



INFORMATION SHEET

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Film & copyright

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In this information sheet we give a brief overview of copyright as it relates to the use of films and to the use of material in films. We give more detailed information in our book *Film & copyright*.

If you need information about screening a film or video, refer to our information sheet *Videos, films & DVDs: screening in public* and *Videos, DVDs and film: screening in class*. If you need information about including music in a film or video, refer to our information sheet *Music: use in film & multimedia*.

We update our information sheets from time to time. Check our website at <http://www.copyright.org.au/film> to make sure this is the most recent version, and for other information, such as our training program.

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.

Key points

- Films contain a number of separate copyrights, including copyright in the screenplay or narration and in the visual images and material incorporated into the soundtrack, such as music and recordings.
- If you're making a film, you will usually need to get clearances for any third party copyright material which appears in a shot or which can be heard on the soundtrack.
- You will usually need legal advice on contracts that deal with distribution and licensing of films.

What does copyright protect?

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and decisions of courts.

Copyright protects:

- "written material" such as journal articles, novels, poems, song lyrics, letters and reports;
- "artistic works" such as paintings, drawings, cartoons, graphic art, craftwork, photographs, maps and plans;
- "musical works";
- "dramatic works" such as dance, plays, screenplays and mime;
- "computer programs";
- "compilations" such as anthologies, directories and databases – the selection and arrangement of material may be protected separately from the individual items contained in the compilation;
- "sound recordings" such as CDs, cassettes and DAT (the particular recording itself is protected by copyright in addition to any work that is recorded – the music or story, for example);
- "broadcasts": broadcasters have copyright in broadcasts of television and radio programs (this is separate from the copyright in the films, music and other material that they broadcast);
- "published editions": publishers have copyright in the typographical arrangement of a published edition (this is separate from the copyright in works reproduced in the edition, such as poems or illustrations or music); and
- "cinematograph films" the visual images and sounds in a film.

The Copyright Act also says you must obtain consent from a **performer** to record, broadcast or rebroadcast a live “performance”. Consent will also usually be needed to incorporate an unauthorised recording of a performance into a film, or an authorised sound recording of a performance into a soundtrack to a film.

Protection of a “cinematograph film”

The Copyright Act defines a “cinematograph film” as the visual images embodied in an article or thing together with the accompanying sounds embodied in the soundtrack. As a result, the visual images and accompanying sounds in each of the following examples may be jointly protected by copyright: feature films, documentaries, short films, home videos, animated films and television commercials.

The film elements of some multimedia products may also fall into the category of “cinematograph film”. In one case, a court found that computer games were “cinematograph films” for copyright purposes.

It is important to remember that copyright protects the visual images and accompanying sounds (the “film”) separately from the items that may be incorporated into the film. For example, a film will generally contain literary, dramatic and musical works and, in many cases, pre-existing sound recordings. Sets and costumes may also be protected as artistic works. Each of these elements may be separately protected.

Film will be protected by copyright regardless of its format. For example, a film may have been recorded onto 16mm film, video, DVD or other digital formats, or it may have been reproduced into one of these formats at a later date (for example, something shot on 16mm that has been transferred to video, and then to DVD).

What are the rights of the copyright owner?

The owner of copyright has certain exclusive rights. These exclusive rights allow copyright owners to control particular uses of their material. The copyright owner is generally the only person allowed to use, or give permission to others to use, his or her work in these ways. The exclusive rights of copyright owners, depending on the type of material, may include the right to:

- reproduce the work in material form (for example, by scanning, digitising, videoing, filming or photographing);
- perform the work in public (for example, by screening, reciting or performing the work outside a private and domestic setting);
- communicate the work to the public (for example, by broadcasting, emailing copies or putting the work onto the internet); and
- adapt the work (for example, by creating a screenplay from a novel or vice versa, or by translating a work into a different language).

Owners of copyright in a film have the following specific exclusive rights:

- to make a copy of the film;
- to cause the film to be seen and/or heard in public; and
- to communicate the film to the public.

When is copyright in a film infringed?

As noted above, generally only the copyright owner has the right to do certain things with a work. Anyone else who uses copyright material in those ways will infringe copyright **unless** they have permission from the copyright owner **or** a special exception applies.

Where film is concerned, one act may result in the infringement of several copyrights. For example, copying part of a film will generally also reproduce a part of the music and of the screenplay.

Substantial part

An infringement occurs if the whole or a “substantial part” of a work is used.

A “substantial part” in this context is a part that is important or distinctive. A part may be important or distinctive even if it is a small part. When deciding whether or not a “substantial part” has been used, a court will focus on the **quality** of the part used (that is, how important or distinctive it is in relation to the material it is taken from) rather than the **quantity** (that is, how much is used).

Moral rights

Creators of copyright material have certain personal rights over their work. Creators have these rights whether or not they own copyright. These rights are:

- to be attributed as the creator of their work;
- not to have their work falsely attributed to someone else;
- not to have their work described as unaltered when it's been altered; and
- not to have their work altered or otherwise treated in a manner that is prejudicial to their reputation or honour ("derogatory treatment").

The creators of a film, for the purposes of moral rights, are the producer, the screenwriter and the director. (A screenwriter will also have a separate set of moral rights in his or her script.)

Generally, moral rights must be respected whenever a film is:

- copied;
- exhibited in public; or
- communicated to the public.

Moral rights only apply to films and material included in a film if the film was made on or after 21 December 2000. For more information about moral rights and the ways they apply to different copyright materials, see our information sheet *Moral rights* or our more detailed practical guide, also entitled *Moral rights*.

Also, from 26 July 2007, **performers** have had moral rights in relation to their live performances and performances which are embodied in sound recordings. For further information on these provisions, see our information sheets *Performers rights* and *Free Trade Agreement amendments*.

Who owns copyright in "film"?

Generally, the first owner of copyright in a film is the person who makes the arrangements for the film to be made. In practice, this person is usually known as "the producer". If the production is on a small scale, the copyright owner may well be the person who shoots the film, if he or she also made the arrangements for the film to be made.

Remember, though, that the owner of a copyright in a film will not necessarily own copyright in the copyright material incorporated into the film, such as the screenplay or the music.

For more information about ownership of copyright, see our information sheet *Ownership of copyright*.

Where someone pays for filming

Where a person pays another person to film or make arrangements for a film to be made, the person who pays for the making of the film will be the owner of copyright in the film. For example, if a producer pays for filming, that producer will own copyright in the film. If a company pays for a training video to be made, the company will own copyright in the video. This can be altered by agreement.

Note, however, that you will often need to consider the copyright in underlying material that's incorporated into the film, such as the script, the music and the artwork. Unless there is an agreement to the contrary, the writer, composer and artist will own copyright in these. If this type of material is commissioned, the person who pays for the work to be created will, however, at least have an implied right to use the work for the purposes for which it was commissioned. If there is an agreement in writing, it might expressly set out what the person who paid for the work may do with it. It is always good practice to have written agreements in relation to the creation of material that is to be used in a film.

Filming for a government department or agency

The general rule is that a government will be the first owner of copyright in any copyright material that has been created or first published under its direction or control.

A government, like a person, will also own copyright if it pays for filming.

Note, however, that a government won't necessarily own copyright just because it funds a filmmaker. Generally, the funding agreement should state who owns copyright.

Note also that in many cases, a statutory authority or agency may be "government" for the purposes of the government ownership rules.

Transferring ownership of copyright

Ownership of copyright can be transferred by written agreement. For more information about transferring and licensing copyright, see our information sheet *Assigning and licensing rights*.

Ownership of copyright versus ownership of a physical item

Copyright is separate from the physical item in which the copyright material is embodied. The fact that you own a copy of a film does not mean that you own copyright in that film or have the right to use the film in the ways reserved to the copyright owner. For example, owning a DVD of *Star Wars* does **not** give you the right to screen it in public or make a copy of the film. (See, however, our information sheet *Videos & DVDs: copying & downloading*.)

The owner of a physical copy of copyright material (such as a gallery, museum or archive) may control access to that copy even if he or she doesn't own copyright. He or she may also charge a fee for access to that copy even in circumstances where copyright in the material has expired.

Has copyright expired?

You do not need permission to use material in which copyright has expired.

On 1 January 2005, as a result of Australia's Free Trade Agreement with the United States, the rules on duration of copyright changed.

In general terms, copyright in individual frames of movies made before 1 January 1955 has now expired under Australian law, as has copyright in material created by people who died before that date (provided that the material concerned was published during their lifetime).

In other words, under Australian law you won't need a copyright clearance to include **still** images of World War II in a film, or to make a new film adaptation of a Jane Austen novel or a Shakespeare play. You are, however, likely to need permission to include **moving** images, such as footage from a Charlie Chaplin movie, in your film because the footage could contain a "substantial part" of an underlying dramatic work that is still protected by copyright (the screenplay and the unfolding events portrayed in the footage).

Different periods of protection apply in other countries. If you are looking to release your film overseas, you may need permissions for material that is no longer in copyright in Australia but is still in copyright elsewhere.

For detailed information on how long copyright lasts under Australian law, see our information sheet *Duration*.

Making a film: when will you need a clearance?

If the material you want to use is still protected by copyright, you are likely to need to ask for permission to use it. For information about how to contact the copyright owner, see our information sheet *Owners of copyright: how to find*.

Music

If you want to include music in a film or video you will generally need permission from the relevant copyright owners. Note that permission will generally be needed even if the music is incidentally captured on your soundtrack (for example, there is a radio on in the background, or you are filming someone and a band is playing out of shot).

If you film or otherwise record people performing music, you will also need consent from each of the performers.

Our information sheet *Music: use in film & multimedia* has more detailed information.

Artistic works

If you want to use an artistic work that is protected by copyright in your film you will generally need permission. There are, however, some special exceptions available under Australian law.

First, if an artistic work is included in your film but is merely “incidental” to the main focus, you will not need permission. For example, the filming of an artwork may be “incidental” if there is a painting on a wall in the background as characters walk past.

Second, sculptures or works of artistic craftsmanship (such as woodwork or enamelling) which are in public places (including, for example, inside public areas of town halls and shopping centres) may be filmed and photographed without permission, provided they are not there just temporarily.

However, if you are making a film that you hope will have international release, you may need specialist advice from a private solicitor on the extent to which you should rely on these exceptions.

Literary works

If you want to include either all or any “substantial part” of a literary work that is protected by copyright in your film, whether spoken by a character or displayed on the screen, you will generally need permission.

You will also need permission to adapt a copyright literary work into a dramatic form such as a screenplay.

Dramatic works

If you want to include a dramatic work such as a play, dance or mime that is protected by copyright in your film you will generally need permission. A screenplay is a dramatic work and you will need the permission of the copyright owner to use the screenplay as the basis for your film.

If you film a performance of a play, mime or choreographed show you will also need permission from the performers.

Using part of a film in another film

If you include footage that is protected by copyright in your film or video, you will generally need permission.

Check the footage and soundtrack you want to use for any underlying copyright material, such as artistic works and any important or distinctive parts of the script. In many cases, these copyrights may be owned or controlled by whoever owns copyright in the footage, but this won't necessarily be the case in relation to music or any pre-existing sound recording that has been incorporated into the soundtrack.

Ideas for films

Copyright does **not** protect ideas, as such. Rather, it protects the way those ideas are expressed.

If you have an idea for a film, you may want to keep it confidential until you have written a screenplay or recorded your idea in some other form that is protected by copyright. If you **do** want to disclose your idea to a producer or television station, for example, it may be best to get advice about the law of “confidential information” before you do so.

For more information, see our information sheet *Ideas: legal protection*. You can also contact the Arts Law Centre of Australia for a sample confidentiality agreement, or refer to the Centre's website, <http://www.artslaw.org.au>.

Film titles

Generally, names and titles are not protected by copyright. However, other areas of law, such as trade marks and trade practices, may be relevant. See our information sheet *Names, titles and slogans* for further information.

Filming sporting events and filming in parks and other locations

There is no copyright in sporting events. However, people who control a venue may impose restrictions on entry. These restrictions may include a prohibition on filming and photography. In this way, organisers of events such as sporting events are able to maintain some control over the distribution of images of their event.

In addition, there are various pieces of legislation which restrict photography and filming for commercial purposes in particular areas. Also, many local councils have rules about commercial filming, particularly where this may involve inconvenience to the public.

Commonwealth reserves

The Environment Protection and Biodiversity Conservation Regulations 2000 (Cth) introduced important procedures and restrictions in relation to commercial activities in Commonwealth reserves.

A Commonwealth reserve is defined as one proclaimed by the Governor-General. They include Kakadu National Park, Uluru–Kata Tjuta National Park, Booderee National Park, Australian National Botanic Gardens, Christmas Island National Park, Pulu Keeling National Park, Norfolk Island National Park and Commonwealth Marine Parks and Reserves.

To photograph or film in a Commonwealth reserve for commercial purposes you need to:

- contact the Commonwealth reserve and get a permit (you will be asked to enter into a “Location Agreement”); and
- abide by the conditions imposed by the Director.

If you breach a Location Agreement (or do not enter into one), a ranger or warden may require you to hand over all copies of any footage or photographs taken and any camera or other device you have used.

For further information, contact the relevant National Park. You can also contact the Commonwealth Department of Environment, Water, Heritage and the Arts on (02) 6274 1111, or see the website: <http://www.environment.gov.au>.

Note that the Regulations extend not only to photographing and filming in Commonwealth reserves, but also to later commercial (that is, non-domestic) uses of images and footage taken in those reserves.

Sydney Harbour Foreshore

The Sydney Harbour Foreshore Authority Regulations 2006 (NSW) restrict the taking and subsequent use of photographs and film footage for commercial purposes within “public areas” unless authorised by the Sydney Harbour Foreshore Authority.

“Public areas” are defined as any part of the Sydney Harbour foreshore that is managed by the Authority and that the public is entitled to use; these include Luna Park, the Rocks and Circular Quay, Darling Harbour, Woolloomooloo, Pyrmont, White Bay and Rozelle Bay.

For further information, contact the Sydney Harbour Foreshore Authority on 02 9240 8500 or see the website: <http://www.shfa.nsw.gov.au>.

We understand that similar State legislation may apply in relation to areas within capital cities in other States.

Filming people

Under the Copyright Act, you will need to get consent to film anyone who is performing something (including music, circus and variety acts and mime). However, there is no general law of privacy in Australia which prevents people being filmed without permission.

Nonetheless, there are laws that affect certain uses of a person’s image, even if they are not performing something. If, for example, the person’s image is used in a way that suggests the person has authorised that use, the person may be able to take legal action for breach of fair trading laws. The law of defamation may also be relevant (if the image is used in a way that would lower the public’s estimation of that person).

If you are planning an international release of your film, you should seek specialist legal advice about relevant laws in other countries.

Filming houses & buildings

Buildings are protected by copyright, but under Australian law a building or a model of a building may be filmed without permission from the copyright owner. In some cases, the use of the image may breach other laws, such as trade practices and “passing off” laws. These areas of the law may be relevant, for example, where a well-known house is used to advertise a product – people seeing the advertisement might be misled into thinking that the use of the house in this way had been authorised by the owner.

Also, owners of buildings and houses have the right to restrict physical access to their property and may therefore prevent filming in this way.

If you are planning an international release of your film, you should seek legal advice about relevant laws in other countries.

Using films and parts of films

In this section, we look at the use of films and when permission may be needed from the copyright owner.

Screening a film

If you screen a film for people outside a private or domestic sphere, it is likely that the screening will be “in public” for copyright purposes. If this is the case, you will generally need permission from the copyright owner.

For more information see our information sheets *Videos, films & DVDs: screening in public* and *Video, DVDs & films: screening in class*.

Using a still image from a film

It's unclear whether or not, under Australian law, reproducing an individual frame or still image from a film made **on or after 1 May 1969** would require the copyright owner's permission. Arguably, a famous or recognisable still could be regarded as an important part of the film. There is also a technical argument: a still image from a film could be a “photograph”. If this were the case, any unauthorised reproduction could infringe copyright regardless of the importance of the still to the film as a whole.

You will generally need permission to reproduce a still from a film made between **1 January 1955 and 1 May 1969**. (This is because footage of this vintage is, for copyright purposes, protected as a series of photographs, and photographs of this vintage are all protected by copyright.)

Copyright in the photographs which make up the footage of a film made before **1 January 1955** has now expired. In some cases, however, such photos may include images of a protected artistic work, such as a costume or set.

Using a soundtrack

If you want to use a soundtrack from another film in your film, you may need permission from several people.

First, you may need permission from the owner of copyright in the film. This is because the soundtrack forms part of the film and permission may be needed if you are using an important or distinctive part of the film.

In addition, you may need permission for the use of any pre-existing works and sound recordings of those works that have been used as part of the soundtrack. The most common example of this is where a pre-existing recording of music is incorporated into a soundtrack. In such cases, permission may be needed both in relation to the music (usually from a publisher) and the sound recording (usually from a record company).

Using the screenplay

The screenplay of a film is protected by copyright as a dramatic work. If you want to reproduce the screenplay (for example, by doing a remake of the film), perform it in public, adapt it into a novel, or translate it, you will need permission. The first person to contact will usually be the relevant studio, but check to see if the film's credits have any specific information.

If you want to quote a film script in a work you are creating, see our information sheet *Quotes and extracts: copyright obligations*; it has more detailed information in it to help you work out whether or not permission will be needed.

Using characters or plot

Although ideas and characters are not protected by copyright under Australian law, you may infringe copyright in a film if you use a selection of characters and plot in a way that is substantially similar to someone else's film. For example, the film studio that made the film *Jaws* successfully sued another film company that made a film using a similar combination of events and characters.

Even if copyright isn't infringed, laws in other areas, such as trade practices and "passing off", may stop you using characters from other films without permission. These areas of law are likely to be relevant if consumers are likely to believe that the use of the characters is authorised by a legitimate source when in fact it is not.

Common questions

I have an idea for a film. How can I make sure no one else uses it?

Ideas are not protected by copyright. If you have an idea for a film or a television show, the best way to prevent other people from using it is to keep it secret. If you want to divulge your idea to a producer or anyone else who may use the idea without your permission, you should get advice about the law of confidential information. See our information sheet *Ideas: legal protection* or contact the Arts Law Centre of Australia to obtain a sample confidentiality agreement.

Once an idea is reduced to "material form" (such as a written outline, treatment or script), it will be protected as a literary work or as a dramatic work. This means that if you give it to a producer, and he or she then uses it for a film without your permission, he or she might not only be in breach of a duty of confidentiality to you, but is also likely to be infringing your copyright.

What should I do to protect my script?

As a legal matter, your script is protected by copyright from the moment you begin to type it up or write it down. As a practical matter, it is always worth putting the "copyright notice" onto copies that you distribute, to remind people that it is protected, and to let them know that you're the copyright owner. The notice consists of the "copyright symbol" followed by your name. You can also put the relevant year. For example: "© D. Auteur 2005".

As a service to members, the Australian Writers Guild (AWG) has a script registration service. For more information, see the AWG's website, <http://www.awg.com.au>.

Registration with the AWG is **not** a means of registering copyright. As stated above, your script is protected by copyright from the moment you begin to write it down or type it up.

Can I reproduce a television commercial?

A television commercial is protected by copyright. The footage will be protected as "film" and there may be separate copyright material such as music or scripts or storyline used in the ad. If you want to reproduce or screen a commercial in public, you will, therefore, generally need permission from all the relevant owners of copyright.

Can I base my film on an idea from a book?

If a book is simply the source of inspiration for your idea, you may not need permission, as ideas and information are not protected by copyright.

However, the owner of copyright in a literary work, such as a history book or a novel, has the exclusive right to adapt the work. This right includes the right to convert the book into a dramatic work such as a screenplay. If you want to create a screenplay based on a book, you will need permission. Usually this is done by securing an "option" agreement with the publisher or writer (this agreement deals both with making the adaptation, and with later permission to actually make the film – the option is exercisable if, for example, finance and so on is secured).

If I enter my film in a competition, who owns copyright?

If you have made a film and you want to enter it into a competition, you should check whether or not there are any conditions of entry. The competition organisers may require that copyright be transferred to them in the event that you win the competition (or on some other terms). You should be aware of such conditions and make an informed decision about whether or not those conditions are acceptable to you before you enter the competition.

Can I copy a film I own into a new format?

If you want to copy a film that is protected by copyright you will need permission from the copyright owner unless all the copyrights have expired or a special exception applies. The fact that you own a physical copy of a film does

not mean that you have the right to copy the film into either the same or a different format. However, if you own a copy of a film on videotape, you may satisfy the private use copying exception discussed in our information sheet *Videos and DVDs: copying & downloading*.

Further information

For further information about copyright, and about our other publications and training program, see our website – <http://www.copyright.org.au>.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

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Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.

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