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## Permission: Do I Need It?

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This information sheet is for people who are familiar with the basic copyright principles set out in our information sheet entitled *An Introduction to Copyright In Australia* and outlines issues relating to permissions and clearances for copyright material.

Relevant information can also be found in our information sheets *Permission: How To Get It, Quotes & Extracts* and *Artworks: Getting Permission*.

For information about our other information sheets, publications and seminar program, see our website [www.copyright.org.au](http://www.copyright.org.au)

We update our information sheets from time to time. Check our website at [www.copyright.org.au](http://www.copyright.org.au) to make sure this is the most recent version.

**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.**

### When you need a copyright clearance

You will need copyright permission if:

- you use something protected by copyright;
- you use a 'substantial part' (this may not necessarily be a big part);
- the copyright has not expired;
- your use is controlled by the copyright owner (the copyright owner has the exclusive right to make the use); and
- your use is not covered by a special exception.

For details on how to find the copyright owner, see our information sheet *Permission: How To Get It*.

### When you don't need a copyright clearance

- **You're not using a "substantial part"**

Copyright issues don't arise unless you are using an important, distinctive or essential part of copyright material. Note that this may be a small part of the material.

- **You can rely on an exception to getting permission**

There are a number of situations in which permission to use copyright material is not required. Our information sheet *Exceptions to Copyright* contains a useful table summarising the statutory exceptions to copyright infringement. In brief, the exceptions include:

- “Fair dealing” in copyright material for the following purposes: criticism or review; parody or satire; or reporting news. See our information sheet *Fair Dealing: What Can I Use Without Permission*.
- There are also exceptions relating to taking photos and drawing pictures of buildings, public sculptures and craft. See our information sheet *Photographers & Copyright*.
- There are a number of exceptions relating to private copying of material. See our information sheet *Copying & Converting Formats for Private Use*.
- There are a number of special exceptions in the Copyright Act that affect libraries. See our information sheet *Libraries: Introduction to Copyright*.
- There are a number of special exceptions in the Copyright Act that affect educational institutions. See our information sheet *Education: Copyright Basics*.
- There are a number of special exceptions in the Copyright Act that affect government use of copyright material. See our information sheet *Government: Commonwealth, State & Territory*.
- There are a number of special exceptions in the Copyright Act that allow people who own, or have a licence to use, a computer program to do certain things with the program. See our information sheet *Software & Apps*.

Note, however, that exceptions to the need to get permission are often subject to limits and pre-conditions.

- **Copyright has expired**

Material may be freely used if copyright has expired. Become familiar with the rules of duration which are relevant to the type of material you are using – see our information sheet *Duration of Copyright* for full details.

- **The material was never protected by copyright in the first place**

There are no copyright issues if what you are using is really just ideas, information or styles.

Be aware, however, of the distinctions between:

- ideas and their expression in copyright material;
- information and the selection and arrangement of information in a compilation or table; and
- styles or genres and particular items protected by copyright.

In some cases, ideas and information can be protected by laws relating to confidentiality, and adopting someone else’s style may give rise to issues under areas of law such as “passing off”. See our information sheet *Ideas: Legal Protection* for more information.

Similarly, images of individual people are not protected by copyright, but using someone’s image can in some cases give rise to issues under other areas of law – including passing off or “trade practices” law, as well as defamation.

- **Your organisation owns the copyright**

You won’t have to worry about copyright issues if you or your organisation own copyright in the material. Be careful, however, of making assumptions as to who owns copyright in material

that is “in-house”, particularly if it may have been created by freelancers or may contain embedded third-party material.

### **“Free” licences**

Many copyright owners offer “free” licences to use their material – particularly where they make that material available on the internet.

Note, however, that many of these are still subject to conditions (such as attribution) and to limits (such as use for non-commercial purposes only). Always read the terms and conditions carefully and ensure your use will be within the scope of the licence. If you need a broader licence, contact the copyright owner.

### **Identifying moral rights and performers’ rights issues**

You will generally have moral rights obligations to people who have created any copyright material you are using. These obligations are in addition to your obligations to obtain any necessary permission from the copyright owner of the material.

Moral rights obligations will generally require you:

- to attribute relevant creators;
- not to “falsely” attribute them (for example, by failing to indicate that the creator’s material has been altered by someone else); and
- to respect the integrity of their work (by not using it in a way that may damage their reputation or honour).

These obligations extend to creators (including employees) whether or not they own copyright. Moral rights issues exist whenever you use copyright material, but are particularly likely to arise if material is re-purposed. See our information sheet *Moral Rights* for more details.

In some cases, you may be under similar obligations to performers where you are using sound recordings of their performances. Please see our information sheet *Performers’ Rights* for more details.

If you wish to use copyright material in a way that may infringe the creator’s moral rights and/or performers rights, you will need to seek the creator’s consent to that use in addition to the relevant consents from the copyright owners.

### **Using material overseas**

While copyright law in other countries is generally similar to Australian law, there can be significant differences, particularly in relation to the duration of copyright and in relation to exceptions.

You will always need to take these differences into account if you will be exploiting material in other countries; in some cases, you may need to get specific legal advice from someone with expertise in the copyright law of the relevant country/ies.

## **Frequently Asked Questions (FAQs)**

### ***If I use another person’s work for a non-profit purpose, do I need permission?***

There is no special exception that allows you to use a work without permission just because it is used for a non-profit purpose. The copyright owner may give permission for a low fee, or no fee, if the use is non-profit, but you still need to get permission if you are using a substantial part of the work and no exceptions to infringement under the Copyright Act apply to your situation.

***If we want to use work produced by children, whose permission should we get? Can their school or teachers give permission or will we need permission from the children themselves and/or their parents or guardians?***

A child's work is capable of being protected by copyright. If a child produces work, the presumption is that he or she will own copyright in that work.

In some cases, there will be an implied licence that the child's school can use the child's work for certain purposes. For example, if the child drew a picture for the purpose of putting that picture on the cover of a magazine, there will be an implied permission for the publisher to do so.

In other cases, however, you should get permission. While there are no hard and fast legal rules, the younger the child, the more inclined your organisation might be to make it a policy to get permission not only from the child but also from his or her parents or guardians. Teachers and schools may be able to assist in getting permission, but cannot themselves give a permission where a child owns copyright.

***If a work is anonymous, or has no copyright notice, can I use it without permission?***

A work does not need to have the copyright notice or the author's name on it to be protected by copyright. The absence of a copyright notice or the author's name may of course make it more difficult to obtain permission.

***How many changes to something do I need to make to avoid having to get permission?***

Generally, making changes to something won't avoid the need to get permission.

If, for example, you want to use something someone else has created – on your website, or in a brochure, or even for purely personal purposes – you might need permission even if you are using only a small part of that material, or if you make changes to it.

When working out whether or not you will need to get permission, it is more important to look at what is still the same, rather than what has been changed. You will usually have a copyright issue to deal with if you are using any important, distinctive or essential part of the original material – this may or may not be a large proportion of that material.

***I have sought written permission from a copyright owner to reproduce their material. In response to my enquiry, an employee of the copyright owner gave me oral permission to reproduce the material with some formatting changes. Do I need to do anything more?***

It's always best to get permission – or any change or clarification to permission – in writing.

In some cases, agreements about the use of copyright material specifically state that any changes must be in writing. In any event, if there is a dispute, having something in writing makes it easier to show what was agreed. In this case, it would be best to write a letter to the copyright owner, confirming your understanding of what you are allowed to do under the licence as a result of the telephone conversation. Make sure to keep a copy of the letter.

***I want to share a playlist I have created on Spotify. Do I need permission?***

In general terms, the use you can make of material you create using a music streaming service like Spotify or Pandora (eg a playlist) will depend on the terms and conditions of use of that service. Check the terms and conditions of the service to find out whether the way you are using the service is permitted.

Also, be aware that there may be copyright issues if you are creating a playlist which is a copy of the track listing from a commercially available compilation album. In 2013 the Ministry of Sound record label brought legal proceedings in the UK against Spotify on the basis that Spotify did not

take action to prevent its customers from creating and sharing playlists which were identical to the track listings on the Ministry of Sound compilation albums. The proceedings were settled out of court. The question about whether track listings are protected by copyright has not yet been tested in Australian courts.

### Further information

For further information about copyright, and about our other publications and seminar program, see our website – [www.copyright.org.au](http://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.

### Australian Copyright Council

**The Australian Copyright Council is a non-profit organisation whose objectives are to:**

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



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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