



## Websites: an introduction to copyright

This information sheet is for people who are familiar with the basic copyright principles set out on our website at [www.copyright.org.au/information](http://www.copyright.org.au/information). There is more detailed information in our guide *Websites & Copyright* ([www.copyright.org.au/b106](http://www.copyright.org.au/b106)) Check our website at [www.copyright.org.au/websites](http://www.copyright.org.au/websites) to make sure this is the most recent version of this information sheet, and for links to Q&As, more information, publications and training.

**These notes give introductory information only. If you need to know how the law applies in a particular situation, please get advice from a lawyer.**

### Key points

- Whole websites are not protected by copyright. However, component parts of a website, such as text, artworks, logos and the underlying source code and files, may be protected.
- When a website designer is paid to create a website, it's a good idea to have a written agreement that, among other things, specifically deals with copyright and moral rights issues.

### Copyright protection and websites

A website, as a whole, is not protected by copyright. Rather, individual components of it are likely to be protected. For example:

- text, including song lyrics ("literary works");
- photos, logos and other images ("artworks");
- music;
- sound recordings;
- video files and animations ("cinematograph films"); and
- tables of words or symbols ("compilations").

### Using third party material in websites

In most cases, you will need permission to upload onto your website any material that wasn't created by you or your organisation.

If a client owns copyright in material and supplies it to you to use on a website you are creating for him or her, you will have "implied permission" to use it for this purpose (see below).

### ***When can you use material without permission?***

You won't need to get copyright permission if:

- the material is not protected by copyright (for example, ideas, information, names\*);
- copyright has expired (for example, a photograph taken before 1955);
- you are not using a "substantial part" of the work (for example, you are reproducing one sentence from a full-length novel); or
- a special exception applies (for example, your use of the material is a fair dealing for criticism or review, for reporting news, or for parody or satire).

*\*Note, however, that in some cases other areas of law may be relevant – for example, trademark or trade practices law may affect your rights to use names or slogans in particular ways.*

Exceptions to infringement are limited: see further our information sheets *Fair dealing* and *Parodies, satires & jokes*.

### ***When do you have express or implied permission?***

#### *Express permission*

In some cases, you may not need to contact the copyright owner directly because he or she has already granted express permission for anyone to use the material in certain ways. For example, websites or printed documents may contain statements about how the reader is entitled to use the material. Software (such as for web-authoring software) is almost invariably accompanied by express licence agreements.

Similarly, material available on the internet is sometimes covered by a generic licence such as those promoted by Creative Commons. Many of these permit commercial and non-commercial uses.

In each case, check that the licence covers what you want to do. Such permission may be subject to terms and conditions (such as acknowledgment of the source or creator of the material, not making changes to it, or non-commercial use only). If you want to use the material in ways that aren't covered by the express licence, you will have to ask for permission directly.

### *Implied permission*

In some cases you may have permission (a licence) that is implied from the circumstances, even though the copyright owner has not expressly granted permission. For example, if you commission an artist to create a logo for use on your website, you will have implied permission to use the logo for that purpose.

The scope of an implied licence is the **minimum** necessary to make sense of the situation. For this reason, and because it can be hard to work out the precise limits of an implied permission, it's generally preferable to get **express permission in writing** for all uses you are likely to want to make of the material. The fact that material is already on the internet does **not** mean you have implied permission to download or otherwise use it.

## **Getting permissions (clearances)**

### *Identifying and locating a copyright owner*

Generally, the creator of the material (or his or her employer, if it was created as part of his or her job) owns copyright in it. However, in many cases, the creator may have assigned or licensed some or all of the rights to someone else. For example, book authors often grant publishers extensive rights to negotiate on their behalf.

The following points will help you to find and contact the person who can give you permission:

- if the material has been published, contact the publisher for permission or information;
- if you find the material on a website, contact the website proprietor for permission (unless it appears that the material is on the site without the copyright owner's permission – for example, a pirate music website);
- if the material is in hard copy, look at the information on the packaging, cover or imprint page for information about the copyright owner, publisher or the appropriate person to contact;
- if the material was published or commissioned by a government, contact that government for permission; and
- relevant collecting societies or professional bodies may be able to help you contact copyright owners.

For more detail, see our information sheets *Owners of copyright: how to find* and *Artworks: getting permission*.

### **Collecting society licences**

In some cases, copyright collecting societies are able to grant you a licence covering all the material they control. This coverage can be very extensive, and often includes not only material which comes from other countries but also activities in those other countries which result from your use of the material on your website. This is because most collecting societies have reciprocal arrangements with similar organisations in other countries.

APRA/AMCOS can grant licences for certain online uses of **music**. Information is provided on its website: <http://www.apra.com.au>. Separate permission may be needed if you wish to use pre-existing sound recordings (rather than making your own recording of the music). Usually, the record companies control the rights in **sound recordings**.

VISCOPY can grant licences for online use of artworks created by members: see <http://www.viscopy.com>.

### **Points to note when getting permission**

It's very important that you get any permission from the person or organisation entitled to grant that permission. In practice, if you have any doubts as to whether or not the person or organisation purporting to give you permission is in a position to do so, you could ask for evidence, or for a warranty and indemnity from the person granting permission – or find different material to use.

Make sure the rights you ask for "match up" with what you want to do with the material. If, for example, you want to allow visitors to your site to print out copies of the material, or you wish to sell copies, or make translations, you will need to ensure the clearance you get allows you to do so.

For further information, see our information sheet *Assigning & licensing rights*.

## **Moral rights**

Creators of copyright material have the following rights:

- to be attributed when their work is used;
- not to have their work falsely attributed to someone else, nor to have the altered work attributed as if it were unaltered; and
- not to have the work treated in a manner that would prejudice the creator's honour or reputation.

In some cases, you may be able to defend yourself against a claim by arguing it was **reasonable** not to attribute a creator or to treat the work in a way that

could prejudice the creator's honour or reputation. However, in most cases it is preferable to get the creator to consent to the way you want to use his or her material, if possible.

For further information, see our information sheet *Moral rights*.

## Linking to third party websites

### *The legal position*

The legal implications of providing hyperlinks are not entirely settled. However, in general terms, and subject to the comments below, it's unlikely that simply providing a link raises copyright issues under Australian law.

Providing a link to a website's home page is unlikely to raise objections. Many website proprietors do, however, object to "deep linking" – that is, providing links to pages within a website, bypassing the home page. There may be a number of reasons for this, including a wish to ensure visitors to the website see the home page and are counted for revenue purposes, and a wish to ensure that links to out-of-date material are not maintained. Note also that, in some circumstances, linking may raise issues under areas of law such as trade practices law.

We understand there are **technological** methods available to make it difficult or impossible to link to particular pages on a website, or to limit access to particular parts of a website. However, it would currently appear difficult for a website proprietor to use **legal** arguments to attack deep linking unless all visitors to the website (or particular sections of it) enter an agreement not to make deep links, as a condition of access.

### *When can linking get you into trouble?*

#### *"Authorising" infringement*

If your website links to material that infringes copyright or to websites that you know contain infringing material, you could be held liable for authorising infringements by visitors to your website who follow the links.

In 2005, the Federal Court held that Cooper, the proprietor of a website called "mp3s4free.net" was liable for authorising infringements, because the website encouraged users to post links to files of recorded music and to download those files by clicking on the links (*Universal Music v Cooper* (2005) 65 IPR 409). Cooper hadn't placed the links on the site himself, but he was aware that many linked to material that infringed copyright. He took no steps to check the legality of the linked files, and encouraged users of the website to access and download material.

#### *"Framing" material from other websites*

It is possible to "frame" material from other websites within your own, so that visitors to the site see the material without being aware they are actually looking at a different website. This practice may not raise issues under copyright law; however, in many cases this technique may put you at risk of action under other areas of law, such as trade practices law (especially if you are framing material from the website of a commercial rival). It is generally preferable to make it clear to the user that he or she is looking at a different website, and therefore it is probably a good idea not to frame material from other websites without permission.

## Agreements between website designers & clients

As with any other agreement in which someone is commissioned to produce material, it is highly desirable to have a written agreement setting out exactly what is required of each party, and what rights each party will have in relation to the completed material. In many cases, especially for website designers who regularly work on commission, it is a good idea to get a lawyer to draft a standard agreement appropriate to your situation.

Some of the issues that are particularly relevant to agreements relating to the construction of websites are:

- who is responsible for clearing third party material and getting any moral rights consents that may be necessary (this may depend on who provides the material);
- whether or not the client is entitled to revise or update the site;
- whether the designer is required to hand over any digital files (or physical media on which such material is stored) relevant to the website;
- credits for the designer & creators of website material; and
- who will own copyright in any material created for the site (including any material not ultimately used).

## Protecting your website

### *Copyright protection*

Any copyright material you create for your website (such as text, photos and artworks) is automatically protected by copyright as soon as it is saved to disk or otherwise in "material form".

Copyright protection gives the copyright owner a legal basis for taking action if his or her copyright is infringed. However, it is generally up to the copyright owner to identify infringements and take action: there

is no organisation set up to investigate or prosecute infringements on behalf of copyright owners.

### **Contracts**

Legally binding agreements can be a useful way to set legally binding conditions on people accessing information or services on your site. A common way to achieve this is to require users to agree to stated terms and conditions of use in order to get access to the material or service.

### **Other legal protection**

In some cases you may be able to rely on other areas of law to protect your website. For example, trade practices law and the law on passing off may allow you to take action against a competitor who creates a website with a similar “look and feel” in order to mislead your customers into thinking they are using your website.

### **Practical approaches**

Legal methods of protection do not actually prevent others from using your material in ways that may infringe your rights: they simply give you the right to take legal action in those circumstances. There are, however, various practical or technological approaches you can consider to make it more difficult or less appealing for people to infringe your rights. These include:

- using a “copyright notice” on your site, together with clear statements as to what people can or cannot do with material on the site;
- making it clear how people can contact you for permission to use material on your site;
- considering whether any or all of the material on your site should be “read-only”;
- preventing users from making direct links to particular pages or areas;
- considering whether there are pages you should make unavailable to search engine indexing “bots”;
- using low-resolution images; and
- limiting access to particular pages or areas of your website (for example, by use of passwords).

### **Further information & assistance**

- **copyright information:**  
[www.copyright.org.au/information](http://www.copyright.org.au/information)
- publications: [www.copyright.org.au/publications](http://www.copyright.org.au/publications)
- training: [www.copyright.org.au/training](http://www.copyright.org.au/training)
- assistance with a specific copyright issue:  
[www.copyright.org.au/assistance](http://www.copyright.org.au/assistance)

### **Reproducing this information sheet**

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**The Australian Copyright Council** is a non-profit organisation, with five full-time and four part-time staff. The Council’s services include providing information, assistance and advice in response to nearly 4,500 enquiries a year, publications, training, research and submissions on copyright policy.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body