



Editors & copyright

March 2006

In this information sheet we discuss the copyright and moral rights issues that are most relevant to people who edit textual material. We do not discuss copyright issues for script or film editors. Note also that the statements in this information sheet may not apply in other countries.

Generally, it is a good idea for editors to be aware of copyright issues so they can assist the people or organisations for whom they are editing material to avoid copyright infringements. In many cases, whether or not they specifically say so, publishers and writers rely on editors to alert them to copyright issues.

For a general overview of copyright, see our information sheet *An introduction to copyright in Australia*. For detailed discussion, see our practical guides *Copyright for Book Publishers* and *Writers & Copyright*.

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.

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

Key points

- Permission is usually needed to include copyright material in a book or other publication.
- People using copyright material usually need to make sure the creators are attributed and that they do not use the material in a way that might be damaging to the creator's "honour or reputation".
- Copyright laws are broadly similar from country to country, but if the material you are editing is going to be published overseas, your writer or publisher should not assume that copyright will apply in exactly the same way as here in Australia, specific advice from a solicitor in private practice with the relevant expertise may be needed.

Copyright material that editors are likely to come across

Copyright protects a range of material that you may be required to edit, or which may be incorporated into material you are editing, including prose works, poetry and song lyrics, press articles, dictionaries, tables of statistics or other information, directories and reports. These are protected as "literary works", whether or not they are "literary" in the way most people use that word.

Copyright also protects "artistic" works, whether or not they are aesthetically pleasing. Examples of artistic works include photographs, drawings, paintings, engravings, handicrafts and sculptures.

For information on other material protected by copyright, and for an overview of copyright generally, see our information sheet *An introduction to copyright in Australia*.

Ideas or styles are not protected

Copyright does not protect information, ideas, styles or techniques. People are free to research material and to take information, facts or ideas from other sources to write about a topic.

Of course, someone taking ideas without attributing their source may be accused of **plagiarism**. Writers and publishers would obviously want to avoid such an accusation, but someone plagiarising someone else's work (by using their ideas or interpretation without attribution) will not necessarily also have infringed **copyright**. Only if someone copies enough of someone else's work (for example, by copying that person's words or structure) will there be copyright issues to be addressed.

For further information, see our information sheet *Ideas: legal protection*.

Names, titles and slogans are unlikely to be protected

Some things, such as titles, slogans or phrases (including headlines) are almost invariably going to be regarded as too "insubstantial" for copyright purposes to be "literary works". Therefore, including references to names or titles in a work is unlikely to raise any copyright issue.

A writer wanting to safeguard the use of a name (such as a title or a pen name) will have to look beyond the law of copyright (for example, to trademark law). Similarly, companies wanting to prevent people using names or slogans in material would need to look to areas of law such as the Trade Practices Act and the "passing off" action.

For further information, see our information sheet *Names, titles & slogans*.

Does your publisher or writer have a copyright issue?

Writers and publishers may have a copyright issue to deal with if what they have written or want to publish includes any "third party material" (that is, material created by someone with whom they have no direct contractual or employment relationship). In other words, copyright issues are likely to arise when quotes, illustrations, graphs and so on are included.

Where a publisher contracts with a writer or illustrator, there are also copyright issues, but these should be dealt with in the commissioning or publishing agreement. For more information, see our practical guide *Book Publishers & Copyright*.

A copyright issue which involves third party material will need to be resolved by getting a permission ("clearance") if:

- copyright has not expired; and
- a "substantial part" of the third party material is being used; and
- there is no applicable exception under the Copyright Act.

We discuss these issues in more detail below.

There are no copyright issues if copyright has expired

The general rule is that copyright lasts for the life of the creator plus 70 years. There are a number of important exceptions to this rule. The exceptions which are likely to be most important in the context of publishing textual material are as follows:

- if something was first published anonymously or under a pseudonym and you can't reasonably work out who the creator was (in which case copyright lasts till 70 years from first publication); and
- if a literary or dramatic work or a piece of music was not published, broadcast or publicly performed, or recordings of it not offered for sale during its creator's lifetime (in which case copyright does not expire: old unpublished letters and diaries can still be protected by copyright).

Different copyright periods also apply where a government owns copyright in a work.

For detailed information about how long copyright lasts, see our information sheet *Duration of copyright*.

What if we're only using a few lines?

Clearly, if a writer or publisher wants to use **all** of something such as a poem or a prose article or a photo, there is a copyright issue.

However, if a writer or publisher just wants to use **part** of something protected by copyright, it can often be difficult to work out whether there is still a copyright issue.

Under the Act, there is a copyright issue if a "substantial part" of something protected by copyright is going to be used in one of the ways exclusively reserved to the copyright owner.

When courts have had to consider what is meant by the phrase "substantial part", they have emphasised that it is the **importance** or **distinctiveness** of the part that is being used that is relevant, not the size or amount. There is no set percentage or number of words that makes a "substantial part". Depending on the nature of the material, using even small parts may still raise a copyright issue, as small parts may nonetheless be important or distinctive parts of the whole material. Generally, the more original or recognisable the part used, the greater the likelihood of it being a "substantial part". Some publishers have in-house guidelines regarding the number of words they will use without seeking permission. This has no legal standing and is merely a risk assessment measure.

For more information, see our information sheet *Quotes and extracts: copyright obligations*.

Does a special exception apply to your use?

There are a number of situations in which writers and publishers may be entitled to use copyright material without permission.

Fair dealing

People can use copyright material for the purpose of criticism or review or for reporting news without infringing copyright, provided they acknowledge the author and title of the work, and provided the dealing is "fair".

The second of these exceptions is likely to be relevant to periodicals rather than books, as it might be difficult to argue that publishing something in a book or multimedia product is "reporting news". However, the "review or criticism" exception could be available in any of these situations.

For more information on these exceptions, see our information sheet *Fair dealing*.

Public artworks and buildings

Sculptures and "works of artistic craftsmanship" which are on public display "other than temporarily" may be filmed, drawn, painted and photographed without permission. Similarly, both buildings and models of buildings may be filmed, drawn, painted and photographed.

The resulting footage, drawing, painting or photograph can then be published without infringing copyright in the artwork, building or model that is depicted.

This means that, in many cases, if you are using an image of this nature, in many cases you will only need to consider the copyright issues relating to the photograph, and not in the building or public sculpture or craft item itself.

These exceptions are generally understood to cover the use of images or footage of public art, buildings and models of buildings when an image or footage is reproduced, for example, in print or in CD-ROMs. It is unclear, however, whether or not these exceptions are available when the image or footage is made available online.

Note that these exceptions do **not** cover other types of artworks, such as paintings (for example, public murals which might be on a wall, or on building).

Moral Rights

Creators of copyright works have “moral rights” in relation to their works, whether or not they also own copyright. Moral rights are separate from copyright, and can only be held by individuals. Creators of copyright works and films have the right to:

- be attributed;
- not have their work falsely attributed; and
- not have their work distorted or otherwise treated in a way that damages or potentially damages their honour or reputation (the “integrity” right).

There are some situations in which moral rights don’t have to be respected. For instance, it is not an infringement of moral rights if:

- failure to attribute or to respect the identity of the work is “reasonable” by reference to factors such as the nature and purpose of the work and relevant industry practice; or
- the creator has given written consent to what otherwise would be an infringement.

Generally, as an editor, you should be on the lookout for whether or not third party material such as quotes, illustrations, tables and photographs are properly attributed. Uses that might raise issues concerning the right of integrity include altering the conclusions of a written work or, in some cases, cropping or re-colouring an artistic work.

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

What rights or consents should be sought?

As an editor, clearing rights may be part of your job. In many cases, however, it is likely that your role is merely to alert the person or organisation you are working for to the fact that a copyright or moral rights issue may exist.

If permission is required from the copyright or moral rights owner, whoever is responsible for clearing rights will need to consider various issues, including:

- what rights to acquire;
- what formats the clearance should cover; and
- for how long the clearance is needed.

For further information, see our information sheet *Assigning and licensing rights*. For information on tracking down copyright owners, see our information sheet *Owners of copyright: how to find*.

Common questions

Does copyright protect ideas for written works?

No. Copyright protects the expression or form that the ideas take. The idea of an article about the Olympic Games, for example, is not protected by copyright. A person who writes about the Olympic Games can take action against others reproducing his or her written work, but cannot prevent others from writing their own work on the Olympic Games or using ideas or information from his or her work.

Who is responsible for getting copyright clearances: the publisher or the writer?

For books, the writer’s contract should generally state who is responsible for getting all necessary permissions to include third party copyright material. In many cases, the writer undertakes to do this. However, in many cases, publishers should generally also assess what permissions are needed, and check that they have been obtained and properly documented.

The reason for this is that, generally, it is the publisher who is sued for copyright infringement, not the author. The publisher may be entitled to recover money from the author if the author has breached an undertaking in his or her agreement, but this is only useful if the author is able to pay.

I have substantially edited a report. Do I have any claim to copyright ownership in the edited version?

Whether an editor will own copyright in an edited text will depend upon the particular situation. It is unlikely that an editor would own copyright where the edits relate to matters such as spelling, grammar, style and punctuation, or where the editor makes suggestions about the text which the writer later implements.

On the other hand, where the editor makes significant changes to structure or wording, the editor (or editor's employer) may own part of the copyright in the new work created. However, this part ownership would be subject to the underlying copyright in the original material (in other words, you could not independently publish the edited work without permission). Further, the owner of copyright in the original material and the person or organisation you are working with would generally have a very wide-ranging licence to use the edited material without specific permission from you.

Can editing a work infringe the moral rights of the author?

It is generally unlikely that an editor would infringe the moral rights of a writer by making alterations to spelling, grammar, style and punctuation (unless, of course, unorthodox spelling, grammar or punctuation are integral to the particular material).

However, substantial changes to structure and wording of a work **may** infringe moral rights if such changes are made without consultation with the author before the work is published.

Most publishing agreements contain a clause dealing with moral rights and making edits to an author's work. As an editor, you should be sure that you understand what sort of editing is permissible without the author having to be consulted.

If you are editing articles for magazines or newspapers, it may be "reasonable", in light of industry practice, to make certain types of changes (for example, for space considerations) which would not be "reasonable" in the context of book publication. However, we recommend that publications draw up policy guidelines to assist their editors in this regard.

In practice, the publisher would usually be liable for any moral rights infringements.

Is plagiarism the same as copyright infringement?

Plagiarism generally means taking and using another person's ideas, writing or inventions as your own. Plagiarism is not an area of law and not all acts of plagiarism are necessarily infringements of copyright. For instance, a writer or academic may breach the ethical standards expected of him or her by presenting someone else's ideas as his or her own, but not infringe copyright because he or she has expressed the other person's ideas in his own way.

As an editor, am I responsible for copyright or moral rights infringement if an author or publisher uses a quote that should have been cleared?

Generally, no.

However, as a practical matter, one of the expectations of an editor may be that he or she will draw potential copyright and moral rights issues to the attention of the person they are working for. It is best to clarify with the person for whom you are doing the editing whether or not he or she has any expectation that you will do so.

An author has included song lyrics in a story. Do these need to be cleared?

Generally, a writer or publisher will need permission to reproduce all or a "substantial part" of song lyrics, which are usually a "literary work".

Because it can be difficult to work out whether or not a line from a song is a reproduction of a substantial part of the song's lyrics, and because music publishers can be very protective of their rights, many publishers get permission for even a couple of lines of a lyric.

We recommend that publishers, if they are expecting their editors to look out for possible copyright issues, develop guidelines to assist them in this regard.

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.

You may also wish to contact the Editors' Society in your state: see http://www.publishers.asn.au/links.cfm?doc_id=63.

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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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