



Editors & Copyright

In this information sheet we discuss the copyright and moral rights issues that are most relevant to people who edit textual material. We do not discuss copyright issues for script or film editors.

Generally, it is a good idea for editors to be aware of copyright issues so they can assist the persons for whom they are editing material to avoid copyright infringement. In some cases, publishers and writers may rely on editors to alert them to copyright issues.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, archives and libraries.

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

Key points

- Permission is usually needed to include copyright material in a book or other publication.
- People using copyright material usually need to make sure the creators are attributed and that they do not use the material in a way that might be damaging to the creator's honour or reputation.
- Copyright laws are broadly similar from country to country, but if the material you are editing is going to be published overseas, your writer or publisher should not assume that copyright will apply in exactly the same way as it does here in Australia – specific advice from a solicitor in private practice with the relevant expertise may be needed.

Copyright material that editors are likely to come across

Copyright protects a range of material that you may edit, including prose works, poetry and song lyrics, press articles, dictionaries, tables of statistics or other information, directories and reports. These are protected as “literary works”, whether or not they are “literary” in the way most people use that word.

Copyright also protects “artistic” works, whether or not they are of artistic quality. Examples of artistic works include photographs, drawings, paintings, graphs, charts, engravings, handicrafts and sculptures.

For information on other material protected by copyright, and for an overview of copyright generally, see our information sheet [An Introduction to Copyright in Australia](#).

Ideas or styles are not protected

Copyright does not protect information, ideas, styles or techniques. People are free to research material and to take information, facts or ideas from other sources to write about. For further information see our information sheet [Ideas: Legal Protection](#).

Names, titles and slogans are unlikely to be protected

Some things, such as titles, slogans or phrases (including headlines) are too insubstantial to be literary works for copyright protection. Therefore, including references to names or titles in a work is unlikely to raise any copyright issues.

A writer wanting to safeguard the use of a name (such as a title or a pen name) will have to look to other laws (e.g. trade mark law). Similarly, companies wanting to prevent people using names or slogans in material would need to look to areas of law such as the *Competition and Consumer Act 2010* and passing off. For further information, see our information sheet [Names, Titles & Slogans](#).

There are no copyright issues if copyright has expired

The general rule of duration of copyright is that copyright lasts for the life of the creator plus 70 years. Once copyright has expired, then you can use the material freely without permission. There are two factors to keep in mind:

- (i) copyright in certain material may have expired in Australia but not in other countries, in which case you may need permission to use that material in the other country (this is going to be relevant if you are using material that is distributed overseas); and
- (ii) one item may contain multiple copyright works (e.g. a magazine article may contain text and a photograph and copyright may have expired in the photographs but not in the text).

There are a number of important exceptions to this rule. Where you are publishing textual material, the most important exceptions are:

- if something was first published anonymously or under a pseudonym and you can't reasonably work out who the creator was – then copyright lasts for 70 years after first publication; and
- if a literary or dramatic work or a piece of music was not published, broadcast or publicly performed, or recordings of it were not offered for sale during its creator's lifetime, then copyright does not expire (note that if the material is published after the author's death, copyright protection lasts for 70 years from the end of the year of first publication).

Different copyright periods also apply where a government owns copyright in a work. For detailed information about how long copyright lasts, see our information sheet [Duration of Copyright](#).

Does a special exception to copyright infringement apply to your use?

There are a number of situations in which writers and publishers may be entitled to use copyright material without permission.

Fair dealing

People can use copyright material without permission for certain purposes as long as the use is “fair”. The most relevant of these fair dealing exceptions for editors are fair dealing for the purpose of criticism or review and fair dealing for reporting news. There is a requirement that you acknowledge the author and title of the work.

The second of these exceptions is likely to be relevant to periodicals rather than books, as it might be difficult to argue that publishing something in a book or multimedia product is “reporting news”. However, the “review or criticism” exception could be available in both of these situations. For more information on these exceptions see our information sheet [Fair Dealing](#).

Public artworks and buildings

Sculptures and “works of artistic craftsmanship” which are on public display “other than temporarily” may be filmed, drawn, painted and photographed without permission. Similarly, both buildings and models of buildings may be filmed, drawn, painted and photographed. The resulting footage, drawing, painting or photograph can then be published without infringing copyright in the artwork, building or model that is depicted.

Note that these exceptions do not cover other types of artworks, such as paintings (for example, public murals or street art which might be on a wall, or on a building).

Moral Rights

Creators of copyright works have moral rights in relation to their works, whether or not they also own copyright. Moral rights are separate from copyright and can only be held by individuals. Creators of copyright works and films have the right to:

- be attributed;
- not have their work falsely attributed; and
- not have their work distorted or otherwise treated in a way that damages or potentially damages their honour or reputation (the “integrity” right).

There are some situations in which moral rights do not have to be respected. For instance, it is not an infringement of moral rights if:

- failure to attribute or to respect the identity of the work is “reasonable” by reference to factors such as the nature and purpose of the work and relevant industry practice; or
- the creator has given written consent to what otherwise would be an infringement.

You should be on the lookout for whether or not third party material such as quotes, illustrations, tables and photographs are properly attributed. Where you are altering the conclusions of a written work or cropping or re-colouring an artistic work you will need to consider the right of integrity. For more information see our information sheet [Moral rights](#).

Frequently asked questions

Does copyright protect ideas for written works?

No. Copyright protects the expression or form that the ideas take. The idea of an article about an upcoming election, for example, is not protected by copyright. A person who writes about an upcoming election can take action against others reproducing his or her written work, but cannot prevent others from writing their own work about the election or using ideas or information from his or her work.

Who is responsible for getting copyright clearances: the publisher or the writer?

For books, the writer's contract should generally state who is responsible for getting all necessary permissions to include third party copyright material. In many cases, the writer undertakes to do this. However, in many cases, to reduce their own risk of liability for copyright infringement, publishers also assess what permissions are needed and check that they have been obtained and properly documented.

I have substantially edited a report. Do I have any claim to copyright ownership in the edited version?

Whether an editor will own copyright in an edited text will depend on the particular situation. It is unlikely that an editor would own copyright where the edits relate to matters such as spelling, grammar, style and punctuation, or where the editor makes suggestions about the text which the writer later implements.

On the other hand, where the editor makes significant changes to structure or wording, the editor (or editor's employer) may own part of the copyright in the new work created. However, this part ownership would be subject to the underlying copyright in the original material (in other words, you could not independently publish the edited work without permission). Further, the owner of copyright in the original material and the person or organisation you are working with would generally have a very wide-ranging licence to use the edited material without specific permission from you.

Does your publisher or writer have a copyright issue?

Publishers and writers may have a copyright issue to deal with if what they have written or want to publish includes third party material (that is, material created by someone with whom they have no direct contractual or employment relationship). This might arise in using quotes, illustrations, graphs and so on.

A copyright issue which involves third party material will need to be resolved by getting a permission ("clearance") if:

- copyright has not expired; and
- a "substantial part" of the third party material is being used; and
- there is no applicable exception under the *Copyright Act*.

What if we're only using a few lines?

If a writer or publisher wants to use **all** of a work, such as a poem or a prose article or a photo, there will be a copyright issue. However, if a writer or publisher just wants to use **part** of something protected by copyright, it can often be difficult to work out whether there is still a copyright issue. Under the *Copyright Act*, there is a copyright issue if a "substantial part" of

something protected by copyright is going to be used in one of the ways exclusively reserved to the copyright owner.

When courts have had to consider what is meant by the phrase “substantial part”, they have emphasised that it is the **importance or distinctiveness** of the part that is being used that is relevant, not the size or amount. There is no set percentage or number of words that makes a “substantial part”. Depending on the nature of the material, using even small parts may still raise a copyright issue, as small parts may nonetheless be important or distinctive parts of the whole material. Generally, the more original or recognisable the part used, the greater the likelihood of it being a “substantial part”. Some publishers have in-house guidelines regarding the number of words they will use without seeking permission. This has no legal standing and is merely a risk assessment measure. For more information see our information sheet [Quotes and Extracts](#).

What rights or consents should we get?

Part of your role as editor may include either clearing rights or alerting the person or organisation you are working for to the fact that a copyright or moral rights issue may exist.

When clearing rights, you will need to consider various issues, including:

- what rights to acquire;
- what formats the clearance should cover; and
- for how long the clearance is needed.

For further information, see our information sheets [Assigning and Licensing Rights](#) and [Permission: How To Get It](#).

Can editing a work infringe the moral rights of the author?

It is generally unlikely that an editor would infringe a writer’s moral rights by making grammatical or typographical alterations (unless unorthodox spelling or grammar integral to the particular material). In practice, the publisher would be liable for any moral rights infringements. However, substantial changes to structure and wording of a work may infringe moral rights if such changes are made without consultation with the author before the work is published.

Most publishing agreements contain clauses dealing with moral rights and with making edits to an author’s work. As an editor, you should be sure that you understand what sort of editing is permissible without the author having to be consulted.

If you are editing articles for magazines or newspapers, it may be “reasonable”, in light of industry practice, to make certain types of changes (e.g. for space considerations) which would not be “reasonable” in the context of book publication. However, we recommend that magazines, newspapers and other publications draw up policy guidelines to assist their editors in this regard.

Is plagiarism the same as copyright infringement?

Plagiarism is where a person takes and uses another person’s ideas or writing and passes them off as their own. It is an ethical consideration and is not a legal wrong. Not all acts of plagiarism are necessarily infringements of copyright and not all copyright infringements are plagiarism. For instance, a writer or academic may breach the ethical standards expected of him or her by presenting someone else’s ideas as his or her own, but not infringe copyright because he or she has expressed the other person’s ideas in his own way.

As an editor, am I responsible for copyright or moral rights infringement if an author or publisher uses a quote that should have been cleared?

Generally, no. However, as a practical matter, one of the expectations of an editor may be that he or she will draw potential copyright and moral rights issues to the attention of the person they are working for. It is best to clarify with the person for whom you are doing the editing whether or not he or she has any expectation that you will do so.

An author has included song lyrics in a story. Do these need to be cleared?

Generally, a writer or publisher will need permission to reproduce all or a "substantial part" of song lyrics, which are usually considered a "literary work".

Because it can be difficult to work out whether or not a line from a song is a reproduction of a substantial part of the song's lyrics, and because music publishers can be very protective of their rights, many publishers get permission for even a couple of lines of a lyric. We recommend that publishers, if they are expecting their editors to look out for possible copyright issues, develop guidelines to assist them in this regard.

Further information and advice

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For further information about the service, see the Legal Advice section of our website copyright.org.au.

Reproducing this information sheet

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

About us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies. We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice education and forums on Australian copyright law for content creators and consumers. Australian Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



Australian Government



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

© Australian Copyright Council 2020