



INFORMATION SHEET

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Fees and royalties for use of copyright material

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In this information sheet, we give a brief overview of issues affecting how much people should charge for the use of copyright material. We also outline where you can get more information on industry practices. This information sheet has been written principally for copyright owners wishing to license rights, but it will also be useful for people seeking permission to use copyright material.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au>.

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.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue 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 further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*. **Please note, however, that we cannot advise you on what dollar amounts or precise percentages to charge (or to pay) in a particular situation. In this information sheet we have stated all we know about general ranges of payments or royalties. Some organisations provide guidelines or standards. Where this is the case, we have explicitly stated in this information sheet where you may find these.**

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

Key points

- You can charge people directly for the use of your copyright material. The amount charged will vary depending on the circumstances.
- There are a number of collecting societies that you can authorise to collect money on your behalf for certain uses of your copyright material. However, individual copyright owners are not able to set the fees for uses of their work that are licensed by a collecting society.
- If your copyright or moral rights have been infringed, you can generally claim compensation ("damages").

Assigning & licensing rights

Copyright owners can assign or license any or all of their rights.

If you assign rights, someone else becomes the owner of those rights. Licensing, on the other hand, permits another person to use the copyright material while leaving you as the copyright owner.

Assignments and licences can apply to all the rights in the material, or to just one or some of the rights. For example, a writer may give an assignment or licence to reproduce their story, but keep all other rights. In addition, a copyright owner may restrict an assignment or licence to particular countries, a specified period of time, use in a particular format (such as print only), a specified number of copies, or any combination of these. A copyright owner may also require certain conditions, such as payment, as part of their agreement to assign or license rights.

If possible, all transactions relating to copyright **should** be in writing. Assignments and exclusive licences **must** be in writing and signed by or on behalf of the copyright owner to be fully effective. (For further information, see our information sheet *Assigning and licensing rights*.)

Licences for existing material from copyright collecting societies

In some circumstances, organisations such as educational institutions or State, Territory or Commonwealth governments, are entitled to use copyright material without the permission of the copyright owner, under "statutory licences". These licences are administered by the collecting societies Copyright Agency Ltd (CAL) and Screenrights. If you are a member of the relevant collecting society, you may receive payment for the use of your material under these licences. The statutory licences are discussed in our information sheets *Educational institutions* and *Governments (Commonwealth, State and Territory)*.

In addition, copyright owners can choose to authorise relevant collecting societies, such as the Australasian Performing Right Association (APRA), CAL or VISCOPY, to license rights on their behalf. Collecting societies set scales of fees that are paid by users of copyright material controlled by the collecting societies. Individual copyright owners are not able to set fees for uses of their work that are licensed by a collecting society. However, there are real benefits to being a member of any relevant societies: this may be the only real opportunity you have as an individual copyright owner to ensure that you are paid for the use of your work.

In many cases, the terms and conditions on which collecting societies grant licences is subject to supervision by the Copyright Tribunal. For a detailed discussion, see the Copyright Law Review Committee's report *Jurisdiction and Procedures of the Copyright Tribunal*, available at <http://www.ag.gov.au>.

For more information on copyright collecting societies, see our information sheet *Copyright collecting societies*.

Licences for existing material other than from a collecting society

Where licences are granted directly by the copyright owner or his or her agent, there may in many cases be industry guidelines which can assist in setting appropriate fees or royalties. However, there are generally no fixed royalties or fees for licences set out in the Copyright Act. Rather, appropriate royalties and fees will depend on a range of factors, including market conditions. Usually, the royalty or fee will depend on what use is being made of the material, and on the scope of the rights granted under the licence.

Once copyright has expired, users do not need to seek permission or pay copyright fees for use, although in some circumstances other fees may be charged. For example, libraries and museums sometimes charge access fees if you need to access an item they hold in order to make reproductions of it. They may also impose limitations on how you can use a copy they have provided to you. Such fees and limitations are based on the law of **contract**, not copyright.

Commissioned works

It is common for copyright works to be created by freelancers under a commissioning agreement. Many composers, photographers, graphic designers and website designers work on this basis. Where a person is paid to create a copyright work by a person or organisation that is not their employer, the creator will generally own copyright in the work, unless the parties have made an agreement to the contrary. The person or organisation which commissioned the work will generally **not** own copyright (unless this is stated in the agreement), but will have a licence to use the work for the purposes for which it was commissioned.

It is important that the commissioning agreement make clear what rights the commissioning party will have to use the work. There are often disputes over matters such as the purposes for which work is commissioned. For example, if a photographer has been commissioned to take photographs for a magazine, it can sometimes be difficult to work out whether the licence entitles the magazine to keep the photographs on file and use them again in a later article.

It is common for commissioning agreements to state the amount or hourly rate to be paid, without making a distinction between the amount charged for the creator's time and materials, and the amount charged for the right to use the material that has been commissioned. If you are a creator entering into a commissioning agreement, you should at least make sure that written agreements, quotes and invoices clearly state what the payments are for, and what rights are licensed. It may also be worth stipulating what additional fees are to be paid if your client makes certain other uses of your work. Information on what issues you should address in such agreements is set out in our information sheet *Assigning and licensing rights*.

General issues in determining licence fees

Generally, the factors relevant to working out what licence fee or royalty will be appropriate are the same as those affecting any calculation of market price. In many cases, it may be possible to get an indication of the general range of prices in the market by checking with organisations or companies which license similar rights (such as photographic libraries, music publishers, or collecting societies) or other people or organisations who use copyright material (such as journal or magazine publishers).

In some cases, the fee or royalty will be related to the anticipated or actual profit from exploitation of the work. This is the rationale for royalties: a percentage of sales or profits. In other cases, a set fee will be agreed for the licence to use the work, unaffected by the number of sales.

In some cases, a copyright owner may licence a use of his or her work for no fee or a nominal fee, if he or she considers that it is for a good cause, or that they will receive another kind of advantage. For example, some musicians release recordings on the internet for free downloading, to increase public awareness of their music.

Issues relevant to particular types of creators

Writers

See our information sheet *Writers and copyright* for general information on copyright issues relevant to writers. See also our book *Writers & Copyright*.

Book publishing

Payments for publication of books are normally negotiated between the author or their agent and the publisher. Usually the payment is in the form of royalties (a percentage of the amount received by the publisher from sales of the book – for example, 10% of the recommended selling price). In many cases, the publisher will pay the author a proportion of the expected royalties prior to publication. This payment is known as an advance. If the work takes up only part of the book – for example, a short story in an anthology – the author would normally receive a payment proportional to the story's share of the book.

These approaches should not be taken as indicating any firm rule, as it is also possible to charge a predetermined set fee, or to negotiate based upon other factors. Your approach may be affected by factors such as how keen you are for your work to be published.

Small publishers, or those dealing with a small print run, might sometimes offer a flat fee for the rights rather than royalties. In working out what might be a reasonable payment, authors should bear in mind the costs the publisher will incur in preparing the manuscript for publication and in printing, distributing and marketing it. The smaller the print run, the higher these costs are likely to be as a proportion of the amount received on sale of the book. The proportional costs are higher still if a large proportion of the books are not sold within a fairly short time. All of these factors may affect what the publisher is prepared to offer.

The Australian Society of Authors publication *Australian Book Contracts* (3rd Edition, 2001, Keesing Press) provides a detailed explanation of publishing contract clauses and gives some guidance on identifying the types and range of royalties that can be negotiated. This is not necessarily an indication of standard terms for the industry, and in practice you may find that the terms offered may often be less favourable. Of course, in some cases it may be possible to negotiate more favourable terms.

Publishing in periodicals

Generally, newspapers, journals and magazines offer a flat fee for publishing works such as articles, short stories and poems, and may not be willing to negotiate on this issue. Often the fee will be based on the number of words published. If you are licensing your work it is important to check carefully what rights you are licensing, as publishers sometimes seek very extensive rights. Especially if you expect to publish the work later in another form or forum, you should make sure that you understand what rights you have licensed. It may be worth negotiating to limit the rights granted rather than to increase the licence fee.

The Australian Society of Authors gives information on minimum rates and conditions for poetry, prose in anthologies and illustrations on its website at <http://www.asauthors.org>. The Media Entertainment and Arts Alliance (MEAA) publishes a list of minimum rates and conditions for freelance journalists, writers and others, see: <http://www.alliance.org.au>. Note that some of these rates are based on hours worked. It is always important to make clear what the payment is for and what rights the person making the payment will have to use the material.

Screenwriters and playwrights

The Australian Writers' Guild provides its members with information on its website at <http://www.awg.com.au> on recommended minimum rates applying to work done by writers for theatre, film, radio and TV. The site specifies the rights covered by these rates and indicates the changes to be made where different rights are to be licensed. Further information (including *The Playwright's Handbook*, which contains various sample agreements, and assistance with contracts) is also available to members of the Guild.

Composers

For general information on copyright issues relevant to composers, songwriters and lyricists see our various information sheets relating to music, particularly *Music: bands* and *Music: use in film and multimedia*. More detailed information is provided in our book *Music & Copyright*. Further information on issues relating to the music industry can be found in Shane Simpson's book *Music Business: A musician's guide to the Australian Music Industry* (Omnibus Press, 2002).

In many cases, rights in musical works are administered by collecting societies such as APRA and the Australasian Mechanical Copyright Owners' Society (AMCOS), or by the composer's music publisher or record company.

For information, see our information sheet *Copyright collecting societies*.

Who is entitled to copyright royalties for music?

It is common for a number of people to have rights to royalties in relation to recorded music. For example, the song writers and publishers may have rights in relation to royalties for the music, while performers and the record company may have rights in relation to the recording of the music. It is common to split the royalties equally between the different works: for example, the words and the music to a song.

If more than one person creates a single work – for example, where several people combine to write the words and/or music to a song – they own the copyright jointly. In the absence of an agreement, it will normally be assumed that the co-writers are entitled to equal shares. However, the share of royalties to be received by each person, and the way the rights will be administered, should be agreed between the copyright owners and recorded in writing.

In some cases, bands decide that non-writing members will also receive a share of copyright royalties, although a non-writing member of a band has no legal entitlement to royalties from the band's songs in the absence of such an agreement. Any such agreement should be in writing.

Synchronisation

Synchronisation of music refers to its use in audio-visual formats such as films and advertisements. This is one of the rights that should be addressed in contracts with record companies and music publishers.

In individual negotiations over synchronisation fees you will, among other things, need to consider the territory for which rights are granted (for example, whether the licence is for worldwide or Australia-only rights); whether the rights cover all media or only specified media; the prominence of the music in the film or advertisement; and the degree of fame and success the music has already achieved. Other relevant considerations include the budget and likely exposure of the film or advertisement (for example, whether it is a low-budget independent film or an advertisement to be screened on prime-time TV) and how keen you are for the music to be used in that context.

For further information, contact the Australian Guild of Screen Composers: <http://www.agsc.org.au>.

Photographers

See our information sheet *Photographers and copyright* for general copyright information. See also our practical guide *Photographers & Copyright*.

Agreements with clients should always make clear what rights the client will have to use the photographs. It may be possible to obtain some guidance on how much to charge for licence fees from the professional bodies: the Australian Institute of Professional Photography (AIPP) at <http://www.aipp.com.au> or the Society of Advertising, Commercial and Magazine Photographers Ltd (ACMP) at <http://www.acmp.com.au>. In addition to other services for members, these organisations publish *The Better Business Bible: Information and sample documents for professional photographers*, which includes suggestions for rates to charge for various uses of photographs.

MEAA publishes minimum hourly rates for freelance photographers working for newspapers, and for reproduction of photographs in newspapers: see <http://www.alliance.org.au>.

In some cases, you might be able to get indications of market rates from photographic libraries.

Visual artists, craft workers and sculptors

See our information sheet *Artworks & copyright* for general information about copyright relevant to visual artists (including craft workers and sculptors). See also our practical guide *Artists & Copyright*.

The National Association for the Visual Arts (NAVA) provides information on payment rates for artists, and links to further sources: see its website at <http://www.visualarts.net.au>, under the heading "Practical Advice" (go to Chapter Five of the *Code of Practice for the Australian Visual Arts and Crafts Sector*). NAVA also publishes "professional practice kit sheets" for artists, one of which sets out fee schedules for artists. Note, however, that these fees are for hourly rates and do not relate to copyright licence fees.

For information on minimum hourly rates and conditions for book illustrators, see the Australian Society of Authors' website: <http://www.asauthors.org>.

MEAA publishes minimum rates for publication of cartoons and illustrations in newspapers: see <http://www.alliance.org.au>.

Visual artists can appoint VISCOPY to license their artworks – its website is at <http://www.viscopy.com>. If you are an Aboriginal or Torres Strait Islander visual artist, you may, as an alternative to appointing VISCOPY, wish to appoint Aboriginal Artists Agency to handle your copyright licensing: <http://www.aboriginalartists.com.au>.

It may also be possible to get information on fees for reproducing artworks from art galleries. Note that such fees may include "access fees" and payment for transparencies. It may be appropriate for you to include such considerations in working out what fees to charge.

Information for people wanting to use copyright material

Information on copyright issues relevant to people or organisations using copyright material is provided in our book *A User's Guide to Copyright*.

When seeking a licence to make a copyright use of a work, it is important to ensure that you identify and obtain permission from all relevant copyright owners.

It is advisable to identify at the outset all copyright uses you are likely to want to make of the material and consider trying to negotiate a fee that covers all of them. For example, if you wish to make an arrangement of a musical work, you will probably also want to make copies of the arrangement (for your own use and possibly for others), and you may also want to record it. Each of these subsequent uses requires permission.

If you are using another person's copyright material, you also need to be aware of their moral rights, such as the right to be attributed as the creator of the work, and the right not to have the work treated in a way that will prejudice their honour or reputation. It may be helpful to agree on the way in which the creator will be attributed. If you do **not** wish to attribute the creator, or intend to do anything else that may infringe the creator's moral rights (such as making changes to the work) you should ask them to give written consent. For further information, see our information sheet *Moral rights*.

Payments relating to infringements

If copyright or moral rights have been infringed, the copyright owner, or the creator of the work, may be able to claim damages in relation to the infringement. The amount that would have been charged for a licence fee is often relevant in working out the amount of damages to claim. See our information sheet *Infringement: actions, remedies, offences and penalties* for further information.

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.



Australian Government



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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