

# What is copyright?

## Copyright

Copyright is a set of exclusive rights granted by the Government to protect the particular form, way or manner in which information or concepts are expressed. Copyright is administered and enforced domestically, and while there is a great deal of harmonisation between countries it is important to check the laws in the country (or countries) in which you wish to protect your copyright.

Copyright does not protect the information but the original form of expression. It protects the further copying of that form of expression. Copyright protection is generally “works” or “other subject matter”. A “work” includes:

- Literary works: that is the written word, irrespective of any literary quality; for example, books, articles, warranty terms, instruction manuals, reports, computer programs, directories and databases.
- Artistic works: including paintings, drawings, sculptures, diagrams, plans, photographs and maps (again, irrespective of any artistic quality).
- Dramatic works: including choreography (dance), screenplays, plays and mime pieces.
- Musical works: including music itself, separately from any lyrics or recording.

Other subject matter covers sound recordings, films, and TV and radio broadcasts.

Generally, authors have the right to control the work, subject to various exceptions.

## Criteria for protection

Original work is automatically granted copyright protection, so registration is not required. Original does not mean that the information is novel, or has never been expressed before. It means that it has not been copied from another source.

## Exclusive rights

The owner of copyright in “works” has the exclusive right to do each of the following:

- reproduce the work (including copying, filming and recording)
- make the work public for the first time
- communicate the work to the public (including online)
- make an adaptation of the work

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 sharing a film containing the work); and the right to make an adaptation of the work (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).

## Duration of copyright protection

Generally speaking (and for most published works) copyright lasts for the life of the author plus 70 years. This is the case even when the author never owned the copyright.

## Who owns copyright?

The general rule is that the first owner of copyright is the creator of the work, or the person responsible for making the sound recordings, film, broadcast or published edition.

There are some important exceptions to this general rule. Both the general rule and the exceptions can be excluded or varied by agreement.

- Employees: where a work is made by an employee (rather than a contractor) as part of that person’s employment, the employer may own the copyright.
- Contractors generally: Contractors usually own copyright in their creations.

- Contract photographers, engravers and people doing portraits: Generally, the photographer owns copyright unless the photograph was commissioned for a private or domestic purpose. A person who pays for the making of an engraving or portrait usually owns the copyright.

The first owner of copyright in a film is the producer or the person who paid for it to be made or controls the master. In some cases, performers recorded on sound recordings (in the absence of agreement to the contrary) also own a share of the copyright in those sound recordings.

## **Infringement of copyright**

Copyright is infringed when a person does (or authorises) any one of the rights exclusively controlled by the copyright owner without the (express or implied) permission of the copyright owner, and where no defence or exception to infringement applies.

The most common infringement of literary and artistic works is reproduction of a substantial part of a copyright work.

A “substantial part” is not about the amount of the work copied, but the nature of what is copied. It is irrelevant that more or less than 50% of the work is copied or more than 10% has been changed. If what is copied is, qualitatively, important or essential to the form of expression, a substantial part will have been copied. There must be actual copying.

A person may also infringe copyright by selling, distributing or importing infringing copies of copyright material in Australia.

## **Defences to infringement**

There are a number of defences or exceptions to infringement that allow certain users of copyright material to use the material without permission. These include fair use (eg United States) or where the use is a fair dealing for the purposes of criticism or review, research or study or reporting news (eg Australia). A reasonable portion only must be used and the use of that portion (and the dealing) must be “fair”.

There are also special provisions for copying by libraries, educational institutions and governments.

*This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.*

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