



## INFORMATION SHEET

G062v10

# Governments (Commonwealth, State and Territory)

October 2009

This information sheet outlines the rights and obligations of Commonwealth, State and Territory governments in relation to copyright material. In particular, we discuss sections 183 and 183A of the Copyright Act, which allow the Commonwealth, the States and the Territories to use copyright material for the services of government.

We also provide information on who to contact if you want permission to use material in which a government owns copyright.

For information about the general rules of copyright, such as what material is protected and what rights the copyright owner has, see our information sheet *An introduction to copyright in Australia*. For more detailed information on the issues discussed in this information sheet, see our book *Government & Copyright*.

We update our information sheets from time to time. Check our website at <http://www.copyright.org.au/governments> to make sure this is the most recent version, and for other information such as 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

- Governments are entitled to rely on very wide-ranging exceptions to copyright infringement, compared to other copyright users.
- Governments become owners of copyright in circumstances where others would not.
- Local governments are not entitled to rely on the special provisions for governments.
- It can be difficult to work out whether a statutory body or government corporation is entitled to rely on the special provisions for governments: specific legal advice may be needed.

## Who is part of the Government for copyright purposes?

The government use provisions apply to departments of the Commonwealth, States and Territories (the Northern Territory, ACT and Norfolk Island). Agencies and statutory authorities may be part of the Commonwealth, States or Territories if the relevant parliament intended them to enjoy the privileges of the Crown as agents or emanations of the Crown. An agency or statutory authority may need to get legal advice about its status.

Local governments or councils are **not** "government" for copyright purposes.

If you wish to get specific legal advice as to your organisation's status, the questions you would need answered are:

1. Is the organisation "Government" for the purposes of sections 176 to 178 of the Copyright Act?
2. Is the organisation "Government" for the purposes of section 183 of the Copyright Act?
3. In which circumstances is the organisation's use of copyright material "for the services of" the Government

(section 183)?

These are difficult legal questions, and the answers need to take into account a number of court decisions, including: *Townsville Hospitals Board v Council of the City of Townsville* (1982) 56 ALJR 789 and *Re Australian Broadcasting Commission* (1982) 45 ALR 153.

The following departments may be able to advise you whether or not your agency is covered by the special government use and government ownership provisions in the Copyright Act:

<b>Government</b>	<b>Contact person</b>	<b>email</b>	<b>tel/fax</b>
Cth	Josh McKay	josh.mckay@ag.gov.au	tel: 02 6141 3446
ACT	David Wardle, Director of Territory Records, Territory Records Office	david.wardle@act.gov.au	tel: 02 6207 0194
NSW	State Copyright Manager, Attorney-General's Dept	copyright@agd.nsw.gov.au	tel: 02 9228 7735
NT	Jenny Daniel-Yee, Dept of Justice	jenny.daniel-yee@nt.gov.au	tel: 08 8935 7667
QLD	Andrew Rodger, Qld Govt Chief Information Office	andrew.rodger@publicworks.qld.gov.au	tel: 07 3898 0336
SA	Catherine Anderson, Crown Solicitor's Office	anderson.catherine@agd.sa.gov.au	tel: 08 8207 1504
TAS	Emma Gunn, Dept of Justice	emma.gunn@justice.tas.gov.au	tel: 03 6233 2445
VIC	Anthony Mithen & Yechiel Belfer, Dept of Treasury & Finance	anthony.mithen@dtf.vic.gov.au yechiel.belfer@dtf.vic.gov.au	tel: 03 9651 2448 tel: 03 9651 6246
WA	Dept of Premier & Cabinet	wa-government@dpc.wa.gov.au	tel: 08 9222 8759

## Government use of copyright material

Governments have greater rights to use copyright material than other users. The Copyright Act provides that the Commonwealth or a State does not infringe copyright by anything done "for the services of the Commonwealth or a State". This means that governments can use copyright material, including books, periodicals, music, broadcasts and videos, for government purposes. However, this use is not necessarily free, as the copyright owner is entitled to demand payment.

### What is use "for the services of the Commonwealth or a State"?

The Copyright Act does not provide any guidance on the meaning of "for the services of the Commonwealth or a State". In interpreting this phrase, one overseas case indicates that it may include services **provided** by government as well as services **used** by government. However, it seems that section 183 does not necessarily apply to every use of copyright material by a government; in our view, only those dealings with copyright material which are "governmental" in nature and where there is some element of public interest involved are likely to be covered by section 183.

Section 183 **specifically** provides that government educational institutions such as schools and TAFEs are **not** entitled to rely on section 183 to copy or communicate copyright material for educational purposes and it is not clear that any **other** uses of copyright material by such institutions for educational purposes would be "for the services of" government in the relevant sense. (Note that there are a range of other provisions in the Copyright Act that educational institutions may rely upon; for information about these provisions, see our information sheet *Education Institutions: introduction to copyright* and our books *Educational Institutions: Text, Images & Music* and *Educational Institutions: Digital & AV Resources*.)

## How much copyright material can be used?

Governments using copyright material for the services of the Crown are not restricted by any limits on how much they can use. A whole book or video can be copied, even if it could be purchased, and multiple copies can be made, provided any applicable procedures or conditions are followed. However, we understand that generally governments have a policy against copying entire items if they are commercially available.

## Administrative requirements and payment

There are two mechanisms in the legislation which allow copyright owners to track government use and receive payment.

The “default” procedure is to notify copyright owners directly of the use of their work, and to pay a reasonable fee if required.

However, governments are **not** required to notify copyright owners directly when they make copies for which the Copyright Tribunal has “declared” a company to be the “relevant collecting society”. Currently, the declared collecting societies are Copyright Agency Ltd (CAL) and Screenrights. Under this arrangement, copyright collecting societies can only be appointed to administer **reproduction**, or copying, of material and not other uses, such as communication to the public and public performance.

However, collecting societies may make (and have made) voluntary agreements with governments covering other uses of the material they control.

In summary, as a result of collecting societies having been “declared” and as a result of voluntary agreements, you will **not** need to notify copyright owners when you do the following for the services of government:

- reproduce any literary, dramatic, musical or artistic work (unless it’s on a sound recording);
- copy from a radio or television broadcast;
- publicly perform music; or
- if you are in the Commonwealth government, communicate literary, dramatic, musical and artistic works by email or intranet within your department (this results from a voluntary arrangement with CAL).

In all other cases, unless it would be contrary to the public interest to do so, you will need to notify the copyright owner(s).

## Collecting society agreements

### *Copyright Agency Limited – text & other printed material*

Copyright Agency Limited (CAL) has been declared the collecting society for the reproduction by governments of text, artworks and music (other than material included in sound recordings or films).

Prior to the amendment of the Copyright Act in 1998, to provide for the appointment of declared collecting societies in relation to government copying, CAL had entered into agreements with the Commonwealth and all States and Territories in relation to payment for photocopying and faxing CAL’s members’ works.

Following the amendment of the Act, governments have been able to reproduce **all** text, artworks and music without having to notify individual copyright owners – not just works controlled by CAL’s members. They have also been entitled to digitise, without having to notify individual copyright owners.

We understand that the Commonwealth and all States and Territories except Victoria have reached various agreements with CAL concerning payment.

As part of its agreement with CAL, the Commonwealth negotiated a limited ability to communicate material within departments without having to notify individual copyright owners. We understand, however, that the State and Territory Governments are still negotiating with CAL over this issue.

You can get more information on the CAL agreements from your copyright contact person or from the Licensing Department of CAL at Level 19, 157 Liverpool Street, Sydney 2000; tel: (02) 9394 7600; fax: (02) 9394 7601; email: [info@copyright.com.au](mailto:info@copyright.com.au); web: [www.copyright.com.au](http://www.copyright.com.au).

### *Screenrights – TV and radio*

Screenrights (the Audio-Visual Copyright Society Ltd) has been declared the collecting society for the purpose of government copying from TV and radio, and has completed an agreement with the Commonwealth Government. Negotiations with the State and Territory Governments are continuing as to the fees, terms and conditions under which this copying will be done. In the meantime, however, these governments can copy audiovisual material from broadcasts without notifying the copyright owners.

However, if you wish to **communicate** the material for the services of government (for example, by putting it on an intranet) you need to notify the copyright owners.

More information is available from your copyright contact person or from Screenrights at Level 3, 156 Military Road Neutral Bay, NSW 2089; tel: (02) 9904 0133; fax: (02) 9904 0498; email: [info@screen.org](mailto:info@screen.org); web: [www.screen.org](http://www.screen.org).

### *Australasian Performing Right Association – playing and performing music*

The Australasian Performing Right Association (APRA) is an association of songwriters and publishers who, on becoming members, transfer performing rights in their works to APRA. A licence from APRA is required to perform music in public – for example, as piped music in lifts and offices, for radios played in workplaces, and for concerts by military bands.

While APRA is not (and cannot become) a declared collecting society under the Act, the Commonwealth, State and Territory Governments have agreements with APRA in relation to the playing of music. The agreements cover most instances of music performance by governments, including playing music for the benefit of staff, but exclude certain special events. Governments pay APRA on the basis of an amount per employee. The agreement applies only to nominated departments and agencies.

You can get more information on the government APRA licence (including whether you are covered) from your copyright contact person or from APRA at 6-12 Atchison Street, St Leonards, NSW 2065; tel: (02) 9935 7900; fax: (02) 9935 7999; web: [www.apra.com.au](http://www.apra.com.au).

## **Notifying copyright owners directly**

Certain uses of copyright material by governments are not administered by a declared collecting society or covered by an agreement with a collecting society (such as the agreement with APRA). For example, the reproduction of sound recordings or computer software, the publication of previously unpublished textual material and the communication of copyright material to the general public (for example by email or via the web) are not covered by an agreement. Where such uses of copyright material are made, the copyright owner must be notified directly.

The Act provides that governments must notify copyright owners as soon as possible after the use, unless it is contrary to public interest. The copyright owner is entitled to receive any reasonably requested information in relation to the use. The owner is also entitled to stipulate terms for the use of the material, including payment. If the copyright owner and the government cannot agree on the terms, an application can be made to the Copyright Tribunal to determine the matter.

In practice, governments may prefer to notify copyright owners **before** they use material, particularly as the government may wish to know whether the copyright owner will require payment for the use and, if so, how much.

For information about finding copyright owners, see our information sheet *Owners of copyright: how to find* and *Artworks: getting permission*.

## **Ownership of copyright material by governments**

The Commonwealth, a State or a Territory owns copyright in material if it is:

- created by, or under the direction or control of, the Commonwealth State or Territory; or
- first published by, or under the direction or control of, the Commonwealth, State or Territory,

**unless** there is an agreement between the Commonwealth State or Territory and another party, such as a contractor, which provides otherwise.

This means that, unless otherwise agreed, governments own copyright in material created by their employees. It is also likely that, unless otherwise agreed, governments will own copyright in material created by people they commission or contract with, and in material created by volunteers under their supervision. It also means that where a government is the first to publish material, for example in a brochure or a report, it will own the copyright in it, unless otherwise agreed, even if that material was created independently of the government.

Government **departments** have no independent legal status and cannot own property in their own right. Copyright is owned by the Commonwealth or the relevant State or Territory Crown. If, for example, a document were created under a joint project of two departments of the South Australian Government, the Government of South Australia would own copyright in it.

There are other rules about ownership of material that apply where material is not created or first published by or under the direction or control of a government. For information about the other rules of ownership, see our information sheet *Ownership of copyright*.

### **Agreements concerning ownership**

In most cases, it is advisable for governments to make written agreements with commissioned creators of copyright material dealing with the issue of ownership of copyright. Having an agreement should minimise uncertainty about who owns copyright and what the rights of each party are.

Your government, department or agency may have a policy in place concerning agreements with people who create copyright material for you and may use standard form agreements. It is important, however, to tailor agreements appropriately for each situation you deal with.

### **Dealing with copyright in government material**

Copyright owners can assign or license their rights. If a government assigns rights, someone else becomes the owner; if a government licenses rights, it allows another person to use the copyright material.

Assignments and licences can apply to all the copyright owner's rights, or to just one or some of the rights. For example, a government may give someone an assignment or licence to publish a document in print form in Australia, but keep all other rights, including the right to publish online or on CD ROM. In addition, a copyright owner may restrict an assignment or licence to particular countries, or to a period of time, or both.

An assignment or licence may include certain conditions, such as payment and attribution.

Agreements and transactions relating to copyright should be in writing, as far as possible. Assignments and exclusive licences, to be fully effective, **must** be in writing and signed by or on behalf of the copyright owner.

A government can give someone a non-exclusive licence to use copyright material simply by putting a notice on the material to that effect. For example, a government could include a notice in its publication stating that the publication may be photocopied for non-profit purposes. Similarly, a government could include a notice on its website stating that the material on it may be printed or downloaded for personal or non-commercial use.

As mentioned above, government departments do not have separate legal status, so even if they administer copyright in materials they create, they do so on behalf of the relevant government. In practice, governments and departments may have policies in place concerning the use of material by other departments in the same government.

### **Administration of government material in practice**

It is important for government employees dealing with government copyright material to be familiar with any policies that apply to the use and licensing of that material internally and externally. Standard form agreements may need to be used and legal advice may need to be obtained. Each government deals with its material in slightly different ways.

### **Getting permission to use government material**

For general information about the administration of Crown copyright go to: <http://www.ag.gov.au/cca>.

The contact details for the administrators of government copyright are as follows:

- **Australian Capital Territory:** Customer Services and Information, ACT Urban Services, GPO Box 158, Canberra ACT 2601, email [copyright@act.gov.au](mailto:copyright@act.gov.au).
- **Commonwealth:** Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Canberra ACT 2600, telephone: 02 6250 6200. An on-line request form is available via the Department's website at: <http://www.ag.gov.au/cca>
- **New South Wales:** No permission is needed to reproduce NSW legislation or court judgments. Check copyright statements on departmental websites for information on permitted use of other material. For

permission, contact: Government Chief Information Office, Level 21, McKell Building, 2-24 Rawson Place, Sydney NSW 2000 or email Mr Trevor Waters, Manager, NSW Government Web Site at [trevor.waters@commerce.nsw.gov.au](mailto:trevor.waters@commerce.nsw.gov.au).

- **Northern Territory:** No permission is needed to reproduce NT legislation. For other material, contact the Director, Policy Division, Department of Justice, GPO Box 1722, Darwin NT 0801; 08 8999 7030; fax 08 8999 7095.
- **Queensland:** Permission is needed to reproduce Queensland legislation and judgments. Check copyright statements on departmental websites for information on permitted use of other material. For permission, contact Natasha Camphorst, Dept of State Development, Trade & Innovation (management of government intellectual property), [Natasha.camphorst@sd.qld.gov.au](mailto:Natasha.camphorst@sd.qld.gov.au), Tel: (07) 3224 7891.
- **South Australia:** Permission is needed to reproduce South Australian legislation or judgments. For permission contact: Attorney-General's Office, GPO Box 464, Adelaide SA 5001; (08) 8207 1723; fax (08) 8207 1736. For other material, contact the department which produced the material.
- **Tasmania:** People wanting to use material in which the Tasmanian government owns copyright should contact the department or agency which created or published the material. People within the Tasmanian Government needing advice on administering copyright should contact the Administrator of Crown Copyright, Department of Justice.
- **Victoria:** For permission to reproduce Victorian legislation or judgments contact: Office of Chief Parliamentary Council, Level 2, 1 Macarthur Street, Melbourne VIC 3002; (03) 9651 2284; fax (03) 9651 2107. For other material, contact the department which produced the work. People within the Victorian Government needing advice on administering copyright should contact the Department of Justice.
- **Western Australia:** Contact the relevant department, or the Director General, Department of the Premier and the Cabinet, 197 St George's Tce, Perth 6000 WA, email [wa-government@dpc.wa.gov.au](mailto:wa-government@dpc.wa.gov.au).

## Common questions

### Can a government put text and graphics from a journal article onto a website?

Yes, if it is for the purposes of the government. It is likely that this use will involve both reproduction and communication of the material. The reproduction of the text and graphics will be covered by the declaration of CAL as the collecting society for government copies. It will, however, be necessary to notify each relevant copyright owner in relation to the communication, and they may require remuneration.

### Can a government department make multiple copies of an article to hand out to its staff?

Yes, if the copying is for the services of government. Copying any type of text is covered by the declared collecting society, Copyright Agency Limited (CAL), therefore you will not need to notify the copyright owner directly. Records may need to be kept if your department or agency is participating in a sample survey conducted by CAL to determine the extent and nature of copying.

### Who owns copyright in a report commissioned by government?

The contract between the government and the person commissioned to write the report may state which party owns the copyright. If the agreement does not deal with ownership, the government will own the copyright on the basis that the report was written under the direction or control of, or first published by, the government.

### What copyright information should a government department put on its website?

You should first check whether your government has a policy about the wording of copyright notices on government material. For example, see the requirements for copyright notices on Commonwealth publications at <http://www.ag.gov.au/cca> (click on "General Information", then on "Advice on copyright notices for Commonwealth agencies").

Just as book publishers put copyright notices on their books, people who publish on the web normally have a statement about copyright on their websites. There could be an easily recognisable link to it from each page on

the site. There are no special rules about how the statement should be worded, but (unless your government has a statement it requires you to use) it is a good idea for the statement to include the following:

- the copyright symbol (©) and the name, or names, of the copyright owner(s) of material on the site (this will generally be the name of the relevant government);
- the year of first publication (for websites, often in the form 2001-2007, to indicate that the material has been updated over a period of time)
- information about what visitors to the site may or may not do with material on the site (for example a statement giving visitors permission to print material for personal use, or to distribute it for a non-commercial purpose); and
- contact details (preferably including an email address) to get a copyright clearance for any of the material on the site.

### **Who owns copyright in material that was funded by a government department?**

Generally, the issue of copyright ownership should be addressed in the funding agreement.

If there is no specific statement on this point in the agreement between the government and the creator, the answer depends on whether the provision of funding amounts to the government “directing or controlling” the creation of the material. This, in turn, depends on how the funding is provided. One-off grants to incorporated bodies or communities to assist with things such as the setting up of exhibitions and the showing of films, or grants which are part of ongoing support for an organisation's general purposes, are unlikely to constitute control or direction. Where the funding is project-specific, with a greater degree of departmental involvement in the design of the project and its administration, and where further funding depends on satisfactory progress of the project, the government is more likely to own copyright.

### **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.

### **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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