



Galleries & Museums: Introduction to Copyright

This information sheet is for staff and volunteers in collecting institutions such as galleries and museums.

This information sheet will also have some relevance to commercial galleries and auction houses,

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version, and for other information for collecting institutions such as our training program.

We also publish books on copyright law relevant to galleries and museums. A new edition of *Galleries & Museums* is due in the second half of 2014.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

Key Points

- Collecting institutions are entitled to copy and communicate material in their collections for certain purposes.
- There is an exception allowing collecting institutions to use copyright material for the purpose of maintaining or operating the collection, provided certain conditions are met.
- Collecting institutions can make replacement copies of published editions in certain circumstances.
- Collecting institutions which are “key cultural institutions” can make three preservation copies of certain original material, editions films and sound recordings.

General principles

What does copyright protect?

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and decisions of courts.

Copyright protects a range of material which a person may encounter while working in a collecting institution, including:

- written material;
- musical works;
- artistic works;
- films; and

- sound recordings.

A person who wants to use one of these things in certain ways – such as by copying it, digitising it, uploading it to a website or emailing it – usually needs the permission of the copyright owner unless copyright has expired or a special exception applies.

For more information see our information sheet, *An Introduction to Copyright in Australia*.

Protection is free and automatic

There is no system of registration for copyright protection in Australia. A work does not have to be published or bear the copyright notice to be protected. Rather, it is protected automatically from the time it is first written down or recorded in some way, provided it has resulted from its creator's skill and effort and is not simply copied from another work.

Moral rights

A person dealing with another person's work has a legal obligation to:

- attribute the work's creator;
- not falsely attribute the work to someone other than the work's creator; and
- not treat the work in a manner that is prejudicial to its creator's reputation or honour.

These obligations may not apply to a person that has obtained the creator's consent or whose actions are "reasonable" in the circumstances. For more information, see our information sheet *Moral rights*

Special provisions for collecting institutions

There are provisions in the Copyright Act that allow staff of collecting institutions to reproduce and communicate copyright material for certain purposes. These provisions apply to libraries and archives.

"Archives" is a collection of material of historical significance or public interest, being maintained for the purpose of conserving and preserving the material. The collection must not be maintained and operated for profit.

The Copyright Act includes the following note:

Museums and galleries are examples of bodies that could have collections covered by ... the definition of **archives**.

In order to protect the copyright owner's market for copyright material, there are limits on the amount of that may be reproduced from commercially available material.

Copying for preservation

A collecting institution may copy a manuscript or other original version – such as a painting, first copy of a film or first copy of a sound recording – for preservation.

If the collecting institution is a "key cultural institution", it can also make three preservation copies of the following:

- a manuscript;
- an original artwork, provided a photographic reproduction is not commercially available;
- a published work, provided a copy of it is not commercially available;

- a particular edition of a work, provided the authorised officer of the library or archives is satisfied that it is appropriate that a preservation copy be made of that edition;
- an original sound recording, an unpublished sound recording, an original film and an unpublished film; and
- a published sound recording or film, provided a copy of it is not commercially available.

An item is commercially available if it is available within a reasonable time at an ordinary commercial price, including in electronic form.

A collecting institution is a “key cultural institution” if:

- the body administering the collection:
 - has, under a Commonwealth or State law, the function of developing or maintaining the collection; or
 - is prescribed by the Copyright Regulations; and
- the material is of historical or cultural significance to Australia.

Copying to replace lost, stolen or damaged items

A collecting institution can make a replacement copy of an item in the collection which has been lost, stolen or damaged if a replacement copy is not available for purchase.

A collecting institution is now allowed to make a replacement copy of a particular edition of a work which has been damaged or deteriorated, even though another edition of the work is available for purchase, provided an authorised officer makes a declaration stating why a replacement copy should be made from the particular edition.

Administrative purposes

A collecting institution can make a reproduction of a work in the collection for “administrative purposes”, which are “purposes directly related to the care or control of the collection”.

An administrative copy of a work in a collection may be made available online so that staff and volunteers can view the work on a computer terminal on the collecting institutions premises.

There is no equivalent provision for audiovisual material such as DVDs and audio CDs.

Maintaining or operating the collection

A collecting institution can copy and communicate material for the purpose of “maintaining or operating the [collection] (including operating the [collection] to provide services of a kind usually provided by a [collecting institution])”, provided:

- the circumstances of the use amount to a special case;
- the use does not conflict with a normal exploitation of the material;
- the use does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- the copying is not made for commercial advantage or profit.

The provision does not apply to an activity covered by another provision (such as making a preservation copy of an original version).

It appears that museums and galleries can only rely on this provision when dealing with material in their collection and not, for example, when dealing with materials not forming part of the collection.

Other purposes for which a collecting institution can copy

Collecting institutions are also entitled to copy material for the following purposes:

- supplying certain material to students and researchers;
- publishing old unpublished material; and
- supplying certain material to other collecting institutions.

There is more information in our information sheet *Libraries: Introduction to Copyright*, and our practical guide *Libraries: A Copyright Guide*.

Technical protection measures

“Technological protection measures” (TPMs) are technological mechanisms used by copyright owners to prevent:

- unauthorised access to copyright content (access-control TPMs); and/or
- unauthorised use of copyright content (copy-control TPMs).

The Copyright Act currently includes sanctions against manufacturing and supplying devices and services to circumvent copy-control TPMs. There are also be sanctions against:

- circumventing an access-control TPM;
- manufacturing or supplying a device to circumvent an access-control TPM;
- providing a service to circumvent an access-control TPM.

There are however, limited circumstances in which a circumvention device or service can be legally manufactured and supplied.

The provisions allow a person to circumvent a TPM to get access to copyright content in certain situations. Some of these situations are set out in the Copyright Act and include a collecting institution circumventing TPMs for the purposes of making an acquisition decision.

Removing or altering electronic rights management information (ERMI)

A copyright owner can take action against a person that removes or alters ERMI that is embodied in, attached to, or used in connection with copyright material if this person was aware that removal or alteration of the ERMI would induce, enable, facilitate or conceal copyright infringement of that material.

Types of ERMI include watermarks and metadata embedded into a file.

Frequently Asked Questions (FAQs)

Copying and communicating material in the collection

Do we need permission to reproduce a painting we own?

You are likely to need permission, unless:

- you own the copyright;
- the copyright has expired; or
- a special exception (such as those discussed in this information sheet), applies.

You do not become the owner of copyright merely by buying the painting. To transfer ownership of copyright, there must be a document signed by the copyright owner.

How do we find out when copyright has expired?

The period of copyright protection varies according to the type of material. As a general rule:

- copyright in *published* written material lasts for 70 years after the year of the creator's death, or if published after the death of the creator, then 70 years from the year of first publication;
- Copyright in artistic works like paintings and drawings has expired if the creator died before 1 January 1955;

There are several variations to the general rule, for example, copyright in any photograph taken before 1 January 1955 has expired, regardless of the year of the photographer's death or whether the photographer is still alive.

Copyright in certain types of *unpublished* material can last indefinitely.

For more detailed information on how the rules apply to different types of material, see our information sheet *Duration of Copyright*.

Can we reproduce works in our collection for catalogues, posters, promotional material and other merchandising?

All of these uses involve a reproduction of the copyright work and generally require the permission of the copyright owner (unless copyright has expired).

If you are acquiring material for your collection directly from the copyright owner or his or her agent, consider getting clearances for uses of the material at that stage. If you get material from someone other than the copyright owner, try to get as much information as possible about the work, its creator and its copyright status, to make clearances easier.

For information about copyright agreements, see our information sheet *Assigning & Licensing Rights*.

Are we allowed to put copies of works in our collection on our gallery's website?

Scanning a picture and uploading it onto a website involves both a reproduction and communication to the public of the copyright material. You will generally need permission from the copyright owner to do this, unless copyright has expired. For information about copyright agreements, see our information sheet *Assigning & Licensing Rights*

If the works were **acquired in electronic form** (for example, articles in electronic journals) then you can make them available online within the premises of the gallery, provided that users cannot make an electronic reproduction or communicate the works using equipment in the gallery – but this does not apply to AV material.

When copyright is owned by the museum or gallery

A painting is now out of copyright. Is a photograph of the painting protected by copyright?

The issue of whether a photograph of a public domain work is itself separately protected by copyright has not been definitively settled by the courts. Some overseas decisions indicate that such photographs may be protected by copyright but on the other hand, others may argue that a photo may not be sufficiently "original" to be protected by copyright in its own right if it is merely an exact reproduction of another pre-existing work.

Who owns copyright in an unpublished work if the creator has died?

A person who is bequeathed an unpublished manuscript, or original version of an artistic work, in the author's or artist's will is presumed to also own the copyright, unless there is a contrary intention in the will.

If the creator died before 1 May 1969, however, the bequest provides evidence, but not a presumption, that the beneficiary owns the copyright.

Are assignments or licences of copyright by the creator still valid after the creator's death?

In general terms, if copyright is assigned for the full term of copyright, the person to whom it was assigned continues to be the copyright owner. However, in some cases the situation can be more complex. If a creator assigned copyright before 1 May 1969, ownership of copyright reverts to the creator's estate 25 years after the creator's death. More complicated rules of law affect the operation of assignments granted before 1912. For this reason, where copyright seems to have changed hands under an assignment, it may be necessary to seek legal advice as to the current copyright owner.

Copying for preservation or administrative purposes

What can museums and galleries copy for preservation and administrative purposes?

Museums and galleries are entitled to reproduce **original artworks** and **original manuscripts** in their collection to preserve them against loss or deterioration. They can also communicate a "preservation reproduction" of original artworks on computers on the premises, if the original work has been lost or deteriorated so much that it cannot be displayed without significant risk of further damage.

You may reproduce **any** "work" held in the collection for "administrative purposes". Cataloguing or insurance purposes may be examples of "administrative purposes". However, this provision does not apply to AV materials.

In some cases, you may be able to copy, but this will depend on whether or not you can rely on the "special case provision" in section 200AB.

Use of the collection by visitors or clients

Are visitors entitled to photograph or copy material in our collection?

In some situations, people can use copyright material without the copyright owner's permission, without infringing copyright. The most common of these situations is where the use of the material is a "fair dealing" for purposes of research or study, criticism or review, or reporting news. For further information, see our information sheet *Fair Dealing*.

However, even though visitors would not infringe copyright by using copyright material in these circumstances, they do not have a **right** to have access to the material. The collecting institution may decline to allow access to certain material, or restrict access, and may also limit the ways visitors are entitled to use material in the collection through contract.

Would we be liable if visitors infringe copyright in material in our collection?

Collecting institutions could be liable for copyright infringements by clients if they "authorise" the infringement. This could be done by encouraging visitors to copy, photograph or film copyright material in the collection, or by making copying equipment such as photocopiers available to the

public without warning them against infringement. To protect yourself against such claims, you should put warning notices on copying equipment such as photocopiers and computers.

We have templates for such notices available in our information sheets *Notices on Photocopiers & Other Copying Equipment* and *Libraries: Declarations & Notices*.

Can visitors photograph sculptures or other works in our collection?

Sculptures and works of artistic craftsmanship on permanent public display may be photographed, drawn and filmed without permission. Unless they can rely on other provisions in the Act or copyright has expired, clients will, however, generally need permission from copyright owners to photograph other public art, such as murals.

Can we stop visitors taking photos of material which is out of copyright?

As owner or controller of its premises, a collecting institution can determine the extent of access that will be given to works in the collection by members of the general public and others – it is not **obliged** to allow people to use material in any particular way.

Material that isn't in the gallery's or museum's collection

Do we need permission to copy a photograph of an artistic work from a book?

Photographs of artistic works may contain two separate copyrights: copyright in the artistic work (for example, a painting) and copyright in the photograph of the artistic work. Permission will generally be needed from the owner of copyright in the artistic work (unless the copyright has expired). As noted earlier, a photograph that simply reproduces the entire artistic work may not be separately protected by copyright.

Do we need permission to reproduce just part of a work?

You will generally need permission to reproduce a “substantial part” of the work. A “substantial part” is a **distinctive, recognisable** or **essential** part of the original work.

Depending on the nature of the work, using small parts might amount to infringement. Generally, the more original or recognisable the part taken, the greater the likelihood of it being a “substantial part”. However, if the first work consists of commonplace elements, the degree of similarity required between the two works will be greater.

For information on copying parts of works, see our information sheet *Quotes & Extracts*.

Do we have to pay a fee to another collecting institution to reproduce a work in its collection?

If the other collecting institution owns copyright in a work in its collection, you will generally need permission from it to reproduce the work. In some cases, a collecting institution charges an “access fee” to reproduce works in its collection, even if it does not own copyright or the copyright has expired. If a collecting institution has requested a fee, you may wish to check what the fee is for.

Further information

For further information about copyright, and about our other publications and training program, see our website, www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see <http://www.copyright.org.au/legal-advice/>

Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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