



# Writers & Copyright

In this information sheet, we give a brief overview of copyright for writers.

**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.**

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue 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, archives and libraries.

We have a range of information sheets on a number of topics and publish books that analyse specific areas of the law. We can provide this information sheet in an accessible format on request. Check our website for information about our publications [here](#) and details of our seminar program [here](#).

## Key points

- You do not need to register or pay fees or go through any other process to get copyright over your work. There are no registration formalities required for Australian copyright.
- The person who creates copyright material is not necessarily the copyright owner.
- Writers have moral rights in their work, even if they do not own copyright.

## Introduction

Written material (including novels, poems and newspaper articles) is automatically protected by copyright as soon as it is written or otherwise recorded in some way (e.g. on computer disk or dictaphone).

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and court decisions. There are no registration formalities required for Australian copyright.

As a result of international treaties such as the Berne Convention, Australian writers are protected by copyright in most other countries. The copyright notice is not a requirement for protection in Australia or in most other countries, but it does notify people that the work is protected and identifies the person claiming the rights. The notice also creates a presumption, if court action is taken, that the person named in the notice owns the copyright (although the presumption may be challenged). You can place the notice on your work yourself – there is no formal procedure. The notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication; for example: © Australian Copyright Council 2020.

## Who owns copyright?

In any case where you have a written agreement about material you write, you should first look at the agreement to see whether or not it states who will own copyright in the material. If there is no such statement, the rules on ownership in the *Copyright Act* apply.

If you are on staff (as opposed to working freelance), your **employer** will usually own copyright in works you make as part of your employment duties.

If your employer publishes **newspapers** or **magazines**, you may be covered by an enterprise agreement that determines ownership of copyright in the work you create. Such enterprise agreements generally reflect the position in the *Copyright Act*. Under the Act, copyright ownership is split between you and your employer. For works created **before** 30 July 1998, the employer owns copyright for certain purposes only (newspaper and magazine publication and broadcasting) and you own copyright for all other purposes, such as publication in a book. For works created **on** or **after** 30 July 1998, you own copyright for the purposes of photocopying and inclusion in books, and the employer owns copyright for all other purposes. Further information may be found in our information sheet [Journalists & Copyright](#).

If you are writing on a **freelance** basis, or under **contract**, the contract may state who owns copyright in the material you create. Otherwise, whoever pays you to create a work will usually be entitled to use the work for the purpose for which it was commissioned, but will not own copyright.

**Commonwealth, State and Territory** governments and agencies generally own copyright in works made for them, or first published by them, unless some other agreement is made.

These rules apply unless the people involved in creating the copyright material reach some other agreement about who will own copyright. Whether or not the usual rules are to apply, it is nonetheless usually a good idea to have a written agreement about who will own copyright in any situation where more than one person is involved in creating something.

If none of the above rules apply, and there is no written agreement determining ownership, the creator owns copyright in material. For more information see our information sheet [Ownership of Copyright](#).

## What are your rights as an owner of copyright?

The copyright owner is generally the only person entitled to:

- **reproduce** the material (e.g. by photocopying it, copying it by hand, reciting it onto an audio tape, or scanning it onto a computer disk);
- make the material **public** for the first time;
- **recite** or **perform** the material in **public**;
- **communicate** the material to the public using any form of technology (e.g. via TV or the internet); and
- make a **translation**, a **dramatised** version or a **picturised** version (for example, a cartoon).

For further information see our information sheet [An Introduction to Copyright in Australia](#).

## Dealing with copyright

You can assign copyright or license it to other people. Assigning means you sell or transfer the rights and someone else becomes the owner. Licensing means that you remain the owner but someone else is permitted to deal with the work in ways you and that person agree on. You can limit the rights granted (e.g. by type of use, by period of time or by territory) and impose conditions

(e.g. that a person cannot use the work until you receive an agreed payment, or that your name must appear with the work).

Any agreement or transaction relating to copyright should be **in writing**. This is particularly important for assignments and exclusive licences (a licence where only the licensee is permitted to use the material in the ways covered by the licence), because section 196(3) of the Act states that an assignment of copyright does not have effect unless it is in writing.

For more information about dealing with copyright, see our information sheet, [Assigning and Licensing Rights](#) and our practical guide, *Writers & Copyright* (available for purchase at [copyright.org.au/bookstore](http://copyright.org.au/bookstore)). See also the Australian Society of Authors website at [asauthors.org](http://asauthors.org) for further information.

## Moral rights

A writer can generally take legal action against anyone who:

- does not attribute him or her as the author of the work;
- falsely attributes the writer's work as being the work of someone else; or
- alters or otherwise treats the writer's work in a manner which is prejudicial to the writer's reputation or honour ("derogatory treatment").

However, defences to infringement of moral rights can include:

- where the person had the writer's consent; or
- where derogatory treatment or failure to attribute was reasonable in all the circumstances.

A writer's moral rights are separate from the copyright in what he or she has written. Writers and other creators have moral rights in their work whether or not they also own copyright. For more information, see our information sheet [Moral Rights](#) and our practical guide of the same title.

## How long does copyright last?

The general rule is that copyright in a published written work lasts for the life of the creator plus 70 years, whether or not the creator is the copyright owner. If a literary work is never published, copyright in it does not expire.

The rules on duration of copyright changed on 1 January 2005 as a result of the Australia–US Free Trade Agreement. Under the previous rules, copyright generally only lasted for the life of the creator plus 50 years. Given this, if an author of a work died before 1 January 1955, copyright has generally expired in Australia. For further information see our information sheet [Duration of Copyright](#).

## When is copyright infringed?

Copyright is infringed if someone uses copyright material in ways that are reserved to the copyright owner without permission. Copyright is not infringed if one of the special exceptions to infringement in the *Copyright Act* applies.

Using a part of a work may infringe copyright if that part is a "substantial part" of the work. A part will be substantial if it is an important or distinctive part of the original work. It need not be a proportionally large part. Deciding what is a substantial part is a question of fact and degree and is assessed on a case-by-case basis. For more information about infringement of copyright, see our information sheet [Infringement: What Can I Do?](#)

The special exceptions in the Act include fair dealing for private research or study and for criticism or review. There are also special provisions that allow libraries to make copies of copyright

material in some circumstances, and schemes that allow educational institutions and governments to make copies in return for payment, administered by Copyright Agency ([copyright.com.au](http://copyright.com.au)). This money is distributed to writers and other owners of copyright.

More information on copyright exceptions can be found in our information sheets [Exceptions to Copyright Infringement](#) and [Fair Dealing: What Can I Use Without Permission?](#)

## **Payment for copying by educational institutions and governments**

If your work is likely to be copied in educational institutions or by government, you should contact Copyright Agency to enquire about becoming a member ([copyright.com.au](http://copyright.com.au)).

## **Frequently asked questions (FAQs)**

### **Copyright ownership**

#### ***I wrote a document as part of my job. Who owns copyright in it?***

If you are an employee (rather than a freelancer or independent contractor) and it was part of your duties to create the work, your employer will own copyright in the work unless you and your employer had an agreement to the contrary. If you are employed by a newspaper or magazine publisher, the position may be different. For more information see our information sheet [Ownership of Copyright](#).

#### ***I was commissioned by a company to create a work. Who owns copyright in it?***

As the author of the work you will own copyright in it, unless you assigned copyright to the commissioning company (an assignment must be in writing and signed by you to be legally effective). The company will generally have the right to use the work for the purpose for which it was commissioned.

#### ***What if I was commissioned by a government agency to create a work?***

If you are commissioned by a government agency, the government may own copyright in the work, unless you have an agreement with the agency that you will own copyright. You may need advice about whether the agency is part of the Commonwealth, or a State or Territory government. You may also need advice about whether your work is, or will be, made or published under the direction or control of the Commonwealth, or a State or Territory government.

#### ***Can copyright be jointly owned?***

Yes. The *Copyright Act* provides that copyright in a work may be owned jointly if two or more authors have contributed jointly to the creation of a single work. Joint ownership of copyright can also be provided for in an agreement between the authors or contributors.

#### ***Who owns copyright in an oral history?***

If an oral history consists of the words of a person whose story telling has been recorded (e.g. onto an iPhone), the storyteller is the owner of copyright in the oral history. If two people create a version of the story together, the two people may be joint authors. If you are recording oral histories, it is generally a good idea to have a written agreement with the person whose story telling is recorded, which sets out how the recorded story may be used and who owns copyright.

## Copyright protection and copyright notices

### *Is my work protected if I use a pen name or pseudonym?*

Written works are protected automatically as soon as they are “fixed”; for example, written on paper or saved to a computer. It is not necessary that your name appear on a work for it to be protected. Your use of a pen name or pseudonym will not generally affect the copyright protection for your work. A work first published under a pseudonym may, however, only be protected for 70 years from the year of publication, rather than 70 years from the year of your death, if your identity later cannot be ascertained by people wanting to use your work.

### *Can I use a pen name or company name in a copyright notice?*

Generally, you may use a pen name, pseudonym, company name or business name in a copyright notice. In Australia, and nearly all other countries, the copyright notice is not a requirement for protection, it just notifies people that the work is protected.

You may, however, want to include your contact details near the notice, so that a person who wants to reproduce your work can easily contact you.

### *Can I stop someone else using my book title or my pen name?*

Generally, copyright does not protect a name, whether it is the real name of an author, a pen name, a book title or a magazine article title. If the writer has established a reputation in a pen name, he or she may be able to prevent others from using the name in a way that causes confusion (e.g. by relying on the law of passing off, fair trading laws or consumer protection laws). A distinctive name may also be registerable as a trade mark. See also our information sheet [Names, Titles and Slogans](#).

### *Is there standard wording for a copyright notice?*

The internationally recognised copyright notice is the copyright symbol ©, followed by the name of the copyright owner and the year of first publication. In many publications, other words are added to this notice. For example: “© Australian Copyright Council 2020. Except as provided by the *Copyright Act 1968*, no part of this publication may be reproduced or communicated to the public without the prior written permission of the publisher”.

There is, however, no standard or prescribed wording for such a notice. It is generally up to the publisher to determine the form of words used.

### *How can I prove that I am the author?*

If there is a dispute about who wrote a work, the person whose name appears as the author is presumed to be the author unless the contrary is established.

## Publishing

### *What are royalties?*

The word royalty usually describes a percentage of income (e.g. from the selling price of a book) which is payable to a copyright owner under a contract with someone who is using the copyright owner’s work. Publishing contracts, for example, usually provide for royalties to be paid by a book publisher to the writer.

### ***If my work has been published in a magazine, can I now allow it to be used in another publication?***

This depends on the rights you granted to the magazine. If you merely submitted the work to the magazine, either with an express invitation to publish or without any express statement but in circumstances in which it could be implied that the magazine had a right to publish, the magazine would have a non-exclusive licence to publish your work once. In this situation, you could offer the work to other publications. Of course, you should indicate to subsequent publishers that the work has been published elsewhere.

If, on the other hand, you signed a document granting the first publisher an exclusive licence to publish your work, you may not be able to grant another publisher a similar right. This will largely depend on the terms of the agreement you reached.

### ***What is an ISBN (International Standard Book Number)?***

The ISBN is a 13-digit number that uniquely identifies books and book-like products published internationally. Each number identifies a unique edition of a publication, from one specific publisher; its purpose is to allow more efficient marketing of products by booksellers, libraries, universities, wholesalers and distributors.

ISBNs are given to printed books and pamphlets, book readings on cassettes, microform publications and microcomputer software. ISBNs are not given to ephemeral material (such as diaries, calendars, theatre programs), sheet music, art prints and art folders and serial publications such as newspapers, magazines and annual reports. Serial publications receive an ISSN – International Standard Serial Number. For further information or supply of numbers, see [thorpe.com.au](http://thorpe.com.au).

### ***How do I get published?***

The Australian Society of Authors has a range of publications available for purchase from its website ([asauthors.org](http://asauthors.org)) which you may find useful. See for example, “A Decent Proposal: How to sell your book to an Australian publisher or literary agent”.

There are also Writers Centres in most capital cities which may be able to assist you.

## **Using other people’s material**

### ***I want to write a novel based on the central theme of another work. Can I do this?***

Themes and ideas are not protected by copyright; therefore, it is not an infringement of copyright to write a work based on a theme that is used in another work. You will, however, need to be careful that you do not reproduce any important part of the way the other author has expressed that theme in his or her work. Other areas of law, such as competition and consumer legislation may also be relevant to the way you market such a book. You will need to consult a private solicitor if this area of law is of concern to you.

### ***Can I publish old family diaries and letters, or extracts from them?***

Generally, material such as old family diaries and letters may still be protected by copyright, even though it may be very old: see our information sheet [Duration of Copyright](#) for information on the duration of copyright for material that remains unpublished when its creator dies.

You might therefore only be able to publish this type of material with permission or in situations covered by a special exception to copyright infringement: see our information sheets [Quotes and Extracts](#) and [Family Histories & Copyright](#).

## Further information and advice

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue 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 further information about the service, see the Legal Advice section of our website [copyright.org.au](http://copyright.org.au).

## 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 Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



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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