



Websites: Social Networks, Blogs & User-generated Media

In this information sheet we give an overview of copyright issues that apply when people operating websites, social networks, blogs and other online services invite users to create or post their own content.

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.

Our books *Copyright & Online Technologies, Websites & Social Media* and *Advertising, Communications & Copyright* are relevant to this information sheet. You may buy our books from our bookstore: www.copyright.com.au/bookstore

Key points

- Users will usually own and retain copyright in material they post to, or create on, your website, social network or other online service.
- Unless users agree to give a broader permission, a person operating a website or other online service will generally have a very limited licence to use content contributed by users. This is only likely to cover making the material available on that particular website.
- Take care when licensing content contributed by your users. The permissions you give people visiting your site to use content contributed by other users mustn't be broader than the permissions you get from the people who posted that material.
- Develop appropriate procedures to guard against the consequences of visitors posting infringing material to your website, blog, social network or other online service..

What is user-generated media?

Examples of this type of content include:

- posts and comments on social networks (such as Facebook and Twitter);
- images and videos uploaded to image/photo/film-sharing sites (for example, YouTube, Instagram, Vimeo, Pinterest and Flickr);
- websites and blogs that invite comments and responses (such as restaurant and accommodation review websites);
- contributions to crowdsourced projects (such as Wikipedia);
- certain activities on game and virtual reality sites (such as Second Life); and

Content contributed by users is protected by copyright

In some cases, your users may have created material offline and then posted it to your site. For example, they may have taken photos, recorded music or shot video that they then upload.

In other cases, your users may create material on your site. For example, they may be creating avatars and other material as part of an online game or they may be typing comments or articles directly into your discussion forum or wiki.

For the purposes of this information sheet, we have assumed this material will be protected by copyright (although this may not always be the case). For example, content comprised of short phrases of everyday text (such as “I really enjoyed this book/hotel/film/blog”) may not have resulted from sufficient skill and effort to be protected by copyright. See our information sheet *Quotes & Extracts* for more detail.

Ownership of copyright in material posted to a website, blog, social network or other online service

Websites run by people not connected to a government department or agency

Merely hosting a site on which people post their content or within which they create content does not mean that you own copyright in that material. Rather, the contributing user will usually own copyright (assuming that the user has created the material). You on the other hand will have a limited “licence” (permission) to use that material. People other than the contributor might own copyright – see our information sheet *Ownership of Copyright* for further detail.

If you **do** wish to acquire copyright in material users post to your site, you will need to have contributors assign copyright to you by “signing” a written agreement to that effect. In this context, typing their name may constitute a “signature”, but you may need legal advice on this. Before deciding to ask contributors to assign copyright to you, consider what reaction such a request may have as it may meet with resistance from the community your website, social network or online service is seeking to foster.

See our information sheet *Assigning & Licensing Rights* for more detail.

Websites run by a government department or agency

Where users contribute to a website run by a Commonwealth, State or Territory government department or agency it may be that that government owns copyright in the users’ contributions. This is because there are provisions in the Copyright Act that vest copyright in a government if it is the first “publisher”.

Government departments and agencies operating websites that invite users to contribute content may want to alert their users to the consequences of uploading their content. If the government does not want to own copyright in that content, it should address this in its user agreement.

For information on what sort of organisations are “government” for copyright purposes, and other information about copyright for governments, see our information sheet *Government: Commonwealth, State & Territory*.

Practical implications

Make sure that your copyright notice clearly distinguishes between what you claim copyright in and what contributing users own copyright in. You can do this by adopting a copyright notice such as:

© [name of website proprietor] and contributors 2012.

Your entitlement to use content contributed by your users

In the absence of an agreement with your users, your right to use content created on or posted to your site by your users will be limited. Unless contributing users agree to the contrary, you will **not** be entitled to:

- use the material offline; and
- grant other users of your site permission to do anything other than view or listen to the content (in particular, you will not be able to authorise them to download or print off copies of that material).

If you want to be in a position to use content contributed by your users more broadly than your site, you should make sure your users give you permission. Ways to do this include:

- if someone has already posted or created material to or within your site, you can try to contact them **after** the event (note, however, that they may not be identifiable or contactable in some cases); or
- making sure that you not only have user terms and conditions that will allow you to use the material more broadly, but that potential contributors have to agree to these **before** they can post or create material.

As a practical matter, the second approach is usually preferable where you have identified that you need to use the material other than on the site.

Take some care in crafting any terms and conditions so that they reflect the rights your users are prepared to grant you. A prominent website recently upset its users when it changed its terms and conditions to allow it to use of material contributed by users very broadly. In the end, it had to review its position and try to repair its relationship with its users.

Practical implications

While you should ensure that where users contribute material you can use that material, you should also ensure that other users may also use that material.

For example, if you have a blog, you might be happy to license it under a Creative Commons licence but you won't be in a position to give any similar licence for contributions from people posting responses to your blog unless you have prior permission from those contributors.

Infringing material within content contributed by users

In some cases, content that users post to your site may be infringing. For example, a user may post someone else's photo, music or video on your site. This may be out of ignorance or malice. Whatever the reason, you are likely to be liable for authorising copyright infringement if infringing material can be accessed on your service (whether or not you were aware of the infringing material).

“Safe harbour” provisions in the Copyright Act

There are provisions in the Copyright Act that can limit the liability of Internet Service Providers (ISPs) for infringement of copyright by their customers. These do not, however, apply to the ISPs' customers themselves (e.g. website operators).

In 2014 the Australian Government released a discussion paper containing a proposal to extend the authorisation infringement provisions in the Copyright Act as well as the safe harbour provisions. The safe harbour proposal is to extend the scope of the scheme from ISPs to “service providers”. For more details, see the Attorney-General’s Department website: www.ag.gov.au

Exceptions to infringements

In some situations, you and/or contributors may be able to rely on provisions in the Copyright Act that permit the use of other people’s material without permission. However, these exceptions apply in narrow contexts and for public policy reasons. See our information sheets *Fair Dealing: What Can I Use Without Permission?*, *Exceptions to Copyright* and *Parodies, Satire & Jokes* for more information.

Content contributed by your users that incorporates someone else’s material (for example, an audio or video mashup) will usually require a clearance. For more information, see our *Mashups, Memes, Remixes & Copyright* information sheet.

Practical implications

There are several steps we recommend you take in order to limit the consequences of users posting or creating material on your website or social network that infringes copyright:

- as part of a binding agreement with your users, ensure that one of the terms or conditions states that they will not infringe copyright and that they will indemnify you for any infringing behaviour. It’s a good idea to get a lawyer to draft your terms and conditions and to advise on how to make sure these are contractually binding;
- educate users by reminding them in plain language not to post material without the relevant copyright owner’s consent;
- make it clear to users that you retain the right to remove material that you consider may infringe copyright;
- monitor your site for potentially infringing material (this will generally be easier if you have a moderating process, so that someone has to “eyeball” and approve content contributed by users before it goes “live” on your site. You can then remove potentially infringing material before it becomes a problem);
- put a clear statement on your website, blog, social network or other online service that sets out how people who want to complain about potential infringements of their copyright can contact you; and
- respond quickly to claims that any content posted on your site infringes copyright (for example, by removing the material). If you are in doubt as to the validity of the claim get legal advice as quickly as possible (for example, if you think a “fair dealing” defence may apply).

Following these steps won’t mean that you will never be liable for an infringement, but they are likely to diminish the chance that an infringement occurs and greatly diminish the financial and legal consequences of any such infringement.

Links to content on other websites

The law on linking is unclear. However, the mere provision of a link on your website – including within content contributed by users – should not raise any copyright infringement issues.

To minimise your risk of infringement, you may wish to:

- set up your website, social network or online service in a way that takes someone clicking on the link directly to the other URL (avoid “framing” the material from the other site on your site);
- remove any links if it is reasonably obvious that the link will take people to infringing material (for example, to websites offering the latest Hollywood movies for free); and
- respond quickly to any complaint from another website that you are linking to it by either removing the link or seeking urgent legal advice as to your position.

Frequently Asked Questions (FAQs)

Somebody has copied material from my Facebook profile onto their website. What should I do?

If material in which you own copyright has been copied onto another website without your permission, it's likely that your copyright has been infringed. For information about situations where there might not be an infringement of copyright, see our information sheet Fair dealing; for information on what options are open to you if you suspect your copyright has been infringed, see our information sheet Infringement: what can I do?

Can I link to third party sites without infringing copyright?

Yes, so long as the website to which you are linking to is a legitimate site with legitimate content (and not, for example, an illegal file sharing site).

Also, if the site to which you are linking to is not affiliated in any way with you or your site, it is generally best to make it clear that there is no relation between you.

Finally, there is a difference between html linking (which usually does not raise any copyright issues) and other kinds of linking, such as embedding or framing (which may require permission from the copyright owner of the content to which you are linking to).

Further information

We have published detailed practical guides *Websites, Blogs & Social Media* and *Copyright & Online Technologies*, which are available from our bookstore at www.copyright.org.au/bookstore

For further information about copyright, and about our other publications and seminar 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.

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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