



INFORMATION SHEET

G108v01

User-generated content & Web 2.0 websites

March 2009

In this information sheet we give an overview of copyright issues that apply when website proprietors invite people visiting their site to create or post user-generated content (UGC). Popular examples include:

- social networking sites (such as MySpace, Facebook and Twitter);
- image/photo/film-sharing sites (for example, YouTube, Shutterfly and Flickr);
- blog sites that invite comments and responses;
- information sources (such as Wikipedia);
- game and virtual reality sites (such as Second Life); and
- entrepreneurial ventures with UGC elements (such as book, CD and travel sites which invite customers to post reviews).

We particularly focus on the issues a website proprietor needs to be aware of when setting up such a site. We assume that you are familiar with the copyright basics set out at www.copyright.org.au/basics, and that you have read our information sheet *Websites: an introduction to copyright*, available at www.copyright.org.au/websites.

We update our information sheets from time to time. Check our website to make sure this is the most recent version, and for other information, such as 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

- Contributors will usually own and retain copyright in material they post to, or create on, your site.
- Unless contributors agree to give a broader permission, a website proprietor is likely to have only a very limited licence to use UGC – this is only likely to cover making the material available on that particular website.
- Take care in licensing UGC – the permissions you give for people visiting your site to use UGC must be no broader than the permissions you get from the people who posted that material.
- Develop appropriate procedures to guard against the consequences of visitors posting infringing material to your site.

UGC protected by copyright

In some cases, visitors to your site may have created material offline and then posted it to your site. For example, they may have taken photos or recorded music or created video footage that they then upload.

In other cases, people may create material on your site. For example, they may be creating and animating avatars and other types of material as part of an online game or virtual world which you are operating, or they may be typing comments directly into your discussion forum or wiki.

For the purposes of this information sheet, we have assumed this material will be protected by copyright, although this may not always be the case. For example, UGC comprised of text (such as “I really enjoyed this book/hotel/film/blog”) may not have resulted from sufficient skill and effort to be protected by copyright.

Ownership of copyright in material posted to a UGC website

Websites run by people not connected to a government department or agency

Merely hosting a site to which people post UGC or within which they create UGC does not mean that you own copyright in that material.

Rather, assuming that the contributor has created the material, the contributor will usually own copyright. (In some cases, their employer may own copyright, if it was part of the poster’s job to create that material). You, on the other hand, will have a limited “licence” (permission) to use that material.

If you **do** wish to acquire copyright in material users post to your site, you will need to have contributors assign copyright to you by “signing” a written agreement to that effect. In this context, typing their name may constitute a “signature”, but you may need legal advice on this. Before deciding to ask contributors to assign copyright to you, however, you should consider what reaction such a request may have, as it may meet with resistance from the community your website is seeking to foster.

Websites run by a government department or agency

Although it is not entirely clear, it is possible that UGC uploaded to a website run by a State, Federal or Territory government department or agency will be owned by that government. This is because there are provisions in the Copyright Act that vest copyright in a government if it is the first “publisher”.

In light of the fact that this may – for contributors – be an unexpected outcome, government departments and agencies that are operating websites that invite UGC may want to alert contributors to the consequences of uploading their content. If the government does not want to own copyright in that UGC, it should address this in its user agreements.

For information on what sort of organisations are “government” for copyright purposes, and other information about copyright for governments, see www.copyright.org.au/government.

Practical implications

Where you **don’t** own copyright in UGC, make sure that your website copyright notice clearly distinguishes between what you claim copyright in, and what might be copyright to contributors. You can do this by adopting a copyright notice such as:

© [name of website proprietor] and contributors 2009.

Your entitlement to use UGC

Subject to the comments above relating to government websites, your right to use UGC created on or posted to your site will usually be very limited. Unless contributors agree to the contrary, you will not be entitled to:

- use the material offline; and
- grant visitors to your site permission to do anything other than view or listen to the UGC (in particular, you will not be able to authorise them to download or print off copies of that material).

If you do want to be in a position to use UGC more broadly than making it available for viewing and/or listening on your site, you should make sure that contributors specifically give you permission to do this. Ways to do this include:

- if someone has already posted or created material to or within your site, you can try to contact them **after** the event (note, however, that they may not be identifiable or contactable); or
- you can make sure that you not only have user terms and conditions that will allow you to use the material more broadly, but that potential contributors have to agree to these **before** they can post or create material.

As a practical matter, the second approach is usually preferable where you have identified that you need to use the material other than on the site.

You may, however, want to take some care in crafting any terms and conditions, so that they reflect the rights contributors are prepared to grant you. A prominent Web 2.0 website recently upset its contributors when it changed its website terms and conditions to allow it to use contributors' material very broadly. In the end, it had to review its position and try to repair its relationship with its contributors.

Practical implications

Unless you have permission from UGC contributors, check that people visiting your site aren't likely to be misled, because of any copyright or licensing statement on your site, into thinking that they can use the UGC in the same way as you allow people to use your own material.

For example, if you have a blog, you might be happy to license it under a Creative Commons licence, but unless you have contributors' prior permission, you won't be in a position to give any similar licence for contributions from people posting responses to your blog.

Infringing material within UGC

In some cases, UGC may infringe copyright. For example, a contributor may post someone else's photo, or upload a video that uses someone else's music in its soundtrack. This may often be as a result of ignorance on the part of the contributor but, whether or not you are aware of the infringing material, you are likely to be liable if there is an action for copyright infringement.

"Safe harbour" provisions in the Copyright Act

There are provisions in the Copyright Act that can limit the liability of Internet Service Providers (ISPs) for infringement of copyright by their customers. These do not, however, apply to the ISPs' customers themselves (e.g. website proprietors).

Exceptions to infringements

In some situations, you and/or contributors may be able to rely on provisions in the Copyright Act that permit the use of other people's material without permission.

These situations are, however, rare. In particular, there is no "fair use" defence under Australian law; UGC that includes someone else's recording in a video soundtrack, or that samples someone else's music or mashes-up someone else's text or photos, will usually require a clearance.

For information on exceptions, see the information on our website, particularly at www.copyright.org.au/exceptions.

Practical implications

There are several steps we recommend you take in order to limit the consequences of contributors posting or creating material that infringes copyright:

- as part of a binding agreement with contributors, ensure that one of the terms or conditions states that they will not infringe copyright and that they will indemnify you for any infringing behaviour (generally it's a good idea to get a lawyer to draft your terms and conditions and to advise on how to make sure these are contractually binding);
- educate contributors by reminding them in plain English not to post material without the relevant copyright owner's consent;
- make it clear to contributors that you retain the right to remove material that you consider may infringe copyright;
- monitor your site for potentially infringing material (this will generally be easier if you have a moderating process, so that someone has to "eyeball" and approve UGC before it goes "live" on your site – you can then remove potentially infringing material before it becomes a problem);

- put a clear statement onto your website that sets out how people who want to complain about potential infringements of their copyright can contact you; and
- respond quickly to claims UGC on your site infringes copyright (for example, remove the material from the site or, if in doubt as to the validity of the claim – for example, because you think a “fair dealing” defence may apply – get legal advice as quickly as possible).

Following these steps won't mean that you will never be liable for an infringement, but they are likely to greatly diminish the chance that an infringement occurs, and greatly diminish the financial and legal consequences of any such infringement.

Links to content on other websites

While it's not entirely clear from current Australian case law, there are good grounds for arguing that the mere provision of a link on your website – including within UGC – won't of itself raise copyright issues.

You are likely to be on safer ground, however, if you:

- set your website up in a way that takes someone clicking on the link directly to the other URL – avoid “framing” the material from the other site on your site;
- remove any links if it is reasonably obvious that the link will take people to infringing material (for example, to websites that offer the very latest Hollywood movies for free); and
- respond quickly to any complaint from another website that you are linking to it, either by removing the link or by seeking urgent legal advice as to your position.

Further information

For further information on the approach being promoted by the entertainment industries, see the “Principles for User Generated Content Services”, available at www.ugcprinciples.com.

For further information about copyright, and about our other publications and training program, see our website – www.copyright.org.au.

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 and libraries. For information about the service, see <http://www.copyright.org.au/advice>.

Information from the Arts Law Centre of Australia may also be of interest to you: see 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.

The Australian Copyright Council is a non-profit organisation, partly funded by the Australia Council for the Arts, with four full-time and four part-time staff. The Council's services include providing information, assistance and advice in response to more than 3,000 enquiries a year, publications, training, research and submissions on copyright policy.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

© Australian Copyright Council 2009