



Permission: Do I Need It?

This information sheet is for people who are familiar with the basic copyright principles set out in our information sheet entitled *An Introduction to Copyright In Australia* and outlines issues relating to permissions and clearances for copyright material.

For information about our other information sheets, publications and seminar program, see our website 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.

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

Relevant information can also be found in our information sheets *Permission: How To Get It, Quotes & Extracts* and *Artworks: Getting Permission*.

When you need a copyright clearance

You will need copyright permission if:

- you use something protected by copyright;
- you use a 'substantial part' (this may not necessarily be a big part);
- the copyright has not expired;
- your use is controlled by the copyright owner (the copyright owner has the exclusive right to make the use), and
- your use is not covered by a special exception.

For details on how to find the copyright owner, see our information sheet *Permission: How To Get It*.

When you don't need a copyright clearance

- **You're not using a "substantial part"**

Copyright issues don't arise unless you are using an important, distinctive or essential part of copyright material. Note that this may be a small part of the material.

- **You can rely on an exception to getting permission**

There are a number of situations in which permission to use copyright material is not required.

- These include where the material is being used as a “fair dealing”, which can include the following purposes: criticism or review; parody or satire; and reporting news. See our information sheet *Fair Dealing*.
- There are also exceptions relating to taking photos and drawing pictures of buildings, public sculptures and craft. See our information sheet *Photographers & Copyright*.
- There are a number of exceptions relating to private copying of material. See our information sheet *Copying & Converting Formats for Private Use*.
- There are a number of special exceptions in the Copyright Act that affect libraries. See our information sheet *Libraries: Introduction to Copyright*.
- There are a number of special exceptions in the Copyright Act that affect educational institutions. See our information sheet *Education: Copyright Basics*.
- There are a number of special exceptions in the Copyright Act that affect government use of copyright material. See our information sheet *Government: Commonwealth, State & Territory*.
- There are a number of special exceptions in the Copyright Act that allow people who own, or have a licence to use, a computer program to do certain things with the program. See our information sheet *Software & Apps*.

Note, however, that exceptions, to the need to get permission are often subject to limits and pre-conditions.

- **Copyright has expired**

Material may be freely used if copyright has expired. Become familiar with the rules of duration which are relevant to the type of material you are using – see our information sheet *Duration of Copyright* for full details.

- **The material was never protected by copyright in the first place**

There are no copyright issues if what you are using is really just ideas, information or styles.

Be aware, however, of the distinctions between:

- ideas and their expression in copyright material;
- information and the selection and arrangement of information in a compilation or table; and
- styles or genres and particular items protected by copyright.

In some cases, ideas and information can be protected by laws relating to confidentiality, and adopting someone else’s style may give rise to issues under areas of law such as “passing off”. See our information sheet *Ideas: Legal Protection* for more information.

Similarly, people, as such, are not protected by copyright, but using their image can in some cases give rise to issues under other areas of law – including passing off or “trade practices” law, as well as defamation.

- **Your organisation owns the copyright**

You won't have to worry about copyright issues if you or your organisation own copyright in the material. Be careful, however, of making assumptions as to who owns copyright in material that is "in-house", particularly if it may have been created by freelancers or may contain embedded third-party material.

"Free" licences

Many copyright owners offer "free" licences to use their material – particularly where they make that material available on the internet.

Note, however, that many of these are still subject to conditions (such as attribution) and to limits (such as use for non-commercial purposes only). Always read the terms and conditions carefully and ensure your use will be within the scope of the licence. If you need a broader licence, contact the copyright owner.

Identifying moral rights issues

You will generally have moral rights obligations to people who have created any "work" or film you are using.

These obligations will generally oblige you:

- to attribute relevant creators;
- not "falsely" to attribute them (for example, by failing to indicate that the material has been altered by someone else); and
- to respect the integrity of their work (by not using it in a way that may damage their reputation or honour).

These obligations extend to creators (including employees) whether or not they own copyright; in some cases, you may be under similar obligations to performers where you are using sound recordings of their performances.

When won't you need to worry about moral rights (quick overview)

Moral rights issues exist whenever you use a work or film, but are particularly likely to arise if material is re-purposed. See our information sheet *Moral Rights*.

Using material overseas

While copyright law in other countries is generally similar to Australian law, there can be significant differences, particularly in relation to the duration of copyright and in relation to exceptions.

You will always need to take these differences into account if you will be exploiting material in other countries; in some cases, you may need to get specific legal advice from someone with expertise in the copyright law of the relevant country/ies.

Some common questions

If I use another person's work for a non-profit purpose, do I need permission?

There is no special exception that allows you to use a work without permission just because it is used for a non-profit purpose. The copyright owner may give permission for a low fee, or no fee, if the use is non-profit, but you still need to get permission.

If we want to use work produced by children, whose permission should we get? Can their school or teachers give permission or will we need permission from the children themselves and/or their parents or guardians?

A child's work is capable of being protected by copyright. If a child produces work, the presumption is that he or she will own copyright in that work.

In some cases, there will be an implied licence that the child's school can use the child's work for certain purposes. For example, if the child drew a picture for the purpose of putting that picture on the cover of a magazine, there will be an implied permission for the publisher to do so.

In other cases, however, you should get permission. While there are no hard and fast legal rules, the younger the child, the more inclined your organisation might be to make it a policy to get permission not only from the child but also from his or her parents or guardians. Teachers and schools may be able to assist in getting permission, but cannot themselves give a permission where a child owns copyright.

If a work is anonymous, or has no copyright notice, can I use it without permission?

A work does not need to have the copyright notice or the author's name on it to be protected. The absence of a copyright notice or the author's name may of course make it more difficult to obtain permission.

How many changes to something do I need to make to avoid having to get permission?

Generally, making changes to something won't avoid the need to get permission.

If, for example, you want to use something someone else has created – on your website, or in a brochure, or even for purely personal purposes – you might need permission even if you are using only a small part of that material, or if you make changes to it.

When working out whether or not you will need to get permission, it is more important to look at what is still the same, rather than what has been changed. You will usually have a copyright issue to deal with if you are using any important, distinctive or essential part of the original material – this may or may not be a large proportion of that material.

Further information

For further information about copyright, and about our other publications and seminar 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 www.copyright.org.au

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference.

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.



Australian Government



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

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