



Permission: How To Get It

In this information sheet we provide some suggestions on how to locate copyright owners for people who want permission to use copyright material. We also give information about licences available from copyright collecting societies for some uses of copyright material. Please note that the Copyright Council does not have records about copyright ownership and does not provide any research services to locate copyright owners.

Unlike the systems for trade marks, patents and designs, there is no Australian registration system for copyright, so there are no official records of ownership that you can search. For this reason, you may need to use a variety of resources when looking for copyright owners. In some cases, you may need to do some detective work.

If you want information about what is protected by copyright, who owns copyright, and when you need permission to use copyright material, see our information sheets *An Introduction to Copyright in Australia*, *Quotes & Extracts* and *Ownership of Copyright*. For information about our other information sheets, frequently asked questions and seminar program, see our website www.copyright.org.au

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version.

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

- The owner of a physical item does not necessarily own copyright in that item. For example, a gallery or museum does not necessarily own copyright in items in its collection.
- The Copyright Act does **not** allow you to use material without permission if you can't contact the copyright owner. If you use a substantial part of copyright material without permission, you will infringe copyright, unless an exception to infringement applies.
- The creator of copyright material is not always the copyright owner.
- If copyright is owned by an individual who has died, ownership may have passed to someone else – usually the copyright owner's spouse or children. If a company owned copyright and it has now gone out of business, its assets, which include copyrights, may have been distributed elsewhere.
- As well as clearing copyright, you need to ensure you do not infringe the creator's moral rights.

Where to start

It is a good idea to check whether there is a licence available from a copyright collecting society that covers your intended use. If no licence is available, the appropriate collecting society may nevertheless be able to assist (sometimes for a fee) in finding the copyright owner.

Often you can get information about how to contact the copyright owner from the material you want to use. Copyright notices that appear on CDs and on the imprint page of books usually name the owner of copyright and sometimes give contact details.

If you know that the material has been used by someone else (for example, it has been reproduced in a book) it may be worth contacting that person or organisation for information about where they obtained permission.

If you wish to use written material in which a State, Territory or Commonwealth government owns copyright, see our information sheet *Government: Commonwealth, State and Territory*.

Text/written material

For information on exceptions to infringement that may allow you to use written material without permission, see our information sheets *Quotes & Extracts* and *Fair dealing*.

Material published in books

Publishers

Usually, the first step is to contact the publisher, or the person identified on the imprint page.

If the publisher cannot give permission, it may be able to direct you to the copyright owner. Most publishers have departments or people who deal with granting permissions.

A directory of Australian publishers and foreign publishers represented in Australia is available from the Australian Publishers Association.

Copyright Agency

You could also try Copyright Agency, a copyright collecting society that licenses the reproduction of material from books and journals on behalf of most Australian and many overseas publishers and authors. You may be able to obtain a licence from Copyright Agency. Alternatively, Copyright Agency may be able to give you a copyright owner's contact details.

Other sources

The Australian Society of Authors may be able to assist with contacting an author who is a member.

Information about publishers and authors can also be obtained from libraries (for example, from publications with titles such as "Books in print").

Australian Publishers Association

Phone: (02) 9281 9788; www.publishers.asn.au

Copyright Agency

Phone: (02) 9394 7600; www.copyright.com.au

Australian Society of Authors

Phone: 02 9211 1004; www.asauthors.org

Material published in newspapers & magazines

Unless there is a specific agreement in place, copyright in material produced by journalists or photographers employed by newspapers and magazines is split between employer and employee. Copyright Agency maybe able to license the material on behalf of all relevant copyright owners or the publisher should be able to assist with such enquiries. For information that will help you work out which copyright owner you need to contact, see our information sheet *Ownership of Copyright*.

Information about contacting journalists (including media photographers) may be sought from their union, the Media Entertainment and Arts Alliance. Professional photographers' bodies may be able to assist with contacting photographers.

Media Entertainment & Arts Alliance (MEAA)

Phone: 1300 656 512; www.alliance.org.au

Australian Institute of Professional Photography (AIPP)

Phone: 03 9856 0700; www.aipp.com.au

Australian Commercial and Media Photographers (ACMP)

Phone: (02) 9025 3975; www.acmp.com.au

Unpublished material

For unpublished material, the first point of contact is usually the creator or his or her employer, if it was created as part of his or her job.

It may also be useful to contact a collecting society, such as Copyright Agency, or if relevant a professional organisation such as the Australian Society of Authors.

Plays and other dramatic works

If the work has been published, you should generally contact the publisher in the first instance. If you cannot contact the publisher, try the organisations listed above in the "*Text/written material*" section. If the work you want to use is a screenplay or another work that has been filmed, the producer may be able to give permission, or put you in touch with the copyright owner.

The Australian Writers' Guild may be able to assist in finding the copyright owner:
www.awg.com.au

For information on getting permission to **perform** copyright material, see our information sheet *Music: Concerts, Musicals and Plays*.

Visual art, craft & photographs

If a work has been published (for example, as an illustration in a book or magazine), the publisher will usually be the first point of contact. If the work is held in a gallery or museum, the gallery or museum may be able to authorise the use or be able to help contact the copyright owner. Note, however, that the fact that someone owns a physical item does not necessarily mean that he or she also owns copyright.

You may be able to obtain a licence from Copyright Agency | Viscopy, the visual artists' collecting society, for the reproduction of works of art from Australia or overseas: www.viscopy.org.au

Viscopy's business is now managed by Copyright Agency. Viscopy remains a separate legal entity, with members and a board.

For more information on contacting owners of copyright in artistic works, see our information sheet *Artworks: Getting Permission*.

Music and sound recordings

There may be separate copyrights in a sound recording – in the recording itself and in the music and lyrics on the recording. There are several organisations you may need to contact, depending on how you want to use music.

The Australasian Mechanical Copyright Owners Society (AMCOS) and the Australasian Performing Right Association (APRA) may be able to help you find the owner of copyright in music, as they have extensive databases of rights holders.

The Phonographic Performance Company of Australia (PPCA) and the Australian Record Industry Association (ARIA) may be able to help you find the record company that owns copyright in a sound recording you want to use.

Playing or performing music in public

For information on when permission is needed and how to get it, see our information sheet *Music: playing music - APRA and PPCA*.

For information on how to get permission to perform music, see our information sheet *Music: Concerts, Musicals and Plays*.

Recording music or reproducing recorded music

To record live music or dub recorded music, you generally need permission from the owner of copyright in the music and lyrics (usually a music publisher), as well as from the owner of copyright in any sound recording you may be reproducing (usually a record company). APRAIAMCOS offers licences to record musical compositions and lyrics (for example, using music in film and advertising). If it can't license your use of the material, it may be able to give you information about which music publisher owns the rights. ARIA offers licences to record sound recordings. If ARIA can't license your use of the material, it may be able to direct you to the relevant record company for permission.

The first release of a song requires the copyright owner's permission. The copyright owner will generally be the composer or a music publisher. Once it has been released, anyone can record their own version (a "cover version"), by getting a licence from APRAIAMCOS which requires the payment of royalties.

For more information on copying recorded music (including downloading it from the internet), see our information sheet *Music: Copying CDs, MP3s, and Records*.

Using music online

If you want to upload music to a website or make it available online in other ways, you will generally need a licence to do so. You will need to contact APRAIAMCOS in relation to your use of the music and lyrics and PPCA in relation to your use of the sound recording. These collecting societies may be able to give you the relevant licences. If not, they may be able to put you in touch with the copyright owners.

APRAIAMCOS

Phone: (02) 9935 7900; www.apraamcos.com.au

PPCA

Phone: (02) 8569 1100; www.ppca.com.au

ARIA

Phone: (02) 8569 1144; www.aria.com.au

Films, TV programs, DVDs & videos*Copying*

The first point of contact if you want to get permission to copy a video is usually the production company. Contact details for producers can be found in directories such as the *Encore Directory*, www.encoredirectory.com.au

Screen Australia is the Commonwealth government agency providing funding and support to Australian film and television producers. It has a database of Australian productions and co-productions with Australia and tips on finding a copy of an Australian film or TV production.

Screenrights is a copyright collecting society and non-profit organisation which collects and distributes copyright fees payable by educational institutions for recording television and radio programs under certain licence schemes. It has an extensive database of rights holders in film and may be able to help you identify a copyright owner.

In relation to copying foreign films, sometimes the Australian licensee or distributor may have authority to license the use of a film owned by a foreign copyright owner. Try typing the name of the film together with 'DVD distributor Australia' (or similar) into a search engine, or search an international film database such as IMDb.

Screening "in public"

If you want to screen a film in public, try contacting distributors or organisations such as Roadshow Public Performance Licensing, which supply films and videos for public screening. For more information, see our information sheet *Films, DVDs, Videos & TV: Screening in Public*.

Screen Australia

Phone: 1800 213 099; www.screenaustralia.gov.au

Screenrights

Phone: (02) 9904 0133; www.screenrights.org

Software

When you buy software, it usually comes with a licence (containing terms and conditions) that tells you how you can use it. The licence may be on the packaging, in an accompanying document or in a file within the program itself. If you want to use software in a way not permitted by the software licence, contact the developer or distributor of the software. The Business Software Alliance (BSA) may be able to give you contact details for a particular software developer.

Business Software Alliance

www.bsa.org/Australia

Government documents & other material

Governments usually own copyright in material they produce, commission, or first publish. In some cases, individual departments administer copyright in material produced by that department. Some governments permit some uses of the material without the need to make a direct request for permission. To find out whether you can rely on such a licence, check the “copyright” statement on the website (usually via a link at the top or bottom of each page). For further details, see our information sheet *Government: Commonwealth, State and Territory*.

Copyright owners that are companies

If the copyright owner is a company, you may be able to locate it by checking the Australian Securities and Investment Commission website: www.asic.gov.au

Foreign copyright owners

Australian collecting societies, including Copyright Agency and APRA/AMCOS, may be able to give you contact details for foreign copyright owners. The copyright collecting societies may also put you in contact with their overseas counterparts that may also be able to assist you. Note also that collecting societies in Australia can often license the use of overseas material in Australia.

People who own copyright in the USA may be registered with the United States Copyright Office. See the Office’s website: www.copyright.gov

If the foreign copyright owner is a company, you may be able to locate the company by checking the relevant country’s company registration lists. You can find links to the lists on the website of the International Organisation of Securities Commissions: www.iosco.org

The US Securities and Exchange Commission also operates a search facility to search for companies registered in the US: www.sec.gov/edgar/searchedgar/webusers.htm

Particular problem areas

Orphan works

If you can rely on an exception in the Copyright Act in relation to your use of copyright material, it doesn’t matter whether or not you can identify or locate the copyright owner. However, if a clearance is required, the fact that you can’t identify or locate the copyright owner doesn’t provide you with a legal defence to a claim of infringement.

We recommend that your organisation adopts an internal policy as to the circumstances in which it will use an orphan work where a clearance is needed. The policy should include the steps your organisation will take to mitigate the risks in using orphaned material. For more information about orphan works, see our information sheet *Orphan Works*.

Non-responsive copyright owners

If you need permission, the fact that a copyright owner doesn’t respond does **not** mean that you can go ahead and use the material. You may decide to make a commercial decision to go ahead with your intended use, but in doing this you run the risk of being held liable for copyright infringement if the copyright owner brings an action against you.

Expensive or onerous licences

Generally, copyright owners are free to set whatever licence terms and conditions they want. It then becomes a matter of trying to negotiate terms you are comfortable with.

If the licence for the material you want to use is set by a collecting society, you may be able to challenge the licence conditions by applying to the Copyright Tribunal.

“Free” licences

Many copyright owners offer “free” licences to use their material – particularly where they make that material available on the internet.

Note, however, that many of these are still subject to conditions (such as attribution) and to limits (such as use for non-commercial purposes only). Always read the terms and conditions carefully and ensure your use will be within the scope of the licence. If you need a broader licence, contact the copyright owner.

Frequently Asked Questions (FAQs)

What if the copyright owner is dead or has gone out of business?

If copyright was owned by an individual who has died, copyright is usually passed on to that person’s spouse or children. You may be able to check who inherited copyright if you can get a copy of the person’s will. If copyright has not been bequeathed specifically, it is presumed to form part of the residual estate. In Australia, contact the Probate Division of the Supreme Court in the State or Territory where the author died. Alternatively, if the work has been published, contact the relevant publisher.

If a work has not been published, the person to whom the manuscript is bequeathed is also understood to inherit the copyright in that work unless the testator has indicated otherwise.

If copyright was owned by an Australian company which has gone out of business, you may be able to get information about what happened to the company’s assets (which include copyrights) from the Australian Securities and Investments Commission (ASIC): www.asic.gov.au

What if I cannot find the copyright owner?

The Copyright Act does not allow you to use protected material without permission merely because you are unable to find the copyright owner.

Nonetheless, in some cases, publishers and other users make a commercial decision to use copyright material despite having failed to find the copyright owner. They weigh the risks of a copyright owner bringing an infringement action against the benefits of reproducing the work. They sometimes include a statement (referred to as a “good faith notice”) saying they tried to find the copyright owner, and that they are willing to pay the copyright owner a reasonable fee. **A good faith notice does not give legal protection from being sued for infringement.**

However, on a practical level, it may show the copyright owner that the failure to obtain permission was because the user could not find him or her, not because they wanted to avoid paying for the use. Copyright owners may settle a claim, by accepting an agreed licence fee, in these circumstances.

If you intend to use such a notice, it is important to keep records of all attempts you have made to locate and contact the copyright owner.

I have come across some old Australian material and have been told that the copyright ownership was registered. Could this be correct?

Yes. There was a voluntary national registration system for copyright in Australia from 1907–1969. Before this, most of the Australian colonies also had registration systems. Records of these registrations are held by the National Archives of Australia, which provides an online search facility at: www.naa.gov.au/collection/recordsearch/index.aspx Note that you may use this search facility to ascertain whether or not a work was registered but you will not necessarily identify the current copyright owner through this service.

How do I get permission to use something from the Internet?

Start by contacting the website proprietor and/or the webmaster (there will usually be email addresses for them on the website). If the material is contained in a digital file, there may also be information embedded in the file that will help you locate the copyright owner.

Further information

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

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.

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 Australian Government through the Australia Council, its arts funding and advisory body.

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