

Australian copyright law overview

general information

what copyright applies to

Copyright is a form of intellectual property embodied in Australian law in the provisions of the *Copyright Act* 1968 (Cth).

The Act applies to certain materials, including:

- literary works
- dramatic works
- musical works
- artistic works

and other subject matter such as:

- films
- sound recordings
- broadcasts
- published editions

The copyright in each type of work or other subject-matter has independent existence. For example: copyright may subsist independently in a literary work, a film based on the work and a broadcast of the film. Three different copyright owners may own these three different kinds of copyright. Similarly, for a compact disc, there may be a separate copyright in the lyrics, the composition and arrangement of the music and the sound recording of the work. Any dealings in such material must recognise all relevant layers of copyright. In case of doubt it is advisable to obtain legal advice.

It is important to understand that copyright protects the skill and labour involved in a particular expression of ideas in a physical medium, not the information or ideas as such. In this respect it is dissimilar to the law relating to confidential information.

No particular level of literary or artistic merit is required for copyright to subsist in a work. However single words, slogans or titles are not sufficiently substantial to be protected as works. They may be protected by other legal means, such as a trademark or under the *Trade Practices Act* 1974 (Cth).

rights of copyright ownership

The copyright conferred by the *Copyright Act* is a bundle of exclusive rights in relation to the work or material in question. They include the rights:

- to copy or reproduce the work;
- to make an adaptation of it;
- to publish it;
- to perform it in public; and
- to broadcast it to the public

In some cases the copyright owner also enjoys an exclusive right to transmit the work by cable to subscribers, or to commercially rent copies of the material. Note that the delivery of a training course may constitute a performance for the purposes of the Act.

Copyright is a form of property. However it relates to an abstraction — the work or material in question; and should be distinguished from ownership of the physical medium in which the material is expressed. It is an infringement of copyright to do any of the acts listed above without the permission of the copyright owner. An infringement need not involve the whole of a work in question; it is an infringement to take a substantial part of the work.

who owns copyright

In general the copyright owner is the author/creator/maker of the work in question. However a work created in the context of employment is owned by the employer. A work created by a contractor is owned by the contractor. However it is possible to vary these provisions by agreement.

The Act does not require the completion of formalities (such as publication, registration or the payment of fees) in order to obtain protection in Australia, or any other country which is also a party to an international copyright treaty. Copyright protection is granted

automatically from the time an original work is created. Like other forms of property, copyright can be assigned to a new owner, or use of the copyright material can be licensed either exclusively or non-exclusively or may be assigned to a new owner. For example rights may be assigned using a Creative Commons licence. Assignments and licences may be qualified by reference to time, territory and other factors.

exceptions + additional rights

The Act provides certain defences and exceptions to copyright infringement. These include a number of so-called statutory licences, under which copyright acts that would otherwise be infringing are permitted, usually subject to payment or some remuneration.

Under the Act, performers have the right to prevent the unauthorised recording, broadcasting or cable transmission of their performances. As of 1 January 2005, they also share ownership in the copyright in the sound recording of a live performance. Performers may also prevent certain dealings in unauthorised recordings of their performances, such as broadcasting, cable transmission, copying, sale, hire, distribution, importation, possession and use of an authorised sound recording on the sound track of a film (synchronisation right). These rights are unassignable; they do not currently amount to a form of copyright.

In addition to the exclusive rights referred to above (sometimes called economic rights), the Copyright Act provides certain non-economic rights (moral rights). The creator of a work is entitled to be acknowledged as such and to object to derogatory treatment of the work. There are also provisions relating to false attribution of authorship.

for more information on moral rights, see <http://www.aesharenet.com.au/backgroundInformation/25moral.asp>
for more information on economic rights, see <http://www.>

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useful organisations

Copyright Agency Limited (CAL)

CAL is an Australian copyright management company whose role is to provide a bridge between creators and users of copyright material. CAL represents authors, journalists, visual artists, photographers and publishers as their non-exclusive agent to license the copying of their works to the community.

see <http://www.copyright.com.au>

Australian Performing Rights Association (APRA)

APRA is an association administering the performing rights of the world's composers, songwriters and publishers in Australia and New Zealand. These are the rights that, under the modern language of copyright, are those of performance in public and communication to the public. In practice, the organisation's clients are radio and television stations, pay-television operators, venues playing music and, increasingly, on-line businesses using music in some form.

see <http://www.apra.com.au>

Screen Rights

Screenrights is a non-profit organisation that links rightsholders in film and television to the people who use their work. Screenrights assists where it is difficult or impossible to negotiate individual copyright clearances, ensuring that the people who want to use film and television can do so, provided they make a fair payment for this use.

see <http://www.screen.org>

Visual Artists Copyright Collecting Agency (Viscopy)

VISCOPY licenses the copyright in artistic works and pays the artist or copyright owner a royalty for the reproduction. VISCOPY represents its artist members for the full range of rights, reproduction, publication and communication, thereby providing copyright users with authorised access to thousands of artistic works for commercial, non-commercial and educational purposes.

see <http://www.viscopy.com>

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