



Short Guide to Copyright

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What is copyright?

Copyright is a type of property that is founded on a person's creative skill and labour. Copyright protects the form or way an idea or information is expressed, not the idea or information itself.

Copyright is not a tangible thing. It is made up of a bundle of exclusive economic rights to do certain acts with an original work or other copyright subject-matter. These rights include the right to copy, publish, communicate (e.g. broadcast, make available online) and publicly perform the copyright material.

Copyright creators also have a number of non-economic rights. These are known as moral rights. This term derives from the French *droit moral*. Moral rights recognised in Australia are the right of integrity of authorship, the right of attribution of authorship and the right against false attribution of authorship.

Copyright is distinct from physical property

A clear distinction exists between the copyright in a work and the ownership of the physical article in which the work exists. For example, an author may own the copyright in the text in a book even though the physical copy of the book will be owned by the person who purchases it. Similarly, the purchaser of an original painting does not have the right to make copies of it without the permission of the owner of copyright: the right of reproduction remains with the copyright owner who is generally the artist.

What is intellectual property?

Copyright is part of an area of law known as intellectual property. Intellectual property law protects the property rights in creative and inventive endeavours and gives creators and inventors certain exclusive economic rights, generally for a limited time, to deal with their creative works or inventions. This legal protection is designed as a reward to creators to encourage further intellectual creativity and innovation, as well as enabling access by the community to the products of intellectual property. Because intellectual property protects rights, rather than physical property, intellectual property is an intangible form of property. It is property which cannot be seen or touched.

Intellectual property is the general name given to the laws covering patents, trade marks, designs, circuit layouts, plant breeder's rights and copyright. Each of these forms of intellectual property is protected by a specific Act of the Commonwealth Parliament. The framework for these Acts is largely based on Australia's obligations under international treaties.

Circuit Layouts

The *Circuit Layouts Act 1989* protects the layout-designs of integrated circuits (also referred to as computer chip designs or semi-conductor chips). The Act protects plans which show the three-dimensional location of the electronic components of an integrated circuit and gives the owner of the plans certain rights, including the right to make an integrated circuit from the plans. There is no requirement for registration for the granting of rights to the owner of a layout.

Patents

The *Patents Act 1990* grants monopoly rights to inventors of new inventions such as improved products or devices, substances and methods or industrial processes, provided that the invention is a manner of manufacture, is new, is not obvious and is useful. A registered patent provides exclusive rights to the owner to exploit the invention for the life of the patent, which is 20 years. The innovation patent provides protection for incremental and lower level inventions for a period of 8 years.

Trade Marks

The *Trade Marks Act 1995* grants protection to a letter, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or combination of these, used by traders on their goods and services to indicate their origin and to distinguish such goods and services from those of other traders. Initial registration lasts for 10 years, with the possibility for further renewals for as long as the mark is used.

Designs

The *Designs Act 2003* grants protection to the visual appearance or design of a manufactured article if it is new or original. It protects the features of shape, pattern or ornamentation applied to an article. Protection is based on a system of registration and can last for up to 10 years.

Some designs for articles may qualify for both designs and copyright protection. Before registering a design of an artistic work under the Designs Act, you should seek legal advice on whether registration would affect copyright protection of any articles related to the design.

Plant Breeder's Rights

Plant breeder's rights are exclusive commercial rights to market a new plant variety or its reproductive material. The rights are administered under the *Plant Breeder's Rights Act 1994*. Holders of plant breeder's rights have exclusive rights over the production, sale and distribution of the new variety.

Registration of patents, trade marks, designs and plant breeder's rights

Protection for patents, trade marks, designs and plant breeder's rights is dependent upon a formal registration procedure conducted by the central or regional offices of IP Australia. IP Australia is the Australian Government agency which administers the *Patents Act 1990*, *Trade Marks Act 1995*, *Designs Act 2003* and the *Plant Breeder's Rights Act 1994*.

Confidential information and passing off

Other categories of intellectual property which do not have special statutory protection include confidential information and trade secrets. These are protected by the action for breach of confidence.

The business reputation and goodwill in unregistered trade marks or trade names may be protected by the common law action of passing off or an action for misleading or deceptive conduct under the *Competition and Consumer Act 2010* or equivalent State or Territory legislation.

What law governs copyright in Australia?

Copyright Act 1968

Copyright exists in works and other subject-matter by virtue of the *Copyright Act 1968*. The only exception to this is in relation to certain limited prerogative rights of the Crown in respect of copyright in Acts of Parliament.

Regulations

The *Copyright Regulations 1969*, the *Copyright Tribunal (Procedure) Regulations 1969* and the *Copyright (International Protection) Regulations 1969* specify matters related to the operation of the Copyright Act.

Access to the law

The Copyright Act and Regulations are constantly under review and are amended from time to time. Access to electronic versions of Commonwealth legislation is available through the Attorney-General's Department's legal information retrieval system, ComLaw. Hard copies can also be purchased through the ComLaw website.

- [Copyright Act 1968](#)
- [Copyright Regulations 1969](#)
- [Copyright Tribunal \(Procedure\) Regulations 1969](#)
- [Copyright \(International Protection\) Regulations 1969](#)

What does copyright protect?

Works

The Copyright Act protects original literary, dramatic, musical and artistic works. In order for copyright to subsist in a work it must be made by a resident or citizen of Australia, or made or first published in Australia, or has a specified connection with a country which is a member of a relevant international copyright treaty. (See '[Is overseas copyright material protected in Australia](#)').

Literary works

Most materials that are reduced to writing or some other material form by a creator and which are not trivial in content are literary or dramatic works. Such works may be in electronic or hard copy form. Such works include letters, e-mails, articles, novels, poetry, song lyrics, timetables, databases and computer programs. No level of literary merit is required for copyright to subsist in a work. However, single words, slogans or titles are not usually protected as literary works.

Are names and titles protected by copyright?

Copyright protects literary works including books, poems and newspaper articles. The Copyright Act does not expressly protect names and titles. In most cases dealing with this issue, the courts have held that names and titles are not protected on the basis that they are not substantial enough to constitute literary works and that they fail to satisfy the test of originality under copyright law.

Artistic works

Artistic works include paintings, photographs, sculptures, engravings, sketches, blueprints, drawings, plans, maps and buildings or models of buildings, irrespective of the artistic quality of the work. They may exist in electronic or hardcopy form. There is also a category called 'work of artistic craftsmanship' that must satisfy the added criteria of aesthetic appeal and be the result of the work of a skilled craftsperson in order for it to be protected by copyright. Items such as hand-woven tapestry, handmade jewellery or crafted furniture may fit into this category.

Works must be 'original'

Works are only protected by copyright law if they are 'original' works. A copyright work will be considered original if it is the product of the creator's own intellectual effort and has not been copied from another person's work. However an original work could be a compilation of other works, e.g. in an original anthology or selection, where the permission of the copyright owners of those individual works compiled would be needed.

Copyright in subject-matter other than works

The Copyright Act also protects sound recordings, films (which include pre-recorded television programs and videos), radio and television broadcasts and published editions of works. These categories of copyright material are collectively referred to as 'subject-matter other than works'.

Independent existence

The copyright in each type of work or other subject-matter has independent existence. For example, for a film broadcast on television, separate copyright may subsist in the film itself, the broadcast of the film, the underlying script and any sound recording which is part of the film. Different copyright owners may own each of these 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.

No copyright in ideas or information

Copyright does not protect ideas or information as such but only the original expression of ideas or information. Copyright differs fundamentally from patents, trade marks and designs in this way. For example, unlike the grant of a patent, which gives monopoly rights over the idea of an invention, the creation of a copyright work does not grant a monopoly over the ideas or information expressed in the work. Rather, rights are granted to the copyright owner in respect of the reproduction (and certain other uses) of that particular expression of ideas or information which has been fixed in a material form.

Copyright, therefore, does not prevent the use of the same idea or information. If two people independently create similar works based on the same idea or information, and neither is a copy of the other work, there is no issue of copyright infringement. For example, two artists may set up canvasses in the same spot and paint the same waterfall. Both artists would have copyright in their works and there would be no infringement of copyright providing the artists do not copy each other's painting.

How do you obtain copyright protection?

The Department of Communications and the Arts is aware of Australian-operated websites purporting to offer copyright protection or Australian 'registration' of copyright for payment of a fee.

No such registration or other formality is necessary for copyright protection in Australia, and these websites have no authority or capacity to guarantee copyright 'protection'.

If you are considering using one of these services, please read the information on copyright protection below.

No formalities - including no registration

The Copyright 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. This is unlike the position with patents, trade marks, designs and plant breeder's rights where registration is a precondition to protection. Copyright protection is granted automatically from the time an original work is created.

Copyright notice

Although copyright protection in Australia is not dependent upon formal notice, it is best practice and advisable for copyright owners to place a copyright notice in a prominent place on their work. There is no set form of words for a copyright notice, but such a notice may state:

This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of [name and address of copyright owner and the year in which the work was made].

It is sensible for copyright owners to regard their copyright as an item of property and to deal with it in a business-like way. Copyright owners should always keep dated copies of their works (e.g. manuscripts and tapes) and copies of any letters submitting their work to others. No document dealing with copyright should be signed unless its contents are fully understood.

Copyright owners of material in electronic form may also wish to attach electronic rights management information to their work or other subject-matter. The removal or alteration of this material is prohibited by the Copyright Act in certain circumstances. Copyright owners of material in electronic form can also protect their material by technologies such as password protection or software locks. The Copyright Act also prohibits the circumvention of locks which control access and dealings in devices and services used to circumvent locks.

How do you prove ownership of copyright if there is no system of registration?

In most cases the issue of ownership of copyright will not be in dispute. However, where there is a dispute which comes before a court, the court will take into account the evidence of the person who created the work and other persons who were involved in or who knew about the creation of the work. Statements of the ownership of copyright and the date of publication or manufacture appearing on the labelling or packaging of copies of copyright materials will be treated in court as accurate evidence of what they say (through evidential presumptions), unless the person disputing those issues can point to something raising a question about their accuracy. Documents recording the passing of copyright from the original owner to the person claiming present ownership will be similarly treated as evidence unless there is something to question the accuracy of that.

What is the difference between an author and a copyright owner?

An author is the person who creates a copyright work. A copyright owner is the person or company which owns the rights in a work or other subject-matter. In many instances the author of a work will be the owner of copyright; however, this need not be the case. An important exception is where copyright works are made by an employee during the course of their employment, in which case copyright vests with the employer. The rules relating to ownership of copyright may also be varied under an agreement; for example, an author may agree to assign his or her rights in a work to someone else.

Who is a copyright owner?

Works

Usually the creator of a literary, dramatic, musical or artistic work is the first owner of the copyright in it, but there are several exceptions. One important exception is that copyrights in works made during the course of employment are owned by the employer and not the employee. All copyright ownership rules (except those that relate to moral rights) may be varied by agreement.

Certain commissioned works

In the case of certain artistic works, including engravings and painted or drawn portraits that are made under commission, the person commissioning the work is the first copyright owner, subject to any agreement to the contrary. However, if the person commissioning the work informs the artist of the purpose for which the work is required then the artist can legally restrain the use of the work for any other purpose.

In the case of commissioned photographs, the photographer is the copyright owner, subject to any agreement to the contrary. Where the commissioned photographs are of a private or domestic nature, the commissioning party owns the copyright, subject to any agreement to the contrary.

Sound recordings and films

The owner of any copyright in a sound recording or a film is normally the person/s who made it. The 'maker' of a sound recording is the owner of the master recording, but where the recording is of a live performance, the performers are also 'makers'. The 'maker' of a film is the person who undertook the arrangements necessary for the making of the film. However, for commissioned sound recordings and films, the default position is that the copyright is owned by the commissioning party. The rules for first ownership of copyright in sound recordings and films can, as in the case of works, be varied by contract. For instance, a recording contract between a performing artist and a record company may include assignment of some or all of the artist's share of copyright in the recordings made under the contract to the company. In the case of sound recordings of performances made before 1 January 2005, special rules apply regarding the performer's rights and legal advice should be obtained.

Other ownership rules

Special provisions in the Copyright Act provide for the ownership of copyright in radio and television broadcasts, publishers' copyright in editions of works (i.e. the typesetting and layout), material published by international organisations and material made before the Copyright Act came into operation.

Government materials

The Australian Government and State or Territory Governments own the copyright in materials which are made by or first published under their direction or control. Further information about the use of material in which the Australian Government owns copyright is available from this Department's website (www.communications.gov.au) by following the link to the Australian Government intellectual property rules ([Click here to go to the rules](#)).

What are the rights of a copyright owner?

Economic rights

The Copyright Act gives copyright owners a number of exclusive economic rights. These exclusive rights vary according to the different types of works and other subject-matter protected by copyright.

Literary, dramatic or musical works

The owner of copyright in a literary, dramatic or musical work has the following exclusive rights:

- to reproduce the work in a material form (which includes making a sound recording or film of the work or including a substantial portion of the work in a database)
- to publish the work (that is, to make copies of the work available to the public for the first time)

- to perform the work in public
- to communicate the work to the public (which includes the electronic transmission of the work such as a broadcast, and making the work available online)
- to make an adaptation of the work (which includes an arrangement of a musical work and a dramatisation or translation of a literary work), and
- in the case of computer programs, and works recorded in sound recordings, to commercially rent the sound recording or computer program.

Artistic works

The owner of copyright in an artistic work has the following exclusive rights:

- to reproduce the work in a material form (which includes reproducing a two-dimensional work in a three-dimensional form and vice versa)
- to publish the work, and
- to communicate the work to the public (which includes the electronic transmission of the work such as a broadcast, and making the work available online).

Other subject-matter

The owner of copyright in a film or sound recording has the following exclusive rights:

- to copy it
- to cause it to be heard or seen in public
- to communicate the material to the public (which includes electronic transmission, and making the film or sound recording available online), and
- in the case of a sound recording, to commercially rent it.

The owner of copyright in a radio or television broadcast has the exclusive right to make a sound recording, film or photograph of it, to re-broadcast it, or to communicate it to the public (otherwise than by re-broadcasting it, eg internet streaming).

Licensing of rights

Copyright owners may exercise any of the above rights themselves or may give permission to other people to do so. Such permission is referred to as a licence. Copyright owners may grant a licence that is subject to certain conditions such as the payment of a fee or royalty or limit the licence as to time, place or purpose.

Moral rights

The Copyright Act also provides creators with certain non-economic rights known as moral rights. They are the right of attribution of authorship of one's work, (the right to be named in connection with one's work), the right against false attribution of authorship and the right of integrity of authorship (the right to object to treatment of one's work that has a detrimental effect on one's reputation).

Moral rights apply to all creators of literary, dramatic, musical and artistic works, film-makers (producers, directors and screenwriters) and also for performer's for their live performances and sound recording of their performances.

A film maker's right of integrity of authorship in respect of a film is limited to the author's lifetime. In all other cases, moral rights endure for the term of copyright.

Due to the personal nature of moral rights, they may not be assigned (i.e. given away to another) or licensed. It is, however, possible for an author to provide a written consent in relation to certain treatment of his or her work that might otherwise constitute an infringement of moral rights.

A range of remedies is available for an infringement of moral rights. These include an order for damages, an injunction or a public apology. The Copyright Act provides a general reasonableness defence to actions for infringement of the right of integrity of authorship and the right of attribution of authorship. It also provides specific defences to actions for infringement of the right of integrity of authorship in relation to certain treatment of buildings and moveable artistic works.

What are performers' rights?

Under the Copyright Act, performers have:

- part-ownership of copyright in sound recordings of their performances;
- rights to control recording and communication of their live performances; and
- moral rights in live performances and performances incorporated in sound recordings.

Performers have the right to grant or refuse consent to the recording or live broadcasting or online streaming of their performances. Performers may also prevent certain dealings in unauthorised recordings of their performances, such as broadcasting, making available online, copying, sale, hire, distribution, importation and possession for trade, and the use of an authorised sound recording on the sound-track of a film ('synchronisation right'). These rights cannot be assigned.

A performer can now take action against an unauthorised non-broadcast transmission to the public of their performance, eg, Internet streaming of the performance.

What is a performance?

A 'performance' includes a performance of a literary, dramatic or musical work (whether or not in copyright) or a performance of a dance, circus or variety act or an expression of folklore. However, reading, recitation or delivery of an item of news or information and the performance of a sporting activity are explicitly excluded from the definition of a 'performance' for the right to control recording and communication of their live performances.

Duration

Performers' rights in relation to unauthorised audio recordings lasts for 50 years, and in relation to unauthorised audio-visual recordings lasts for 20 years, from the year in which the performance was given. Performers would also have a share of the copyright in unauthorised sound recordings of their performances. Performers' rights in their sounds recordings last for 70 years from the year in which it was published.

Remedies for unauthorised use of a performance

Unauthorised use of a performance entitles the performer to sue for an injunction and/or damages. Criminal penalties are also applicable.

How long does copyright last?

Literary, dramatic or musical works

The duration of copyright protection is dependent on a number of factors, including the nature of the work, the time when it was made and whether it has been published. The duration of protection for copyright works that have been published (or otherwise made available to the public) generally lasts for 70 years after the death of the creator. There are some exceptions to this general rule.

Copyright subsists indefinitely in a literary, dramatic or musical work that has not been published, performed in public, broadcast or sold as a recording during the life of the author. If the work is posthumously made public in any of those ways, the copyright will terminate at the end of 70 years after that event.

Artistic works

In the case of artistic works, other than engravings, copyright protection generally also lasts for 70 years after the end of the year in which the artist dies whether or not it has been published. The term of copyright in an engraving is similar to that for a literary work, so that copyright subsists in an engraving that is unpublished at the author's death until 70 years after publication or otherwise indefinitely.

The term of copyright protection for photographs taken before 1955, regardless of whether the author has since died or is still alive, has expired. The life plus 70 years term for artistic works applies to all photographs taken after that time.

Other subject-matter

The duration of copyright protection for sound recordings made after 1954 and films (made after 1 May 1969) is generally 70 years from the end of the year of first publication. If the film or sound recording is unpublished, the protection period is indefinite until it is published.

The duration of copyright in radio and television broadcasts is 50 years from the making of the broadcast.

Copyright in the published editions of works lasts for 25 years from the year of first publication of the edition.

Special provisions

The Copyright Act has specific provisions which clarify the duration of copyright protection for works of joint authorship (ss 80-81), anonymous and pseudonymous works (s 34), works in which the Government owns copyright (ss 180-181), foreign works and works made by international organisations (Part VIII).

Expired copyright

Copyright protection that had already expired before the date of commencement of the present Act (that is, 1 May 1969) cannot be revived. However, the provisions of earlier copyright legislation are still relevant in relation to works in copyright immediately before the commencement of the present Act.

When is copyright infringed?

Exercise of exclusive rights

The copyright in any work or other subject-matter is infringed when any act which the copyright owner has the exclusive right to do is done by a person in Australia who is not the copyright owner (or his or her licensee). Examples include when a work is published, reproduced or performed in public without the copyright owner's permission. This general rule is subject to a number of specific exceptions in the Copyright Act.

Authorising an infringement

The copyright in any work or other subject-matter is also infringed when any act which the copyright owner has the exclusive right to do is authorised to be done by a person in Australia who is not the copyright owner (or his or her licensee). For example, a person could be taken to have authorised a copyright infringement if they provide access to a photocopier and expressly or impliedly permit someone else to make infringing copies on it. In the online environment, providing links to infringing material may, in some circumstances, constitute authorisation of an infringement.

Substantial copying

It is not necessary for a whole work to be reproduced or for more than one reproduction to be made for an infringement of copyright to occur. An infringement of copyright occurs so long as a substantial portion of a work or subject-matter has been reproduced or other copyright use is made of it (eg it is communicated to the public). The test for what is a substantial portion is often a qualitative rather than a quantitative test. It is the quality or essence of what has been taken rather than the amount that is taken that will often determine whether the portion taken is 'substantial'.

What about photocopying, scanning or electric copying?

Photocopying or scanning a literary, artistic, dramatic or musical work is one of the more common ways of infringing copyright in works as it involves reproduction of the work. A large number of authors and publishers are members of a copyright collecting body called Copyright Agency Limited (CAL) ([Click here to visit the CAL website www.copyright.com.au](http://www.copyright.com.au)). CAL is authorised to collect royalties for the photocopying of these works. A licence from CAL can be obtained for the photocopying of published literary works. Alternatively, the permission of the author or publisher should be sought.

CAL also handles some licences for copying of works in an electronic format. These licences deal with original electronic work and allow educational institutions to reproduce and communicate it to their staff and students. Note that the work must already be in an electronic form.

If I change a work can I avoid infringing copyright?

Changing a work does not necessarily avoid an infringement claim. If the resulting work includes a substantial part of the original work (which may be a small but important part) permission will be required from the copyright owner of the original work.

Importation and commercial dealings

The Copyright Act also makes certain other acts an indirect infringement of copyright. It is an infringement of copyright to import copyright infringing articles (i.e. pirate goods) into Australia for trade purposes. Commercial dealings with infringing or pirate articles also constitute an infringement of copyright. Infringing or pirate articles are items such as copies of DVDs and computer games that are made without

legal authority or consent from the owner of the copyright material in them. There are also restrictions on importation of certain legitimate copyright goods into Australia without the permission of the copyright owner ('parallel importation').

Importation of books

The commercial importation of legitimate copies of books is permitted in certain circumstances. For example, books which are not published in Australia within 30 days of their first publication overseas can be imported without the permission of the copyright owner in the literary work or published edition. A person wishing to import books commercially without the permission of the copyright owner should seek legal advice before doing so.

Importation of sound recordings

The commercial importation of legitimate copies of sound recordings (including CDs and records) is generally not an infringement of copyright. However, if the copies were made without the consent of the copyright owner (i.e. they are pirate copies), the importation of those copies will infringe copyright. A person wishing to import CDs or records commercially without the permission of the copyright owner should first seek legal advice.

Sound recordings commonly record musical works which themselves have a copyright separate to the copyright in the recording. If the copyright in a musical work is infringed by the making of a copy, the importation will also infringe copyright in the musical work.

Importation of Computer Programs and e-Books and e-Journals

The commercial importation of legitimate copies of computer software or electronic books (including collections of works), electronic journals and electronic sheet music into Australia without the permission of the Australian copyright owner is generally not an infringement of copyright. The imported copy must have been made with the permission of the copyright owner in the country of manufacture. If the physical item or medium embodying the works in electronic form, (e.g. a CD-ROM or DVD) includes a film or television program of more than 20 minutes duration, it cannot be parallel imported. Note that downloading of copyright materials by computer from an overseas Internet site, which does not involve bringing of a physical item or medium into Australia, is not parallel importation. Downloading is an exercise of the reproduction or copying right of the owner of copyright in the materials concerned.

Is permission required to play music in public?

One of the exclusive rights of the owner of copyright in a musical work is to perform that work in public, and in the case of sound recordings to cause the recordings to be heard in public. The playing of music from a radio or television broadcast in the workplace would generally be regarded as a public performance of the work. A licence from the Australasian Performing Right Association (APRA www.apra.com.au), which is a copyright collecting society representing music copyright owners, should be obtained by the employer or business for this purpose. Where CDs are played in public, a licence from both APRA and the Phonographic Performance Company of Australia (PPCA www.ppca.com.au) may be required.

Place of public entertainment

It is an infringement of copyright to permit a place of public entertainment to be used for an infringing public performance of a literary, dramatic or musical work.

Circumvention devices and services

The Copyright Act provides civil remedies and criminal sanctions against the manufacture, importation and dealings in devices and services designed to circumvent any technological protection measure (TPM).

The Copyright Act also provides civil remedies and criminal sanctions against the circumvention of access control TPMs. These are TPMs that control access to the copyrighted work (e.g. by requiring the application of information or a process before access is granted). Examples include items such as a software lock or password protection measure. TPMs which prevent copying but do not control access to the work do not come within this definition, e.g. copy protection on a PDF file. There is no liability for the circumvention of TPMs which do not come within the definition of an access control TPM.

Devices which control geographic market segmentation are not TPMs. This means that consumers can circumvent the region coding devices on legitimate DVDs purchased overseas. It also allows for the continued availability of region free DVD players. There are exceptions to TPM liability in the *Copyright Act 1968* and *Copyright Regulations 1969*. There is also a mechanism under the *Copyright Regulations 1969* for the relevant Minister to create exceptions to TPM liability.

Unauthorised access to encoded broadcasts

There are two types of encoded broadcasts, subscription broadcasts (e.g. pay-TV) and encoded free-to-air broadcasts. There are remedies and sanctions against the manufacture, dealing in and use of broadcast decoding devices (a device which permits unauthorised access to an encoded broadcast). It is also an offence to access a subscription broadcast without authorisation, or distribute it without authorisation. The offence covers unauthorised access regardless of context and includes unauthorised access in a private home.

Electronic Rights Management Information

The Copyright Act provides civil remedies and criminal sanctions against the removal of electronic rights management information (ERMI). There are also remedies and sanctions against commercial dealing in copyright material where ERMI has been removed, if the person knows this was done without lawful authority. ERMI is information (or numbers or codes that represent the information) attached to or embodied in copyright material that identifies the work or other subject-matter, identifies the copyright owner, or contains any terms or conditions imposed on use of the copyright material. The definition of ERMI includes information that is separate from, but appears in connection with, or has at some point in time appeared in connection with, a copy of the work or other subject-matter.

Carriage Service Provider (CSP) Scheme

The purpose of the CSP scheme is to provide legal incentives for CSPs to cooperate with copyright owners in deterring the infringement of copyright, and limitations on the scope of remedies available against CSPs for copyright infringements that they do not control, initiate, or direct, and that take place through their systems or networks.

There are four separate types of activities undertaken by CSPs that are covered by the scheme:

- Category A – where the CSP acts as a conduit for internet activities through the provision of facilities for transmitting, routing or providing connections for copyright material.
- Category B – where the CSP caches copyright material through an automatic process.
- Category C – where the CSP stores copyright material on their systems or networks.

- Category D – where the CSP refers users to an online location using online information location tools or technology.

The CSP scheme is voluntary. The scheme does not affect whether or not a CSP is liable for infringement, but rather the consequences of that liability. Where a CSP complies with the conditions relevant to activities under scheme, a court cannot award damages against the CSP in relation to those activities.

Are there any exceptions to infringement?

To balance the rights of copyright owners with the needs of the public to have access to copyright materials, the Copyright Act provides a number of exceptions to the general rules regarding infringement of copyright.

Fair dealing

There are a range of exceptions that enable the exercise of certain copyright rights without constituting copyright infringement. They may be raised in answer to a claim of infringement. The most important of these exceptions permits 'fair dealing' for certain specified purposes. A fair dealing with a copyright work, sound recording, film or broadcast will not amount to an infringement of copyright if done for the following purposes:

- research or study
- criticism or review
- reporting of news
- giving of professional advice by a lawyer or a patent or trade marks attorney, or
- parody and satire.

Whether an exercise of copyright rights amounts to a fair dealing is a matter to be determined on the facts of each case. Many factors may be taken into account. In the case of reproduction for research or study the factors include: the purpose and character of the use, the nature of the work or other subject-matter, the amount and substantiality of the portion copied, the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the work or other subject-matter.

The 10 per cent rule

Can I copy 10 per cent of a work without infringing copyright?

There is no general exception that allows 10 per cent of a work to be reproduced without infringing copyright. Where a part of a work is copied, the issue is whether a substantial part of that work has been reproduced and an infringement has occurred. However, there is a reasonable portion or 10 per cent rule which applies in relation to fair dealing copying for the purposes of research or study. A reasonable portion of most categories of works may be copied for research or study. A reasonable portion is 10 per cent of the pages of a work of more than 10 pages, or 10 per cent of the words of a work in electronic form or one chapter if the work is divided into chapters.

In the case of fair dealing copying for the purposes of research or study the Copyright Act specifically provides that it is a fair dealing:

- to make a single copy (all or part) of a journal article in a periodical publication,
- to make a single copy (all or part) of multiple journal articles from the same periodical publication, providing they are for the same piece of research or coursework
- to copy up to one chapter or 10% of the number of pages of a published work more than 10 pages long, or
- to copy up to one chapter or 10% of the number of words of a work published electronically.

It is a fair dealing to copy one chapter even if it is longer than 10% of the pages or words in the work.

Exceptions for private copying

Is there a general exception for home copying?

There are exceptions for home copying in specific circumstances. The main exceptions are for format-shifting of certain works and time-shifting of broadcasts. The format-shifting exception allows certain types of material that a person owns to be copied into a different format for private or domestic use. For example, a book can be scanned into an electronic form. The format-shifting exception also allows music from a legitimately purchased CD to be copied to an MP3 player, Xbox, computer or other device. The format-shifting exception does not cover computer games.

The time-shifting exception allows television or radio broadcasts to be recorded to be watched or listened to at a later time. The recording can only be used for private or domestic use and cannot be kept indefinitely.

There are some exceptions for private copying. The main exceptions are format-shifting, time-shifting and uses of copyright material for special purposes.

Format-shifting

The format-shifting exceptions allow a person to copy certain types of material that he or she owns for private and domestic use into a different 'format'. Types of format shifting include:

- copying a book, newspaper or periodical to use in a different format
- copying a photograph from hardcopy form into an electronic form (e.g. by scanning into a computer), or from electronic form into hardcopy form (e.g. by printing a digital file), and
- copying a video into an electronic form (e.g. to a DVD).

Format-shifting of music

A person who owns a legitimate copy of a sound recording, such as a CD, can make a copy of that recording **solely for the person's private and domestic use**. The exception allows a person to use an earlier copy to make later copies for all the players that person owns regardless of format (e.g. copying a CD to two MP3 players) and can make sequential copies (e.g. copying a CD to a personal computer and copying the content again to an iPod). Limits on format-shifting of music include:

- the original copy must not be a pirate copy
- the later copy must be solely for private and domestic use
- the later copy must be made for use with a playing device that the person making the copy owns

- a copy must not be made from a 'podcast' of a radio broadcast or similar program (unless the podcast is licensed for private use)
- the copy cannot be sold, swapped, lent or given away to someone else (however, a person can loan it to a member of his or her family or household)
- where a person disposes of, gives away, sells or swaps the original copy of a sound recording, they must not keep any copy made from the original
- a business cannot use this exception to make a copy of a sound recording for a person unless it has permission to do so from the relevant copyright owners
- uploading a copy of a song to the Internet is not allowed, and
- the new exception does not authorise the removal of any technological access control measures applied to the sound recording (many CDs and all vinyl records do not have access controls).

Time-shifting

The time-shifting exception allows a person to record a television or radio broadcast and watch or listen to it later. This exception does not apply to copying material from a DVD or from an Internet download or webcast. There is no fixed time for keeping the copy. However, the recording cannot be kept indefinitely or repeatedly used. Further limits to the time-shifting exception include:

- the recording must be made solely for personal and domestic use
- time-shift recordings cannot be sold, swapped, lent or given away (however, the maker can loan it to a member of their family or household)
- the recording cannot be used to make a further copy of the material broadcast, and
- uploading a recording to the Internet to share with others is not permitted.

'Special' purposes

In some circumstances copyright material can be used for 'special' purposes. The 'special' purposes covered by the exception are:

- use by a library or archives – for maintaining or operating the library or archives or providing library services
- use by an educational institution – for giving educational instruction, and
- use by a person with a disability or someone else – for obtaining a copy of the material in a form which assists the person with a disability.

The use of the copyright material for 'special' purposes must:

- amount to a 'special case'
- not be made partly to obtain a commercial advantage or profit
- not conflict with a normal exploitation of the material, and
- not unreasonably prejudice the legitimate interests of the copyright owner.

The 'special' purposes exception is intended to cover cases where there is no other specific exception or statutory licence in the Act that authorises the particular use. For example, a school cannot rely on the 'special' purposes exception to reproduce copyright material for teaching purposes if the reproduction is covered by the statutory licence in Part VB of the Act.

Other specific exceptions

There are also exceptions to infringement in the Copyright Act that are specific to certain works. The following acts are permitted:

- the making of a copy of a computer program resulting from the process of normal use of the program or for back-up purposes
- the owner of a copy of a computer program decompiling the copy to make an interoperable product, to test its security, or to correct an error – if the required information about the program, or an error-free copy, is not otherwise available
- the filming, photographing, drawing or painting of sculptures in public places and buildings, and
- the public performance of a literary, dramatic or musical work by playing a television, radio or record player to residents at guest houses or premises where people reside or sleep.

Some exceptions also apply to specific uses or purposes. The main exceptions of this type are:

- the temporary reproduction of a work or adaptation made as part of the technical process of making or receiving a non-infringing communication (this covers reproductions that occur automatically while browsing on the Internet and in certain types of caching)
- anything done for the purpose of a judicial proceeding or the report of a judicial proceeding
- the temporary reproduction of a work, film or sound recording made as part of the normal process of using the item, eg playing a legal CD or a DVD at home or at a private party and the player makes a temporary copy as part of its normal operation, and
- the reproduction or copy of a work (or adaptation of a work) that is contained in a broadcast, where the copy is made solely for the purpose of broadcasting the work or adaptation or simulcasting it in digital form.

Copying by libraries and archives

Copying may also be done in certain instances without infringement of copyright when done by libraries and archives for students, researchers, Members of Parliament, other libraries or administrative purposes. Copying of unpublished works and certain audio-visual materials for certain other purposes (e.g. publication) may also be done without infringing copyright. Reference should be made to the Copyright Act to determine the precise terms of these, and any other, exceptions to copyright infringement.

Statutory licences

Certain educational institutions and institutions assisting persons who have a print or intellectual disability may make multiple reproductions and communications of works for educational purposes or for assisting people who have a disability, under a licence set out in the Copyright Act (a statutory licence).

Such statutory licences give the copyright owner a right to be paid equitable remuneration through an approved collecting society. Educational institutions and institutions assisting people who have a disability may for educational purposes, or for the purpose of assisting people who have a disability, also copy television and radio broadcasts under statutory licences. Again, the licences provide for a right for copyright owners to be paid equitable remuneration through an approved collecting society. Educational institutions do not have to pay the fee in relation to material reticulated through a central source player to a different location, e.g. a device in a library which displays material in classrooms.

How can copyright rights be enforced?

A copyright owner can approach a person infringing copyright to seek redress. It is best to seek legal advice. Where enforcement is required it is generally done in the court system.

Injunctions

The owner of the copyright in a work or other subject-matter may obtain an injunction to restrain an infringement of copyright occurring or continuing.

Damages

A person whose copyright is infringed is entitled to damages as compensation for infringement. In the case of a blatant infringement, or where some particular benefit has accrued to the defendant, punitive damages may be awarded to a copyright owner. In determining the amount of damages for copyright infringement, a court may consider whether the infringement involved converting hardcopy material into digital form, as well as whether a stronger penalty would deter others from committing the same infringement.

A court may take into account the high probability of likely infringements in assessing damages in relation to commercial scale electronic infringements, such as peer-to-peer file sharing. A court may grant additional relief for these likely infringements. However, the plaintiff is still required to show that an initial infringement has occurred before he or she is able to raise likely infringements.

Account of Profits

Alternatively, the court may order payment to the owner of copyright of the profit made by the infringer as a result of the infringement.

Conversion damages

Where the infringement was deliberate, the Copyright Act also provides for the owner of the copyright in a work or other subject-matter to be in substantially the same position as if he or she owned the infringing copies of the material. Subject to the discretion of the court, there is a provision for a copyright owner to have any infringing copies of the material in the hands of the infringer (including any device used in making the copies) delivered up to him or her.

Customs

A notice in writing may be given to the Comptroller-General of Customs objecting to the importation of copies of copyright materials suspected to be infringing copies.

A Notice of Objection lodged by a copyright owner with the Comptroller-General of Customs authorises an Australian Border Force officer to seize copies of infringing copyright material where that copyright owner has objected to their importation. A person giving such a notice is required to give a written undertaking that expenses for the seizure will be repaid. Where an objector has previously defaulted on

an undertaking to repay expenses, the Comptroller-General of Customs may decide not to seize the infringing copies unless security has been provided. Once a notice is accepted, the Comptroller-General of Customs may seize the copies believed to infringe copyright and hold them for a specified period to enable the giver of the notice to bring infringement proceedings in court.

Importers of copies that are non-infringing can counterclaim for damages arising from the infringement proceedings.

Contact details for the Australian Border Force are:

Australian Border Force
Chan Street
BELCONNEN ACT 2617
Tel: 131 881 or 61 2 6275 6999
E-mail: iprights@border.gov.au
www.border.gov.au

Criminal provisions

The Copyright Act contains a number of criminal offence provisions. These include offences in aid of enforcement regimes for technological protection measures (TPM) liability, abuse of rights management information and broadcast decoding devices, unauthorised access to encoded broadcasts, piracy of books, computer software, sound recordings and films, infringements on a commercial scale and other actions that prejudice the economic rights of the copyright owner.

There are now three tiered offences for most offences in the Copyright Act. There are indictable, summary and strict liability offences, relating to copyright piracy. The tiered offences contain similar physical elements, but have different fault elements to reflect the offences' different levels of seriousness. Only select offences are strict liability to ensure that certain legitimate activities of consumers and businesses are not criminalised. In determining a penalty, a court may impose higher penalties in certain circumstances for offences involving the conversion of hardcopy material into digital form.

The Copyright Regulations allow for infringement notices to be issued to persons alleged to have committed certain strict liability offences. This allows police to deal with suspected minor offenders without the need to summons a person to appear in court.

Can copyright be bought and sold in Australia?

Copyright can be dealt with in the same way as other forms of personal property. It can be assigned, licensed, given away, sold, left by will, or passed on according to the laws relating to intestacy or bankruptcy. This does not apply to moral rights which are personal and which creators cannot transfer or assign. It is always best to obtain written evidence of permission to use copyright, rather than rely on oral statements.

Assignment

An assignment of copyright must be in writing and signed by or on behalf of the assignor (ie the copyright owner) to be legally effective. The assignment may be in whole or part and may be limited to one or more of the exclusive rights or aspects of them and may also be limited as to time or geographical area.

Exclusive licence

An exclusive licence grants specified rights to the licensee with a guarantee that those rights will be granted to no other person. An exclusive licensee can sue and take certain other actions as though he or she were the copyright owner. Exclusive licences, like assignments, must be in writing and signed.

Non-exclusive licence

A non-exclusive licence is a permission to exercise one or more of the copyright owner's rights in a work. It does not result in the copyright owner parting with his or her rights in the work. A copyright owner may grant numerous non-exclusive licences, but can assign any or all of the exclusive rights that comprise his or her copyright only once for the period of that assignment.

Is Australian copyright material protected overseas?

International treaties

Australia is a party to a number of international copyright treaties and conventions including:

- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention)
- World Trade Organisation *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement)
- WIPO Copyright Treaty
- WIPO Performances and Phonograms Treaty
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), and
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Geneva Phonograms Convention).

National treatment

International copyright protection is achieved under the conventions through the principle of 'national treatment'. Broadly speaking, each convention member country gives the same rights to the nationals of other convention countries as it gives to its own nationals under its own law. The laws of members of the conventions or treaties must conform to the minimum rights specified in the conventions or treaties.

This means that because Australia is a party to the international copyright conventions outlined above, original works created by Australian citizens or residents are also entitled to the protection given by the copyright laws of all countries which belong to the Berne Convention and TRIPS Agreement. Similarly, Australian performances, broadcasts and sound recordings are entitled to protection by the laws of all countries which are members of the TRIPS Agreement and Geneva and Rome Conventions.

In order to ascertain what copyright protection is available in a particular country, it is necessary to have regard to the copyright laws of that country. It should be noted that in some countries, it is necessary to register a work before it will enjoy full copyright protection.

Bilateral agreements between Australia and other countries

Australia is party to bilateral trade agreements with some other countries, e.g. United States, Singapore and Thailand. These trade agreements include provisions on protection of copyright. For example, the Australia-United States Free Trade Agreement contains extensive obligations on both countries regarding the protection and enforcement of copyright.

Copyright symbol - ©

Use of the copyright symbol was significant when the United States was not a member of the Berne Convention and it would only recognise copyright where the © symbol was used in accordance with the Universal Copyright Convention (UCC). The UCC has been largely overtaken by the other treaties that do not require any formalities. To qualify for copyright protection in countries that are only members of the UCC, it is necessary that works bear, in a prominent place and from the time of first publication, the copyright symbol -© - together with the name of the owner of the copyright and the year of first publication, for example:

© Jane Bloggs 2005

However, using the © symbol, while having little legal effect, alerts others that copyright is claimed in the material in question.

Phonograms symbol - ®

Under both the Rome Convention and the Geneva Phonograms Convention, the symbol on copies of a sound recording is recognised as sufficiently indicating a claim to the protection of those conventions in the member countries that require such an indication of claim to protection.

Is overseas copyright material protected in Australia?

The provisions of the Copyright Act extend to works of nationals, citizens and residents of other convention countries and to works made or first published in those countries, by virtue of the *Copyright (International Protection) Regulations 1969*. Copyright will therefore subsist in Australia in a work made by a national of a country that is a party to one of the copyright conventions to which Australia is also a party - provided the type of work concerned is covered by the convention. This is subject to certain restrictions in the regulations.

For example, as Australia and the United States are members of the Berne Convention for the Protection of Literary and Artistic Works, original works of US nationals or works first published in the US will receive the same copyright protection as Australian nationals receive under the Copyright Act.

In order to establish in court proceedings who is the owner and whether the copyright has been made under conditions or in a place that is recognised in Australia as giving rise to a valid copyright, valid foreign certificates and documentation (e.g. US Copyright registration certificates) can be used as evidence and are given a degree of evidentiary weight. It will be up to the person disputing the ownership and publication information in such certificates to point to something that raises an issue as to the accuracy of what they say.

Where can I obtain more information?

Department of Communications and the Arts

The Department of Communications and the Arts provides general copyright information, but not specific legal advice, to members of the public.

You can contact us at copyright@communications.gov.au

Further information (including fact sheets and in some cases free legal advice) for creators and users of copyright material is available from the following websites:

Australian Copyright Council

The Australian Copyright Council is an independent not for profit organisation funded in part by the Australia Council. It represents the interests of many copyright owners and provides an online legal advice service for professional creators, arts organisations, members of its affiliated organisations and people who work in educational institutions and libraries. The Council also publishes information sheets and bulletins on specific copyright matters. Members of the public are encouraged to check the Council's website first to see if an information sheet answers their question. The Council's address is:

Australian Copyright Council
PO Box 1986
STRAWBERRY HILLS NSW 2012
E-mail: info@copyright.org.au
Website: www.copyright.org.au

Arts Law Centre of Australia

The Arts Law Centre of Australia provides free initial advice on arts-related legal and accounting matters to arts practitioners and organisations only – see the Centre's website for more details. The Centre also provides educational services and publishes a range of materials. Its address is:

Arts Law Centre of Australia
The Gunnery, 43-51 Cowper Wharf Road
WOOLLOOMOOLOO NSW 2011
Tel: +61 2 9356 2566
Toll free: 1800 221 457
E-mail: artslaw@artslaw.com.au
Website: www.artslaw.com.au

IP Australia

IP Australia should be contacted if you need information about the procedures for registration of patents, trade marks, designs and plant breeder's rights. It has a range of search functions and educational material available. IP Australia incorporates the Patent Office, the Trade Marks Office, the Designs Office and the Plant Breeder's Rights Office. The address for the central office is:

IP Australia
PO Box 200
WODEN ACT 2606
Tel: 1300 651 010 or +61 2 6283 2999
Fax: +61 2 6283 7999

E-mail: assist@ipaaustralia.gov.au

Website: www.ipaustralia.gov.au

Copyright Advisory Group

The Copyright Advisory Group's Smartcopying website provides information on copying issues for Australian Schools and TAFE ([click here for the Smartcopying website](#)).