

What is copyright?

Copyright protects the particular form, way or manner in which information or concepts are expressed. It does not protect the information but the original form of expression. It protects the further copying of that form of expression.

Copyright subsists in “works” or “other subject matter”. A “work” is each of the following:

- **Literary works:** that is the written word, irrespective of any literary quality; for example, books, articles, instruction manuals, reports, tables, computer programs, directories and databases.
- **Artistic works:** including diagrams, pictures, plans, photographs, drawings, sculptures and maps, again irrespective of any artistic quality.
- **Dramatic works:** including plays, choreography (dance), screenplays, 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.

Criteria for protection

In Australia (and elsewhere), an **original** work is **automatically** granted protection. Copyright is not registered and thus no formalities are required for protection. It is automatic. 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 uploading into an online format).
- 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 regardless of whether the author no longer owns the copyright.

Who owns copyright?

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

There are some important exceptions to this general rule:

- **Employees:** Where a work is made by an employee (rather than a contractor) as part of that person’s employment, the employer owns the copyright.
- **Contractors generally:** Contractors usually own copyright in their creations.
- **Contract photographers, engravers and people doing portraits:** If a photo was taken on or after July 1998, the photographer owns copyright unless the photo was commissioned for a private or domestic purpose. A person who pays for the making of an engraving or portrait usually owns the copyright.
- **Copyright in Films:** 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.

Both the general rule and the exceptions can be excluded or varied by contractual agreement.

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 quantitative but qualitative. 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 key to the form of expression, a substantial part will have been copied.

There must also 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 where the use is a fair dealing for the purposes of criticism or review, research or study, reporting news, parody or satire or in legal proceedings. 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 is a statutory licensing scheme, where permission cannot be refused, but payment to the copyright owner must be made for that use.

This fact sheet was produced as part of a collaboration between the CGIAR Consortium and the Australian Centre for Intellectual Property in Agriculture (ACIPA) to research international intellectual property issues relating to agriculture.

This fact sheet is for information purposes only. It is designed to assist in general understanding of legal rights and obligations: It is not tailored to any particular fact, situation or requirements and should not be relied upon for legal advice.

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