

FACT SHEET

Copyright and Plagiarism AN OVERVIEW



What is copyright?

Copyright is a form of intellectual property that protects the expression of ideas, rather than the ideas themselves, for a specified period of time.

In Australia, copyright is regulated by the Copyright Act 1968 (**the Act**). Provided that a 'work' is original and not insignificant or insubstantial, that work will automatically be protected by copyright once it is created and recorded in a material form. There is no registration system for copyright in Australia. Nor is there any need to use a copyright notice (ie. ©). The symbol does however serve to notify third parties of an author's right to claim copyright in a work.

Copyright will not protect a person's interest in a created work if a third party creates a similar work independently and without reference to the initial work.

Ownership of copyright

Generally, the author of the created work is the first owner of copyright. There are some exceptions to this rule, such as where work is created by an employee during the course of their employment. In this case, the employer will be the owner of the copyright, unless alternative arrangements are agreed to in writing.

Copyright in 'works' and subject matter other than works

In respect of a literary, dramatic or musical work, the owner of copyright has the exclusive right to do a number of things. These include the right to: (a) reproduce the work in a material form; (b) publish the work; (c) exhibit or perform the work in public; (d) communicate the work to the public;

(e) make an adaptation of the work; and (f) enter into a commercial rental arrangement in respect of the work reproduced in a sound recording. In addition, owners of a copyright of computer programs and sound recordings have the exclusive right to enter into a commercial rental arrangement in respect of that program or sound recording.

In respect of an artistic work, the owner of copyright has the exclusive right to: (a) reproduce the work in a material form; (b) publish the work; and (c) communicate the work to the public.

Copyright can also exist in subject matter other than 'works', such as cinematograph films (including television programs, videos and movies); sound recordings (including music recorded on compact disc or recorded in an electronic format, such as MP3); broadcasts (both television and radio); and published editions (ie. the typographical arrangement in a published work). Unlike 'works', there is no specific requirement for originality in 'subject matter other than works' in order for copyright protection to apply. However it is argued by some that a requirement for originality is implied by the wording of the relevant provisions of the Act.

An owner of copyright is also entitled to:

- Assign/transfer (including by way of sale) any rights to which a copyright owner is entitled; and/or
- Authorise another person to exercise rights to which a copyright owner is entitled.

Duration of copyright

Generally, material that was created on or after 1 January 2005, or material whose copyright was

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still enforceable in Australia as at 1 January 2005, will enjoy copyright protection for a period ending 70 years after the life of the creator ends.

There are some exceptions and variations to this rule, such as for published editions of works where copyright protection exists for 25 years from the date of publication.

Infringement of copyright and exceptions to copyright protection

Infringement

Generally, infringement of copyright will occur if a 'substantial' part of the copyright material is used by another person in a manner for which the owner has an exclusive right (eg. reproduction). A 'substantial' part of the work is generally regarded as any part that is important, essential or distinctive to the work. The size of the part does not in itself determine whether or not it is 'substantial'. However, the Act does set out various exceptions to what would otherwise amount to copyright infringement.

Exceptions

There are a number of exceptions to infringement of copyright. These include:

- Fair dealing for the purposes of:
 - Research or study;
 - Criticism or review;
 - Reporting news;
 - Professional advice;
 - Private and domestic use;
 - Parody and satire;
 - 'Special cases' (such as use by libraries, educational institutions, assisting persons with a disability); and
 - Judicial proceedings.

Each of the exceptions has its own specific requirements. You should seek your own legal advice if you wish to rely on any copyright exception (including any of those listed above).

Consequences of infringement

Since 2006, the Act has provided for indictable, summary, and strict liability offences for any breach of copyright laws. The statutory penalties which may apply to infringement of copyright include injunctions, damages, an account for profits, or an on the spot fine.

Prevention of copyright infringement

Since 2006, the Act has broadened the definition of accepted technological protection measures (also known as TPMs) adopted by many copyright owners in an effort to prevent unauthorised use and access of copyright material. Since this time, the Act has also broadened the application of penalties for circumvention devices used to avoid TPMs and to access copyright material.

There are specific exceptions to the use of circumvention devices, such as national security or law enforcement. You should seek your own legal advice if you wish to rely on any exemption provided under the Act.

Moral rights

Traditional copyright can generally be regarded as intended to protect a copyright owner's economic interests in copyright material. 'Moral rights', on the other hand, are intended to protect the original creator's reputation in the work, and to protect the integrity of the work itself, even if the creator has transferred traditional copyright to another person.

Since 21 December 2000, the Act has provided for the protection of 'moral rights' in two broad categories: attribution of authorship and integrity of work. Moral rights apply to authors (eg. writers, composers, choreographers and programmers) of literary, artistic, musical and dramatic works, and computer programs. Moral rights in respect of cinematograph films also apply to individuals who are the principal director, principal producer and principal screenwriter. Generally (but with exceptions) moral rights will last as long as traditional copyright.

Individuals hold moral rights. Other creatures of law (eg. corporations) cannot. In Australia, the owner of moral rights cannot deal in them (eg. they cannot transfer or license them). Various remedies, including damages and injunctions, are available for a proven infringement of a creator's moral rights.

Attribution

When a work is reproduced, published, exhibited or performed in public, communicated or adapted, a person who holds the moral rights in the work is entitled to be attributed (ie. credited as the creator of the work) in a clear and

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reasonably prominent form. A failure to attribute the creator is permissible if the creator provides their written consent, or if it is reasonable in all the circumstances to do so.

The right of attribution also includes the right not to have another person falsely attributed as the creator of the work in question. False attribution is also permissible if the creator provides written consent.

Integrity

A person with moral rights in a work is entitled not to have that work subject to 'derogatory treatment'. This includes anything that results in a material distortion of, or a material alteration to, the work that is prejudicial to that person's honour or reputation; or anything else in relation to the work that is prejudicial to that person's honour or reputation. 'Derogatory treatment' is permissible with the creator's written consent or if it is reasonable in all the circumstances.

Plagiarism

In many ways, plagiarism is related to copyright law but also goes beyond copyright law. Broadly, plagiarism can probably be described as passing off one person's ideas as your own.

Copyright law will protect the expression of an idea but not the idea itself. Therefore, if one person presents an idea or information, a second person may be able to use and re-present that idea or information without infringing copyright, provided that the second person does so in their own form of expression (eg. writing an article in their own words).

Prohibitions against plagiarism are generally enforced by contract (eg. the rules of a university) or under the law relating to confidential communications.

For instance, if a person had access to the ideas or information only because that person was exposed to those ideas or information of another in a confidential situation, and then re-presents those ideas and information (even in his or her own words), that second person may have breached contractual obligations to maintain confidentiality.

Prohibitions against plagiarism may also be enforced indirectly by way of the Trade Practices Act 1974 (Cth) if the plagiarism is such that it amounts to misleading or deceptive conduct.