Legal Glossary: What do some important legal terms mean?

This information sheet acts as a very basic legal dictionary to explain the plain meaning of some important legal terms that you might come across.

Assignment

The assignment of rights is the transfer of property or rights from one party to another. Any assignment of copyright must be in writing and must be signed by the copyright owner.

Attributed

To be identified as the creator of a particular work, sound recording or film.

Author

Legal term used by copyright law which refers to the creator of a literary, dramatic, musical or artistic work.

Business name

A business name is a name or title used by a person or other company, partnership, co-operative or association to conduct business. It is sometimes called a trading name. A business name should be registered with the relevant state or territory government department.

Collaboration

This word generally refers to projects where a group of people work together, such as a play, writing a song, producing a film or sound recording.

Communicate to the public

The *Copyright Act 1968* says that 'communicate' means to make material available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject-matter, including a performance or live performance within the meaning of the Act.

So, whenever copyright material is provided on the Internet, via an online database or by email, or broadcast using electronic transmission it is communicated to the public.

We use material which has been "communicated to the public" when we do the following with publicly accessible copyright material: view a digital image of an artwork online, email a digital image of an artwork, download music from the internet, listen to live streaming of a radio program, or watch a television broadcast.

Copyright

The exclusive right to copy, reproduce, publish, sell, broadcast, make material available online, transmit electronically or distribute a form of expression

Copyright notice

A notice which is a notice placed on a work, sound recording or film to inform others that the work is protected by copyrightand who claims copyright at that time. The notice will often include the copyright symbol, the copyright owner's

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name(s) and the year the work, sound recording or film was first made or published. The copyright notice is a claim to ownership in the work or sound recording,published edition, broadcast orfilm, broadcast or published edition.

Copyright symbol

Copyright symbols include © and (p)Image not found or type unknown. © is the most commonly used symbol. (p)Image not found or type unknown is the symbol sometimes used for a sound recording. The symbols are a notice to the public that an individual, group or company claims ownership of copyright in the work, sound recording, published edition, broadcasting or film.

However, it should be remembered that copyright can exists without a notice.

Creative Commons

Creative Commons is an organisation that provides a number of standard licenses to use its copyright material with licence terms based on the preferences of the creators of those materials.

Domain name

A domain name can be described as the text version of an Internet address on the world wide web. For instance, the full Internet address of Australian Parliament House's website is www.aph.gov.au. The domain name is aph.gov.au.

Duration

This word generally refers to a period of time. For example: the duration of the agreement may be six months. After six months the agreement is finished.

Fair dealing

The *Copyright Act 1968* allows people to use material for certain purposes without infringing copyright providing they meet certain conditions. These are included in the *Copyright Act 1968* as exceptions to copyright. The exceptions are based on the idea of fairness, and allowing fair use of material. They include uses of copyright material for the purpose of: research or study, criticism or review, reporting news, parody and satire, and judicial proceedings or professional advice. The Act sets out a number of conditions which must be met. In the US there are provisions that are often called 'Fair Use' which have some similarities.

Indigenous

In defining Aboriginal and Torres Strait Islander identity as indigenous the Aboriginal and Torres Strait Islander Arts Board of the Australia Council uses a definition that combines three elements: descent, identification and acceptance. An Aboriginal person or Torres Strait Islander is defined as someone who is of Aboriginal or Torres Strait Islander descent, identifies as an Aboriginal or Torres Strait Islander person, and is accepted as such in the communities where he or she lives or comes from.

Indigenous arts

Indigenous arts include visual arts, song, music, drama, dance, performance works, writing and new media. Indigenous art involves the development and practice of traditional art practices, as well as the generation of new forms of artistic expression (Australia Council, *Support for the Arts Handbook,* 2006 page 1).

Infringement

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Infringement of copyright is formally defined in the *Copyright Act 1968*. It includes the act of copying, publishing, communicating to the public, distributing or adapting a work, film or sound recording work, or a substantial part of a work, film or sound recording without the permission of the copyright owner.

Intellectual property laws

The group of laws which set out the rules for copyright, trademarks, patents, designs, the rights of plant breeders, passing off and confidential information. See www.ipaustralia.gov.au

Licence

A licence is a type of agreement which allows copyright or other materials to be used. Generally, a copyright owner will agree that their material can be used for a set amount of time, for a set purpose, for a set fee and other conditions. It could be in writing, oral or implied by the conduct of the parties.

Maker

Legal term used by copyright law which refers to the creator of a sound recording or film.

Moral rights

Moral rights are concerned with the protection of the reputation of the creator of works and films. In particular, moral rights are the right to be attributed as the creator of a work, the right not to have your work attributed to someone else (false attribution) and the right of integrity, which allows creators to object to treatment of their works that may be derogatory to their reputation.

Passing off

The common law tort of passing off makes it unlawful for one business to trade on the good reputation of another business. To prove passing off the business complaining of the passing off must show that they have gained a reputation for their product or service, that the other business has presented itself (passed itself of) as the other business in a deceptive way to the public and that the business being passed off is likely to suffer damage as a result of that deceptive conduct. In practice, passing off generally involves a business using a competitor's work, name, slogan, packaging or images to promote its own goods or services without consent of the competitor.

Patent

A patent is a right granted by the government for the invention of any device, substance, method or process which is new, inventive and useful. A patent is legally enforceable and gives the owner the exclusive right to commercially exploit the invention for the life of the patent. An inventor must apply to IP Australia for a patent to obtain exclusive rights to exploit their invention: www.ipaustralia.gov.au.

Perform in public

A work is *performed if* a visual (seen) or aural (heard) presentation of the work is made.

Performing a work in public (the public performance right) is not defined in the Copyright Act. But the Act does define 'performance' as 'any mode of visual or aural presentation, whether the presentation is by the operation of wireless telegraphy apparatus, by the exhibition of a cinematographic film, by the use of a record or by any means.' And in relation to a lecture, address, speech or sermon, the cases show that if a work is performed in the presence of more than one person other than in private or domestic circumstances, it is likely that it will constitute a public performance. There are some

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exceptions to this rule.

Publish

The right to publish is one of the rights which belong to the copyright owner of a literary, dramatic, musical or artistic work, and a sound recording, film or published edition. A work or edition is published if a reproduction of the work or edition is supplied (by sale or otherwise) to the public. A film is published if copies are sold, let, hired or offered for sale or hire to the public. A sound recording is published if the recording or part of it, is supplied (by sale or otherwise) to the public.

Publisher

The owner of copyright in a published edition is the publisher.

Phonogram copyright

The copyright in the individual sound recording is the phonogram copyright. It is often indicated by the copyright symbol (p) (a little “p” inside a circle similar to the © symbol). This is a separate copyright to that which exists in the underlying musical composition which is embodied in the sound recording. The musical composition and lyrics are protected as copyright in the musical and literary works.

Royalties

A share paid to the copyright owner out of the proceeds resulting from the reproduction, publication, communication to the public or performance in public of his or her work. For example, a writer may be paid a percentage of the sale price of a book by the publishing company.

Term

The word ‘term’ has a couple of different meanings:

- It can mean a word or set of words used to define something. For example: a ‘term’ used to define Aboriginal and Torres Strait Islander people is ‘Indigenous’.
- It can mean a condition in a contract or agreement. For example, payment of a royalty fee is a ‘term’ of the contract.
- It can also mean a period of time. For example, her ‘term’ of employment is six months.

Trade mark

A trade mark is used to distinguish the goods or services of one trader from those of another. The mark is used to show the origin of a product. A trade mark can be a word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these. When a trade mark is registered by its owner on the IP Australia Register of trade marks, a notice using ® symbol is used. Where a trademark is used but is not registered, the symbol ™ can be used. A trade mark is not a business name or domain name. See www.ipaustralia.gov.au

Watermarks

A visible watermark is generally a pale imprint embedded inside a digital file or published text. The imprint is visible on some images and helps protect against unauthorised reproduction. A watermark can also be machine readable only.

Disclaimer

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The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.