



Internet: Copying & Downloading

This information sheet is for people who want to copy or download material from the Internet or swap and share files online.

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.

Check our website at www.copyright.org.au to make sure this is the most recent version of this information sheet, and for information about our other information sheets, other publications and our seminar program. If you want to know about creating a website or publishing on the Internet, see our information sheet *Websites & Copyright* and our practical guides in the *Websites & IT section* of our bookstore.

Key points

- Material on the Internet like music, videos and photographs may be protected by copyright.
- Just because material is freely available, doesn't make it free to use. In many cases, permission to download material from a website is given on the site itself, but the fact that material is available to be viewed on a website, or is accessible using P2P software or networks over the internet does not, by itself, mean that you can use it as you wish.
- Do not assume that material you come across whilst online has been uploaded with the copyright owner's permission: if the material is an infringing copy, or the person hosting the site was not in a position to give a permission on behalf of the copyright owner, you risk infringing copyright if for example, you download or copy that material.

Copyright overview

- Copyright is automatic; there is no need to register for copyright protection (see our information sheet *An Introduction to Copyright in Australia*).
- Copyright does not protect ideas or information (see our information sheet *Ideas: Legal Protection*).
- Copyright has a term of protection, usually the life of the creator plus 70 years (see our information sheet *Duration of Copyright*).
- Copyright can be owned by people other than the creator (see our information sheet *Ownership of Copyright*).

Copyright protects "works" such as:

- **literary works** such as journal articles, novels, screenplays, poems, song lyrics, reports, compilations and computer programs;
- **artistic works** such as paintings, drawings, cartoons, sculpture, craft work, architectural plans, buildings, photographs, maps and plans;

- **dramatic works** such as choreography, screenplays, plays and mime pieces; and
- **musical works:** that is, the music itself, separately from any lyrics or recording.

Something that is a literary, dramatic, musical or artistic work will be protected if it is “original” and in “material form”. “Original” in copyright terms, means that the work isn’t a mere copy, skill and effort has been exercised in its creation, and a human author has created it. “Material form” means that the work is written down, recorded or detailed in some way.

Copyright also protects “subject matter other than works”:

- **cinematograph films:** films are protected separately from any underlying copyright material incorporated in the film, such as scripts and music;
- **sound recordings:** sound recordings are protected separately from any underlying copyright material incorporated in the recording, such as the music or story that is recorded;
- **broadcasts:** TV and radio broadcasts are protected separately from the underlying films, music and other material incorporated in the broadcast; and
- **published editions:** publishers have copyright in their typographical arrangements, which is separate from the copyright in works reproduced in the edition (such as poems or illustrations or music).

Copyright protects these works and subject matter other than works in both analogue and digital forms. For example, copyright protects both a hardcopy book and an eBook.

When might you infringe copyright?

Copyright owners have a number of rights, including the right to control the “reproduction” of their material and the right to control the “communication” of that material “to the public” (which includes uploading, posting or downloading material online).

Generally, you will infringe copyright if you use copyright material in one of the ways that copyright owners control, without permission, in circumstances to which no exception applies. For example, you might infringe copyright if you do any of the following:

- print or distribute copies of material from a website without express or implied permission;
- uploading, streaming, downloading or sharing unauthorised copies of a movie, album or software;
- save material from a website onto your hard drive without express or implied permission;

What’s the difference between “express” and “implied” permissions?

You will have an “express” permission if, for example, there is a statement on a website which states that you may do certain things (for example, where it states that you can download a document for personal or non-commercial uses).

Some material made freely available on the internet is distributed by its creators under *Creative Commons* licences. There are several versions of the licences containing express permissions to use the material in certain ways, usually indicated by the Creative Commons’ logo, and a link to the relevant terms or conditions. For further information see our information sheets *Creative Commons Licences* and *Assigning & Licensing Rights*.

You will also have an “express” permission if, for example, you email a request for permission and get a reply which expressly allows you to use the material. Your right to use the material, however, may be limited by the terms of the permission granted, and/or by any conditions that the copyright owner imposes.

An “implied” permission, on the other hand, is a permission which is not spelled out, but which is implied from all the circumstances. Generally, implied permissions are very limited in scope.

For permission to be implied, a website has to be very clear. For example, it could have a button that says “printer friendly version” or “email to a friend”. In the case of these two examples, it is unlikely that you could imply a permission to use the material on the site for a commercial purpose, but you could at least print out a copy, and email the material to friends. Generally, if you want to use the material from the internet for a commercial purpose, look for an express permission on the site, or email the website administrator in the first instance for permission.

Before you can rely on permission – whether express or implied – you need to be sure that the material that you are planning to use has actually been uploaded or posted with the copyright owner’s permission.

Frequently Asked Questions (FAQs)

Is everything on the Internet in the “public domain”?

The term “public domain” is used in a couple of different ways: (i) for material in which all copyright has expired, and (ii) for material, such as software, where the copyright owner gives very broad permissions to people to use it freely.

The fact that something is on the internet does not mean that it is “copyright-free” or “in the public domain” in either of these senses.

Material in which copyright has expired

Once copyright has expired, the material may, from the copyright perspective, be freely used within Australia.

For detailed information on when copyright expires in a variety of material like music, film and books, see our information sheet *Duration of Copyright*.

Broad permissions

If software is labelled “public domain”, it is likely this refers to a very broad permission given by the copyright owner. In these cases, you may be able to do a variety of things with the material, including copying, sharing or downloading it.

However, you should not assume that you can do anything at all with the material. Rather, you should check the terms of the “public domain” statement to see whether or not what you want to do is permitted. There is at least one case we are aware of where a company infringed copyright by bundling software labelled “public domain” with other software and selling copies as part of a package.

Can I print and/or download material from the Internet?

Check to see if there is a statement about copyright on the site – website operators often state what you can and can’t do with material on their site. You may often be allowed to download material under certain terms and conditions either for free or in return for a specified payment.

If there is no express statement about copyright on sites, you may still in some cases be able to copy or download, but only if that is implied from everything on or relating to the site (for example, a “print” or “download” button next to material).

Some material will be infringing material posted online without the copyright owner’s authorisation – in these cases, it is best to avoid any further dealing with such material to avoid raising any copyright issues.

Can I copy small parts of a work available on the Internet?

Copying part of a work may infringe copyright if the part is a "substantial part". In this context, a "substantial part" does not mean a large part: it means any part that is important, distinctive or essential. You need to consider the importance of the material you copy to the work from which it is taken, rather than its importance to the web page or the website (which will usually be a collection of separate works – for example, a number of images and some text).

For more information, see our information sheets *Quotes & Extracts* and *Artworks: Getting Permission*.

Can I download music, movies, games and software from anywhere on the Internet?

If a copyright owner has given permission, you may download a file from an authorised website or through file sharing networks.

- Many major record companies and independent bands and labels offer music downloads through their own sites, through online music stores (like iTunes or Bigpond Music) or for streaming through services such as Spotify, Pandora or YouTube.
- Several TV stations make programs they broadcast available online.
- Game developers and publishers make their games available through many platforms, including iTunes, Android, Steam and Humble Bundle (see our book *Interactive Games & Copyright*).
- Developers may offer an option to download their software via BitTorrent.

However, the fact that you can locate a file on a website or a file-sharing network does **not** mean that you can copy it, even for personal use. There are a number of sites that claim copying material over networks using their software is legal. However, these statements are not true: you will generally need permission to copy someone else's material.

In Australia, there are at least three people who have ended up with criminal records as a result of illegal file sharing of music files. Another man received a criminal conviction after he recorded *The Simpsons Movie* in an Australian cinema on his mobile phone and placed a copy on a US-based website before the US release date. In yet another case, a provider of P2P software settled a court dispute by paying over \$150 million to record companies whose copyright in music files was infringed.

Can I use information from the Internet?

Copyright protects the way information and ideas are expressed (for example, in words), rather than the information and ideas themselves. You can always use the Internet to find and view information about a particular subject in much the same way as you use a library.

You do not infringe copyright if you express in your own way (for example, by using your own words or diagram) information or ideas you have found on the Internet. You may, however, infringe copyright if you copy all or a "substantial part" of someone else's expression (for example, a document): see our information sheets *Quotes & Extracts*, *Fair Dealing* and *Research & Study*.

How can I tell if I am accessing a website with illegitimate (infringing) material?

You'll need to adopt a common sense approach in working out whether or not content on a site is likely to be infringing. The legitimacy of material will be questionable where it is commercial material that is available for free from third party sources, is of low quality and/or is available before a published release date. In particular, if a site offers free copies of a vast range of popular music or free copies of the very latest movies or eBooks from someone other than the copyright

owner, there's a strong likelihood the copies are infringing copies and you will infringe copyright if you download a copy.

In June 2015 the Copyright Act was amended to allow copyright owners to seek an injunction against a carriage service provider to "block" access to foreign websites that have the primary purpose to infringe, or to facilitate infringement of, copyright. As this new power gets used by copyright owners and access to websites start to be blocked, then illegitimate websites will be harder to find. See our information sheet *Copyright Infringement & Site Blocking* for more guidance on the new legislation.

Can I put an article or images I have downloaded from the Internet onto our intranet?

First check whether or not there is a statement on the site about what you are permitted or not permitted to do. If there's no statement permitting you to put the material on an intranet, you will generally need to get permission from the owner of copyright to do so. You may be able to do this by sending an email to the general email address on the website.

There are, however, provisions in the Copyright Act that allow governments and educational institutions to do various things with copyright material, including placing material on intranets: see our information sheets *Government: Commonwealth, State & Territory*, *Education: Copyright Basics*.

Can I reproduce a web page in my magazine for the purpose of reviewing the site?

You will not infringe copyright by reproducing material for the purposes of criticism or review, provided this is your real purpose, your use is fair, and you give "sufficient acknowledgment" of each work that you reproduce (for example, each image and each piece of text).

"Sufficient acknowledgment" means identifying the work by its title or description and – unless the author is anonymous, uses a pseudonym (pen name) or does not want to be identified – identifying the creator (for example, the writer of the text or the designer of the graphics): see our information sheet *Fair Dealing*.

Can I copy material from the Internet for an assignment?

Generally, you may print and/or save material to disk if:

- it is for your research or study; and
- the copying is "fair" (for example, it doesn't interfere with the legitimate market for the item).

For more information, see our information sheet *Research or Study*.

However, if you have accessed the material by having to agree to terms or conditions (for example, by clicking an "I accept" button), you should look in those terms or conditions to see what you can do with the material. If the terms and conditions prohibit the use you want to make of the material, you might breach the contract by going ahead and using it in that way (even though you would not be infringing copyright).

How do I get permission?

Start by contacting the person operating website (there will usually be email addresses for them on the website). See also our information sheet *Permission: How To Get It*.

What can I do if my copyright has been infringed overseas or on an overseas website?

If your copyright is infringed overseas, you will generally need to get advice from a lawyer with expertise in the laws of the relevant industry, unless you can settle the matter informally. An action for infringement generally must be taken in the courts of the country in which the infringement occurred. You may, however, have rights in Australia against a person who, without your permission, imports copies of your material into Australia for sale or other commercial purposes, or who sells such copies in Australia.

If the foreign website operates a take-down notice scheme (otherwise known as a DMCA notice), this is the best place to start. This will have your copyright material taken down from the website. If the website does not contain a take down notice scheme and is infringing your copyright, then for more serious infringements, you might consider making an application to the court to have the website blocked under the new legislation. Court processes can be expensive, so try to ensure you have legal advice and representation before you seek an injunction.

For more information, see our information sheets *Infringement: What Can I Do?*, *Importing copyright items* and *Copyright Infringement & Site Blocking*.

Further information

For further information about copyright, and about our publications and seminar program, see our website at 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 and libraries.

Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



Australian Government



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

© Australian Copyright Council 2015

