



YouTube & Copyright

This information sheet gives a brief overview of the relevant copyright issues for people uploading video to YouTube as well as those with an interest in the copyright issues that may arise when using videos appearing on YouTube. It will also be relevant if you are using other video sharing platforms such as Vimeo, Veoh, Daily Motion and Facebook.

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

- YouTube's terms and conditions will determine how YouTube and its users can use your material. Similarly, the terms and conditions of other video sharing platforms will determine how the platform and its users can use your material;
- You may need permission to use third party material like music and images in videos you upload to YouTube or other video sharing platform.
- There is no general exception for non-commercial use of copyright material in your videos, but some types of use may be covered by fair dealing.

Elements of YouTube videos that may be protected by copyright

Copyright protects a wide range of material including:

- Film & Video (like home videos, commercially released movies, TV shows and animations)
- Music (like melodies of songs and orchestral scores)
- Sound Recordings (like recorded music or speeches)
- Visual works (like paintings, photographs and sculptures)
- Dramatic works (like screenplays and choreography)
- Literary works (like books, manuals, poems, and all kinds of written works)
- Broadcasts (TV & radio material)

One item may contain multiple types of copyright-protected material. For example, a video will be protected by copyright as a type of film, but a video may also contain sound recordings (such as music on the soundtrack) and dramatic works (like the script the actors are performing) – these would be separately protected in addition to the film.

How do you get copyright protection?

There is no registration procedure nor any other formal procedure you have to undertake to protect your material in Australia, all eligible material is automatically protected as soon as it is written down or recorded in some way (for example, on a file or disk).

We recommend that copyright owners use the “copyright notice” on their work to remind users that the material is protected and that the person named is claiming the rights. Copyright owners can put the notice on their material themselves. The notice consists of the symbol, followed by the name of the copyright owner and the year of first publication: for example, © Freddie Filmmaker 2014.

It is important to note, however, that the notice has no legal effect: copyright material is protected whether or not the notice appears on it.

Who owns copyright?

Different ownership rules apply depending on the type of material that is being protected. For some of the most commonly found material on YouTube, as a general rule:

- Films – If you are shooting your own personal video such as a home video or making your own short film or viral video clip, then the likelihood is that you will own the copyright in that film. However, if you are filming as part of your duties as an employee or you are filming as part of a project that has been commissioned or paid for by a producer, then it is likely that the producer will own the rights to the film.
- Sound Recordings – You will generally own the copyright in any sound recordings you create yourself. Additionally, any other performers on that sound recording will also own a share of the copyright unless you agreed otherwise. If on the other hand someone has paid for the sound recording to be made, then the person that paid will usually own copyright unless there is an agreement otherwise.
- Written material, Visual artworks and music - the person that created the material is usually the copyright owner unless they made an agreement otherwise or created the material as part of their duties of employment (in which case their employer would own copyright).
- Photographs – usually the person that took the photographs owns copyright in it unless there was an agreement otherwise or the photograph was created as part of their duties of employment (in which case their employer would own copyright).
- Broadcasts – often owned by the TV or radio station that broadcast the material unless there was an agreement otherwise.

For more detailed information, see our information sheet *Ownership of Copyright*.

What are your rights as a copyright owner?

If you do own the copyright in your film, sound recording, photographs or other types of material, then you have a bundle of different rights relating to use of that material. You are generally the only person who can (or give others permission to):

- reproduce it: for example, by copying or format shifting the material;
- make it available to the public for the first time;
- screen or play it in public;
- communicate it to the public (including making it available online for download or streaming);

Copyright owners have additional rights that we outline in more detail in our information sheet *An Introduction to Copyright in Australia*.

Uploading your own videos to YouTube

Before you can upload your material to YouTube, you will have to agree to YouTube’s terms and conditions. It is important to be aware of these terms and conditions as they determine your

responsibilities when uploading content as well as set out the ways in which YouTube (and its users) can use your material.

For general information on dealing with the rights in your material, see our information sheet *Assigning & Licensing Rights*.

You should seek legal advice from a solicitor if you want a full review of what consequences the terms and conditions have for material that you upload to YouTube, but some key points to note are:

- Whilst you retain your ownership rights, you give YouTube a licence to use your material in a number of ways;
- You give YouTube's users permission to use your submitted material in the variety of ways permitted by the site;
- You warrant to YouTube that you already have the necessary copyright clearances for any third party material you use in the material you submit;

If you have created a video or sound recording that doesn't feature any third party material and in which you own the copyright, then you can upload this to YouTube without having to worry about clearances.

On the other hand, if you do use third party material like music, images or extracts of written material that has been created by others, then you should work out whether this material will need to be cleared.

Under YouTube's terms, the onus is very much on the person uploading material to make sure that that uses of any material created by others has been cleared, however, under Australian law, YouTube may also be at risk of being liable for unauthorised material on their site.

YouTube's terms indicate that users found to be repeatedly ignoring copyright rules risk having their account removed.

Using other people's material in your YouTube videos – getting clearances

If the third party material you are using is still protected by copyright, then the general rule is that you need permission to use it if you use a "substantial part" of it your project. This is because using such material in your film would be a type of *reproduction* of that material and then uploading that material for streaming on YouTube will be a type of *communication* of that material - two types of uses, which the copyright owner usually has to permit.

"Substantial part" doesn't refer to a specific amount of material you may be using (like 10% or 15%), rather, it is best considered in terms of whether particularly distinctive or original elements of the other work are being reproduced in your work - it is a qualitative rather than quantitative frame of analysis that you have to apply.

If you are using a substantial part of other material and need to get permission, then we have information sheets that may assist:

- For music – usually the composer or record company owns the rights. See our information sheet *Music: Use in Film*
- For commercially released sound recordings, usually the record company owns the rights. See our information sheet *Music: Use in Film*;
- For artworks and photographs, usually the person that created the material owns the rights. See our information sheet *Artworks: Getting Permission*;
- For written material, usually the publisher or author owns the rights. See our information sheet *Quotes & Extracts*;

- For video material, the producer usually owns the rights. See our information sheet *Film & Copyright*.

Moral rights

In addition to copyright rights, creators of material like written text, music and film have moral rights in relation to their works. The creator of a work has the right to:

- be attributed as the creator of the work;
- take action if the work is falsely attributed as the work of another person; and
- take action if the work is distorted or treated in a way that is prejudicial to his or her honour or reputation.

There are two defences available for not observing moral rights obligations: (i) if it is reasonable in the circumstances not to or (ii) if you have the author's consent not to.

Moral rights only apply to films and material included in a film if the film was made on or after 21 December 2000. For more information, see our information sheet *Moral Rights*.

In some cases, YouTube will allow an attribution (such as the artist and title of a song on a music video) to be linked to a legitimate source to purchase that material (such as an online music store).

Performers' rights

If your video was filmed on or after 1 October 1989 and features a person performing in a context like playing live music, giving a speech or performing as part of a show then the people performing have several *performers' rights* in your film or sound recording of them. These are:

- the right to grant or refuse consent to the reproduction and communication of a performance;
- rights in relation to a sound recording of a performance; and
- moral rights in performances (only for performance after 26 July 2007).

You should confirm with the people performing in your video or sound recording that they agree having their performances uploaded to YouTube. For more information, see our *Performers' Rights* information sheet.

YouTube's internal copyright management system

YouTube operates a copyright management tool called "Content ID", which parses through submitted videos and audio recordings and detects and identifies third party material (mostly commercially released songs and films). Once such content is identified, owners can choose from a series of options for what action is to be taken. The options include blocking the content or leaving it up and choosing to monetise it in a variety of ways.

YouTube's partnership program with content owners means that there could be instances in which copyright owners elect to keep and share revenue from material that was originally uploaded without their permission.

Information on this program can be found at www.youtube.com/t/contentid

Using other people's material in your YouTube Videos – when you don't need clearances

Copyright expired material

There are no copyright issues if copyright has expired, as once this has happened, the material enters the public domain. There are two factors to keep in mind:

- material may have expired in Australia but not in other countries, in which case you may need permission to use that material in the other country (this is going to be relevant if you are using material being distributed overseas); and
- one item may contain multiple copyright works (for example, a video clip may contain (a) music and (b) a recording of that music and copyright may have expired in (a) but not in (b).

The rules for copyright expiry vary depending on what that material is. Films will have different expiry rules to music that has different expiry rules to sound recordings, photographs and so on.

For detailed information about how long copyright lasts for particular types of material, see our information sheet *Duration of Copyright* which contains tables outlining when copyright expires in a variety of material.

Pre-cleared material

There are a number of companies and organisation which offer either free or paid music, video footage and images that have been pre-cleared for use on YouTube. These provide an easy way of using third party material in your content without having to directly approach rights holders.

Open licensed material

If you don't want to worry about permissions, consider using material released with flexible or open licences.

One such example is *Creative Commons* material. Material like music, film, text and images released under a Creative Commons licence can in most cases be reproduced and communicated without having to first ask the copyright owner's permission. There are a variety of different Creative Commons licences with varying levels of permission.

Finding such material has become easier with the advent of search engines that limit results to Creative Commons material as well as filters on popular photo sites which can limit results to Creative Commons licensed material.

For more information, see our information sheet *Creative Commons Licences*.

Fair Dealing

Australian copyright law has a number of fair dealing exceptions that allow you to use material without needing permission from the copyright owner.

Fair dealing is tied to specific purposes such as criticism and review, parody and satire, reporting the news and research and study. So if you are using material like a piece of music, image or video in your own material, consider whether the nature of your use of that material falls within these categories.

Fair dealing operates in a limited way and the question of whether a fair dealing applies should always be assessed on a case by case basis and in terms of whether the particular use being assessed is indeed "fair" in the circumstances and is genuinely being used for one of the "fair dealing" purposes.

When thinking about fair dealing and YouTube, questions to ask include:

- is my initial reproduction of the other person's material in my video a fair dealing of that material, and following this;
- would my subsequent distribution of this material to a mass audience on the internet via YouTube be a fair dealing?

In general terms, other factors to consider include:

- a) whether there was a commercial element to the use of your material in their video, either during the initial use or when the material was uploaded;

- b) whether the copyright owner would usually license this type of use; or
- c) whether your use of the material is genuinely for one of the fair dealing purposes (i.e. are you making a genuine criticism, review, parody or satire of something).

If you answer to (a) and (b) is *no* and your answer to (c) is *yes*, then it is more likely that fair dealing would apply.

For more information on fair dealing, see our information sheets *Fair Dealing: What Can I Use Without Permission* and *Parodies, Satire & Jokes*.

Using YouTube videos

If you have signed up as a member of the YouTube community, you will have agreed to YouTube's terms and conditions. These terms and conditions will ultimately determine how you are able to use video from the site.

In a general sense, personal viewing of authorised content on YouTube use is not likely to raise any copyright issues. Additionally, linking to a video at its YouTube URL is unlikely to raise a copyright issue unless you know that the material you are linking to is unauthorised material.

YouTube's platform allows certain types of uses that go beyond just viewing the video from the site:

Embedding

YouTube gives users an ability to "embed" YouTube content on to their websites. Embedding is a web design technique that facilitates users having YouTube videos appear on their site and being able to be viewed without having to leave the site to view it directly from YouTube's website.

We understand that users uploading video can elect to permit or disallow YouTube to enable embedding of their videos.

API

YouTube gives users access to their Application Programming Interface (API), which enables developers to integrate YouTube content into other applications. For more information, see <https://developers.google.com/youtube/>

People without a YouTube account

It should be noted that if you have never signed up to YouTube's terms and conditions, then you may have an argument that you are not bound by YouTube's terms, however, a recent Canadian court decision has indicated that in some cases, users of a website can be bound by the terms of that website even if the user did not have to actively sign up or agree to the terms. Whilst arguably, actively signing up to website terms may make those terms binding, the issue of how binding terms that you don't have to agree to remains unsettled in Australia.

When your material is uploaded to YouTube without permission

If you discover that someone has used your material on YouTube without permission, then YouTube itself may be your first avenue of approach. YouTube has a process in place for addressing copyright infringement claims, information on this can be found at www.youtube.com/t/copyright_center

Frequently Asked Questions (FAQs)

Can I screen a YouTube movie at a public function or at a movie night?

Unlike watching a YouTube video at home, on your phone or at friend's house (which would usually be considered private rather than public screenings), planning an event where a video from YouTube is screened publicly may require a bit more investigation on your part. Firstly, check the video itself and see if the uploader has licensed the video in a way that allows public screening without permission (for example, it may be a creative commons licensed video). If no direct permission has been given, then you may need permission.

As YouTube videos are usually displayed with the username of the person that uploaded that video, you are easily able to know whom to approach at first instance to get permission to screen the movie.

If there is live or recorded music on the video, you should confirm that the venue at which your screening will be taking place is licensed by APRA|AMCOS and the PCCA public performances of music (and recordings of music) on the premises. If not, then you may need to approach APRA|AMCOS and possibly the PCCA for a licence to publicly perform music.

For more information, see our information sheet *Music: Playing Music – APRA & PCCA*.

Can I use YouTube content in my own projects?

There are no special rules that allow video artists, filmmakers or other types of users to mashup or otherwise use material merely because it is posted to YouTube.

YouTube's "embed" and "download" options would not of themselves give you permission to use something from the site in a new video or audio work you may be creating.

In some cases, however, one of the fair dealing exceptions may be available to you (for example, if you are using the material for parody, satire, criticism or review), but each case will depend on its own facts.

In other cases, the content you want to use may be licensed to allow this type of use, for example, creative commons material.

If an exception is not available to you, you will need permission. Given the risk that the person who uploaded the material to YouTube may not own any or all of the relevant copyrights (for example, music and recordings on the soundtrack may be owned by music publishers and record companies), make sure you list each of the relevant copyrights you want to use, and get appropriate warranties and indemnities from anyone purporting to be able to give you permission.

For further information, see our information sheet *Mashups & Copyright*.

Am I infringing copyright by watching infringing material streamed on YouTube?

When you watch video online, material in the footage and on the soundtrack is temporarily reproduced into the your computer's cache memory. There are provisions in the Copyright Act to the effect that you can ignore these reproductions for copyright purposes if the material is not infringing.

However, this does not mean that you necessarily infringe copyright if you watch infringing material online. This is because, at least for material such as film and sound, you would only yourself infringe if you reproduced a "substantial part" of an infringing copy into your temporary cache. While it's not entirely clear, there are arguments that the small amounts of film footage or sound recording held at any one time in your cache while merely watching something online may not be a "substantial part".

While the legal situation is far from clear, in practical terms, as far as we are aware, copyright owners who are worried about their material being made available over the internet (including on YouTube) are concerned about people who are uploading and downloading copies without permission, rather than people just watching that material.

Make sure you consider each of the relevant pieces of copyright material when considering whether or not you can rely on an exception.

Further information

For related information, see our information sheets *Websites & Copyright* and *Websites: Social Networks, Blogs & User-generated Media*.

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 www.copyright.org.au

YouTube's terms and conditions are available at www.youtube.com/t/terms

YouTube's Copyright Center for users and rights holders is accessible at www.youtube.com/yt/copyright/

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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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