

# Copyright information for clients

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**Note:** These guidelines are based on current Australian copyright law and are therefore not applicable to the National Library of New Zealand.

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## Copyright in library collections

You are welcome to copy and re-use material from the library's collections provided you meet the requirements of the Australian *Copyright Act 1968* and any special requirements that may apply to material that is rare, unique or culturally sensitive.

Much of the activity that takes place in libraries is for the purposes for research and study, which has a special copyright exception. Recent changes to the legislation were intended to allow the public to have greater access to the copyright materials held in the collections of libraries and archives.

Information on copyright provided by the library does not constitute legal advice. If in doubt, seek legal advice before copying a work.

## About copyright

### What is copyright?

Copyright is an area of law that gives creators the right to control how their works are used. This includes the right to control copying and other types of re-use, such as publication, performance, adaptation and communicating the work to the public (for example, by making it available online).

You risk infringing copyright if you perform one of these exclusive acts without obtaining the permission of the copyright owner. You must consider copyright when you obtain or create copies of items from the library's collection.

The period of copyright protection in Australia is generally 70 years, but when this starts depends on the details of the work. The duration of copyright depends on whether:

1. the creator is known
2. the work was made public during the creator's lifetime.

Once this is ascertained, copyright duration is calculated based on either the death date of the creator, the date of the work's creation, or the date the work was first made public, depending on the circumstances.

When the duration of copyright ends, a work is referred to as 'out of copyright' or 'in the public domain'.

### Why do we have a copyright system?

There are a number of explanations for why we have a copyright system, including that it:

- provides an important incentive for the creation and distribution of intellectual and creative works
- rewards creators for their efforts.

## What types of works does copyright cover?

In Australia, copyright applies to both published and unpublished works, and protection is automatic as long as certain basic requirements are met. There is no copyright registration process and an individual does *not* need to claim copyright by including the copyright symbol and their name on a work (such as © Author Name 2015). Copyright is not dependent on aesthetic or literary merit and protects materials that are utilitarian, short or mundane.

Copyright applies to many different types of works in library collections, including:

- architectural plans
- artworks
- books, newspapers and periodicals
- broadcasts (both sound and television)
- choreography
- compilations and databases
- computer games
- design drawings and plans
- diaries and letters
- films
- manuscripts
- maps
- musical scores
- photographs
- plays
- published editions
- screenplays and scripts
- software
- song lyrics
- sound recordings
- websites.

## Which copyright law applies?

Australian copyright law is set out in the *Copyright Act 1968* (Commonwealth), including all amendments. Australian copyright law applies to any copying or re-use performed in Australia, even if the owner of copyright in the work you are copying is a citizen of another country. There are reciprocal arrangements between countries which mean that copyright in foreign works is also recognised in Australia (and vice versa). If you are not located in Australia and you are copying digitised content from the library's website, you must follow the copyright law of the country in which you reside.

## Who owns copyright?

The library does not own the copyright of most material in its collections. Copyright ownership is distinct from physical ownership. For example, even though the library holds a painting in the collection, the library does not necessarily have the right to provide you with a copy of it.

Permission to copy and use material needs to be obtained from the copyright owner. The library can, in some cases, provide information to help you contact a copyright owner.

The default rule in the *Copyright Act 1968* (Cth) is that copyright in a work is owned by its creator or maker. However, this basic position can be changed in various ways:

- copyright owners can transfer their copyright, e.g. where an author assigns copyright to a publisher or it is assigned to a library
- if a creator made the work as part of their job, the employer will generally own copyright
- for some commissioned items, the commissioner is deemed to be the copyright owner
- if a copyright owner dies, their copyright forms part of their estate and can therefore be bequeathed by will
- if a licence for use is granted e.g. Creative Commons licence
- the relevant government owns copyright in works made by, or under the direction or control of, an Australian federal or state government agency
- it is possible for more than one copyright to exist in a single item. For example, in a music CD, the composer may own copyright in the music, the lyricist in the words, a photographer in a photo used on the cover, and a production company in the way the music was recorded
- it is also possible to have more than one owner of a single copyright, for instance when two or more individuals co-author a book.

The library can sometimes provide information that may help you contact a copyright owner to request permissions to copy and use material.

## How long does copyright last?

Copyright protection in Australia generally lasts for the life of the creator, plus 70 years. There are factors that can change this. Copyright duration can depend on the type of material and the date it was published, performed or exhibited.

Calculating the copyright term for a given work can be complicated because copyright legislation has changed over time. You may need to look at previous copyright statutes to work out whether older material is still protected by copyright.

Amendments to the *Copyright Act 1968* (Cth) which came into force on 1 January 2019 removed copyright in perpetuity for unpublished material. This harmonised terms for published and unpublished material.

Once copyright of an item expires, copyright-related restrictions on its use cease. This is sometimes referred to as being in the public domain. Some general examples of where this applies are:

- a book published during the author's life, where the author died before 1955
- photographs taken before 1955
- sound recordings made before 1955 and never made public.
- an unpublished diary where the author died 70 years ago or more.

The library may restrict use of material in the public domain because it is fragile, culturally sensitive, or subject to conditions in a donor rights agreement.

The information below sets out some of the general rules for copyright terms for different types of works. For comprehensive details, we recommend the Australian Government's [copyright duration information](#). You can also find more detailed fact sheets from the [Australian Copyright Council](#) and the [Australian Libraries and Archives Copyright Coalition](#).

### **Literary, dramatic, artistic and musical works**

Generally, copyright lasts for 70 years following the death of the creator. However, this can change depending on whether the creator is known and whether (and when) the work has been made public. For example:

- If the work was first made public after the creator's death, with the permission of the creator or their copyright heir, and before 1 January 2019, then the duration is 70 years from the date it was made public.
- If the creator is unknown and the work has never been made public, the duration is 70 years from its creation.
- If the author is unknown and the work was made public before 1 January 2019 or within 50 years of creation, the copyright period is 70 years from the date the work was made public.

A work is 'made public' when it is published, performed or made available online with the permission of the author. Anything made available illegally or under an exception has not been 'made public'.

Generally, published works where the creator died before 1 January 1955 and unpublished works where the creator died before 1 January 70 years before the current year are now in the public domain, as are photographs taken before 1955.

## Sound recordings and films

Generally, copyright lasts for 70 years from the year the material was created. However, if the work was made public before 1 January 2019 or within 50 years of creation, the period of protection is 70 years from the date the material was made public.

Generally, a sound recording made before 1955 is in the public domain. Older films, however, are not subject to this rule because of previous changes to copyright law. It is best to check the copyright for a pre-1969 film using the detailed resources from the [Australian Government](#), [Australian Copyright Council](#) or the [Australian Libraries and Archives Copyright Coalition](#).

## What are moral rights?

Australian copyright law sets out a separate and additional set of rights called moral rights. Moral rights give certain creators and performers the right:

- to have their authorship or performership attributed to them
- not to have their work falsely attributed to someone else
- not to have their work treated in a derogatory way.

Moral rights should always be considered if you are re-using and altering works (for example, through editing, cropping or colourising) and you should ensure that attributions are clear and reasonably prominent.

Moral rights generally last until the copyright in the work expires. Moral rights cannot be transferred or waived, although creators can provide written consents to acts that would otherwise infringe their moral rights. Furthermore, there are defences to moral rights infringement, for instance, where the infringing act is reasonable in all the circumstances.

## Your responsibilities

It is your responsibility to determine whether the work you want to copy or re-use requires copyright permission. Permission from the copyright owner may be necessary where:

- the material you wish to copy is protected by copyright
- your copying is not insubstantial
- your copying does not fall within an exception in the Copyright Act.

To determine the copyright status of the work you want to copy, we suggest that you first try searching for the work in the library's catalogue to see if there is a rights statement for that specific work. Or you could search for the work on [Trove](#) and follow the 'Check copyright status' link in the record. (Note, however, that the copyright status information on Trove is a computer-generated estimate and is not legal advice.)

When you are determining whether permission is required, remember that multiple copyrights can subsist in the same item. This includes, for instance, where a book includes photographs or

illustrations that have separate copyright from the text, potentially requiring you to obtain more than one permission.

If in doubt, it may be best to assume that a work is in copyright and that you need to get permission.

### **Get permission**

If permission is required, you will need to find the copyright owner. To help protect yourself against legal action, you should seek to obtain the copyright owner's permission in writing before you copy or re-use the work. The copyright owner has the right to refuse permission, to set conditions and/or to ask you to pay a fee for permission.

If you need the library to undertake the copying for you, and your request does not fall within an exception in the Copyright Act, a library staff member will need to see evidence of the copyright owner's permission before the copy is made.

### **Adhere to moral rights**

You also have a responsibility to ensure that your copying of a work does not infringe moral rights. For instance, you should credit the work using the author(s) preferred form(s) of attribution. You should also observe the following:

- If the author is not known, then 'author unknown' is an appropriate description.
- 'Anonymous' should be used where the author intended not to be identified.
- In no circumstances should you credit the work to someone else or to yourself.
- You should not treat the work in a derogatory way.

### **What happens if I infringe copyright?**

In cases of copyright infringement, it is usual for the copyright owner to contact the alleged infringer to explain the nature of their complaint. Many disputes are resolved at this stage, and pointing to your good faith may help in such negotiations.

However, if you do infringe copyright, the owner has the right to sue you, and a court may order a variety of remedies. Under current law, it is no defence to say that you did not know you were infringing copyright or that you used reasonable efforts to locate the copyright owner. That said the Copyright Act also makes certain activities a criminal offence.

### **What can I copy and re-use without a copyright owner's permission?**

#### **Material not protected by copyright**

You do not need to obtain any permissions where:

- the item was never protected by copyright

- copyright has been waived, such as by the author marking their work with a [Creative Commons' CC0 – 'No Rights Reserved' open licence](#)
- copyright has expired and the work is in the public domain.

Not all works in library collections have been protected by copyright during their existence, although other areas of law might apply. For example:

- Objects such as a medal are not covered by copyright but may be protected by design law.
- An inventor's prototype may not be covered by copyright but may be protected by a registered patent.
- A church's registers of births, deaths and marriages may not be covered by copyright, but access might be restricted by the church on the grounds of privacy to protect personal information.
- A gum leaf inscribed with the words 'Dardanelles, 1915' as a memento of the First World War was never covered by copyright because single words (even invented words), names, titles and slogans are too small and unoriginal to be protected by copyright. However, a word or name might be protected as a registered trademark.

### **Uses of in-copyright material that are covered by 'exceptions'**

Australian copyright law allows you to copy or re-use in-copyright material in certain circumstances, known as exceptions. If an exception applies, you do not need to ask the copyright owner for permission to undertake acts within its scope. For example, the fair dealing exceptions can apply when you copy material for the purpose of research, study, criticism, review, parody, satire, reporting the news, or giving legal advice.

The Copyright Act expressly states that certain acts constitute fair dealing, such as copying up to 10 per cent or one chapter of a book, or copying one article, for research or study. However, in other cases, you will need to consider the elements of fair dealing as set out in the Copyright Act.

There are also exceptions which allow some copying by cultural and educational institutions and on behalf of people with print or intellectual disabilities. These are particularly relevant when you ask the library to reproduce collection material and supply a copy to you. Amendments in 2017 introduced exceptions to facilitate the import and export of accessible formats of published works (in accordance with the provisions of the [Marrakesh Treaty](#)) and exceptions that enable persons with a disability and anyone assisting them, as well as organisations assisting persons with a disability to use copyright material. The Australian Copyright Council website provides further information on the [Copyright Amendment \(Disability Access and Other Measures\)](#) You should also consult [Making Content Accessible](#) from the Australian Inclusive Publishing Initiative.



## **Restrictions for other reasons**

In addition, special restrictions not related to copyright often apply to the copying of rare or unique works in the library's collections. These may be due to preservation concerns, conditions of acquisition, or because of the operation of other laws (such as defamation and privacy).

## **Do I need the library's permission as well as the copyright owner's permission?**

### **Copying and re-use *without* the library's permission**

If you make your own copy of items from the library's collections without seeking any additional permission from us, you accept the responsibility to make sure you do not infringe copyright or moral rights, as set out in the section on 'Your responsibilities'.

### **Copying and re-use that *does* need the library's permission**

If you ask the library to do the copying for you, you will be asked to make a declaration that confirms that either the permission of the copyright owner has been obtained or no such permission is necessary (for instance, because an exception applies).

Some collection items may have access restrictions that require permission from the library before you copy or re-use them. This permission does not relate to any copyright in the item, but relates to collection management issues, such as ensuring that fragile items are handled with care, and that the library is properly attributed for certain public uses.

The library asks you to seek this permission for two reasons:

- library staff need to check whether any special restrictions apply to the works. A special restriction may apply, for example, because the library agreed to a request by a collection donor that they retain control of the work's use for a certain period, even though they may not own copyright in the works they donated, or copyright has expired. These restrictions are often requested because the material contains private or sensitive information.
- library staff seek your agreement to cite the creator and title of the rare or unique work you are re-using, and to acknowledge the library as the owner. That way, anyone who comes across your reproduction can trace the material back to the library's collection.

Rare or unique works are often fragile or valuable so can only be copied by library staff on your behalf. A fee may be payable to cover the library's costs.

### **Copying and re-using digitised material from the library's website**

Digitising does not change the copyright status of material. When a public domain photograph is digitised, the digital version is also in the public domain. The digitised version of an in-copyright work has the same duration of copyright as the original.

You will find digital copies of items from the library's collections on its website, such as photographs, diaries, letters or recorded interviews. Where this material is out of copyright it may be freely used provided the library and the creator are acknowledged; however, the library does not endorse any inappropriate or derogatory use.

Use of digital copies of in-copyright material may require a request for permission unless your use falls within one of the exceptions, such as research or study. The need to request permission will usually be stated on the library's website in association with the digital copy.

You need to ask the library's permission because a copyright owner may have allowed us to put a copy on our website but not allowed us to authorise uses beyond research or study. In other cases, the library may have put the digital copy online using one of the exceptions in the Copyright Act that apply to libraries. These exceptions are not transferable to the public. When you ask us for permission to copy or re-use the material, we will tell you whether copyright or any other restrictions apply.

## How do I find copyright owners?

### Finding copyright owners for books and other printed material

To work out who owns copyright in a work, look for a copyright statement on the work. It will often look like this: © John Smith 2009. On books, the copyright statement often appears on the back of the title page. If you cannot find the name of the copyright owner that way, check the record in the library's catalogue.

Here is an example of a catalogue record, with the potential copyright owners in italics. Copyright owners are generally authors, illustrators, translators or publishers.

*Fox, Mem, 1946-*

Wombat divine / written by Mem Fox ; illustrated by *Kerry Argent*

Malvern, S. Aust : *Omnibus Books*, 2009

1 v. (unpaged) : colour ill. ; 18 cm

"Celebrating 15 divine years" - Cover

ISBN: 9781862918429

Wombats - Juvenile fiction

Other Authors: *Argent, Kerry, 1960-*

Try contacting the publisher first. Publishers are easier to find than authors, and if the author is the copyright owner, the publisher may be able to give you the author's contact details or forward your request to them.

See the section 'Collecting societies and other ways to find copyright owners' for a number of online directories for Australian and overseas publishers and authors.

### **Finding copyright owners for rare and unique material**

If you wish to find the copyright owner of a rare or unique work in the collection, please contact the library. Staff may be able to provide you with the copyright owner's contact details.

### **Agencies that represent copyright owners**

Instead of contacting the copyright owner directly, you may wish to contact an agency that represents copyright owners. These agencies may authorise you, on behalf of the copyright owner, to copy, perform or broadcast a work, usually for a fee. Some examples are the [Copyright Agency](#) for books, essays and articles, and artistic works; and [APRA AMCOS](#) for music.

### **What if the copyright owner is hard to trace?**

It may be difficult to find a copyright owner, especially when copyright has passed to heirs or copyright was owned by a company that has gone out of business.

To find heirs named in an Australian creator's will, contact the Probate Division of the Supreme Court in the state or territory where the creator died. To find information about what happened to the assets (copyright is an asset) of an Australian company which has gone out of business, try the [Australian Securities and Investments Commission](#).

If you are unable to identify or locate a copyright owner, you will need to decide whether you are willing to proceed with your proposed use, and hence risk infringing copyright.

Some people decide to proceed, but with a statement inviting copyright owners to come forward if they believe their material has been reproduced. If you decide to follow this course, it may be wise to keep detailed records of your attempts to clear rights, and to speak with a lawyer about your exposure to risk.

Under the current law, the fact that you have made good faith attempts to identify and contact the copyright owner does not protect you from legal action under the Copyright Act 1968 (Cth).

Libraries use the term 'orphan work' to describe material where the copyright owner can either not be identified or located and permission to copy the work or publish it online cannot be obtained. An orphan work's appearance on the library's website is not a guarantee that you can use it for any other purpose. The library may have put the digital copy online using one of the exceptions in the Copyright Act that apply to libraries. These exceptions are not transferable to the public. Further information can be found in NSLA's [Position statement: Reasonably diligent search for orphan works](#).

If you as a copyright owner find material on the library's website for which you have not given permission, the library's takedown policy explains the steps that can be taken to contact the library. See NSLA's [Position statement: Takedown](#).

### **Copying and re-using works with Indigenous cultural content**

Although copyright law applies to Indigenous works in the same way as it applies to other works, Indigenous works may have additional legal and cultural issues, for instance because they include secret or sacred information, or information obtained without the consent of the relevant Indigenous people. As such, the library has developed policies for its Indigenous collections.

One of these policies is that you may be required to seek cultural clearances from Aboriginal and Torres Strait Islander communities, families, individuals or organisations before you access or reproduce some Aboriginal and Torres Strait Islander material. If cultural clearances are required, the library will assist you to understand the process involved in meeting your obligations to consult with Aboriginal people and Torres Strait Islanders.

Further information can be found in NSLA's [Position statement: Indigenous Cultural and Intellectual Property \(ICIP\)](#)

## Copyright glossary

**Copying:** The act of copying on a photocopier or scanner, taking a digital photo, downloading from the internet or the library making a copy for you.

**Made public:** When (if ever) a work has been made public will now be important when calculating the copyright term of works, films and sound recordings. Circumstances in which a work will be 'made public' by or with permission of the copyright owner include: publication, public performance, communication to the public, and exhibition.

**Public domain works:** Works where copyright has expired.

**Published works:** Works of which reproductions have been supplied to the public, such as books, newspapers and magazines, most maps, commercially-made music CDs, television broadcasts.

**Rare and unique works:** Examples from the library's collection include unpublished works and rare books.

**Re-use:** Using a copyrighted work in a print or web publication or website, in a performance, adaptation, broadcast, exhibition, screening and even making a translation of a work.

**Unpublished works:** Works of which reproductions have not been supplied to the public. These can include architectural plans; archival material including diaries, letters and the records of businesses and organisations; art works; hand-drawn maps and music scores; oral history sound recordings; and photographs.

## Useful links

### The law

[Copyright Act 1968](#) (Commonwealth)

The current version of the *Copyright Act* includes all changes made by amending legislation, such as the *Copyright Amendment (Moral Rights) Act 2000*, the *Copyright Amendment (Digital Agenda) Act 2000*, the relevant parts of the *US Free Trade Agreement Implementation Act 2004*, the *Copyright Amendment Act 2006* and the *Copyright Amendment (Disability Access and Other Measures Act 2017*.

For an overview of Copyright Act see [Copyright Basics](#) from the Attorney-General's Department.

### Exceptions that allow copying without permission

The [Australian Copyright Council](#) website provides a range of information sheets.

### Collecting societies and other ways to find copyright owners

- [Copyright Agency](#) - pay for a licence to copy books, articles, essays and artwork.

- [Australasian Performing Rights Association \(APRA\) and Australasian Mechanical Copyright Owners Society \(AMCOS\)](#) - pay for a licence to copy, perform or broadcast music.
- [Screenrights](#) - educational institutions and government agencies can pay for a licence to copy or broadcast certain film, television and radio productions.
- [Phonographic Performance Company of Australia \(PPCA\)](#) - pay for a licence to broadcast recorded music or perform it in public.
- [Australian Publishers Association](#) - find links to around 185 Australian publishers.
- [Publishers Global](#) - find publishers listed by country. It has links to publishers in around 55 countries, including links to around 420 Australian publishers.
- [Firms Out of Business \(FOB\)](#) - lists some of the international publishing firms, magazines, literary agencies and similar organisations that are no longer in existence.
- [Writers Artists and Their Copyright Holders \(WATCH\)](#) a useful source for contact details of international writers.
- [Australian Society of Authors](#) - lists Australian authors with links to their individual web pages.
- [Australian Cartoonists' Association](#) - a list of full members, many with links to their contact details.
- [Australian Copyright Council](#) has an information sheet on ways to contact government agencies to get permission to copy their material.

Organisations with expertise in copyright and other intellectual property rights

- [Arts Law Centre of Australia](#)
- [Australian Copyright Council](#)
- [Australian Digital Alliance](#)
- [Australian Libraries and Archives Copyright Coalition \(ALACC\)](#)
- [Centre for Media and Communications Law](#), University of Melbourne
- [Creative Commons Australia](#)
- [Department of Infrastructure, Transport, Regional Development and Communications](#)
- [Intellectual Property Research Institute of Australia](#)
- [IP Australia](#)
- [Resale Royalty Rights](#)