



## **INFORMATION SHEET**

**G066v09**

# **Databases, compilations, tables & forms**

**September 2009**

In this information sheet, we discuss the legal issues relevant to people compiling or using items such as tables of information; indexes and forms; collections of information such as directories; anthologies of short stories, essays or poetry; and databases.

Check our website at [www.copyright.org.au/writing](http://www.copyright.org.au/writing) 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**

- Copyright does not protect facts or information.
- Copyright may, however, in some cases, protect “compilations” of information such as catalogues, databases and dictionaries, provided there is a sufficient degree of originality of expression.
- You do not need permission to reproduce particular facts from a compilation (such as a name, address and telephone number from a telephone directory). However, you may need permission to reproduce all or a “substantial part” of a compilation.

### **Copyright protection for compilations**

#### **What is a “compilation”?**

Copyright protects certain categories of material, including “literary works”. The Copyright Act states that the term “literary work” includes “a table, or compilation, expressed in words, figures or symbols”.

An anthology of stories, poetry, essays and other similar material will generally be protected as a “compilation”. This copyright is separate from and in addition to any copyright in any stories, poems, essays or other literary works included within the anthology, and a compilation may still be protected by copyright even if none of the items in it are subject to copyright protection.

Past Australian cases have held that collections of words, figures or symbols – such as databases, telephone directories, trade catalogues and tables of statistics – may also be

“compilations” and therefore protected by copyright. However, a 2009 decision by the High Court of Australia concerning Channel Nine’s television schedules (known as “electronic program guides”) has cast some doubt about whether copyright does subsist in a compilation such as a telephone directory or database. While this case did not specifically consider the question of copyright subsistence in compilations, the judges’ comments indicate that this question is up for debate.

In order for copyright to subsist in a work, the Copyright Act requires that the work be “original”. The High Court, in the abovementioned case, held that originality for this purpose means that the literary work “originated” with the author; that is, the author must not have copied it from someone else. The Court went on to say that the amount of skill, labour or expense expended by an author is not necessarily indicative of an “original” work.

### **When is a collection of material not protected by copyright?**

Only a table or compilation of material that is “expressed in words, figures or symbols” is protected under the extended definition of “literary work” set out in the Copyright Act. There are therefore good grounds for arguing that collections of photographs or other artworks, for example, or of films or sound recordings, are not protected by copyright as compilations. (Note, however, that the individual items in such collections may be protected, and that the selection and arrangement of any information within such collections that is expressed in “words, figures or symbols” may also be protected).

### **What does copyright in a compilation mean?**

Owners of copyright in compilations have exclusive rights, including the rights to:

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

These rights apply both in relation to the entire compilation and to any important, distinctive or essential part of it.

### **Who owns copyright in a compilation?**

The general rule is that the creator of a copyright work is the first owner of copyright, unless they have made an agreement assigning the copyright to someone else.

If you are an **employee**, and create a compilation as part of your job, your employer will be the first owner of copyright. This rule only applies to employees; contractors, freelancers and volunteers usually own copyright in material they create, unless they have made an agreement to the contrary or the government rule applies (discussed in the next paragraph).

If you create a compilation under the “direction or control” of a State, Territory or Commonwealth **government**, or a government is the first publisher of your compilation, that government will own copyright in the compilation, unless you reach some other agreement with it.

### *Joint owners of copyright*

In some cases, there may be more than one owner of copyright in a compilation. This may arise, for example, where more than one person is involved in compiling the material. In this case, there may be joint owners of copyright. This means that anyone wanting to use or exploit the compilation in one of the ways reserved to the copyright owner would need permission from all the copyright owners. If one of the owners wished to use the compilation in one of these ways, he or she would need to get permission from the other copyright owner(s).

### *Underlying works*

Compilations can contain “underlying works” that are separately protected by copyright. If you are creating a compilation (such as an anthology of letters or poetry), you may not be able to exercise your copyright rights unless you first get permission from owners of copyright in material you want to include within the compilation (see below).

### **When do you need permission to use a compilation?**

If you wish to use all or a “substantial part” of someone else’s compilation in one of the ways reserved to the copyright owner, you will need to get permission, unless copyright has expired or a special exception applies. (In this context, a “substantial part” is any part that is important, essential or distinctive; it need not be a large part, and is judged more by the quality of what is taken than the amount).

In the 2009 High Court case previously mentioned, the Court decided that in that context, “slivers” of time and title information in the electronic program guides did not constitute a substantial part.

Where the material included in a compilation is itself protected by copyright, you will also need permission from the owner of copyright in each underlying work (if, for example, you wanted to reproduce all or a “substantial part” of the material).

When underlying material in a compilation is not protected by copyright – for example, because the material is not in one of the categories protected by copyright, or because copyright has expired – you do not need permission to reproduce individual items from it. However, you would still generally need permission to reproduce all, or any important or distinctive parts, of the compilation itself.

(For information on what material is not protected by copyright, see our information sheet *An introduction to copyright in Australia*. For information on when copyright expires, see below under the heading “How long does copyright in a compilation last?”).

### *Exceptions to infringement*

There are special provisions in the Copyright Act that allow the use of copyright material without permission. In some cases, certain procedures must be followed or fees paid. The major exceptions to infringement are:

- “fair dealing” for the purpose of research or study, reporting the news, criticism and review, or parody or satire (see our information sheet *Fair dealing*);
- special provisions for non-profit libraries (see our information sheet *Libraries*);
- special provisions for educational institutions (see our information sheet *Educational institutions*); and
- provisions for governments (see our information sheet *Governments (Commonwealth & State)*).

### How long does copyright in a compilation last?

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including:

- where a work was not published, performed or broadcast during a creator's lifetime; and
- where something was published anonymously or under a pseudonym, and the identity of the creator couldn't reasonably be ascertained.

In each of these cases, copyright lasted for 50 years from the end of the year the work was, with permission, first published, performed or broadcast.

Under the Australia-US Free Trade Agreement (AUSFTA), Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts for the **life of the creator plus 70 years** (or, where duration depends on year of publication, until 70 years after the material is first published).

The AUSFTA amendments to the Copyright Act, however, did **not revive** copyright if copyright had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

Note that the changes to duration as a result of the AUSFTA, did **not** affect the rules of duration in relation to material in which copyright is owned by a **government**. Where a government owns copyright or, but for an agreement, would have owned copyright, copyright in a compilation lasts until 50 years from the end of the year the compilation was first published.

For further information, including tables to help you work out duration of copyright, see our information sheet *Duration of copyright*.

### Examples of compilations

Examples of compilations that courts have found to be protected by copyright include: football betting coupons; grids and letter sequences used in a promotional "scratchie" prize game; a form of contract for the sale of land; and safety data sheets for hazardous materials. The case which held that Telstra's telephone directories were protected by copyright as compilations has had doubt cast upon it by the High Court in the case concerning Channel Nine's television schedules.

Other examples are discussed below.

#### Anthologies

Anthologies of "literary works" such as short stories, essays and poetry are likely to be compilations for copyright purposes, as are anthologies of "dramatic works" such as one-act plays or TV scripts. In these cases, the compilation relates to the selection and arrangement of the underlying material.

Someone reproducing all or a substantial part of the anthology might need permission from the owners of copyright in each of the stories, essays or other material being reproduced as well as from the owner of copyright in the compilation.

#### Trade catalogues

The Federal Court has addressed the issue of copyright in trade catalogues. The case concerned a claim of copyright infringement in a trade catalogue of motorcycle parts; A-One claimed that Off Road had infringed its copyright by reproducing a catalogue.

Interestingly, the Court held that the fact that the A-One catalogue itself infringed copyright in an earlier catalogue produced by another company did **not** prevent the A-One catalogue from being protected as an original compilation. Also, the Court held that updated versions of a catalogue could each be separately protected by copyright, provided “there was more than a trivial difference between the new edition and its predecessor”. This was the case even though the changes were minor.

After considering all the facts, the Court found that Off Road had infringed A-One’s copyright.

### **Forms and tables**

Forms for people to fill in may also be protected by copyright if they are sufficiently “original”. To be sufficiently “original”, it is necessary to consider the originality of the expression of the form or table, rather than the skill and labour that went in to preparing it.

In one case, a court found that accounting forms (which consisted of lines, columns, boxes and a few words, which were headings or directions about the use of the forms) were not sufficiently “original” to be protected by copyright individually. However, taken together as a set, the forms did have enough originality to be protected as a compilation; the originality arose from the intellectual effort that had gone into creating the whole system or set of forms.

In another decision, the Federal Court found that a *Weight Watchers* program comprising recipes, menu plans and instructions was protected as a compilation. The Court found that a *Trim For Life* program infringed copyright in the *Weight Watchers* program, even though various words and expressions were changed, and even though some changes had been made to the order of the contents.

### **Databases**

Your database will be protected by copyright if:

- you have applied sufficient intellectual effort in the selection or arrangement of the information; or
- there is sufficient originality of expression.

#### *Other legal protection for client databases and other sensitive information*

Customer and other types of databases may be protected not only by copyright, but also by the law of confidential information. Businesses may require employees to sign a confidentiality agreement, or include a clause in their employment contract that prevents the employee giving customer details to another organisation, or soliciting business from clients listed on the database, for a specified period after the employee has left the company. However, even without such an express agreement, it will usually be an implied term of an employment contract that an employee will not misuse confidential information to which he or she has access.

For more information about the law of confidential information, see our information sheet *Ideas: legal protection*.

### **Metadata and meta-tags**

Meta-tags are keywords which internet search engines use to identify the contents of a web page. Creating meta-tags that ensure that potential users will find the site can require considerable skill and labour. In many cases, a list of meta-tags is likely to constitute a compilation that is protected by copyright. In those cases, someone who reproduces the entire list, or a substantial part of it, without permission may infringe copyright. However,

coincidental similarities between lists (which will often occur where two websites have similar contents) do not infringe copyright.

Other areas of law may also be relevant. For example, if a business tries to divert traffic to its website by using the meta-tags of a competitor or of a completely unrelated product or company, the law of trademarks, passing off or trade practices may be relevant. You may need to seek advice from a lawyer on this issue.

## **Common questions about creating compilations**

### **Who owns copyright in an anthology?**

Generally, the person who selects and arranges the material in an anthology will own copyright in the anthology as a compilation. If the material is still protected by copyright, permission from relevant copyright owners will be needed to copy or publish the item in the compilation. The owner of copyright will generally be the author. If the work has already been published, the publisher may be able to grant permission or provide contact details for the author.

Note, however, that an anthology of music or artworks is not likely to come within the extended definition of “literary work”.

### **Does copyright protect gambling forms or racing guides?**

A racing guide or betting ticket or form may be protected by copyright if it is sufficiently “original” (that is, not copied from a pre-existing ticket or form).

### **Can we scan newspaper articles and put them into a database for staff use, if we have bought the newspapers we are scanning from?**

Scanning an article involves making a reproduction of the article, irrespective of whether or not you have purchased the newspaper in which it appears. You will therefore need permission from relevant copyright owners – generally the author of the article or the publisher of the newspaper. Note, however, that Copyright Agency Limited (CAL), on behalf of its members, now offers various licences to cover this sort of situation: see its website at [www.copyright.com.au](http://www.copyright.com.au) for further information.

## **Common questions about using material in compilations**

### **Can I use data from a telephone directory to create my own database?**

You should not use data from telephone directories to create your own database without advice from a lawyer with the relevant expertise.

### **Is it possible to create a list of addresses from different sources without infringing copyright?**

Individual addresses themselves are unlikely to be protected by copyright, but the selection or arrangement of addresses may be. Provided you have not simply copied all or a substantial part of a list from one source, you would be able to use the addresses to make your own compilation. Note, however, that you **must** take care not to reproduce a “substantial part” of any one source.

### **If I design and sell forms that are similar to others on the market, will I infringe copyright?**

Generally, it is unwise to copy pre-existing material. As discussed in this information sheet, forms can be protected by copyright. If you create a form from scratch (that is, without looking at other forms that are already available), and that form turns out to have similarities to others on the market, your form will not infringe copyright. However, if you adapt an existing form, without getting permission, you risk legal action for copyright infringement – especially if you are likely to compete with the existing form. If in doubt, get advice from a solicitor in private practice with the relevant expertise.

### **Are contents pages of journals protected by copyright?**

Contents pages generally contain factual information such as names of authors, titles of articles and page numbers. Although the particular collection of articles is protected as a compilation, in our view the list of authors and titles is not itself likely to be a compilation protected by copyright.

However, contents pages often include copyright works such as article summaries or abstracts (“literary works”), pictures and photographs (“artistic works”). Reproducing or communicating such material generally requires permission from the publisher. In many cases, however, CAL is able to offer licences for copying such pages on behalf of its publisher members: see CAL’s website at [www.copyright.com.au](http://www.copyright.com.au) for further information.

### **If an employee creates a database of customers, can they take this information with them when they leave?**

Copyright material created during employment is generally owned by the employer, unless there is an agreement to the contrary. Therefore, an employee is not entitled to download or print material from a customer database and take it with them when they leave.

Apart from copyright, contract law and laws relating to confidentiality may also prevent a former employee copying or making use of such information. For further information, see our information sheet *Ideas: legal protection*.

### **Further information**

For further information about copyright, and about our other publications and training program, see our website – [www.copyright.org.au](http://www.copyright.org.au).

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