

Information sheet G69

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* – *click title to view table of contents*.

If you need information about screening a film or video, refer to our information sheet *Videos and films: screening in public* and *Videos 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 and multimedia*.

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, craft work, 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 to 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, for example, the music or story.

Broadcasts: broadcasters have copyright in broadcasts of television and radio programs. This is separate to the copyright in the films, music and other material which is transmitted.

Published editions: publishers have copyright in the typographical arrangement of a published edition. This is separate to the copyright in works reproduced in the edition (such as poems or illustrations or music).

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 re-broadcast a live performance. Consent may also be needed to use an unauthorised recording of a performance, or to use an authorised sound recording of a performance on a soundtrack to a film.

Protection of “cinematograph film”

The Copyright Act defines “cinematograph film” as visual images embodied in an article or thing together with the accompanying sounds. As a result, the visual images and accompanying sounds in each of the following examples may be 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”.

It is important to remember that copyright protects the visual images and accompanying sounds (“film”) separately from the items that may be incorporated into the film. For example, film will generally contain literary, dramatic and musical works and often, pre-existing sound recordings, each of which may be separately protected.

It is also important to remember that film will be protected by copyright regardless of the format in which it is recorded. For example, film may be recorded onto 16mm film, video, DVD or other digital formats.

What are the rights of the copyright owner?

The owner of copyright has certain exclusive rights. These exclusive rights allow the copyright owner to control particular uses of their material. The copyright owner is the only person allowed to use, or give permission to

others to use, their 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** (including scanning, digitising, videoing, filming and photographing);
- perform the work in public** (including screening, reciting or performing the work outside a private and domestic setting);
- communicate the work to the public** (including broadcasting, emailing and putting the work on the Internet); and
- adapt the work** (including creating a screenplay from a novel and vice versa, and translating a work into a different language).

Copyright owners in film have the exclusive right to:

- Make a copy of the film;**
- Communicate the film to the public; and**
- Cause the film to be seen and heard in public.**

When will an infringement occur?

As noted above, only the copyright owner has the right to do certain things with a work. Anyone else who uses a work 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, reproducing part of a film may also reproduce music and the screenplay.

Substantial part

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

A "substantial part" is a part that is important or distinctive to the work being used. 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 rather than the *quantity*.

Moral rights

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

- to be correctly attributed as the author of their work; and
- to object to any derogatory treatment of their work that may be detrimental to their honour or reputation.

The creators of a film for the purposes of moral rights are the **producer**, the **screenwriter** and the **director**. Unless it is reasonable in the circumstances, or consent has been given by the creator, moral rights must be respected whenever a film is:

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

Moral rights only apply to films 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*.

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 owner of copyright may well be the person who shoots the film if this person 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 other copyright material incorporated into the film, such as the screenplay or 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. Or, if a company pays for a training video to be made, the company will own copyright in the video. This arrangement can be altered by agreement.

Note, however, that it is different for other copyright items that are incorporated into film such as the script or music or artwork. Unless there is an agreement to the contrary the writer, composer or artist will own copyright in their script, music or artwork. If the work is commissioned, the person who pays for the work to be created will, 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, this might expressly set out what the person who paid for the work may do with it.

Filming for the government

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

A government, like any other person, will own copyright if it pays for filming. (Note however that a government won't necessarily own copyright just because it funds a film maker. Generally, the relevant funding agreement should deal with who owns copyright.)

Transferring ownership of copyright

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

Ownership of copyright vs. ownership of a physical item

Copyright is separate from the physical item in which 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 for the copyright owner. For example, owning a video of *Star Wars* does not give you the right to screen the video in public or make a copy of the film.

A person who owns a physical copy of copyright material may control access to that copy even if they don't own copyright. They may also charge a fee for access to that copy even in circumstances where copyright in the material has expired.

Has copyright expired?

If copyright has expired you will not need copyright clearance in order to use the material in question.

Copyright in the visual images and soundtrack of a film lasts for 50 years from the end of the year that copies of the film were first made available to the public for sale or hire. However, copyright in the screenplay and other copyright materials that appear in the film are protected for different periods. For example, the screenplay, as a dramatic work, is protected for the life of the writer plus fifty years.

Before 1 May 1969 there was no category of protection for "films". However, the footage for a film made before this date is protected as a series of photographs. Copyright in that footage has expired if it was taken more than fifty years ago (for example if the year is 2001, copyright in footage taken before 1 January 1951 has expired).

Copyright in underlying material, such as music on the sound track, or the copyright in the dialogue, commentary, voice over or the unfolding sequence of events will generally last until 50 years after the end of the year in which the creator of the material dies.

For more information about duration of copyright see our information sheet *Duration of copyright*.

Making a film: when will you need clearance?

As stated above, copyright protects a range of materials that fall into the categories listed in the Copyright Act. If you want to use these materials you should check if the copyright has expired. If the material is still protected by copyright, you may need to ask permission. For information about how to contact the copyright owner see our information sheet *Owners of Copyright: how to find*.

In the section below we address the use of different types of material in films.

Music

If you want to include music in a film or video you will generally need permission from the relevant copyright owners. Our information sheet *Music: use in film and 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, however, there are some special exceptions.

First, if an artistic work is included in your film but is merely “incidental” to the main focus, you will not need permission under Australian law. For example, filming of an artwork may be “incidental” in circumstances where there is a painting on a wall in the background as characters walk past. A recent case (*Thompson v Eagle Boys Dial-a-Pizza*) has suggested (but not decided) that filming artwork may be incidental even where the artwork has been included deliberately.

Secondly, sculptures or works of artistic craftsmanship (such as woodwork or enamelling) which are permanently located in public places (including, for example, town halls and shopping centres) may be filmed and photographed without permission.

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 upon exceptions in the Australian Copyright Act.

Literary works

If you want to include 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 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 in your film you will generally need permission from the copyright owner. A screenplay is a dramatic work and you will need the permission of the copyright owner before you use the screenplay as the basis for your film. If you film a performance of a play, mime or choreographed show you will need permission both from the owner of copyright and from the performers to include them in your film.

Using part of a film in another film

If you include film in a film or video you are making you will generally need permission. Whether you can include just a part of another film in your film will depend on all the facts. If copyright in the footage has not expired, you will need permission in relation to the footage and any artwork in the footage. You will probably also need permission for any important or distinctive parts of the script or music which are in the part you want to use. You may also need separate permission in relation to any pre-existing sound recording that has been incorporated on the soundtrack.

Again if you are planning an international release, you should get specialised legal advice from a solicitor with the relevant expertise to ascertain whether you should simply clarify all the rights in these circumstances.

Film ideas

Copyright does not protect ideas, as such. Instead it protects the way those ideas are expressed. If you have an idea for a film, you should keep it secret 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, for example, you may want to obtain advice about the law of ‘confidential information’ before proceeding. For more information see our information sheet *Ideas: legal protection*. You may also contact the Arts Law Centre of Australia for a sample confidentiality agreement or refer to the Centre’s website at 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 to their use. See our information sheet *Names, titles and slogans: legal protection*.

Filming events in public places

There is no copyright in public events or in people's images. However, the people who control a certain 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.

Filming people

In Australia, there is no general law of privacy which prevents people being filmed without permission. There are, however, laws that affect certain uses of the person's image. If, for example, the person's image is used in a way which suggests that 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 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. The use of the image may breach other laws such as trade practices 'passing off'. These areas of the law may be relevant, for example, where a well-known house is used to advertise a product, and people seeing the advertisement would be misled to think that the use of the house in this way had been authorised by the owner.

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

Again, if you are planning an international release, you should seek legal advice about relevant law 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 the purposes of copyright. If this is the case you will generally need permission from the copyright owner.

For more information see our information sheet *Videos and films: Screening in public* and *Video and films: screening in class* which are available from our website at www.copyright.org.au.

Using a still

It is unclear under Australian law whether 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 that a still image from a film could be a "photograph". In this way, any unauthorised reproduction could infringe copyright without any need to consider the importance of the still to the film as a whole; in this case, the whole of an artistic work in the form of a photograph would be reproduced and permission would be required.

You will always need permission if the still is taken from a film made before 1 May 1969 and was made less than 50 years ago.

Using a sound track

If you want to use a sound track from a 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 sound track 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 sound track. Perhaps the most common example of this is where a pre-existing recording of music is incorporated into a sound track.

Using the screenplay

The screenplay of a film is protected by copyright as a dramatic work. If you want to reproduce the screenplay, perform it in public, adapt it into a novel or translate it you will need the permission of the copyright owner. The first person to contact is the distributor of the film. The distributor should be able to help you work out from whom you should ask permission.

If you want to quote a film script in a work you are creating, our information sheet *Quotes and extracts: copyright obligations* has more detailed information

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 is not infringed, other laws such as trade practices and 'passing off' may also prevent you from using characters from other films without permission. These areas of law may be relevant where consumers are likely to believe that the use of the characters is authorised by a legitimate source, when in fact this is not the case.

Common questions

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

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. Once an idea is reduced to some material form, the expression of that idea may be protected as a literary work or a dramatic work or a film. If you want to divulge your idea to a producer or anyone else who may use the idea without your permission, you should obtain 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.

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.

Remember that copyright may be infringed by the use of the whole or a 'substantial part' of the commercial. A part may be 'substantial' even if it is a small part.

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

If you want to reproduce 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. Converting a film to a new format will involve making a reproduction of the film; this is something only the copyright owner has the right to do. The fact that you own a physical copy of the film does not mean that you have the right to copy the film into a new format.

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

If a novel is simply the source of inspiration for your film idea, permission may not be required since ideas and information are not protected by copyright

However, the owner of copyright in a literary work, such as a novel has the exclusive right to adapt their work. This right includes the right to convert their book into a dramatic work such as a screenplay. If you want to create a screenplay using the storyline and characters from a novel you have read you will need permission from the owner of copyright in that work. If you would like to adapt a novel to a film, you may be able to secure an agreement with the writer (known as an 'option').

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

If you have made a film you and want to enter it in a competition, you should check whether 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.

Further information about copyright

We publish a large range of information sheets which you print from www.copyright.org.au or buy from us in printed form. We also publish a range of book titles – see www.copyright.org.au or contact Customer Service for further information.

Legal advice

The purpose of this information sheet is to provide general introductory information about copyright. If you need to know about 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 legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations, and is also available to people working in educational institutions and libraries. For further information about the service, see our information sheet *Australian Copyright Council: who we are, what we do* or see www.copyright.org.au (click the Advice button).

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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.



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