



INFORMATION SHEET G61

Importing copyright items

August 2005

In this information sheet we give some introductory information about when you may need a copyright clearance to import items into Australia for commercial purposes and when you may be able to import without a copyright clearance.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

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.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Owners of copyright in some types of material have the right to control importation of their material into Australia for commercial purposes, whether the items are infringing or not.
- Material that can be imported without permission includes non-infringing sound recordings and items containing non-infringing computer programs and other "electronic" material; and goods with copyright material in their packaging or labelling.
- A manufacturer of non-copyright items cannot generally prevent importation on the basis that it owns copyright in, for example, a label, packaging or set of instructions which accompany the item.

When do you need permission to import copyright items?

You may need permission from the relevant copyright owner to import items such as books, print music, art prints, postcards and films if you are importing the item to:

- sell;
- rent or hire out;
- distribute for commercial purposes; or
- distribute for any other purpose that will prejudice the copyright owner.

There are special exceptions, however, which allow the importation of non-infringing:

- printed books that are not available in Australia;
- sound recordings (such as CDs);
- items containing non-infringing copies of computer programs;
- goods with copyright material in, for example, their packaging or labelling or in accompanying sets of instructions or demonstration videos;
- electronic books and notated music in electronic form (such as books and music on CD-ROMs); and

- items containing computer programs, electronic literary or music material or sound recordings that have other material embodied in, or included with them, provided that it is not a “**feature film**”.

Region coded material

While you may be able to import certain types of material, such as computer programs or CDs, you should consider the effect of any technological protection measures they include (for example, region codes) that may limit their use. It is important to note that there are provisions in the Copyright Act against distributing, manufacturing and importing devices, such as mod-chips, that circumvent technological protection measures.

Printed books

You **do not** need the copyright owner’s permission to import a book for sale, and other commercial purposes, if:

- the book was not published in Australia within 30 days of its first publication overseas; or
- the book was first published in Australia or published in Australia within 30 days of its first publication overseas but:
- the copyright owner (or the owner’s licensee or agent) is unable to supply you with the book within 90 days of your order;
- you have received an order for a single copy from a customer who wants the book for personal use; or
- you have received an order from a non-profit library for **two or more** copies of the book (therefore, this exception won’t apply if the library only wants one copy).

You may however import items containing **electronic** notated books and music, providing they are non-infringing copies.

There is more information about the importation of books in our publication *Copyright for Book Publishers*.

Items containing sound recordings (such as CDs)

You do not need the copyright owner’s permission to import items containing sound recordings, such as CDs and cassettes, for commercial purposes, **provided** the sound recording was made with the consent of the copyright owner in a country with the required level of copyright protection. You can import the sound recording together with its packaging, even though that packaging will usually contain other copyright material such as artworks, lyrics and so on.

Items containing computer programs

You may import items containing computer programs (including computer games and CD-ROMS) for commercial purposes, **provided** the items were made with the authority of the copyright owner in a country with the required level of copyright protection.

Goods accompanied by copyright packaging or labelling

Before 31 January 2000, people who wanted to import any products, such as foodstuffs, beverages, and cosmetics, accompanied by packaging, labelling and other accessories protected by copyright, needed the permission of the relevant copyright owner or licensed distributor. Importation without permission infringed copyright in the accessories. For example, some years ago, a court allowed the manufacturer of the liqueur “Bailey’s Original Irish Cream” to prevent an unauthorised distributor from importing the product into Australia because the label on the bottle contained an artistic work protected by copyright.

However, the law has changed and it is no longer an infringement of copyright to import non-copyright items accompanied by labelling, packaging or other accessories protected by copyright, **provided** the accessory is not an infringing copy. This means that the relevant item must have been made in a country with the required level of copyright protection and the relevant copyright owner authorised the use of the accessory with the item.

The legislation defines “accessory” to include labels, packaging, written instructions, warranties and instructional videos and sound recordings.

Items containing non-feature films

You may also import items that contain computer programs, electronic literary or music material or sound recordings that have other material embodied in, or included with it, provided that this material is not a “feature film”. A “feature film” for these purposes is a cinematograph film that:

- (a) is produced wholly or principally:
 - (i) for exhibition to the public in cinemas or by way of television broadcasting; or
 - (ii) for sale or rental to the public where it is reasonable to assume that the viewing of the film (without electronic interactive involvement with the film) would be the primary object of any such sale or rental; and
- (b) is more than 20 minutes in duration.

If permission is needed, who do you contact?

Usually, you should start by contacting the publisher, producer, manufacturer or Australian distributor of the material you want to import. Sometimes the copyright owner may have appointed an exclusive Australian agent, and if that person or company controls reproduction rights, you will generally need to ask their permission.

You should make sure that you have permission (or a licence) to import the material in question for your intended purposes. There is no particular form which this permission should take. It should preferably be in writing so you have proof that it was granted and to lessen the likelihood of disputes. You should consider getting legal advice on any agreement before you sign it or act on it.

Common questions about importing articles containing copyright material

Can I import video laser disks for sale or rental?

Generally, you need the permission of the copyright owner—usually the relevant film production company or distributor. You can, however, import a video laser disk if it doesn't contain a “feature film”.

It doesn't matter that the disks you want to import are genuine, as opposed to illegal or pirate, copies. You still need the copyright owner's permission if it contains a “feature film”. The fact that you purchased them from someone who was authorised by the copyright owner to make them does not mean that you have permission to import them into Australia.

What about second-hand video disks?

Again it does not matter that the disks you want to import are not new but second-hand. You still need the copyright owner's permission, unless the video laser disk doesn't contain a “feature film”.

Does the need to get permission depend on which country I am importing from?

Generally, it won't matter which country you are importing material from or whether the material originated in another country. This is because almost every country including Europe, US and most countries in Africa and Asia, are all members of various international treaties which Australia is also a member of. Material created by people in those countries is protected to the same extent as material created in Australia. Therefore, if permission would be needed to import Australian material, then permission will be needed to import material from or created in those countries.

Can I set up a business importing CDs?

You can import CDs for sale and other commercial purposes without the copyright owners' permission, **provided** the CD was made with the consent of the copyright owner in a country with the required level of copyright protection and the copy is not infringing or pirated. The onus is on you, however, to ensure that this is the case.

Can I import art prints for sale?

Generally, you need permission to import prints or artworks (such as posters, birthday cards, post cards etc) for sale. Permission should generally be obtained from the artist, the artist's agent or heirs. However, you do not need permission if copyright has expired (for example, if the relevant artist died before 1 January 1955, or if the artwork is a photograph taken before 1 January 1955).

Can I import print music for sale?

If the print music is still protected by copyright, you will need the copyright owner's permission to import it for sale. The copyright owner is usually the music publisher. Print music is not covered by the special provision for importing books that are not available in Australia.

You may, however, import electronic notated music (for example, CD-ROMs containing notated music).

Can I import products such as foodstuffs and perfume?

You do not need permission to import items that are not protected by copyright, such as foodstuffs and perfume, even where "accessories" such as labels and packaging include copyright material, **provided** that the accessory was made in a country with the required level of copyright protection and that the relevant copyright owner authorised the use of the accessory with the item.

Can I import items containing computer games to sell in Australia?

You do not need the copyright owner's permission to import computer games, **provided** they were legitimately made copies (that is, that they were made with the consent of the copyright owner in a country with the required level of copyright protection).

Note, however, that due to changes in the law, **playing** a computer game that has been imported without the copyright owner's permission (even if it was a legitimately made copy) is an infringement of copyright. Therefore if you are selling such items, it is arguable that you are authorising the infringements made by the people who play the computer games.

You should also note that (as mentioned above under "Region coded material") computer games are likely to have technological protection measures, such as region codes, and that there are provisions in the Copyright Act against distributing, manufacturing and importing devices that circumvent technological protection measures.

There are also other areas of law that should be considered. If you are importing unauthorised copies of items such as computer games, you may be infringing trademark and Trade Practices laws, as well as laws relating to copyright.

Can I import videos and software for personal use?

It is not an infringement of copyright to import articles containing copyright material into Australia for your own personal use or for any purpose other than sale, hire or distribution.

However, in the case of software, you should check the licence agreement to see whether it allows you to use the software in Australia or whether it contains prohibitions which might mean that you infringe copyright by using it. Also, from a practical point of view, you may not be able to register software purchased overseas for ancillary services, such as help lines.

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.



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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