



Artists & Copyright

This information sheet is for visual artists, including painters, print makers, illustrators, cartoonists and sculptors. Before reading this information sheet, please check our website to make sure this is the most recent version.

For Basic information on copyright please see the section *Find an Answer* at <http://www.copyright.org.au/find-an-answer>

For other artist related information please view our webpage <http://www.copyright.org.au/find-an-answer/browse-by-what-you-do/artists>

We update our information sheets from time to time. Check our website at 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.

Please Note: There is no system of registration for copyright protection in Australia. Copyright protection does not depend on publication, a copyright notice, or any other procedure. Copyright protection is free and automatic from the moment your work is on paper, or disk, or otherwise put into "material form".

Key Points

Copyright automatically protects most artistic works that:

- have resulted from some skill and effort;
- are not simply copied from something else; and
- recorded in "material form" (that is, in a form from which they could be reproduced: for example, by making a craft item, painting a picture, taking a photograph or making an artwork in digital form).

Artistic works covered by copyright include:

- drawings;
- paintings;
- sculptures;
- photographs; and
- craftworks (such as mosaics, tapestries, jewellery and woven art).

The copyright notice (©)

Although it is not necessary, it is a good idea to put the “copyright notice” on your work. The copyright notice is the symbol © followed by the name of the copyright owner and the year the work was created or first published. For example: © Arthur Painter 2005.

You may put the copyright notice on your work yourself—there is no formal procedure. For example, you can paint, write, type or stamp the copyright notice on your work. Although the notice is not a requirement for copyright protection in Australia, it serves as a warning to others that the work is protected by copyright, and informs them that you are the person claiming copyright ownership.

Protection overseas

As a result of international treaties such as the Berne Convention, Australian artistic works are protected by copyright in most other countries. In the same way, artistic works created outside Australia will almost always be protected by copyright in Australia.

It is not generally necessary to register your work to be protected by copyright overseas, although there may be benefits in doing so in some countries with a registration system (such as the US), if you intend to exploit your work in that country. For information on registration in the US, go to: <http://www.copyright.gov>

Ideas and styles are NOT protected

Copyright protects particular works, NOT the ideas, information, styles or techniques used in creating the works.

Who owns copyright in artistic works?

Generally, if you create an artistic work, you are the first copyright owner. However, there are some important exceptions:

- **Employees**—if you are an employee and create the work as part of your job, generally your employer owns the copyright. (This rule does not apply to freelancers, volunteers or people who are commissioned to create artworks).
- **Commissioned material**—special rules apply if you take photographs, make portraits or create engravings, where someone pays you to make the work for a private or domestic purpose (such as a family portrait or wedding photograph).
- **Work done for governments**—if you create artworks for a State, Territory or Commonwealth government, or a Government is the first publisher of your work, that Government will generally be the copyright owner.

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

Agreements about ownership

If you create work on commission, or you commission other people to create artworks, it is always a good idea to set out the terms and conditions of the agreement in writing. Where such an agreement has been made, it is the first place to look to work out who owns copyright and what rights each person has in relation to the material. For more information, see our information sheets *Assigning & licensing rights*, *Photographers & Copyright* and *Graphic Designers & Copyright*.

What are your rights as a copyright owner?

If you own copyright in an artistic work others usually need your permission to:

- reproduce it; (for example by photographing, photocopying, copying by hand, filming, scanning into digital form or printing from a digital file);
- publish it; (for example; by making copies available for sale); and
- communicate the work to the public (for example by uploading it to the internet, emailing or broadcasting it).

What happens when copyright expires?

Once copyright has expired, anyone can use that material without infringing copyright, and permissions are no longer needed. The period of copyright protection varies according to the type of material.

To find out when copyright expires in different types of material, see our information sheet *Duration of Copyright*.

No right to prevent exhibition

People do not need your permission to exhibit the original version of your work (for example, in a gallery) but they usually need to credit you if they do so. However, the copyright owner does have the right to prevent the work being put on the internet (even if it was uploaded in a way that could only be looked at and not printed off) because this would be both a “reproduction” and a “communication” of the work.

Even if you do not own copyright, people who use your work usually need to attribute you, and to avoid treating your work in offensive ways. This is because of obligations in the Copyright Act relating to “moral rights”. For more information see our information sheet *Moral Rights*.

When or how do you need get permission to use an artwork?

Please see our information sheet *Artworks: Getting Permission*.

Designs

There are provisions in the Copyright Act that limit copyright protection for artistic works, such as drawings or sculptures, used as designs for the three dimensional features of functional objects (such as the shape of a jug or a chair). Because of this, you may need to consider registering the designs under the Designs Act, administered by IP Australia, www.ipaustralia.gov.au

Copyright infringement

If your work has been reproduced, communicated or published without your permission, your copyright may have been infringed (unless one of the exceptions to infringement applies).

In this case, you will usually need advice from a lawyer about your chances of success in a legal action and what steps you should take. You need to be able to prove that the other work is the same as, or uses important or distinctive parts of your work. You may also need to prove that the other person had access to your work, and copied it.

Similarly, if someone accuses you of infringing copyright, you should consider getting advice from a lawyer.

Both of these issues are addressed in our information sheet *Infringement: What Can I Do?*

Royalties for artists

- Visual Artists may be eligible for the Resale royalty, when work is sold on the secondary market, for further details see our information sheet *Artists: Resale Royalty*.
- Copyright Agency | Viscopy - Viscopy’s business is now managed by Copyright Agency. Viscopy remains a separate legal identity, with members and a board. Copyright Agency |

Viscopy licenses the works of Australian visual artists, including craft workers, photographers and designers. www.viscopy.org.au

- Copyright Agency administers special provisions in the Copyright Act that allow uses of copyright material, including artistic works, by educational institutions and government. Copyright Agency also licenses other types of organisations (inc. local government and non-profit organisation and corporations) to make certain uses of its member's works. www.copyright.com.au

For more information on collecting societies see our information sheet *Copyright Collecting Societies*.

Frequently Asked Questions (FAQs)

How can I prove I am the copyright owner?

You will only have to prove that you own copyright if your claim to copyright is disputed in court. If you own copyright because you are the artist, you could prove this by calling witnesses who know that you created the material and by producing your original sketches, working drawings and so forth. Generally, however, your own statement will be sufficient.

Can I prevent another artist using the same styles or techniques?

Copyright law does not protect styles or techniques. However, if another artist's use of your distinctive style means that people confuse that artist with you, you may be able to take legal action under the law of "passing off", consumer protection legislation or trade practices legislation. You will generally need to get advice from a lawyer with expertise in these areas of law.

If I advertise a limited edition of a print, can I make more copies later?

Generally, no. A person who had purchased a limited edition work from you might be able to take legal action against you if you were to make more copies later—for example, for breach of contract, fraud, or breach of consumer protection laws.

Can works entered in a competition be reproduced without the artist's permission?

This depends on the rules of the competition, and whether the artist has agreed to those rules by entering the competition. If you are considering entering a competition, you should look carefully at the rules, and perhaps get advice. For information on this subject, see our information sheet *Competitions*.

What if someone copies my work?

It will be an infringement of your copyright if someone uses a substantial part of your work without your permission and if an exception does not apply. If you think your copyright has been infringed, there are a number of steps you can take, including requesting that a fee be paid for the use. For more information on this subject, see our information sheet *Infringement: What can I do?*

Creating artworks on commission

If I am paid to create a design, what rights does the client have?

As noted above, a freelance artist or designer is usually the first owner of copyright. Generally, the client will have the right to use the design for the purpose for which it was commissioned. It is a good idea to have a written agreement, which sets out the client's rights. For further information, see our information sheets *Assigning & licensing rights* and *Graphic Designers & Copyright*.

If a drawing represents the pattern, ornamentation or shape of a functional article (such as a chair), it may be registrable as a design under the Designs Act. The client may be entitled to register the drawing as a design, but will generally need the designer's consent to do so. Note that your copyright rights may be limited by the Designs Act.

For more information, see our information sheet *Designs for Functional Articles*.

Using existing artworks in new artworks

If I base my work on an existing work, is my work protected by copyright?

In order for a work to be protected by copyright it must be “original” in the sense that it is not a mere copy of another work. If it is sufficiently original, the work is likely to be protected by copyright in its own right, even if it is derived from a pre-existing work. The artist who created the derivative work will generally own copyright in it. An example of a derivative work that may be separately protected is a three-dimensional sculpture based on a two-dimensional drawing.

However, if you want to create a derivative work you may need permission from the owner of copyright in the original work if you are reproducing an important part of that work. You may also need permission to reproduce, communicate or publish your work, as this involves the use of the underlying work.

Can I use another person’s work without permission if I make changes?

You do not escape the obligation to get permission by making changes or additions to a work (such as changing the colours). If you can put two works side by side and identify important parts that have been copied, it is likely that you need permission.

Do I need permission to make a collage?

You do not need permission if you do not copy—for example, if you are making a collage from photographs cut from magazines. You may need permission if you subsequently wish to reproduce a collage (for example, in a catalogue). Generally, you will need permission from any copyright owner whose work is substantially reproduced by reproducing the collage (even if it is a small part of the collage).

You should also ensure that any uses you make of the work do not result in the work being treated in a way that is prejudicial to the honour or reputation of the artist, or you may be liable for infringing their moral right of integrity.

Do I need permission to make a painting or drawing based on a photograph?

Generally, if you use a photograph as a source of information (for example, for information about the colours or proportions of an animal), you will not need permission. However, if you reproduce an important part of the photographer’s composition, you may need permission.

Do I need permission to photograph or draw public art?

You may draw, paint, photograph or film a sculpture or work of artistic craftsmanship, which is publicly displayed “other than temporarily” without permission from the copyright owner. This does not apply to other public art, such as murals. You may draw, paint, photograph or film a building without permission.

Do I need permission to scan & alter an image to create a new work?

Scanning a copyright protected image to produce a digitised version reproduces the image, and thus requires permission. You will also generally need permission to produce a new image by altering the digitised image, if an important part of the first image is recognisable in the new image.

You should also ensure that any changes you make do not result in the work being treated in a way that is prejudicial to the honour or reputation of the artist, or you may be liable for infringing their moral right of integrity.

Do I need permission to copy a photograph of an artistic work from a book?

There may be two copyrights: copyright in the artistic work (for example, a painting) and copyright in the photograph of the artistic work. You will generally need permission from the owner of copyright in the artistic work unless the copyright has expired.

It is not clear whether you need permission in relation to the photograph, where the photograph depicts nothing but the artistic work and is indistinguishable from other photographs of the same work. There are strong arguments that you do not need permission in such cases. However, if the photograph of the artistic work is distinguishable from other photographs of the same artwork, you will generally need permission from the owner of copyright in the photograph.

Further information

For further information about copyright, our publications or seminar program, see our website <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 a copyright 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.

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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