# Drama, Performance And Dance (AITB)

This fact sheet provides information on the nature of copyright in dramatic works, the rights of copyright owners, when to get permission from the copyright owner, exceptions to the need to get permission, duration of copyright and royalties.

## What is a dramatic work?

A dramatic work is that which is intended to be performed or presented. It includes choreography, pantomimes, plays, treatments, and scripts prepared for cinema, radio and television. Performers have limited copyright when it comes to dramatic works; the copyright is normally held by the creators of the fixed form, the choreography or script, or their employer or commissioner.

The Copyright Act does not define a dramatic work but states that a dramatic work includes:

- a choreographic show, or other dumb show; and
- a scenario or script for a cinematographic film, but does not include a cinematographic film as distinct from the scenario or script of a cinematographic film.

## The importance of fixing in material form: writing, filming or recording

Copyright subsists in dramatic works which are original and fixed in material form. For copyright to exist in a dance, the steps must have been recorded in one of the forms of dance notation or have been filmed. The copyright owner is usually the choreographer. If a dramatic work, such as a dance or a storyline, has not been fixed in material form by writing it down or recording it in a film (for dance or mime) or sound recording (for a pantomime, play, treatment or script), it will not be protected by copyright.

Many types of Indigenous performance, especially dance, are not fixed in material form. For example, many dances are not written or recorded. Indigenous dances of cultural significance are often performed and taught without written or film records. They are often taught by oral tradition passed down through generations. This method of teaching is done according to Indigenous protocols. By its nature and the fact that it is generally performed in public, dance is vulnerable to copying without permission or acknowledgement. This can also raise issues for copyright ownership.

## What can the copyright owner do?

The owner of copyright in a dramatic work has the exclusive right to:

- reproduce the work in material form;
- publish the work;
- perform the work in public;
- communicate the work to the public;
- make an adaptation of the work;
- reproduce the adaptation in material form, publish the adaptation, perform the adaptation in public and communicate the adaptation to the public; and
- enter into a commercial arrangement for the hiring of the work when it is reproduced in a sound recording.

## When do I need permission from the copyright owner?

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Generally you need permission when you want to reproduce, publish, perform the work in public, communicate it to the public or make an adaptation of the work or a substantial part of the work. Under the Copyright Act, there are some exceptions to this rule (see below).

For example, permission is needed from the playwright to perform an entire play in which copyright subsists. Permission would generally be needed from the choreographer to perform a dance in which copyright subsists.

## Exceptions to the need to get permission

Permission is not required if an exception to infringement in the Copyright Act applies. The fair dealing exceptions provide for use of copyright material without the permission of the copyright owner for the purposes of:

- research or study;
- criticism or review, where there is sufficient acknowledgement of the work;
- satire or parody;
- reporting the news in a newspaper of magazine where there is sufficient acknowledgement of the work, and for the purpose of reporting the news by means of communication or film; or
- professional legal advice.

In addition to these fair dealing provisions, there are two other exceptions to the use of dramatic works:

- A reading or recitation can be made in public or included in a sound or television broadcast from a reasonable amount of a published dramatic work, without infringing copyright, as so long as sufficient acknowledgment of the work is made. This might include a reading from a part of a script for a film as long as the work is sufficiently acknowledged.
- A similar exception applied to recordings played where residents reside or sleep as part of the amenities. There are also exceptions for the holder of a print disability license.

## How long does copyright in a dramatic work last?

Copyright in a dramatic work lasts until the end of 70 years after the end of the calendar year in which the author of the work died.

Copyright in dramatic works which have not been published, performed, broadcast, recorded or offered for sale during the creator's lifetime lasts for 70 years from the end of the year of first publication, performance or broadcast.

Copyright in a dramatic work made for or first published by, a government, or in which copyright is owned by a government lasts for 50 years from the end of the year of first publication.

Copyright in works first published anonymously or under a pseudonym lasts for 70 years from the end of the year of first publication.

Indigenous dance, story telling and performance is often closely linked to important cultural knowledge and should only be reproduced, performed, broadcast or adapted with permission from the Indigenous custodians. Plays and other works by Indigenous creators may also contain important cultural, historical and even family history content. Consultation with the creator, family and community are important for respectful productions.

If a creator or cultural custodian of dance, story or script passes away, it is essential to consult the family or community in order to ascertain their wishes and any protocol issues that should be observed.

Recordings of Indigenous people's dance or performance should not be made or used without their permission.

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# Royalties

Royalty payments can be made to copyright owners and performers. These will often be set out in employment contracts. Check with the Media Entertainment Arts Alliance and Viscopy for industry rates.


### Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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