without the copyright owner's authorisation. Similarly, material that you can use P2P software to access and copy may be infringing material.

Where you are accessing material on a website, you should check to see if there is a statement about copyright on the site – website proprietors often state what you can and can't do with material on their site. In some cases (for example, legitimate download sites for software and music and websites of record companies, publishers and independent bands), you may be allowed to download material under certain terms and conditions either for free or in return for a specified payment.

If there is no express statement about copyright on sites, you may still in some cases be able to copy or download, but only if that is implied from everything on or relating to the site.

### Can I copy small parts of a work available on the internet?

Copying part of a work may infringe copyright if the part is a “substantial part”. In this context, a “substantial part” does not mean a large part: it means any part that is important, distinctive or essential. You need to consider the importance of the material you copy to the work from which it is taken, rather than its importance to the web page or the website (which will usually be a collection of separate works – for example, a number of images and some text).

For more information, see our information sheets *Quotes & extracts* and *Artworks & copyright*.

## **Can I download files from the internet or files I find using P2P software?**

As with other copyright material, the mere fact that something is available on or over the internet does **not** mean that it can be copied or downloaded without infringing copyright.

If a copyright owner has given permission, you may download a file from an authorised website or through P2P software. Many of the major record companies offer music downloads through their sites or those of their partners such as iTunes. Many independent bands and labels offer MP3 downloads through sites such as chaosmusic.com and MP3.com.au, as well as through their own sites. Some TV stations are also beginning to make programs they broadcast available online. Sometimes, files are free to download; in other cases they are subject to payment.

However, the fact that you can locate a file on a file-sharing network through P2P software does **not** mean that you can copy it, even for personal use. There are a number of sites that even say that copying material over networks using their software is legal. However, these statements are not true: you **will** generally need permission to copy someone else's material.

In Australia, there are at least three people who have ended up with criminal records as a result of illegal file sharing of music files. Another man received a criminal conviction after he recorded *The Simpsons Movie* in an Australian cinema on his mobile phone and placed a copy on a US-based website before the US release date. In yet another case, a provider of P2P software settled a court dispute by paying over \$150 million to record companies whose copyright in music files was infringed.

## **Can I use information from the internet?**

Copyright protects the way information and ideas are expressed (for example, in words), rather than the information and ideas themselves. You can always use the internet to find and view information about a particular subject in much the same way as you use a library.

You do not infringe copyright if you express in your own way (for example, by using your own words or diagram) information or ideas you have found on the internet. You may, however, infringe copyright if you copy all or a "substantial part" of someone else's expression (for example, a document): see our information sheets *Quotes & extracts*, *Fair dealing* and *Research and study*.

## **How can I tell if I am accessing a website with illegitimate (infringing) material?**

You'll need to adopt a common sense approach in working out whether or not content on a site is likely to be infringing. The legitimacy of material will be questionable where it is available for free from third party sources, is of low quality and/or is available before a published release date. In particular, if a site offers free copies of a vast range of popular music or free copies of the very latest movies from someone other than the copyright owner, there's a strong likelihood the copies are pirated and you will infringe copyright if you download a copy.

## **Can I put an article or images I have downloaded from the internet onto our intranet?**

First check whether or not there is a statement on the site about what you are permitted or not permitted to do. If there's no statement permitting you to put the material on an intranet, you will generally need to get permission from the owner of copyright to do so. You may be able to do this by sending an email to the general email address on the website, or to the webmaster.

There are, however, provisions that allow governments and educational institutions to do various things with copyright material, including placing that material on intranets: see our information sheets *Governments*, and *Educational institutions*.

## **Can I copy material from the internet for my clients?**

Again, first check whether or not there is a statement on the site about what you are permitted and not permitted to do. If there is no statement permitting you to make copies of the material for others, it's likely that you will need to get permission from the owner of copyright to do so. You may be able to do this by sending an email to the general email address on the website, or to the webmaster.

### **Can I forward part of the text I've seen on an interesting site to other people?**

Again, first check whether or not there is a statement on the website about what you are permitted and not permitted to do. If there is no statement permitting you to forward the material to others, it's unlikely that you may do so without getting express permission. You could email your friends or colleagues the URL for the site, though, so that they could see the text for themselves in context.

### **Can I reproduce a web page in my magazine for the purpose of reviewing the site?**

You will not infringe copyright by reproducing material for the purposes of criticism or review, provided this is your real purpose, your use is fair, and you give "sufficient acknowledgment" of each work that you reproduce (for example, each image and each piece of text).

"Sufficient acknowledgment" means identifying the work by its title or description and – unless the author is anonymous, uses a pseudonym (pen name) or does not want to be identified – identifying the creator (for example, the writer of the text or the designer of the graphics): see our information sheet *Fair dealing*.

### **Can I copy material from the internet for an assignment?**

Generally, you may print and/or save material to disk if:

- it is for your research or study; and
- the copying is "fair" (for example, it doesn't interfere with the legitimate market for the item).

For more information, see our information sheet *Research or study*.

However, if you have accessed the material by having to agree to terms or conditions (for example, by clicking an "I accept" button), you should look in those terms or conditions to see what you can do with the material. If the terms and conditions prohibit the use you want to make of the material, you might breach the contract by going ahead and using it in that way (even though you would not be infringing copyright).

### **How do I get permission?**

Start by contacting the website proprietor and/or the webmaster (there will usually be email addresses for them on the website). See also our information sheet *Copyright owners: how to find*.

### **Can I forward an email I have received to someone else?**

Copyright issues arise when an email is forwarded because a reproduction will be made on the computer used by the recipient and a copy may also be stored as a sent item in your email account. Where emails are sent in a business or educational context (or any context other than between family and friends), the sending will also constitute a "communication to the public".

In many situations, however, there will be an implied permission from the copyright owner to forward an email. For example, in the context of an organisation, business or government department, it would generally be relatively easy to argue that there was an implied permission to forward an email received by the organisation to relevant people in the organisation (such as administrative staff and the people who might be expected to deal with the issues raised in the email).

## **Further information**

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>. In particular, if you work in a library, see our practical guides *Libraries & Copyright* and *Libraries: managing licences for digital resources*; if you work in an educational institution, see our practical guides *Educational Institutions: Text, Images & Music*, *Educational Institutions: Digital & AV Resources*, and *Educational Institutions: Copyright Compliance Resources*. For more information about policy issues, see our discussion papers *Copyright & the Internet* and *Fair Dealing in the Digital Age*.

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.

## 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.*

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