

VISUAL ARTS COPYRIGHT INFO

1. Copyright Act 1968

Creation of legislation Copyright Act 1968 (Commonwealth)

- applies identically throughout Australia
- no "common law" copyright

International Conventions and Treaties

- Australia is a member (with other countries)
- reciprocal protection granted to Australian copyright owner's works

2. How does it arise?

- original - not copied
- in a material form
 - * not mere ideas
 - * not Titles
- citizen or resident of Australia or Treaty Country

What formalities are necessary?

As long as the thing is capable of copyright protection and it is given a "material form" then copyright protection is:-

- AUTOMATIC and FREE

NO registration needed ("Copyright Registration Services" - don't improve validity of copyright)

NO need to post things to yourself

NO need to put **copyright symbols** on them **BUT a good idea**

ONUS is on owner to be able to prove ownership

- * diary notes
- * original notes

- * witnesses

3. What does Copyright Cover and Protect

WORKS

- artistic works
 - * 2 and 3 dimensional
 - * graphic
- works of artistic craftsmanship (eg. jewellery, ceramics, theatre costumes etc.)
 - * not just utilitarian
 - * look at **intention** of creator
- photographs
- literary
- musical works
 - * music
 - * lyrics
- dramatic works (eg. theatre plays, screenplays)
- published editions - eg. books, magazines
- compilations -eg. Telstra Phone directories

SUBJECT MATTER OTHER THAN “WORKS”

- films
- sound recordings
- computer programmes

4. Who is the Owner of the Copyright?

4.1 General Rule

Creator owns copyright (i.e. the person who puts it in a material form)

Referred to as the “author”

4.2 Exceptions to General Rule

(UNLESS A CONTRACT STATING OTHERWISE)

- * Employer relationship
- * Commissioned photographs
- * Sound Recordings/Films(inc. Video) - the “maker” of the sound recording/film is usually the owner of it.
 - Most Useful Test - Who paid for the making of the Recording/Film?
 - Usually the Record Company/Film Producer.
 - BUT if a company is commissioned to make the sound recording/film/video for a fee, the commissioner will own the copyright in that commissioned sound recording/film/video.

5. What Rights do Copyright Owners Own?

The exclusive right to do any of the acts specified in the Copyright Act 1968

Works (inc. Artistic Works)

- * reproduce
- * broadcast
- * diffuse
- * perform in public (**not** Artistic Works - **N.B.** NO exclusive right to exhibit an Artistic Work)
- * adapt (**not** Artistic Works)

Other than works (inc. Sound Recordings/Film)

- * reproduce
- * broadcast
- * perform in public

* adapt (not sound recordings)

* diffuse (not sound recordings)

6. How long does Copyright Last?

Works - including Artistic Works

General Rule - life of "author"/composer plus 50 years from the end of the year in which the "author" died.

(may be increased if EU has its way)

Exception for photos

pre- 1968

post- 1968

Unpublished -v- Published

Unpublished works - (eg. not published as sheet music, book, publicly performed, broadcast or sold in form of records/books during author's lifetime etc.)

* copyright period lasts from end of calendar year in which one of those things occurs and ends 50 years after that.

Sound Recordings made before 1 May 1969 - copyright lasts for 50 years from the end of the year in which the recording was made.

Sound Recordings made after 1 May, 1969 - from end of the year in which the recording is first published (i.e. the year of its first release to the public.)

* Reason for this is the introduction of the then new Copyright Act 1968.

Published Editions -

Pre 1 May 1969 - no copyright protection at all.

Post 1 May 1969 - protection for 25 years from date of its first publication.

Anonymous/Pseudonymous Works -

50 years after the end of the calendar year in which their work was first published **unless** author's identity could be ascertained by reasonable enquiry, in which case protection lasts for 50 years after end of the calendar year of the author's death (i.e. general rule applies)

Works of Joint Authorship (e.g. Murals)

Generally:-

If published during one of the author's lifetime - 50 years from end of calendar year in which the last author dies;

If published after death of authors - 50 years from end of the calendar year in which the work is first published.

7. Dealing with Copyright

- * sale (assignment) - avoid if possible
 - common to be required to do so in past
 - no longer the case
 - bargaining power - limited control at least is possible
 - must be in writing and signed by copyright owner

- * licence - wherever possible licence rights
 - granting permission (owner retains certain controls over the rights)
 - exclusive or non-exclusive
 - exclusive must be in writing and signed by copyright owner

- * Testamentary Disposition - Is inherited like other property

- * Basic Terms When Dealing With Copyright
 - Copyright is very flexible property
 - Territory (the World/Universe/nominated country)
 - Term (life of copyright - NO!)

- Use - What are the permitted uses?
- Creative Control - What changes (if any) will you permit to your Work (eg. colourisation, cropping, additions etc.)

Perhaps with your prior permission only?

Proposed MORAL RIGHTS will help here.
- FEE - Fee/a royalty or combination - depends on deal and your bargaining power
- TERMINATION RIGHT - eg. for breach

8. What Constitutes a COPYRIGHT INFRINGEMENT?

When does one infringe copyright?

When one:-

- * uses all or a “**substantial part**” of a copyright protected work
- * without the permission of the owner of that copyright right.
- * the use made falls within one (or more) of the exclusive copyright rights in that work (AND is NOT a Fair Dealing or other Exception to Infringement)
 - A “SUBSTANTIAL PART” - **Quality not Quantity**
 - DIRECT AND INDIRECT INFRINGEMENTS
 - Direct - as above, **no knowledge** is necessary
 - Indirect - includes IMPORTATION of infringing articles into Australia for trade purposes
 - **actual or constructive knowledge** of the infringing nature of the articles is necessary

9. NON- Infringing Uses of Copyright Material

- Use of an **insubstantial** portion
- **Incidental** use for film or television- i.e. if only incidental to the principal matters represented in the film or broadcast
- **Fair Dealing**
 - * research and study

- * criticism or review (but needs acknowledgement)
- * reporting news in newspaper, magazine, film or TV broadcast (but needs sufficient acknowledgement in print media use of this kind)

“Fair” - look at:-

- * purpose and character of the dealing
- * nature of the work
- * possibility of obtaining the work within a reasonable time and at an ordinary price
- * effect of the dealing on the value of or market of the work
- * if part only used, how much and quality of the part which was taken (in relation to the whole)
- **Sculpture permanently on display in a public place** - can be photographed or filmed
- * must be permanent
- * must be a public place
- **Crown Copyright**

10. Remedies available to Copyright Owner for Copyright Infringement

- * injunctions
- * damages or accounting of profits
- * declarations

11. In practice what can you do when making claims for infringement of your copyright?

- * Get advice - check to ensure that there really is an infringement of your copyright.
 - * Section 202 - Groundless threats of legal proceedings;
 - * Get help of your record or publishing company if you have one and their rights are at stake too;
- do it in writing

do it quickly

specify your rights

warn you stand to lose money

12. Effect of COPYRIGHT AMENDMENT ACT 1989

12.1 Design/Works of Artistic Craftsmanship

12.2 Performer Protection

Historically - copyright legislation - trouble dealing with "the performance itself"

Why? Because a requirement of copyright is that the copyright work must be in a material form.

Problem? - When the performance is reduced to a material form(i.e. sound recording or film) it is the maker of that product who owns copyright in that material fixation of that performance

- and this is generally not the performer.

Pre-1989 Act – e.g. a bootleg recording of a performance by a performer was protected by copyright (e.g. DIVA Movie situation) i.e. the owner of that copyright in the bootleg was the maker of it could make and sell records from it and performer got nothing from those sales (& other uses of the recording of their performance) AND could do nothing to stop it.

(eg. Applehouse Music Case - Michael Jackson etc concerts recorded overseas)

EFFECT OF 1989 ACT - Although the Australian performer is not the owner of copyright in recordings of their performances, the performer now has the right to prevent:-

* the "unauthorised use" of their performance for 20 years from the date on which the performance in question was given.

* "unauthorised use" includes (Section 248G):-

- making a recording of the performance without the performer's permission
- broadcasting or re-broadcasting the performance (live or from a recording of that performance) without the performer's permission;