



INFORMATION SHEET

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Competitions

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In this information sheet, we give an overview of copyright and moral rights issues that are relevant to competitions where entrants **create** material such as stories, poems, photographs, paintings, music and films. This information sheet is relevant both to people organising such competitions and people entering them.

If you need information about the copyright aspects of a competition in which entrants will **perform** copyright works (for example, an eisteddfod), please refer to our information sheet *Musicals, concerts & plays: staging*.

For information about our other information sheets, 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.

Copyright protection generally

Copyright protects specific categories of material, which include literary works, dramatic works, artistic works, musical works, sound recordings and films.

For more information on copyright law generally, see our information sheet *An introduction to copyright in Australia*.

Ownership of copyright

Generally, the first owner of copyright is the person who created the material, such as the writer, composer or artist. However, there are certain exceptions to this rule, including in relation to:

- material created by employees in the course of employment;
- material made for, or first published by, Commonwealth and State government departments and agencies; and
- certain commissioned material (films, sound recordings and some specific categories of photos).

For detailed information, see our information sheet *Ownership of copyright*.

How long does copyright last?

As of 1 January 2005, there are two general principles relating to how long copyright lasts.

Firstly, copyright in literary, dramatic, musical and artistic works created by people who died before 1 January 1955 has now generally expired.

Secondly, material created by people who are still alive, or who died on or after 1 January 1955, is still protected by copyright and, generally, will continue to be protected until 70 years after the end of the year that person dies or died.

The rules on how long copyright lasts are complex, and there are a number of important exceptions to these two general rules. We discuss these in detail in our information sheet *Duration*.

Assigning & licensing rights

Copyright is personal property that may be assigned or licensed.

This means that the copyright owner may **assign** (transfer) their copyright in an item or **license** (permit) someone else to use it in certain ways. An assignment or licence of rights may be limited (for example, by type of use, geographical location or period of time). It is also possible to impose conditions (for example, that the other person cannot use the work until the copyright owner has received an agreed payment).

A licence of rights can be **exclusive** or **non-exclusive**. Under an exclusive licence, the licensee is the only person who can use the work in the way or ways covered by the licence. If you grant someone a non-exclusive licence to do something with your work, you may continue to use your work in that way, and you can also grant other people non-exclusive licences to use your work in that way. For example, if you grant a non-exclusive licence to someone running a short film competition to screen your entry, you may also grant other people the same non-exclusive licence, and you may screen the film yourself.

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

Permission to use someone else's copyright material

If you want to use someone else's material in your competition entry, you will generally need permission if you are using it in any of the ways they have an exclusive right over.

Owners of copyright in **literary, dramatic, artistic** and **musical** works have the exclusive right to:

- reproduce the work (including by photocopying, copying by hand, filming, recording and scanning);
- make the work public for the first time; and
- communicate the work to the public (for example, via fax, email, broadcasting, cable or the internet).

Owners of copyright in **literary, dramatic** and **musical** works have two additional exclusive rights:

- to perform the work in public (this includes performing a work live, or playing a recording or showing a film containing the work, in a non-domestic situation); and
- to make an adaptation (for example, a translation or dramatised version of a literary work, a translation or "non-dramatic" version of a dramatic work, or an arrangement or transcription of a musical work).

Owners of copyright in **films, sound recordings** and **broadcasts** have the exclusive right to:

- copy the material;
- show the films and play the recordings in public;
- transmit the films and sound recordings to the public using any form of technology (via email, broadcasting, cable or the internet, for example); and
- rebroadcast television and sound broadcasts.

For more information on how to get permission, see our information sheet *Owners of copyright: how to find*.

Infringement of copyright

Generally, it's an infringement of copyright to use copyright material in any of the ways protected by copyright without the permission of the copyright owner, **unless** an exception to infringement applies. It is also an infringement of copyright to **authorise** someone else to do something that infringes copyright.

Exceptions to infringement include "fair dealing" with copyright material for purposes of research or study, criticism or review, or reporting news. Educational institutions, and governments, can make certain uses of copyright material without getting permission under statutory licences. For further information, see our information sheets *Research or study*, *Governments (Commonwealth, State & Territory)* and *Educational institutions*.

Generally, however, there are unlikely to be many situations in which people will be able to rely on an exception to infringement either to include material in an entry or to use entries that are submitted.

What should be covered in the terms and conditions for a competition?

Terms and conditions should be clearly drafted, and competition entrants should read them carefully.

If you are entering a competition and are not happy with the terms and conditions, you could try contacting the organisers to find out whether a variation is possible. If you can't change the terms and conditions, and you are unhappy with them, **you should not enter**.

Generally, in deciding what rights to seek from entrants, a competition organiser needs to identify both why the competition is being run, and the legitimate expectations and interests of the entrants. Organisers need to make sure that entrants grant all rights the organiser is likely to require. However, excessive demands for rights (especially where these demands relate to all entries rather than only the winning entries) may deter some people from entering. Organisers need to make their decisions on this issue on the basis of their particular circumstances, such as their purpose in running the competition, and the types of entrants they wish to attract.

We would generally advise an artist or other creator not to enter a competition if one of the conditions of entry is that the entrant agrees to assign copyright in their entry to the organisers of the competition, unless the condition applied only to the winning entry or entries, and the value of the prize or prizes was so attractive as to outweigh the likely royalty earnings on the work.

Considerations for competition entrants

Generally, from an entrant's perspective, what he or she might get out of a competition (for example, the value of the prize or the amount of publicity it will generate if they win) should be proportional to the rights that the competition organisers acquire. As a general rule, any rights acquired should be non-exclusive, and should only be acquired in relation to winning entries. (For more information, see "Assigning and licensing rights" above).

Even where an assignment or exclusive licence of copyright in the winning entry will be necessary in practical terms (for example, in a competition to design a logo for an organisation) it may be reasonable for the creator to retain certain rights, such as the right to use the work in his or her portfolio and website for self-promotion purposes.

For a useful discussion of the issues in the context of art competitions, see the *Code of Practice for the Australian Visual Arts and Craft Sector*, which is available online at <http://www.visualarts.net.au/nava/CodePractice.asp>.

Ownership of copyright in material entered in a competition

Unless there is an agreement to the contrary, the first owner of copyright in the material (usually the creator) continues to own copyright. However, the terms and conditions of entry to the competition may require the winning entrant to assign copyright to the competition organiser, or grant them the right to make certain uses of the entry.

The ways in which a competition organiser may use entries

Generally, organisers of competitions will **not** acquire any rights in entries unless there is something in the terms and conditions of entry, or the advertising for the competition, which allows them to use the entries in particular ways.

Competition organisers should ensure that the terms and conditions of entry spell out the ways in which all, or the winning entry or entries, may be used. It is a good idea to require competition entrants to sign a statement that they permit their entry to be used in the stated ways, as a condition of entry.

Note, however, that stating something to the effect that "entries become the property" of the competition organisers is unlikely to mean that copyright in entries is assigned. Rather, a statement such as this merely means that the physical items become the property of the organisers, and the organisers do not have to return entries to the people who entered.

Liability for copyright infringements in competition entries

An organisation inviting entries to a competition will not generally be liable for any infringements of copyright by entrants, unless it reproduces the entry or uses it in any of the other ways reserved to the copyright owner. For example, organisers would not infringe copyright simply by displaying a painting that infringed another person's copyright. However, if they reproduce the artwork in a poster or put it on a website, they are likely to infringe copyright in the underlying work.

This issue is particularly problematic for organisers of film and multimedia competitions, as they could infringe copyright either when they screen entries or when they make copies for such screenings.

It is therefore common for organisers of competitions to require entrants to **warrant** that their entry is entirely their own work, or that they have obtained all necessary clearances for any copyright material incorporated in their entry. The type of warranty required will depend on the nature of the competition. For example, it is normally expected that entries to a poetry competition are solely the work of the competitors entering them. On the other hand, films almost always include material created by someone other than the film maker, and therefore comprehensive warranties are likely to be needed.

Terms and conditions should also address the consequences if a competitor's entry turns out to infringe copyright. For example, the terms and conditions might state that entries that infringe copyright may be disqualified. In addition, the competitor may be required to indemnify the organisers against costs they incur as a result of the infringement. Such costs might arise, for example, from a copyright owner suing the organisers of a film competition for screening a film based without permission on a book, or reproducing a painting that copies another artist's work.

Moral rights

Creators of literary, musical, dramatic and artistic works, and the screenwriter, director and producer of a film have "moral rights" in their work or film. These rights are personal to the creator, and belong to individual creators whether or not they also own copyright.

The moral rights of creators are:

- to be attributed;
- not to have someone else attributed as having created their material;
- not to have any material which someone else has altered attributed to them in a way which suggests that it hasn't been altered; and
- not to have their work subjected to "derogatory treatment" (that is, treatment which is damaging or potentially damaging to their reputation or honour).

Generally, organisers of competitions will be under obligations to respect the entrants' moral rights, whether or not they undertake to do so in the terms and conditions of entry. They will be under this obligation not only in relation to the way that they display any entries (such as artworks) during the competition, but also in relation to the way they use entries after the event.

However, if organisers want to do something with works that might infringe an entrant's moral rights (such as reproducing or displaying it without attribution), they should consider making this clear in an entry form which, preferably, the contestant signs and delivers with his or her entry. (Creators can consent to what otherwise would infringe moral rights. However, such consent must be in writing to be effective under the relevant provisions in the Copyright Act.)

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

Ownership of items entered into a competition

Ownership of the physical items entered in the competition is separate from ownership of the copyright: ownership of the physical items is determined under general law.

This issue should be addressed in the terms and conditions for entry. Common ways of addressing this issue include a provision that the competition organisers keep all entries, or that entrants can have entries returned provided they pay the costs of returning the items (for example, by providing a stamped, self-addressed envelope).

Common questions

Can the organisers of an art competition require me to assign copyright as well as sell my actual painting?

There is nothing to prevent competition organisers from including an assignment of copyright in the work as part of the terms and conditions of entry. However, this may deter people from entering.

From the point of view of artists entering the competition, it would be preferable to limit the rights granted, especially if the rights are granted in relation to all entries and not only the one that ultimately wins. For example, artists might be more willing to give the organisers limited permission to use the work for certain purposes related to the competition, but not to assign copyright. We would generally advise artists that any licence to use winning entries should be non-exclusive, or should be stated only to last a reasonably short period (not more than a year).

Where the art competition is acquisitive (that is, the organisers get to own the winning entry or entries), the value of the prize should correspond with the value of the expected entries.

Can we stage a play that wins the competition we are running?

Generally, inviting entries for a playwriting competition will not, by itself, mean that the winning entry may be produced. On the other hand, if it is clear from the promotional material or terms and conditions of the competition that entries may be given a reading or a production, permission may be implied from all the circumstances, or may be express if entrants have signed an agreement to this effect as part of their entry.

The Australian Writers Guild (which represents writers for stage, film, television and radio) does not approve of competitions which require all entrants to give an option over their material, or which transfer rights to the competition organisers or any third party. Rather, it recommends that any option or rights must be negotiated and paid for at the appropriate rates. For winning entries, however, the Guild **does** approve of a demand for rights or options if the prize money is more than the minimum purchase fee payable for the rights or options required, and provided the grant of rights or the option is for no more than 1 year from the date the winners are announced.

Contact the Guild for further information, and for sample agreements relating to the staging of plays. Their website is at <http://www.awg.com.au>.

Who owns copyright in entries from school pupils or university students?

Generally, the person who creates something is the first owner of any copyright.

However, an ownership issue can arise with pupils of State and Territory departmental schools, as there is a provision in the Copyright Act which gives first ownership of copyright to a government if it "directs" or "controls" the creation of copyright subject matter. In our view (and in the view of some State and Territory Departments), it may be difficult for a government to argue that it directed or controlled the creation of copyright material when pupils are expected to do their own work.

The issue can also arise in relation to some universities. Such claims are generally based on by-laws or other quasi-statutory documents which students may have agreed to accept, or agreements which students may have signed.

There are some legal problems in a number of these universities' claims, as agreeing to abide by by-laws would not generally amount to an agreement by a student to assign copyright to an institution such as a university. However, some organisations, including many film schools, specifically ask students to sign documents dealing with copyright in material created by them while at the school. In these cases, any assignment of copyright is likely to be effective.

Considerations from the point of view of a competition organiser

From the point of view of a competition organiser, it is probably reasonable to assume that a student owns copyright in what they have created. However, if you are concerned that someone else, such as a government or an educational institution, may have a claim to copyright in an entry from a student, you might either enquire further of the relevant institution, or ask the student or pupil to warrant that he or she owns copyright.

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.

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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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