
Websites & Copyright

This information sheet is for web developers, bloggers, website designers, startups, businesses and anyone interested in copyright issues relevant to creating and administering websites.

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.

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

See also our information sheet *Websites: Social Networks, Blogs, & User-generated Media* for more information on managing user contributions to your website.

Key points

- Whole websites are not protected by copyright. However, component parts of a website, such as video, text, artworks, logos, photographs, music and the underlying source code and files, may be protected.
- When a website designer is paid to create a website, it's a good idea to have a written agreement that, among other things, specifically deals with copyright and moral rights issues.

Copyright overview

- Copyright is automatic; there is no need to register for copyright protection (see our information sheet *An Introduction to Copyright in Australia*).
- Copyright does not protect ideas or information (see our information sheet *Ideas: Legal Protection*).
- Copyright has a term of protection, usually the life of the creator plus 70 years (see our information sheet *Duration of Copyright*).
- Copyright can be owned by people other than the creator (see our information sheet *Ownership of Copyright*).

Copyright protection and websites

A website, as a whole, is not protected by copyright. Rather, individual components of it are likely to be protected. For example:

- articles, blog posts and most content in written form (“literary works”);
- photos, logos, illustrations, charts, graphical elements and other visual content (“artistic works”);

- music scores, arrangements and guitar tablatures (“musical works”);
- recorded audio such as songs and podcasts (“sound recordings”);
- video and animation (“cinematograph films”); and
- tables of words or symbols (“compilations”).

Using third party material in websites

In most cases where you are posting material to your website that you or your organisation didn't create, you will need permission.

If a client owns copyright in material and supplies it to you to use on a website you are creating for him or her, you will have “implied permission” to use it for this purpose (see below).

When can you use material without permission?

You won't need to get copyright permission if:

- the material is not protected by copyright: for example, ideas, information, names (see our information sheets *Ideas: Legal Protection* and *Names, Titles & Slogans*);
- copyright has expired: for example, a photograph taken before 1955 (see our information sheet *Duration of Copyright*);
- you are not using a “substantial part” of the work: for example, you are reproducing one sentence from a full-length novel (see our information sheets *Permission: Do I need it?* and *Infringement: What Can I Do?*); or
- a special exception applies: for example, your use of the material is a fair dealing for criticism or review, for reporting news, or for parody or satire (see our information sheets *Fair Dealing: What Can I Use Without Permission?*, *Parodies, Satires & Jokes* and *Exceptions to Copyright*).

When will you already have permission?

Express permission

In some cases, you may not need to contact the copyright owner directly because he or she has already granted express permission for anyone to use the material in certain ways. For example, statements about how the reader is entitled to use a PDF document downloaded from a website may be included as part of the document or at the location on the website from where the document is offered for download.

Similarly, material available on the internet is sometimes covered by a generic licence such as those promoted by Creative Commons. For more information, see our information sheet *Creative Commons Licenses*.

In each case, check that the licence covers what you want to do. Such permission may be subject to terms and conditions (such as acknowledgment of the source or creator of the material, not making changes to it, or non-commercial use only). If you want to use the material in ways that aren't covered by the express licence, you will have to ask for further permission directly.

Implied permission

In some cases you may have permission (a licence) that is implied from the circumstances, even though the copyright owner has not expressly granted permission. For example, if you

commission an artist to create a logo for use on your website, you will have implied permission to use the logo for that purpose.

The scope of an implied licence is the **minimum** necessary to make sense of the situation. For this reason, and because it can be hard to work out the precise limits of an implied permission, it's generally preferable to get **express permission in writing** for all uses you are likely to want to make of the material.

The fact that material is already on the internet does **not** mean you have implied permission to download or otherwise use it.

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

Getting permissions (clearances)

Identifying, locating and obtaining permission from a copyright owner

Generally, the creator of the material owns copyright. However, in many cases, the creator may have assigned or licensed some or all of the rights to someone else. For example, book authors often grant publishers extensive rights to negotiate on their behalf. If the material was created by an employee in the course of their employment, their employer will own copyright. If the material was created under the direction or control of a government, the government will own copyright in the material.

When you get permission, it's important to get it from the person or organisation entitled to grant that permission. If you have any doubts as to whether or not the person or organisation purporting to give you permission is in a position to do so, you could ask for evidence or for a warranty and indemnity from the person granting permission. If you remain unsure, consider using alternative material.

Make sure the rights you ask for "match up" with what you want to do with the material. If for example, you want to allow visitors to your site to print out copies of the material or you wish to sell copies or make translations, you will need to ensure the clearance you get allows you to do so.

See our information sheets *Ownership of Copyright*, *Permission: How To Get It*, *Artworks: Getting Permission* and *Assigning & Licensing Rights* for further detail.

Collecting society licences

Copyright collecting societies may be able to grant you a licence to use various material. In such cases, you won't need specific permission from copyright owners to use material within the scope of your licence.

Collecting society licences can cover an extensive range of material, including material created in other countries. This is because most collecting societies have reciprocal arrangements with similar organisations in other countries.

APRA|AMCOS can grant licences for certain online uses of **music**. Information is provided on its website at www.apraamcos.com.au

You will need a separate licence if you wish to use pre-existing sound recordings (like commercially released MP3s or CDs) on your website. For more information, contact PPCA at www.pcca.com.au

Copyright Agency|Viscopy can grant licences for online use of artworks created by members: see www.viscopy.org.au. Viscopy's business is now managed by Copyright Agency. Viscopy remains a separate legal entity, with members and a board.

See our information sheet *Copyright Collecting Societies* for further detail.

Moral rights

Creators of copyright material have the following rights:

- to be attributed when their work is used;
- not to have their work falsely attributed to someone else, nor to have the altered work attributed as if it were unaltered; and
- not to have the work treated in a manner that would prejudice the creator's honour or reputation.

In some cases, you may be able to defend yourself against a claim by arguing it was **reasonable** not to attribute a creator or to treat the work in a way that could prejudice the creator's honour or reputation. However, in most cases it is preferable to get the creator to consent to the way you want to use his or her material, if possible.

For further information, see our information sheet *Moral Rights*.

Linking to third party websites

The legal position

In general terms, and subject to the comments below, it's unlikely that simply providing a link raises copyright issues under Australian law. However, the legal implications of providing links are not entirely settled.

Providing a link to a website's home page is unlikely to raise objections. Many website operators may, however, object to "deep linking" – that is, providing links to pages within a website, bypassing the home page. There may be a number of reasons for this, including a wish to ensure visitors to the website see the home page and are counted for revenue purposes, and a wish to ensure that links to out-of-date material are not maintained. Note also that, in some circumstances, linking may raise issues under areas of law such as trade practices law.

There are **technology-based** ways to make it difficult or impossible to link to particular pages on a website or to limit access to particular parts of a website. However, in the absence of an agreement by visitors not to deep link, it may be difficult for a website proprietor to use **legal** arguments to prevent deep linking.

When can linking get you into trouble?

"Authorising" infringement

If your website links to material that infringes copyright or to websites that you know contain infringing material, you could be held liable for authorising infringements by visitors to your website who follow the links.

In 2005, the Federal Court held that a website operator was liable for authorising infringements because the website encouraged users to post links to music files and download these files by clicking on the links. The website operator hadn't placed the links on the site himself but was aware that many linked to material that infringed copyright. He took no steps to check the legality of the linked files and encouraged his users to access and download material.

"Framing" material from other websites

It is possible to "frame" material from other websites within your own, so that visitors to the site see the material without being aware they are actually looking at a different website. Although it is not entirely clear, this practice may raise issues under copyright law. Framing

may also put you at risk of action under other areas of law, such as consumer and competition law (especially if you are framing material from a commercial rival's website).

To avoid these legal issues, obtain permission from the websites you wish to frame or make it clear to your visitors that he or she is looking at a different website.

However, in some circumstances, permission to frame, or embed may be implied. For example, if a copyright owner provides framing or embedding options for the copyright material, it may be implied that you have permission to frame or embed.

Agreements between website designers & clients

As with any other agreement in which someone is commissioned to produce material, it is highly desirable to have a written agreement setting out exactly what is required of each party and what rights each party will have in relation to the completed material.

In many cases, especially for website designers who regularly work on commission, it is a good idea to get a lawyer to draft a standard agreement appropriate to your situation.

Some issues that are particularly relevant to agreements relating to the construction of websites are:

- who is responsible for clearing third party material and getting any necessary moral rights consents (this may depend on who provides the material);
- whether or not the client is entitled to revise or update the site;
- whether the designer is required to hand over any digital files (or physical media on which such material is stored) relevant to the website;
- credits for the designer & creators of website material; and
- who will own copyright in any material created for the site (including any material not ultimately used).

Protecting your website

Copyright protection

Copyright protection gives the copyright owner a legal basis for taking action if his or her copyright is infringed. However, it is generally up to the copyright owner to identify infringements and take action: there is no organisation set up to investigate or prosecute infringements on behalf of copyright owners.

In late 2014, the Australian Government indicated that it would introduce amendments to the Copyright Act in 2015 to address online copyright infringement.

Contracts

Legally binding agreements can be a useful way to set conditions on people accessing information or services on your site. A common way to achieve this is to require users to agree to stated terms and conditions of use in order to get access to the material or service. This can be done through making users click an "I accept" pop up before using the website.

Other legal protection

In some cases, you may be able to rely on other areas of law to protect your website. For example, consumer and competition law and the law on passing off may allow you to take

action against a competitor who creates a website with a similar “look and feel” in order to mislead your customers into thinking they are using your website.

Practical approaches

Legal methods of protection do not actually prevent others from using your material in ways that may infringe your rights: they simply give you the right to take legal action in those circumstances. There are various practical or technological approaches you can consider to make it more difficult or less appealing for people to infringe your rights.

These include:

- using a “copyright notice” on your site, together with clear statements as to what people can or cannot do with material on the site;
- making it clear how people can contact you for permission to use material on your site;
- preventing users from making direct links to particular pages or areas;
- considering whether there are pages you should make unavailable to search engine indexing “bots”;
- using low-resolution images;
- watermarking images;
- deciding whether material should be available to download or limited to streaming only; and
- limiting access to particular pages or areas of your website (for example, by use of passwords or paywalls).

Frequently Asked Questions (FAQs)

My work has appeared on a website without my permission. What can I do?

If you own copyright in your work, then generally, yes. As the owner of copyright you are the only person who has the right to communicate your work to the public using any form of technology, including the internet. If no exceptions apply to allow the use, you may want to contact the person responsible for the website and ask them to remove your work or pay a fee for the use. Your moral rights (e.g. attribution) may also be relevant. If the website owner doesn't respond, you could also try contacting the web host to request that the content be removed.

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).

When is copyright in a website infringed?

There is no single copyright in a website. Rather, a website is protected by copyright as a combination of different copyright materials. In determining whether an infringement has occurred, it will be necessary to look at each component part of the website separately to

determine whether a “substantial part” of any of these separate copyright materials has been used without the permission of the copyright owner.

Further information

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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