

# Copyright Law in Australia

## A Short Guide

**June 2005**

### About this booklet

This guide covers general questions about copyright law that are frequently asked by members of the public. If you have a question that is not covered by this guide you should contact one of the organisations listed at the end of this guide or a lawyer experienced in copyright law.

The Commonwealth Government accepts no responsibility for the consequences of any action taken in reliance upon the information in this guide. This guide is designed to provide general copyright information only and not specific legal advice. It should also be noted that Australia's copyright law is constantly under review.

This issue of the guide was revised in June 2005 and reflects the law as at that date. For specific information about recent changes to the law and other copyright developments, please visit the *AGD e-News on Copyright* website <http://www.ag.gov.au/enews>. Additional updates are also provided on the Attorney-General's Department's website from time to time <http://www.ag.gov.au>.

© Commonwealth of Australia 2005

ISBN <Insert ISBN number>

## **Contents**

1. What is copyright?
2. What is intellectual property?
3. What law governs copyright in Australia?
4. What does copyright protect?
5. How do you obtain copyright protection?
6. Who is a copyright owner?
7. What are the rights of a copyright owner?
8. How long does copyright last?
9. When is copyright infringed?
10. Are there any exceptions to infringement?
11. How can copyright rights be enforced?
12. Can copyright be bought and sold in Australia?
13. Is Australian copyright material protected overseas?
14. Is overseas copyright material protected in Australia?
15. What are performers' rights?
16. FAQs (Frequently Asked Copyright Questions)
17. How can I obtain permission to use Commonwealth copyright material?
18. Where can I obtain more information?

# 1. What is copyright?

1.1 Copyright is a type of property that is founded on a person's creative skill and labour. It is designed to prevent the unauthorised use by others of a work, that is, the original form in which an idea or information has been expressed by the creator.

1.2 Copyright is not a tangible thing. It is made up of a bundle of exclusive economic rights to do certain acts with an original work or other copyright subject-matter. These rights include the right to copy, publish, communicate (eg, broadcast, make available online) and publicly perform the copyright material.

1.3 Copyright creators also have a number of non-economic rights. These are known as moral rights. This term derives from the French *droit moral*. Moral rights recognised in Australia are the right of integrity of authorship, the right of attribution of authorship and the right against false attribution of authorship. These rights are explained more fully at paragraphs 7.7-7.11.

## Copyright is distinct from physical property

1.4 A clear distinction exists between the copyright in a work and the ownership of the physical article in which the work exists. For example, an author may own the copyright in the text in a book even though the physical copy of the book will be owned by the person who purchases it. Similarly, the purchaser of an original painting does not have the right to make copies of it without the permission of the owner of copyright: the right of reproduction remains with the copyright owner who is generally the artist. Another example is that merely purchasing a physical copy of a CD does not grant the purchaser a right to further reproduce the sound recording embodied in the CD (or to make it available online) without the permission of the owner of the copyright in the sound recording.

# 2. What is intellectual property?

2.1 Copyright is part of an area of law known as intellectual property. Intellectual property law protects the property rights in creative and inventive endeavours and gives creators and inventors certain exclusive economic rights, generally for a limited time, to deal with their creative works or inventions. This legal protection is designed as a reward to creators to encourage further intellectual creativity and innovation, as well as enabling access by the community to the products of intellectual property. Because intellectual property protects rights, rather than physical property, intellectual property is an intangible form of property. It is property which cannot be seen or touched.

2.2 Intellectual property is the general name given to the laws covering patents, trade marks, designs, circuit layouts, plant breeder's rights and copyright. Each of these forms of intellectual property is protected by a specific Act of the Commonwealth Parliament. The framework for these Acts is largely based on Australia's obligations under international treaties.

## Circuit Layouts

2.3 The *Circuit Layouts Act 1989* protects the layout-designs of integrated circuits (also referred to as computer chip designs or semi-conductor chips). The Act protects plans which show the three-dimensional location of the electronic components of an integrated circuit and gives the owner of the plans certain rights, including the right to make an integrated circuit from the plans. There is no requirement for registration for the granting of rights to the owner of a layout.

## **Patents**

2.4 The *Patents Act 1990* grants monopoly rights to inventors of new inventions such as improved products or devices, substances and methods or industrial processes, provided that the invention is a manner of manufacture, is new, is not obvious and is useful. A registered patent provides exclusive rights to the owner to exploit the invention for the life of the patent, which is 20 years. The innovation patent provides protection for incremental and lower level inventions for period of 8 years.

## **Trade Marks**

2.5 The *Trade Marks Act 1995* grants protection to a letter, word, phrase, sound, smell, shape, logo, picture, aspect of packaging or combination of these, used by traders on their goods and services to indicate their origin and to distinguish such goods and services from those of other traders. Initial registration lasts for 10 years, with the possibility for further renewals for as long as the mark is used.

## **Designs**

2.6 The *Designs Act 2003* grants protection to the visual appearance or design of a manufactured article if it is new or original. It protects the features of shape, pattern or ornamentation applied to an article. Protection is based on a system of registration and can last for up to 16 years. (It has been proposed that the period of designs protection be reduced to 10 years).

2.7 Some designs for articles may qualify for both designs and copyright protection. Before registering a design of an artistic work under the Designs Act, you should seek legal advice on whether registration would affect copyright protection of any articles related to the design.

## **Plant Breeder's Rights**

2.8 Plant breeder's rights are exclusive commercial rights to market a new plant variety or its reproductive material. The rights are administered under the *Plant Breeder's Rights Act 1994*. Holders of plant breeder's rights have exclusive rights over the production, sale and distribution of the new variety.

## **Registration of patents, trade marks, designs and plant breeder's rights**

2.9 Protection for patents, trade marks, designs and plant breeder's rights is dependent upon a formal registration procedure conducted by the central or regional offices of IP Australia. IP Australia is the government agency which administers the *Patents Act 1990*, *Trade Marks Act 1995*, *Designs Act 2003* and the *Plant Breeder's Rights Act 1994*. (The address of IP Australia is at paragraph 18.6 of this guide.)

## **Confidential information and passing off**

2.10 Other categories of intellectual property which do not have special statutory protection include confidential information and trade secrets. These are protected by the action for breach of confidence.

2.11 The business reputation and goodwill in unregistered trade marks or trade names may be protected by the common law action of passing off or an action for misleading or deceptive conduct under the *Trade Practices Act 1974* or equivalent State or Territory legislation.

## 3. What law governs copyright in Australia?

### Copyright Act 1968

3.1 Copyright exists in works and other subject-matter by virtue of the *Copyright Act 1968* (the Copyright Act). The only exception to this is in relation to certain limited prerogative rights of the Crown in respect of copyright in Acts of Parliament.

### Regulations

3.2 The *Copyright Regulations 1969*, the *Copyright Tribunal (Procedure) Regulations 1969* and the *Copyright (International Protection) Regulations 1969* specify matters related to the operation of the Copyright Act.

### Access to the law

3.3 The Copyright Act and Regulations are constantly under review and are amended from time to time. Access to electronic versions of Commonwealth legislation is available through the Attorney-General's Department's legal information retrieval system, Comlaw – <http://www.comlaw.gov.au>. The latest consolidation of the Copyright Act is located at <http://www.comlaw.gov.au/CopyrightAct1968>. The latest consolidated version of the Copyright Regulations is located at <http://www.comlaw.gov.au/CopyrightRegulations1969>.

For information about how to purchase hardcopies of legislation contact:

Canprint Information Services

Telephone: 1300 656 868

Fax: 02 6293 8333

Postal address: PO Box 7456, Canberra MC, ACT 2610 (for mail order sales)

Street address: 16 Nyrang Street, Fyshwick, ACT 2609 (for over-the counter sales)

email: [legislation@infoservices.com.au](mailto:legislation@infoservices.com.au)

## 4. What does copyright protect?

### Works

4.1 The Copyright Act protects original literary, dramatic, musical and artistic works. In order for copyright to subsist in a work it must be made by a resident or citizen of Australia, or made or first published in Australia, or has a specified connection with a country which is a member of a relevant international copyright treaty. (See section 14 for more information about the protection of overseas works in Australia).

### Literary works

4.2 Most materials that are reduced to writing or some other material form by a creator and which are not trivial in content are literary or dramatic works. Such works may be in electronic or hard copy form. Such works include letters, e-mails, articles, novels, poetry, song lyrics, timetables, databases and computer programs. No level of literary merit is required for copyright to subsist in a work. However, single words, slogans or titles are not usually protected as literary works.

### Artistic works

4.3 Artistic works include paintings, photographs, sculptures, engravings, sketches, blueprints, drawings, plans, maps and buildings or models of buildings, irrespective of the artistic quality of the work. They may exist in electronic or hardcopy form. There is also a category called 'work of artistic craftsmanship' that must satisfy the added criteria of aesthetic appeal and be the result of the work of a skilled craftsman in order for it to be protected by copyright. Items such as hand-woven tapestry, handmade jewellery or crafted furniture may fit into this category.

### **Works must be 'original'**

4.4 Works are only protected by copyright law if they are 'original' works. A copyright work will be considered original if it is the product of the creator's own intellectual effort and has not been copied from another person's work. However an original work could be a compilation of other works, eg, in an original anthology or selection, where the permission of the copyright owners of those individual works compiled would be needed.

### **Copyright in subject-matter other than works**

4.5 The Copyright Act also protects sound recordings, films (which include pre-recorded television programs and videos), radio and television broadcasts and published editions of works. These categories of copyright material are collectively referred to as 'subject-matter other than works'.

### **Independent existence**

4.6 The copyright in each type of work or other subject-matter has independent existence. For example, for a film broadcast on television, separate copyright may subsist in the film itself, the broadcast of the film, the underlying script and any sound recording which is part of the film. Different copyright owners may own each of these different kinds of copyright. Similarly, for a compact disc, there may be a separate copyright in the lyrics, the composition and arrangement of the music and the sound recording of the work.

### **No copyright in ideas or information**

4.7 Copyright does not protect ideas or information as such but only the original expression of ideas or information. Copyright differs fundamentally from patents, trade marks and designs in this way. For example, unlike the grant of a patent, which gives monopoly rights over the idea of an invention, the creation of a copyright work does not grant a monopoly over the ideas or information expressed in the work. Rather, rights are granted to the copyright owner in respect of the reproduction (and certain other uses) of that particular expression of ideas or information which has been fixed in a material form.

4.8 Copyright, therefore, does not prevent the use of the same idea or information. If two people independently create similar works based on the same idea or information, and neither is a copy of the other work, there is no issue of copyright infringement. For example, two artists may set up canvasses in the same spot and paint the same waterfall. Both artists would have copyright in their works and there would be no infringement of copyright providing the artists do not copy each other's painting.

## **5. How do you obtain copyright protection?**

### **No formalities - including no registration**

5.1 The Copyright Act does not require the completion of formalities (such as publication, registration or the payment of fees) in order to obtain protection in Australia, or any other country which is also a party to an international copyright treaty. This is unlike the position with patents, trade marks, designs and plant breeder's rights where registration is a precondition to protection. Copyright protection is granted automatically from the time an original work is created.

## Copyright notice

5.2 Although copyright protection in Australia is not dependent upon formal notice, it is best practice and advisable for copyright owners to place a copyright notice in a prominent place on their work. There is no set form of words for a copyright notice, but such a notice may state:

**This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of (name and address of copyright owner and the year in which the work was made).**

See paragraph 13.6 for information about using the © symbol.

5.3 It is sensible for copyright owners to regard their copyright as an item of property and to deal with it in a business-like way. Copyright owners should always keep dated copies of their works (for example, manuscripts and tapes) and copies of any letters submitting their work to others. No document dealing with copyright should be signed unless its contents are fully understood.

5.4 Copyright owners of material in electronic form may also wish to attach electronic rights management information to their work or other subject-matter. The removal or alteration of this material is prohibited by the Copyright Act in certain circumstances. Copyright owners of material in electronic form can also protect their material by technologies such as password protection or software locks. The Copyright Act also prohibits the making and dealing in devices and services used to circumvent such protection in certain circumstances.

## 6. Who is a copyright owner?

### Works

6.1 Usually the creator of a literary, dramatic, musical or artistic work is the first owner of the copyright in it, but there are several exceptions. One important exception is that copyrights in works made during the course of employment are owned by the employer and not the employee. All copyright ownership rules (except those that relate to moral rights) may be varied by agreement.

### Certain commissioned works

6.2 In the case of certain artistic works, including engravings and painted or drawn portraits that are made under commission, the person commissioning the work is the first copyright owner, subject to any agreement to the contrary. However, if the person commissioning the work informs the artist of the purpose for which the work is required then the artist can legally restrain the use of the work for any other purpose.

6.3 In the case of commissioned photographs, the photographer is the copyright owner, subject to any agreement to the contrary. Where the commissioned photographs are of a private or domestic nature, the commissioning party owns the copyright, subject to any agreement to the contrary.

## **Sound recordings and films**

6.4 The owner of any copyright in a sound recording or a film is normally the person/s who made it. The 'maker' of a sound recording is the owner of the master recording, but where the recording is of a live performance, the performers are also 'makers'. The 'maker' of a film is the person who undertook the arrangements necessary for the making of the film. However, for commissioned sound recordings and films, the default position is that the copyright is owned by the commissioning party. The rules for first ownership of copyright in sound recordings and films can, as in the case of works, be varied by contract. For instance, a recording contract between a performing artist and a record company may include assignment of some or all of the artist's share of copyright in the recordings made under the contract to the company. In the case of sound recordings of performances made before 1 January 2005, special rules apply regarding the performer's rights and legal advice should be obtained.

## **Other ownership rules**

6.5 Special provisions in the Copyright Act provide for the ownership of copyright in radio and television broadcasts, publishers' copyright in editions of works (ie, the typesetting and layout), material published by international organisations and material made before the Copyright Act came into operation.

## **Government materials**

6.6 The Commonwealth and State or Territory Governments own the copyright in materials which are made or first published under their direction or control.

# **7. What are the rights of a copyright owner?**

## **Economic rights**

7.1 The Copyright Act gives copyright owners a number of exclusive economic rights. These exclusive rights vary according to the different types of works and other subject-matter protected by copyright.

## **Literary, dramatic or musical works**

7.2 The owner of copyright in a literary, dramatic or musical work has the following exclusive rights:

- to reproduce the work in a material form (which includes making a sound recording or film of the work or including a substantial portion of the work in a database);
- to publish the work (that is, to make copies of the work available to the public for the first time);
- to perform the work in public;
- to communicate the work to the public (which includes the electronic transmission of the work such as a broadcast, and making the work available online);
- to make an adaptation of the work (which includes an arrangement of a musical work and a dramatisation or translation of a literary work); and

- in the case of computer programs, and works recorded in sound recordings, to commercially rent the sound recording or computer program.

## **Artistic works**

7.3 The owner of copyright in an artistic work has the following exclusive rights:

- to reproduce the work in a material form (which includes reproducing a two-dimensional work in a three-dimensional form and vice versa);
- to publish the work; and
- to communicate the work to the public (which includes the electronic transmission of the work such as a broadcast, and making the work available online).

## **Other subject-matter**

7.4 The owner of copyright in a film or sound recording has the following exclusive rights:

- to copy it;
- to cause it to be heard or seen in public;
- to communicate the material to the public (which includes electronic transmission, and making the film or sound recording available online); and
- in the case of a sound recording, to commercially rent it.

7.5 The owner of copyright in a radio or television broadcast has the exclusive right to make a sound recording, film or photograph of it, to re-broadcast it, or to communicate it to the public (otherwise than by re-broadcasting it, eg, Internet streaming).

## **Licensing of rights**

7.6 Copyright owners may exercise any of the above rights themselves or may give permission to other people to do so. Such permission is referred to as a licence. Copyright owners may grant a licence that is subject to certain conditions such as the payment of a fee or royalty or limit the licence as to time, place or purpose. For more information about licensing or assigning copyright see paragraphs 12.1-12.4.

## **Moral rights**

7.7 The Copyright Act also provides creators with certain non-economic rights known as moral rights. They are the right of attribution of authorship of one's work, (the right to be named in connection with one's work), the right against false attribution of authorship and the right of integrity of authorship (the right to object to treatment of one's work that has a detrimental effect on one's reputation).

7.8 Moral rights apply to all works and films (and works as included in films) that were in existence and still in copyright on 21 December 2000 and all works and films (but not sound recordings) created after that date.

7.9 An author's right of integrity of authorship in respect of a film is limited to the author's lifetime. In all other cases, moral rights endure for the term of copyright.

7.10 Due to the personal nature of moral rights, they may not be assigned (ie, given away to another) or licensed. It is, however, possible for an author to provide a written consent in relation to certain treatment of his or her work that might otherwise constitute an infringement of moral rights.

7.11 A range of remedies is available for an infringement of moral rights. These include an order for damages, an injunction or a public apology. The Act provides a general reasonableness defence to actions for infringement of the right of integrity of authorship and the right of attribution of authorship. It also provides specific defences to actions for infringement of the right of integrity of authorship in relation to certain treatment of buildings and moveable artistic works.

## **8. How long does copyright last?**

### **Literary, dramatic or musical works**

8.1 The duration of copyright protection is dependent on a number of factors, including the nature of the work, the time when it was made and whether it has been published. The duration of protection for copyright works that have been published (or otherwise made available to the public) generally lasts for 70 years after the death of the creator. There are some exceptions to this general rule.

8.2 Copyright subsists indefinitely in a literary, dramatic or musical work that has not been published, performed in public, broadcast or sold as a recording during the life of the author. If the work is posthumously made public in any of those ways, the copyright will terminate at the end of 70 years after that event.

### **Artistic works**

8.3 In the case of artistic works, other than engravings, copyright protection also lasts for 70 years after the end of the year in which the artist dies whether or not it has been published. The term of copyright in an engraving is similar to that for a literary work, so that copyright subsists in an engraving that is unpublished at the author's death until 70 years after publication or otherwise indefinitely.

8.4 The term of copyright protection for photographs taken before 1955, regardless of whether the author has since died or is still alive, has expired. The life plus 70 years term for artistic works applies to all photographs taken after that time.

### **Other subject-matter**

8.5 The duration of copyright protection for sound recordings made after 1954 and films (made after 1 May 1969) is generally 70 years from the end of the year of first publication. If the film or sound recording is unpublished, the protection period is indefinite until it is published.

8.6 The duration of copyright in radio and television broadcasts is 50 years from the making of the broadcast.

8.7 Copyright in the published editions of works lasts for 25 years from the year of first publication of the edition.

### **Special provisions**

8.8 The Copyright Act has specific provisions which clarify the duration of copyright protection for works of joint authorship (ss 80-81), anonymous and pseudonymous works (s 34), works in which

the Government owns copyright (ss 180-181), foreign works and works made by international organisations (Part VIII).

## **Expired copyright**

8.9 Copyright protection that had already expired before the date of commencement of the present Act (that is, 1 May 1969) cannot be revived. However, the provisions of earlier copyright legislation are still relevant in relation to works in copyright immediately before the commencement of the present Act.

## **9. When is copyright infringed?**

### **Exercise of exclusive rights**

9.1 The copyright in any work or other subject-matter is infringed when any act which the copyright owner has the exclusive right to do is done by a person in Australia who is not the copyright owner (or his or her licensee). Examples include when a work is published, reproduced or performed in public without the copyright owner's permission. This general rule is subject to a number of specific exceptions in the Copyright Act. These are discussed in paragraphs 10.1-10.10.

### **Authorising an infringement**

9.2 The copyright in any work or other subject-matter is also infringed when any act which the copyright owner has the exclusive right to do is authorised to be done by a person in Australia who is not the copyright owner (or his or her licensee). For example, a person could be taken to have authorised a copyright infringement if they provide access to a photocopier and expressly or impliedly permit someone else to make infringing copies on it.

### **Substantial copying**

9.3 It is not necessary for a whole work to be reproduced or for more than one reproduction to be made for an infringement of copyright to occur. An infringement of copyright occurs so long as a substantial portion of a work or subject-matter has been reproduced or other copyright use is made of it (eg, it is communicated to the public). The test for what is a substantial portion is often a qualitative rather than a quantitative test. It is the quality or essence of what has been taken rather than the amount that is taken that will often determine whether the portion taken is 'substantial'.

### **What about photocopying?**

9.4 Photocopying a literary, artistic, dramatic or musical work is one of the more common ways of infringing copyright in works as it involves reproduction of the work. A large number of authors and publishers are members of a copyright collecting body called Copyright Agency Limited (CAL). CAL is authorised to collect royalties for the photocopying of these works. A licence from CAL can be obtained for the photocopying of published literary works. (The address of CAL is at paragraph 18.8 of this booklet.) Alternatively, the permission of the author or publisher should be sought.

### **Importation and commercial dealings**

9.5 The Copyright Act also makes certain other acts an indirect infringement of copyright. It is an infringement of copyright to import copyright infringing articles (ie, pirate goods) into Australia for trade purposes. Commercial dealings with infringing or pirate articles also constitute an

infringement of copyright. Infringing or pirate articles are items such as copies of music CDs and computer games that are made without legal authority or consent from the owner of the copyright material in them. There are also restrictions on importation of certain legitimate copyright goods into Australia without the permission of the copyright owner ('parallel importation'). This is discussed below (see paragraphs 9.6 - 9.9).

### **Importation of books**

9.6 The commercial importation of legitimate copies of books is permitted in certain circumstances. For example, books which are not published in Australia within 30 days of their first publication overseas can be imported without the permission of the copyright owner in the literary work or published edition. A person wishing to import books commercially without the permission of the copyright owner should seek legal advice before doing so.

### **Importation of sound recordings**

9.7 The commercial importation of legitimate copies of sound recordings (including CDs and records) is generally not an infringement of copyright. However, if the copies were made without the consent of the copyright owner (ie, they are pirate copies), the importation of those copies will infringe copyright. A person wishing to import CDs or records commercially without the permission of the copyright owner should first seek legal advice.

9.8 Sound recordings commonly record musical works which themselves have a copyright separate to the copyright in the recording. If the copyright in a musical work is infringed by the making of a copy, the importation will also infringe copyright in the musical work.

### **Importation of Computer Programs and e-Books and e-Journals**

9.9 The commercial importation of legitimate (ie, non-pirated) copies of computer software or electronic books (including collections of works), electronic journals and electronic sheet music into Australia without the permission of the Australian copyright owner is generally not an infringement of copyright. The imported copy must have been made with the permission of the copyright owner in the country of manufacture. If the physical item or medium embodying the works in electronic form, (eg, a CD-ROM or DVD) includes a film or television program of more than 20 minutes duration, it cannot be parallel imported. Note that downloading of copyright materials by computer from an overseas Internet site, which does not involve bringing of a physical item or medium into Australia, is not parallel importation. Downloading is an exercise of the reproduction or copying right of the owner of copyright in the materials concerned (see paragraphs 7.2-7.4).

### **Place of public entertainment**

9.10 It is an infringement of copyright to permit a place of public entertainment to be used for an infringing public performance of a literary, dramatic or musical work.

### **Circumvention devices and services**

9.11 The Copyright Act provides civil remedies and criminal sanctions against the manufacture, importation and commercial dealing in devices and services designed to circumvent a technological protection measure (TPM). TPMs include items such as a software lock or password protection measure.

9.12 There are also remedies and sanctions against the manufacture and dealing in broadcast decoding devices (a device which permits unauthorised access to an encoded broadcast).

9.13 The law relating to circumvention devices is currently under review. Amended provisions will operate from 1 January 2007.

## **Electronic Rights Management Information**

9.14 The Copyright Act provides civil remedies and criminal sanctions against the removal of electronic rights management information (RMI). There are also remedies and sanctions against commercial dealing in copyright material where RMI has been removed, if the person knows this was done without lawful authority. RMI is information (or numbers or codes that represent the information) attached to or embodied in copyright material that identifies the work or other subject-matter, identifies the copyright owner, or contains any terms or conditions imposed on use of the copyright material. The definition of RMI includes information that is separate from, but appears in connection with, or has at some point in time appeared in connection with, a copy of the work or other subject-matter.

## **10. Are there any exceptions to infringement?**

10.1 So as to balance the rights of copyright owners with the needs of the public to have access to copyright materials, the Copyright Act provides a number of exceptions to the general rules regarding infringement of copyright.

### **Fair dealing**

10.2 There are a range of exceptions that enable the exercise of certain copyright rights without constituting copyright infringement. They may be raised in answer to a claim of infringement. The most important of these exceptions permits 'fair dealing' for certain specified purposes. A fair dealing with a copyright work, sound recording, film or broadcast will not amount to an infringement of copyright if done for the following purposes:

- research or study;
- criticism or review;
- the reporting of news, or
- the giving of professional advice by a lawyer or a patent or trade marks attorney.

10.3 Whether an exercise of copyright rights amounts to a fair dealing is a matter to be determined on the facts of each case. Many factors may be taken into account. In the case of reproduction for research or study the factors include: the purpose and character of the use, the nature of the work or other subject-matter, the amount and substantiality of the portion copied, the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the work or other subject-matter.

### **No general exception for private copying**

10.4 It should be noted that the fair dealing exceptions to copyright infringement do not provide a general exception for private or domestic copying of copyright material. The dealing must be for one of the specified purposes.

## **The 10% rule**

10.5 In the case of fair dealing copying for the purposes of research or study the Copyright Act specifically provides that it is a fair dealing to make a single copy of a journal article, one chapter or 10% of a book of ten or more pages, or 10% of the number of words in a work that is in electronic form. For additional information see paragraph 16.6.

## **Specific exceptions**

10.6 There are also exceptions to infringement in the Copyright Act that are specific to certain works. The following acts are permitted:

- the making of a copy of a computer program resulting from the process of normal use of the program or for back-up purposes;
- the owner of a copy of a computer program decompiling the copy to make an interoperable product, to test its security, or to correct an error – if the required information about the program, or an error-free copy, is not otherwise available;
- the filming, photographing, drawing or painting of sculptures in public places and buildings;
- the public performance of a literary, dramatic or musical work by playing a television, radio or record player to residents at guest houses or premises where people reside or sleep; and
- filming or recording live broadcasts for private and domestic use.

10.7 Some exceptions also apply to specific uses or purposes. The main exceptions of this type are:

- the temporary reproduction of a work or adaptation made as part of the technical process of making or receiving a non-infringing communication (this covers reproductions that occur automatically while browsing on the Internet and in certain types of caching);
- anything done for the purpose of a judicial proceeding or the report of a judicial proceeding;
- the temporary reproduction of a work, film or sound recording made as part of the normal process of using the item, eg, playing a legal CD or a DVD at home or at a private party and the player makes a temporary copy as part of its normal operation; and
- the reproduction or copy of a work (or adaptation of a work) that is contained in a broadcast, where the copy is made solely for the purpose of broadcasting the work or adaptation or simulcasting it in digital form.

## **Copying by libraries and archives**

10.8 Copying may also be done in certain instances without infringement of copyright when done by libraries and archives for students, researchers, Members of Parliament and for other libraries. Copying of unpublished works and certain audio-visual materials for certain other purposes (eg, publication) may also be done without infringing copyright. Reference should be made to the Copyright Act to determine the precise terms of these, and any other, exceptions to copyright infringement.

## **Statutory licences**

10.9 Certain educational institutions and institutions assisting persons who have a print or intellectual disability may make multiple reproductions and communications of works for educational purposes or for assisting people who have a disability, under a licence set out in the Copyright Act (a statutory licence). Such statutory licences give the copyright owner a right to be paid equitable remuneration through an approved collecting society.

10.10 Educational institutions and institutions assisting people who have a disability may for educational purposes, or for the purpose of assisting people who have a disability, also copy television and radio broadcasts, under statutory licences. Again, the licences provide for a right for copyright owners to be paid equitable remuneration through an approved collecting society. These licences also extend to communication within the institution by electronic means.

## **11. How can copyright rights be enforced?**

A copyright owner can approach a person infringing copyright to seek redress. It is best to seek legal advice. Where enforcement is required it is generally done in the court system.

### **Injunctions**

11.1 The owner of the copyright in a work or other subject-matter may obtain an injunction to restrain an infringement of copyright occurring or continuing.

### **Damages**

11.2 A person whose copyright is infringed is entitled to damages as compensation for infringement. In the case of a blatant infringement, or where some particular benefit has accrued to the defendant, punitive damages may be awarded to a copyright owner. In determining the amount of damages for copyright infringement, a court may consider whether the infringement involved converting hardcopy material into digital form, as well as whether a stronger penalty would deter others from committing the same infringement.

### **Account of Profits**

11.3 Alternatively, the court may order payment to the owner of copyright of the profit made by the infringer as a result of the infringement.

### **Conversion damages**

11.4 Where the infringement was deliberate, the Copyright Act also provides for the owner of the copyright in a work or other subject-matter to be in substantially the same position as if he or she owned the infringing copies of the material. Subject to the discretion of the court, there is a provision for a copyright owner to have any infringing copies of the material in the hands of the infringer (including any device used in making the copies) delivered up to him or her.

### **Customs**

11.5 A notice in writing may be given to the Chief Executive Officer of Customs objecting to the importation of copies of copyright materials suspected to be infringing copies. A person giving such a notice is required to lodge security for enforcement costs. Once a notice is accepted, Customs may seize the copies believed to infringe copyright and hold them for a specified period to enable the giver of the notice to bring infringement proceedings in court. Importers of copies that are non-

infringing can counterclaim for damages arising from the infringement proceedings. Contact details for the Australian Customs Service are:

Australian Customs Service  
Customs House  
5 Constitution Avenue  
CANBERRA CITY ACT 2601

Tel: 1300 363 236  
or 61 2 6275 6666  
e-mail: [iprights@customs.gov.au](mailto:iprights@customs.gov.au)  
<http://www.customs.gov.au>

## **Criminal provisions**

11.6 The Copyright Act also contains a number of criminal offence provisions. These include offences in aid of enforcement regimes for circumvention devices or services; abuse of rights management information and broadcast decoding devices; piracy of books, computer software, sound recordings and films; significant infringements on a commercial scale and other actions that prejudice the economic rights of the copyright right-holder. There are very high penalties. In determining a penalty, a court may impose higher penalties in certain circumstances for offences involving the conversion of hardcopy material into digital form.

## **12. Can copyright be bought and sold?**

12.1 Copyright can be dealt with in the same way as other forms of personal property. It can be assigned, licensed, given away, sold, left by will, or passed on according to the laws relating to intestacy or bankruptcy. This does not apply to moral rights which are personal and which creators cannot transfer or assign. After the creator's death their moral rights are exercisable by the executors of their estate. It is always best to obtain written evidence of permission to use copyright, rather than rely on oral statements.

### **Assignment**

12.2 An assignment of copyright must be in writing and signed by or on behalf of the assignor (ie, the copyright owner) to be legally effective. The assignment may be in whole or part and may be limited to one or more of the exclusive rights or aspects of them and may also be limited as to time or geographical area.

### **Exclusive licence**

12.3 An exclusive licence grants specified rights to the licensee with a guarantee that those rights will be granted to no other person. An exclusive licensee can sue and take certain other actions as though he or she were the copyright owner. Exclusive licences, like assignments, must be in writing and signed.

### **Non-exclusive licence**

12.4 A non-exclusive licence is a permission to exercise one or more of the copyright owner's rights in a work. It does not result in the copyright owner parting with his or her rights in the work. A copyright owner may grant numerous non-exclusive licences, but can assign any or all of the exclusive rights that comprise his or her copyright only once for the period of that assignment.

## 13. Is Australian copyright material protected overseas?

### International treaties

13.1 Australia is a party to a number of international copyright treaties and conventions including:

- *Berne Convention for the Protection of Literary and Artistic Works* (Berne Convention);
- *World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement);
- *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* (Rome Convention); and
- *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms* (Geneva Phonograms Convention).

### National treatment

13.2 International copyright protection is achieved under the conventions through the principle of 'national treatment'. Broadly speaking, each convention member country gives the same rights to the nationals of other convention countries as it gives to its own nationals under its own law. The laws of members of the treaties must conform with the minimum rights specified in the treaties.

13.3 This means that because Australia is a party to the international copyright conventions outlined above, original works created by Australian citizens or residents are also entitled to the protection given by the copyright laws of all countries which belong to the Berne Convention and TRIPS Agreement. Similarly, Australian performances, broadcasts and sound recordings are entitled to protection by the laws of all countries which are members of the TRIPS Agreement and Geneva and Rome Conventions.

13.4 In order to ascertain what copyright protection is available in a particular country, it is necessary to have regard to the copyright laws of that country. It should be noted that in some countries, it is necessary to register a work before it will enjoy full copyright protection.

### Bilateral agreements between Australia and other countries

13.5 Australia is party to bilateral trade agreements with some other countries, including the United States, Singapore and Thailand. These trade agreements can include provisions on protection of copyright. For example, the Australia-United States Free Trade Agreement concluded in 2004 contains extensive obligations on both countries regarding the protection and enforcement of copyright.

### Copyright symbol - ©

13.6 Use of the copyright symbol was significant when the United States was not a member of the Berne Convention and it would only recognise copyright where the © symbol was used in accordance with the Universal Copyright Convention (UCC). The UCC has been largely overtaken by the other treaties that do not require any formalities. To qualify for copyright protection in countries that are only members of the UCC, it is necessary that works bear, in a prominent place and from the time of first publication, the copyright symbol - © - together with the name of the owner of the copyright and the year of first publication, for example:

However, using the © symbol, while having little legal effect, alerts others that copyright is claimed in the material in question (see paragraphs 16.2 and see 5.2 for information about use of copyright notices).

### **Phonograms symbol - ®**

13.7 Under both the Rome Convention and the Geneva Phonograms Convention, the symbol ® on copies of a sound recording is recognised as sufficiently indicating a claim to the protection of those conventions in the member countries that require such an indication of claim to protection.

## **14. Is overseas copyright material protected in Australia?**

14.1 In Australia, the provisions of the Copyright Act extend to works of nationals, citizens and residents of other convention countries and to works made or first published in those countries, by virtue of the *Copyright (International Protection) Regulations*. Copyright will therefore subsist in Australia in a work made by a national of a country that is a party to one of the copyright conventions to which Australia is also a party - provided the type of work concerned is covered by the convention. This is subject to certain restrictions in the regulations.

14.2 For example, as Australia and the United States are members of the Berne Convention and are bound by the Australia-United States Free Trade Agreement, original works of US nationals or works first published in the US will receive the same copyright protection as Australian nationals receive under the Copyright Act.

14.3 In order to establish in court proceedings who is the owner and whether the copyright has been made under conditions or in a place that is recognised in Australia as giving rise to a valid copyright, valid foreign certificates and documentation (eg, US Copyright registration certificates) can be used as evidence and are given a degree of evidentiary weight. It will be up to the person disputing the ownership and publication information in such certificates to point to something that raises an issue as to the accuracy of what they say.

## **15. What are performers' rights?**

15.1 Under the Copyright Act, performers have the right to prevent the unauthorised recording or live broadcasting or online streaming of their performances. Performers may also prevent certain dealings in unauthorised recordings of their performances, such as broadcasting, making available online, copying, sale, hire, distribution, importation and possession for trade, and the use of an authorised sound recording on the sound-track of a film ('synchronisation right'). These rights cannot be assigned.

### **What is a performance?**

15.2 A 'performance' includes a performance of a literary, dramatic or musical work (whether or not in copyright) or a performance of a dance, circus or variety act or an expression of folklore. However, reading, recitation or delivery of an item of news or information and the performance of a sporting activity are explicitly excluded from the definition of a 'performance'.

### **Duration**

15.3 Performers' rights in relation to unauthorised audio recordings lasts for 50 years, and in relation to unauthorised audio-visual recordings lasts for 20 years, from the year in which the performance was given. Performers would also have a share of the copyright in unauthorised sound recordings of their performances (see paragraph 6.4).

### **Remedies for unauthorised use of a performance**

15.4 Unauthorised use of a performance entitles the performer to sue for an injunction and/or damages. Criminal penalties are also applicable.

## **16. FAQs (Frequently Asked Copyright Questions)**

### **What is the difference between an author and a copyright owner?**

16.1 An author is the person who creates a copyright work. A copyright owner is the person or company which owns the rights in a work or other subject-matter. In many instances the author of a work will be the owner of copyright; however, this need not be the case. An important exception is where copyright works are made by an employee during the course of their employment, in which case copyright vests with the employer (see paragraphs 6.1-6.4). The rules relating to ownership of copyright may also be varied under an agreement; for example, an author may agree to assign his or her rights in a work to someone else (see paragraph 12.2).

### **How do you prove ownership of copyright if there is no system of registration?**

16.2 In most cases the issue of ownership of copyright will not be in dispute. However, where there is a dispute which comes before a court, the court will take into account the evidence of the person who created the work and other persons who were involved in or who knew about the creation of the work. Statements of the ownership of copyright and the date of publication or manufacture appearing on the labelling or packaging of copies of copyright materials will be treated in court as accurate evidence of what they say, unless the person disputing those issues can point to something raising a question about their accuracy. Documents recording the passing of copyright from the original owner to the person claiming present ownership will be similarly treated as evidence unless there is something to question the accuracy of that.

### **Are names and titles protected by copyright?**

16.3 Copyright protects literary works including books, poems and newspaper articles. The Copyright Act does not expressly protect names and titles. In most cases dealing with this issue, the courts have held that names and titles are not protected on the basis that they are not substantial enough to constitute literary works and that they fail to satisfy the test of originality under copyright law.

### **Is there a general exception for home copying?**

16.4 There is no general exception to copyright infringement for copying for private and domestic use. The copying of copyright materials onto blank video and audio cassettes is only permitted under the Copyright Act in specific circumstances, namely: the recording of broadcasts by educational institutions and those assisting persons with a visual or intellectual disability under a statutory licence (see paragraph 10.10) and the filming or recording of live broadcasts (such as a sporting match) for private and domestic use. Creating back-up copies or car-use copies of audio or video material is not an exception provided for in the Act.

## **Is permission required to play music in public?**

16.5 One of the exclusive rights of the owner of copyright in a musical work is to perform that work in public, and in the case of sound recordings to cause the recordings to be heard in public. The playing of music from a radio or television broadcast in the workplace would generally be regarded as a public performance of the work. A licence from the Australasian Performing Right Association (APRA), which is a copyright collecting society representing music copyright owners, should be obtained by the employer or business for this purpose. Note however that APRA is issuing complimentary licences (ie, licences free of charge) to businesses that employ less than 20 people and only play music by the radio or television for the benefit of their employees. (The address of APRA is at paragraph 18.9 of this booklet.) Where CDs or cassettes are played in public, a licence from both APRA and the Phonographic Performance Company of Australia (PPCA) may be required. (The address of PPCA is at paragraph 18.10 of this booklet.)

## **Can I copy 10% of a work without infringing copyright?**

16.6 There is no general exception that allows 10% of a work to be reproduced without infringing copyright. Where a part of a work is copied, the issue is whether a substantial part of that work has been reproduced and an infringement has occurred. However, there is a 10% rule which applies in relation to fair dealing copying for the purposes of research or study. A reasonable portion of a work may be copied for that purpose, and a reasonable portion is deemed to be 10% of a book of more than 10 pages or 10% of the words of a work in electronic form.

## **If I change a work can I avoid infringing copyright?**

16.7 Changing a work does not necessarily avoid an infringement claim. If the resulting work includes a substantial part of the original work (which may be a small but important part) permission will be required from the copyright owner of the original work.

# **17. How can I obtain permission to use Commonwealth copyright material?**

## **Published literary works**

17.1 The Commonwealth Government owns copyright in literary, dramatic, musical and artistic works, sound recordings and films made by its employees, or otherwise made under its direction or control. These include materials such as legislation, departmental publications, photographs, Commonwealth maps, most Government publications and other Government reports, including copyright material on the Internet.

17.2 Requests for permission to reproduce published Commonwealth copyright material should be directed to:

Commonwealth Copyright Administration  
Copyright Law Branch  
Attorney-General's Department  
National Circuit  
Barton ACT 2600  
Tel: +61 2 6250 6200  
Fax: +61 2 6250 5989  
<http://www.ag.gov.au/cca>

## Commonwealth unpublished works

17.3 Permission in respect of unpublished material should be directed to the Commonwealth Department or agency responsible for that material.

## State and Territory publications or unpublished works

17.4 Inquiries concerning State or Territory Government copyright material should be addressed to the State or Territory authorities concerned, not to the Commonwealth as each government controls its own copyright.

## 18. Where can I obtain more information?

18.1 The **Attorney-General's Department** provides general copyright information, but not specific legal advice, to members of the public. Our address is:

Copyright Law Branch  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600  
Tel: +61 2 6250 6655  
Fax: +61 2 6250 5929  
E-mail: [copyrightlawbranch@ag.gov.au](mailto:copyrightlawbranch@ag.gov.au)  
<http://www.ag.gov.au>

18.2 Information about recent changes to the law and other copyright developments in the Australian Government is provided at the *AGD e-News on Copyright* website, <http://www.ag.gov.au/enews>. A free self-subscription service is available to receive these updates.

18.3 **IP Access** is a Government web portal which provides access to a wide range of IP related information and resources. The portal provides Australian businesses, innovators, the broader international IP community and the general public with easy access to information relating to Australia's IP systems, legislation and contact points.  
<http://www.ipaccess.gov.au>

18.4 The **Australian Copyright Council** is a private organisation funded in part by the Australia Council. It represents the interests of many copyright owners and operates a free telephone advice service for professional creators, arts organisations, members of its affiliated organisations and people who work in educational institutions and libraries. The telephone advice service operates from 9am to midday and 2pm-5pm (Sydney time) Mondays and Wednesdays. An enquirer may also post, fax or e-mail a request for legal advice (including a contact phone number to aid response). The Council also publishes information sheets and bulletins on specific copyright matters. Members of the public are encouraged to check the Council's website first to see if an information sheet answers their question. The Council's address is:

Australian Copyright Council  
PO Box 1986  
Strawberry Hills NSW 2012  
Tel: +61 2 9318 1788  
Fax: +61 2 9698 3536

e-mail: [info@copyright.org.au](mailto:info@copyright.org.au)  
<http://www.copyright.org.au>

18.5 The **Arts Law Centre of Australia** provides free initial advice on arts-related legal and accounting matters to arts practitioners and organisations only. The Centre also operates a mediation service, offers educational services and publishes a range of materials. Its address is:

Arts Law Centre of Australia  
The Gunnery 43-51 Cowper Wharf Road  
Woolloomooloo NSW 2011  
Tel: (02) 9356 2566  
Toll free: 1800 221 457  
Fax: (02) 9358 6475  
e-mail: [artslaw@artslaw.com.au](mailto:artslaw@artslaw.com.au)  
<http://www.artslaw.com.au>

18.6 **IP Australia** should be contacted if you need information about the procedures for registration of patents, trade marks, designs and plant breeder's rights. It has a range of search functions and educational material available. IP Australia incorporates the Patent Office, the Trade Marks Office, the Designs Office and the Plant Breeder's Rights Office. The address for the central office is:

IP Australia  
PO Box 200  
Woden ACT 2606  
Tel: 1300 651 010  
or +61 2 6283 2999  
Fax: +61 2 6283 7999  
e-mail: [assist@ipaaustralia.gov.au](mailto:assist@ipaaustralia.gov.au)  
<http://www.ipaustralia.gov.au>

## Collecting societies

18.7 There are a number of copyright collecting societies operating in Australia. These societies licence use of copyrights that they manage and collect and distribute royalties on behalf of the copyright owners they represent. There are societies that represent authors and publishers, composers and music publishers, visual artists, sound recording companies and owners of copyright in audio-visual materials. The main societies are set out below.

18.8 **Copyright Agency Limited (CAL)** is a collecting society representing authors and publishers. While having its main role in regard to educational copying, CAL does have authorisation from some members to administer voluntary licences. Where a licence is sought to reproduce published literary works, requests may be made to CAL. Its address is:

Copyright Agency Limited  
Level 19  
157 Liverpool Street  
Sydney NSW 2000  
Tel: +61 2 9394 7600  
Fax: +61 2 9394 7601  
e-mail: [info@copyright.com.au](mailto:info@copyright.com.au)  
<http://www.copyright.com.au>

18.9 The **Australasian Performing Right Association (APRA)** is a collecting society representing a very substantial number of music copyright owners. Where copyright authorisation is sought for the broadcasting or public performance of musical works, APRA is the most likely organisation with authority to grant such permission. The address for its head office is:

Australasian Performing Right Association  
6-12 Atchison Street  
Locked Bag 3665  
St Leonards NSW 2065  
Tel: (02) 9935 7900  
Fax: (02) 9935 7999  
e-mail: [licence@apra.com.au](mailto:licence@apra.com.au)  
<http://www.apra.com.au>

18.10 **The Phonographic Performance Company of Australia Ltd (PPCA)** represents the major producers of sound recordings. The PPCA licences the broadcast and public performance of protected sound recordings and the public exhibition of music video clips of its members. Its address is:

Phonographic Performance Company of Australia Ltd  
PO Box Q20  
Queen Victoria Building NSW 1230  
Tel: (02) 8569 1100  
Fax: (02) 8569 1183  
e-mail: [ppca.mail@ppca.com.au](mailto:ppca.mail@ppca.com.au)  
<http://www.pcca.com.au>

18.11 The **Australasian Mechanical Copyright Owners' Society Ltd (AMCOS)** represents music publishers in relation to licences for the reproduction of musical works. It is the best initial point of contact when seeking a copyright licence to record published music. AMCOS should also be contacted in relation to permission to copy sheet music. Its address is:

Australasian Mechanical Copyright Owners Society Ltd  
6-12 Atchison Street  
Locked Bag 3665  
St Leonards NSW 2065  
Tel: (02) 9935 7900  
Fax: (02) 9935 7999  
e-mail: [mehlic@apra.com.au](mailto:mehlic@apra.com.au)  
<http://www.amcos.com.au>

18.12 **Screenrights** (the Audio-Visual Copyright Society Ltd) represents owners of copyright in films, sound recordings and works included in audio-visual products. It administers the statutory licence for educational copying from television and radio broadcasts. Its address is:

Screenrights  
Level 3  
156 Military Road  
PO Box 1248  
Neutral Bay NSW 2089  
Tel: +61 2 9904 0133  
Fax: +61 2 9904 0498

e-mail: [info@screen.org](mailto:info@screen.org)  
<http://www.screen.org>

18.13 **VISCOPY** (Visual Arts Copyright Collecting Agency) represents many visual artists, including painters, sculptors, craftspeople, designers, photographers, illustrators and multi-media artists. VISCOPY is an appropriate contact point for publishers, museums, advertising agencies and anyone wishing to reproduce artistic works. Its address is:

VISCOPY Limited  
Level 1  
72-80 Cooper Street  
Surry Hills NSW 2010  
Tel: (02) 9280 2844  
Fax: (02) 9280 2855  
e-mail: [viscopy@viscopy.com](mailto:viscopy@viscopy.com)  
<http://www.viscopy.com.au>

## **Other Organisations**

18.14 The following industry groups play an active role in copyright enforcement:

Business Software Association of Australia  
PO Box 57  
Crows Nest NSW 2065  
Tel: 1800 021 143  
Fax: 61 2 9922 7122  
e-mail: [hotline@bsaa.com.au](mailto:hotline@bsaa.com.au)  
<http://www.bsaa.com.au>

Australian Federation Against Copyright Theft  
PO Box 515  
Mona Vale NSW 1660  
Tel: 1800 251 996  
Fax: 02 9999 2466  
e-mail: [info@afact.com.au](mailto:info@afact.com.au)  
<http://www.afact.com.au>

Australian Subscription Television and Radio Association  
Wharf 8  
Pyrmont NSW 2009  
Tel: 61 2 9200 1494  
Fax: 61 2 9200 1966  
e-mail: [astra@astra.org.au](mailto:astra@astra.org.au)  
<http://www.astra.org.au>

Interactive Entertainment Association of Australia  
PO Box 74  
North Melbourne VIC 3051  
Tel: 61 3 9320 2666  
Fax: 61 3 9320 2667  
e-mail: [info@ieaa.com.au](mailto:info@ieaa.com.au)  
<http://www.ieaa.com.au>

Australian Record Industry Association (including the Music Industry Piracy Investigations  
which is part of ARIA)  
19 Harris Street  
Pyrmont NSW 2009  
PO Box Q20  
Queen Victoria Building NSW 1230  
Tel: 02 8569 1144  
Fax: 02 8569 1181  
e-mail: [aria.mail@aria.com.au](mailto:aria.mail@aria.com.au)  
<http://www.aria.com.au>