



# Protecting your copyright

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In this information sheet, we discuss how people who have created copyright material can protect it. If you are new to copyright, please also read our information sheet *An introduction to copyright in Australia*.

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

## Key points

- Certain material is automatically protected by copyright under Australian law. There is no registration of copyright in Australia, and no formal procedures to go through.
- Copyright gives its owner the legal right to take action in certain circumstances if someone else uses their material. Sometimes, criminal proceedings can be brought.
- There are many myths about how you can prove copyright ownership, which are unhelpful. There are, though, some things you can do that might help you to have relevant evidence for court.
- In some circumstances, copyright owners can rely on presumptions that they own copyright, rather than having to prove ownership.
- In addition to copyright, both technological protection measures and contractual terms can be used to limit other people's ability to have access to or use copyright material.

## How do you get copyright protection?

Material is automatically protected by copyright in Australia, under the *Copyright Act 1968* (Cth), if:

- it is in one of the categories of things that are protected by copyright;
- except for broadcasts, it is in "material form" (for example, on paper, as a digital file, a film or an audio recording); and
- there is a sufficient connection with Australia (as a result of international treaties, this applies to material from almost all countries).

For information on the categories of material protected by copyright, and the rights of the copyright owner, see our information sheet *An introduction to copyright in Australia*.

Note that copyright does **not** protect ideas, information, techniques, names or slogans. For information on areas of law that can sometimes protect these, see our information sheets *Ideas: legal protection*; and *Names, titles and slogans*.

## No registration of copyright

Although it seems surprising, there is **no registration** of copyright **in Australia or in most other countries**. You do not register copyright, or go through any formal process, before your material is protected by copyright under Australian law.

In some countries (such as the US), it is possible to register copyright. However, even in those countries, registration is not normally required in order to receive copyright protection; it can, though, provide additional benefits relating to procedures and damages you can claim if court action is taken over infringement of copyright **in that country**.

For information on registering copyright in the US, see <http://www.copyright.gov>.

## How do I prove I am the copyright owner if there's no registration?

It is rare to be in a position where you have to prove that you are the creator of something.

If there's a dispute about who created something it may need to be resolved by a court. A court would look at all the relevant evidence. The most important evidence would usually be oral evidence from the creator and from people who were present when the material was being created or who saw early drafts. Other evidence may include drafts of the work.

If you are concerned that you might at some stage need to prove you own copyright in something you have created, any of the following procedures might help you ensure that you have some relevant evidence:

- keep dated drafts, plans, and outlines of the work;
- keep dated records of research done in creating the work;
- keep recordings of different stages of development (for example, with songs, music or choreography);
- discuss the work with others, and/or show drafts or finished versions to others;
- keep written records of any agreements you make concerning creation of material or ownership of copyright in material.

Someone who takes legal action falsely claiming to own copyright runs the risk of serious legal consequences if he or she is found to have lied to a court.

### *Presumptions*

In some cases, having the copyright notice on material that you write and publish can raise a presumption that you own copyright in that material. A similar presumption may be raised if you can produce evidence of overseas copyright registration. However, if your claim is disputed, you will still have to provide other evidence, such as the things listed in the previous paragraphs.

There are also presumptions about the authorship of a work. These may apply in relation to names of individuals appearing on published works and names of individuals appearing on artistic works when they are made. There are special presumption provisions relating to photographs.

In its May 2006 proposals for copyright law reform, the government indicated its intention to make it easier for copyright owners to prove copyright ownership, including by adding a presumption relating to the ownership of copyright in commercially released films. Details of the proposals were not available at the time we revised this information sheet.

## Things that don't make you a copyright owner

There are many myths about how you can prove you own copyright. Some of the common ones are set out below.

### **Sending a copy of the work to yourself by registered mail**

This is a widely held belief among musicians. Sending copies to yourself, whether by ordinary or registered post, may help the bottom line of Australia Post, but it has **no legal effect** whatever. At most, doing this may prove that the material existed at a particular date: it does not create copyright, and does not make you the copyright owner.

### **Putting the "copyright notice" on material**

The copyright notice is a written statement in a form such as "© Stuart Pitt 2005". In Australia, as discussed above, there is some benefit in using the notice as it will often raise the presumption that the person or company named in the notice is the copyright owner of the relevant material, unless this is disputed. In other

respects, the notice has no legal effect in Australia and in most other countries. (It may, however, be relevant in relation to those countries which have not signed the main international convention concerning copyright, the Berne Convention, but the number of these countries is reducing.) Specifically, writing the copyright notice on the material does not create copyright or other legal rights, and it does not alter ownership of copyright in the material. Material that meets the requirements for copyright protection is protected whether or not the copyright notice is used.

In addition to the benefit of the presumption referred to in the earlier paragraph, the purpose of the notice in Australia is generally to let someone seeing it know that the material is claimed to be protected by copyright. It can also be helpful if someone wants to use your work, as it gives them somewhere to start when they are trying to ask permission from you or the copyright owner to use the material. Generally, the words used are not crucial. Nonetheless, it is a good idea if you are using the notice on material you create to use it in its correct form: the “©”, the name of the copyright owner, and then the year of first publication.

## Registering music with APRA

Many composers and songwriters are members of Australasian Performing Right Association (APRA) and are required to register their compositions with APRA. Such registration does **not** create copyright or change the copyright status of the material. Rather, registration of the material allows APRA to collect licence fees for the public performance of the material, and to identify who is entitled to receive the payments. Normally, the copyright owner(s) will receive the fees, but this is not always the case. For example, it is common for bands to come to an arrangement about sharing APRA payments, even if not all members were involved in creating all the songs. See our information sheets *Music* and *Music: bands* for further information.

## “Registering copyright” with private organisations

A number of organisations, often operating on the internet, offer to register copyright or materials in return for a fee. “Registering” your work in this way does **not** give you any greater copyright protection than you get from simply writing down or otherwise recording your work. The legal status, and copyright protection, of the material will not be affected.

Before handing over any money (or any work that you want to protect) to such a “register”, you should check what benefits you will get. In many cases, the most you could get from such “registration” is possible evidence that the material was in existence at that date (assuming that the organisation is still traceable at the time you want to prove the fact). Whether or not it is worth paying hard cash for this is up to you.

## How does copyright protect my work?

Copyright is a legal right, giving the copyright owner the legal right to take action if somebody else uses the copyright material (without permission) in one of the ways reserved to the copyright owner, **unless** an exception to infringement applies.

For further information on the rights of the copyright owner and exceptions to infringement, see our information sheet *An introduction to copyright in Australia*.

Although your work is protected by copyright, it may in practice be possible for people to use it without your permission. Unless the person is entitled to use copyright material under one of the “exceptions” to infringement, you have the right to take legal action against them.

## What happens if my copyright is infringed?

Generally, if you are a copyright owner and someone infringes your copyright, it is up to you to take action to stop the infringements and/or claim compensation or other legal remedies. This is a civil legal action.

If you are a member of a copyright collecting society or professional organisation (such as a publishers’ or authors’ society), in some cases you may be able to get assistance from that organisation, especially if the issue is of substantial concern to members of the organisation generally.

If you have assigned or exclusively licensed any of the copyright (for example, by entering a publishing agreement), the assignee or exclusive licensee may take legal action, sometimes with you.

In some cases, criminal proceedings may be brought. Criminal proceedings are most likely to be relevant where commercial-scale piracy has taken place.

For further information, see our information sheets *Infringement: what can I do?* and *Infringement: actions, remedies, offences, penalties*.

## How can I prevent people from infringing my copyright?

If you want your material out in public, there is no foolproof way of preventing people from infringing your copyright. However, there are some things you can do to limit the ability of other people to use your material without your permission.

### Technological protection measures (TPMs)

If you are making your material available in digital form, there are an increasing number of technical things you can do to limit the ways in which it is possible for people to use it. Broadly, there are two main types of TPM: those that restrict access to the material, and those that limit or prevent copying of the material. Techniques include: access codes; password-only access; view-only documents; and low-resolution images.

The Copyright Act supports the use of TPMs because these give practical protection to copyright owners. There are also provisions in the Copyright Act that give copyright owners the right to take legal action against people who make, supply, distribute or import devices to circumvent TPMs. In some cases, distribution of devices or services to circumvent TPMs is a criminal offence. These rules will be made stronger in amendments that are due to come into effect in 2007, as a result of the Australia–US Free Trade Agreement, by for example:

- including sanctions against the use of a circumvention device or service to access copyright material;
- imposing sanctions against using, making and supplying devices designed to circumvent TPMs that control access; and
- limiting the exceptions to the TPM rules.

See our information sheets *Free Trade Agreement amendments* and *Digital Agenda amendments* for information on these changes.

### Contract terms

Whether or not your material is being made available in digital form, you may be able to set contractual (legally binding) conditions on people getting access to it. This is most likely to be feasible if:

- people can only get access to the material by contacting you, or distributors licensed by you;
- the material is made available on a website; or
- the material is made available in digital form.

If you are commissioned to create copyright material, the rights of the person who commissioned the material to use it are governed by the contract, which is often called an agreement. The terms and conditions of the commissioning agreement should set out the uses the other person can make of the material.

You can have a contract without having a written document; however, it is preferable to put contracts in writing, so that you have a record of what has been agreed.

Relying on a contract differs from protection under copyright law in a number of important ways, including the following:

- you can only impose obligations on the person you contract with (who has agreed to be bound by those conditions);
- the terms of the contract can limit or extend what the person can do under the Copyright Act; and
- you can use a contract to protect things that are not protected by copyright (such as information).

For the kinds of issues you should address in contracts, see our information sheet *Assigning and licensing rights*. If you create copyright material on commission, see our information sheets *Ownership of copyright*, *Photographers* or *Graphic designers*.

For assistance with drafting contracts, you should consult a lawyer in private practice. The Law Society or Law Institute in your State or Territory may be able to refer you to a lawyer with relevant expertise.

## Useful organisations

### Copyright collecting societies

Some creators and other copyright owners are able to join copyright collecting societies, which collect licence fees paid by other people for use of the material and distribute the fees to the copyright owners. If you fit into one of the relevant categories, you may be eligible to join a collecting society and receive licence fees through them for use of your material. There may also be other ways the societies can help you. For information on the collecting societies, and their contact details, see our information sheet *Copyright collecting societies*.

### Professional bodies and unions

If you are professionally involved in creative work, you may find it beneficial to join a relevant professional organisation or union. Often these organisations can help members with information on a range of issues, including, in some cases, business practices that will help you protect your copyright. However, these organisations cannot necessarily advise on individual copyright problems. Some of the better-known organisations of this kind are:

- Media Entertainment Arts Alliance (MEAA)—<http://www.alliance.org.au> (journalists, media photographers);
- Australian Society of Authors (ASA)—<http://www.asauthors.org> (writers, illustrators and book designers);
- Australian Writers' Guild (AWG)—<http://www.awg.com.au> (writers for film, television, radio, theatre, video and new media);
- National Association for the Visual Arts (NAVA)—<http://www.visualarts.net.au> (visual artists and craftspersons);
- Australian Publishers Association (APA)—<http://www.publishers.asn.au> (publishers of books, journals, educational materials and electronic works);
- Australian Institute of Professional Photographers (AIPP)—<http://www.aipp.com.au> (full-time professional photographers); and
- Society of Advertising, Commercial and Magazine Photographers of Australia (ACMP)—<http://www.acmp.com.au> (professional photographers).

## Further information

For further information about copyright, and about our 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.**

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.



*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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