

Answers for Artists



**Copyright
Moral Rights
Contracts
Insurance +
Liability**



**A Guide to
Basic Legal Issues
for Artists**





About Us The Arts Law Centre of Australia is the national community legal centre for the arts. Arts Law is a not for profit company limited by guarantee which was established with the support of the Australia Council in 1983 to provide specialised legal and business advice and referral services, professional development resources and advocacy for artists and arts organisations.

How can we help Arts Law gives preliminary advice and information to artists and arts organisations across all artforms on a wide range of arts related legal and business matters including contracts, copyright, business names and structures, defamation, insurance and employment.

Limits to our service There may be occasions when the Arts Law Centre is unable to provide assistance. For example, if one party in a dispute or transaction has already contacted us for advice or if it is considered more appropriate for a matter to be referred elsewhere. Also, Arts Law can only advise on arts related matters.

Telephone legal advice service

Initial telephone legal advice is free. To lodge your request for legal advice please contact us by telephone during business hours. Callers outside the Sydney metropolitan area can contact us on our tollfree number by dialling 1800 221 457. Please note that we do not accept requests for legal advice by email.

Referral service If the matter is beyond the limits of our service, or requires a solicitor to act on your behalf, the Arts Law Centre can assist by recommending a suitably qualified solicitor from our national referral panel, but you will have to discuss costs with the solicitor.

Legal Advice Night (LAN) service

Where appropriate, arrangements can be made for Arts Law subscribers to have a free face-to-face or telephone Legal Advice Night (LAN) consultation with a volunteer lawyer from private practice.

Face-to-face LANs are currently organised with the assistance of local arts organisations and volunteer lawyers on a regular basis in Adelaide, Darwin, Hobart, Melbourne, Perth and Sydney. Where possible a telephone LAN may be arranged for subscribers outside these centres.

Alternate dispute resolution

Mediation is increasingly acknowledged as an important alternative dispute resolution mechanism. The Arts Law Centre of Australia's mediation service is specifically designed to provide affordable and accessible mediation for artists and arts organisations. For further information please contact us.

Publications Arts Law publishes a range of materials to assist arts practitioners including information sheets, guides, checklists, sample contracts with explanatory notes, seminar papers and booklets, plus our quarterly newsletter, **Art+Law**.

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Call the Arts Law Centre of Australia for free legal advice on 1800 221 457 or visit our website www.artslaw.com.au

Copyright

What is copyright?

Copyright gives you various rights over your creative work (eg. artwork, music, literature, film, script, play or dance). It stops a person from copying or using your work without your permission.

Copyright does not protect your ideas – it protects the material form (expression) of your ideas (eg. if you share an idea with someone and that person uses your idea in a painting the person has not infringed any copyright and will own the copyright in the painting).

Copyright protects 2 categories:

1. **Works** (literary, dramatic, artistic and musical works); and
2. **Subject matter other than works** (sound recordings, cinematograph films, television and sound broadcasts and published editions of works).

Copyright protects your work only if you are an Australian citizen or resident. Residents of other countries have copyright in Australia if their country has an agreement with Australia to protect their copyright.

Who owns copyright?

Copyright usually belongs to the person who made the work.

Even if you sell your work or other subject matter you still own the copyright (eg. if a buyer purchases your artwork from a gallery they can hang it on a wall but they can't change it or make copies of it without your permission).

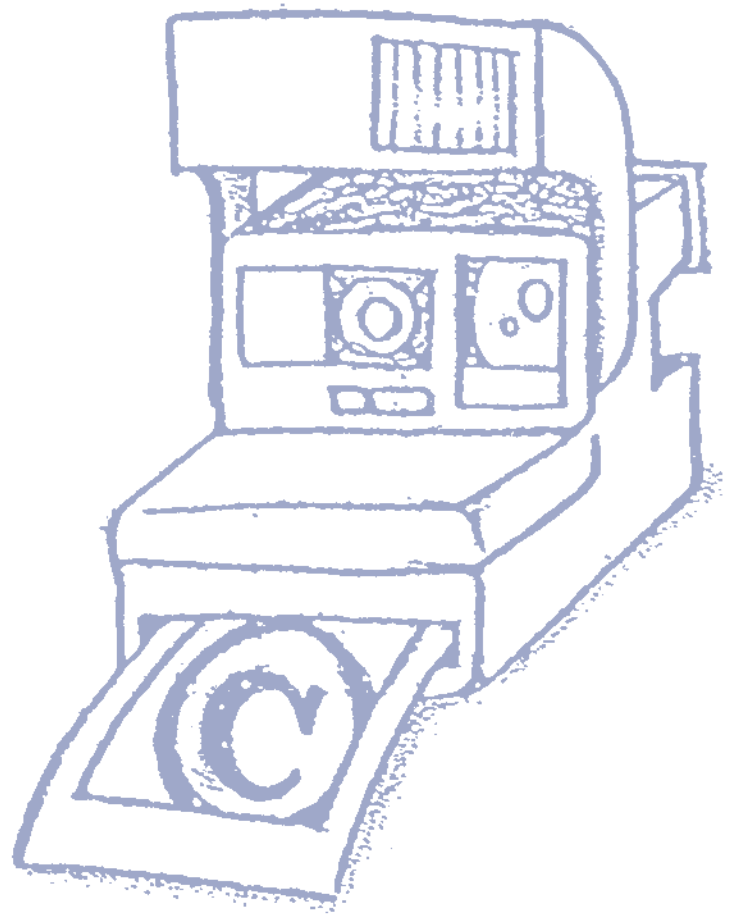
Copyright does not belong to you if:

- you make art at work – your employer is the copyright owner unless you agree in writing to the contrary.
- you make art for a person who pays you to make it for their private or domestic use (eg. you are commissioned to take a photograph or paint a portrait) – the person who pays you is the copyright owner.

The employer or person can reuse your work without asking you but they cannot infringe your moral rights unless you have consented to the infringement. (See the information sheet on moral rights, p3.)

How long does copyright last?

You own copyright in your creative work for your life plus 70 years.



Scenario

Your organisation asks volunteers to take photos of an upcoming festival and create artwork for posters to advertise the festival.

As the festival director, you should consider the copyright issues. Because they are not employees, volunteers generally retain copyright in the artistic works (photographs and other artworks) they create for your organisation. You should seek legal advice and consider entering into a written licence agreement with the volunteers so that the organisation can use the photographs and artwork you have requested.

Continued...

What can I do with my copyright?

For **literary, dramatic and musical works** you have the exclusive right to:

- copy the work;
- publish the work;
- perform the work in public;
- communicate the work to the public (including by putting it on the internet);
- make an adaptation of the work; and
- enter into a commercial rental arrangement in respect of the work reproduced in a sound recording.

For an **artistic work** (eg. paintings, sculptures, drawings, engravings, photographs, buildings, pottery and embroidery) you have the exclusive right to:

- copy the work;
- publish the work; and
- communicate the work to the public.

You can license your copyright to allow another person to do any or all of these things (this should be in writing) or you can sell all of your copyright to someone else, so that you no longer own it (this must be in writing).



What if someone is using my copyright, without my permission?

Always take photos or keep drawings of your artwork to show that you made it.

If someone copies your artwork without your permission (infringement) you can take legal action to stop this. You should speak to a lawyer or the Arts Law Centre of Australia (www.artslaw.com.au).

Universities and schools are allowed to copy your work for educational use but they must pay a fee.

Scenario

An artist discovers that one of her artworks is being printed onto t-shirts and sold at a market without her permission. What can she do?

If the artist's image is being reproduced without her permission then this will be a copyright infringement. Any person who wants to reproduce an artwork must get permission from the artist. The artist should be given money for the use of their image. For more information on what action the artist can take please contact the Arts Law Centre of Australia. www.artslaw.com.au

Alert

You do not need to use a notice or the © symbol, but it is useful and recommended. You could state: **This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of (name and address of copyright owner and the year in which the work was made).**

To make sure that people know that you are the copyright owner of an artwork use:
© + your name + the year that it was first available to the public (eg. © **Your Name 2006**).

Moral Rights

What are moral rights?

Moral rights recognise your ongoing connection with your creative work (eg. artwork, music, literature, film, script, play or dance).

There are 3 types of moral rights:

- 1. Right of attribution** You can make sure that you are named and acknowledged for your work.
- 2. Right against false attribution** You can stop other people from claiming that they created your work.
- 3. Right of integrity** You can stop your work being used in a way that harms your honour or reputation.

Who owns moral rights?

Moral rights are personal to you (the original creator of the work) and you cannot give them away, sell or transfer them.

Example 1

If you create art at work, your employer owns the work and the artistic property (copyright) in it but you still keep the moral rights.

Example 2

If your employer sells your work and/or the copyright, your name should still appear on the work and you can stop the purchaser from making changes to your work that harm your honour or reputation.

If someone wants to make changes to your work, your permission is required.

How long do my moral rights last?

Your moral rights in your creative work last for your life plus 70 years.

Alert

There is no infringement of your moral rights if:

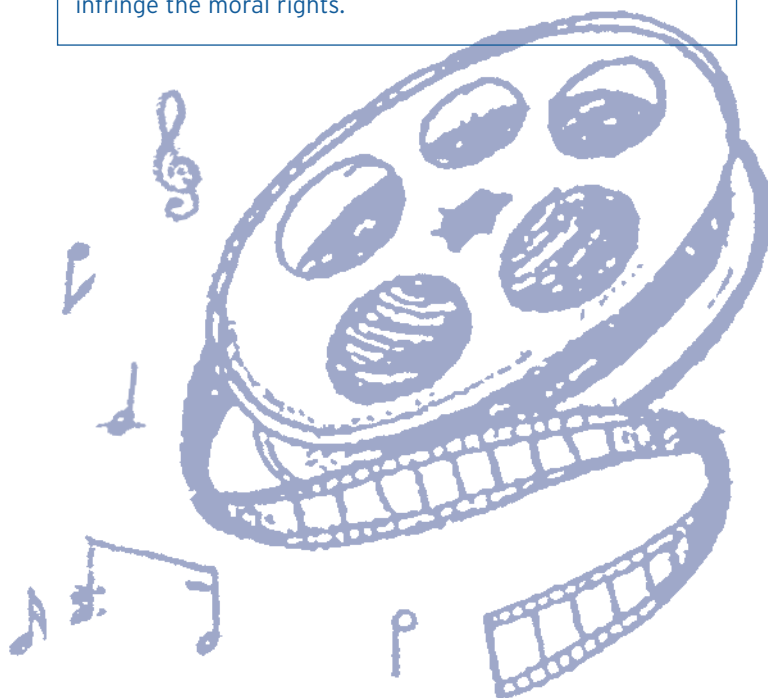
- you have signed a document to allow the actions;
- you have said that you allow the actions; or
- the other person's actions are reasonable.

Always read all written documents that you are given AND never sign anything that you don't understand.

Scenario

You have been asked to write music for an upcoming film and want to know what this means in relation to your moral rights.

As the creator of the music you have moral rights in the music. This means that even if you have sold the work, you should still be named as the composer eg in the credits at the end. Along with this right goes the right against false attribution, so the film maker cannot state that it was someone else who wrote the music. You also have a right to have your integrity upheld, so the music cannot be changed or altered in a way that would harm your reputation. While this is the strict legal position, in practice it is common for the filmmaker to seek consent from the composer of the music to allow the filmmaker to edit the music. However, these consents should be tailored to permit limited acts or omissions which would otherwise infringe the moral rights.



What can I do if someone misuses my creative work or I'm not acknowledged?

You can take legal action against a person who does not properly acknowledge that you are the artist or who changes or uses your artwork in a way that harms your honour or reputation.

If the court agrees that such actions (infringements) have occurred, you can get an order from the court that:

- you get a public apology;
- you are paid money for the harm caused to you (damages);
- the person must stop the infringement (injunction); or
- any false attribution or derogatory treatment is removed or reversed.

Contracts

What is a contract?

A contract or agreement is a promise between two or more parties (people, businesses and/or organisations) which is legally enforceable.

How to make a contract

You can make a contract by agreeing:

- orally (eg. in a phone call or when meeting in person);
- in writing (eg. a letter or email);
- partly orally and partly in writing (eg. by having a meeting and sending an email); or
- by people's actions.

When is a contract made?

There are 4 things you need to make a contract enforceable:

- 1. Offer** An offer from one party to another (eg. if you perform at my festival, I will pay you \$500).
- 2. Acceptance** The other party accepts the whole offer without conditions.
- 3. Consideration** What each party gives to the other as the agreed price for the other's offer.
- 4. Intention** Each party must want to create a legal relationship. If the parties agree that their agreement is not legally binding then a contract has not been made and they cannot be forced to honour their rights or obligations.

Tips about contracts

Get it in writing – this will help to avoid disputes.

- If someone is hesitant about putting things in writing you should explain that it is not a sign of distrust but a clear way to understand each others' rights and obligations.
- You can use a 'formal' contract (the kind a lawyer uses). The Arts Law Centre of Australia has sample contracts that you can buy.
- You can write your own contract in clear, simple words so that the parties understand it.
- If the other party still does not agree to putting it in writing then write them a letter to confirm what each party has agreed on. It is best if you ask them to check it, sign it if they agree with it and return a copy to you.

Alert

Always read all written documents that you are given and never sign anything that you don't understand.



Scenario

An arts and community centre has been funded to provide an artist residency. The artist will be using studio space in the centre and will be teaching 3 short art classes each week to people in the community.

The centre should have a written contract between itself and the artist – this will help everyone to understand their rights and obligations. It can buy a sample contract from the Arts Law Centre of Australia. The centre needs to know who has authority to sign the contract – this should be set out in the rules for the centre. Both the centre and the artist should get a lawyer to look at the contract before they sign it and to explain anything that they don't understand. If you don't know how to find a lawyer or if you can't afford a lawyer you can call the Arts Law Centre of Australia on 1800 221 457, or visit www.artslaw.com.au.

How to safeguard yourself

Ask yourself, "is it a good deal?" Make sure it meets your requirements and covers your concerns.

Don't give away more than you need Try to keep control of your artistic property (copyright).

Remember, you can negotiate There is no 'standard' contract, so try to negotiate better terms for yourself. If you are still unsure, then maybe you should walk away.

Get legal advice If you don't understand a document or conversation contact a lawyer or the Arts Law Centre of Australia (www.artslaw.com.au).

Do your research Make sure that the other party is not bankrupt. Check with the Australian Securities and Investment Commission (www.asic.gov.au) and the consumer affairs department in your state.

Only promise what you can deliver You cannot offer something that you do not have or cannot deliver.

Always keep a copy of all documents that you sign You can make identical copies for each party to sign or you can photocopy the signed documents.

Liability + Insurance

What is liability?

Duty of care

The law requires you to take reasonable care to avoid hurting or damaging a person or their property when your actions (or inaction) are likely to affect them.

Breach of duty

If what you do (or fail to do) causes harm to a person to whom you owed a duty of care, you may be legally responsible or liable.

Consequences

If a court finds that you have done the wrong thing and are responsible for the harm caused, then you may have to pay money (lots) to the person who was hurt or for the property that was damaged.

The court will look at what precautions you took to prevent harm to the people to whom you owed a duty of care.

How to safeguard yourself

Identify risks

You need to identify the risks involved in your arts activity or event.

Minimise or avoid risks

You must plan how to avoid or minimise the risks. This could include:

- Warning signs eg. label poisonous substances with a clear warning;
- Security eg. alarms, smoke detectors, sprinklers;
- Waivers or release forms eg. workshop participants sign a release form absolving your liability in case of injury or accident;
- Training eg. occupational, health and safety training; and
- Insurance eg. public liability, property, workers compensation.

Insurance

You can buy insurance to protect you against the risk.

Scenario 1

You have been asked to teach a music class at your local community centre. Many people from the community will attend. You will need a speaker and microphone set up so that all the people can hear you. You are worried about what might happen if someone trips over the microphone cord during the class.

You should always think about the possible risks, even though you may not be able to think of everything. Then you can do things to minimise those risks, like placing signs, and taping down cords. You could also get people to sign what is called a Waiver or Release. These forms say that you are not liable for one of the workshop member's injuries. In addition to doing these things you should make sure that you have public liability insurance, so that your insurance will pay for injuries that one of the workshop members sustains if they do trip over and hurt themselves.

Scenario 2

Temporary seating built for a performance collapses injuring members of the audience.

As the event organiser you owe a duty of care to each member of the audience. You should take all necessary precautions to prevent harm to the audience. You do this by identifying the risks and taking all reasonable steps to prevent the risks. If the court finds that you have not taken steps to prevent the risk (eg. checking the safety of the temporary seating) you will be liable and required to pay damages (money) to the injured members of the audience.

Continued...



Insurance basics

When you buy insurance you are paying a sum of money (premium) for an agreement (insurance policy) that if you harm someone or someone's property then the insurer will pay the person for the harm you caused.

Public liability insurance pays for harm you cause to a person or their property (it does not usually cover employees or volunteers).

Product liability insurance pays for harm the products you design, make, repair or sell cause to a person.

Workers compensation insurance pays for harm to your employee injured at work (eg. in Victoria visit www.workcover.vic.gov.au).

Professional indemnity insurance pays for harm you cause to a person in your professional work (eg. a person relies on the professional opinions that you expressed in an article or film and suffers damage because the opinions were incorrect).

Property (building and contents) insurance pays for replacement and repair of things in the insured property (eg. damage to your studio or materials that were stolen).

Transit insurance pays for replacement and repair of the insured item (eg. musical instruments stolen, destroyed or damaged during delivery or on loan).

Volunteer insurance pays for harm caused to a volunteer working for you.

You may need more than one type of insurance to protect you. Eg. for a music festival you might protect against:

- harm caused to people coming to the festival (public liability insurance);
- transporting instruments for musicians (transit insurance); and
- harm caused to the students helping run the festival (volunteer insurance).

Alert

Public liability insurance should cover the damages (money) you owe to the injured audience members and the performer.

Tip for buying insurance

Group insurance may be a cheaper option. For example:

Community Insurance (for community groups only.)
www.communityinsurance.com.au

Craftsouth provides property, transit, public and product liability insurance to members. www.craftsouth.org.au

Regional Arts Victoria provides public liability and volunteer insurance cover for local arts groups and individuals. www.rav.net.au

NAVA provides advice on insurance for visual artists and craftspeople. www.visualarts.net.au

Ausdance provides a members only public and product liability and professional indemnity insurance package for dance teachers, dancers and dance companies.
www.ausdance.org.au

Community Broadcasting Association of Australia provides discounts to members for defamation, public liability, property and volunteer insurance.
www.cbaa.org.au

Duck for Cover provides members-only, public liability insurance for performance based artists.
www.duckforcover.com.au

Victorian Woodworkers Association provides public and product liability insurance to members.
<http://home.vicnet.net.au/~woodlink/woodlink.htm>

Artworkers (Qld) provides public and product liability insurance and limited cover for teaching and workshops to members. www.artworkers.org

