

Materials protected by copyright

In essence, copyright protects creative works like books, art, music and film. However, the categories of materials protected by copyright are extremely broad and can cover items you may not ordinarily think of, like databases, choreography and costumes. If you are unsure if something is protected by copyright, it's usually best to assume it is.

Protected material

Copyright protects creative materials like books, art, music and film. This contrasts with other forms of intellectual property such as patents (which protect inventions) and trademarks (which protect branding).

Also in contrast to other intellectual property, copyright protection is automatic from the moment of creation - there is no way to register your copyright in Australia and you do not have to attach a “©” symbol or copyright statement to material in order to be protected.

But even creative works must fulfil some basic requirements before they attract copyright protection. In order to be copyright material, a creative work must be a [human authored original expression](#) reduced to [material form](#). Copyright also only lasts a certain amount of time - after the end of a work's [copyright term](#), it enters the public domain and can be used without any restrictions.

A word about trademarks and designs

Names and slogans that can't be protected with copyright are often protected by [trademark](#). Product designs (for example chairs, toys or clothes) may also be protected as [registered designs](#). So even if something isn't protected by copyright there may be legal rules that will restrict its use, particularly in commercial situations.



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Nomenclature for copyright material

The [Copyright Act \(1968\)](#) splits copyright material into two categories:

- “[Works](#)” covers dramatic, artistic, literary and musical works, including plays, paintings, sculptures, graphs, books, emails, computer code and songs.
- “[Subject matter other than works](#)” covers films (including some computer games), sound recordings, broadcasts and published editions.

These two categories have slightly different protection, with works generally receiving [more protection](#) for a [longer time](#). For example, works are protected for the life of the author plus 70 years, while subject matter other than works are protected for lesser periods.

Rules of Thumb

Following are some examples of things that are/are not normally copyright material. But these lists are not exclusive – check the general principles set out below if you want to be sure.

Things that are normally protected by copyright

Advertisements, architectural plans, artworks, books, broadcasts, CDs, choreography, comics, computer code, DVDs, emails, engravings, films, journals, letters, magazines, meeting minutes, music, oral histories, paintings, photos, sculptures, software, sound recordings, tweets.

Things that aren't normally protected by copyright

Pure information, ideas, names, titles, mathematical equations, products such as furniture or clothes (unless they are unique pieces).

How to work out if what you have is copyright material

If you have material that you are unsure about, you can work out if it is protected by copyright by checking whether it fulfils the following requirements. If you are still uncertain, it's best to assume it is copyright material.

Expression

Copyright protects expression, not mere ideas, information or facts. Thus while photocopying a newspaper article would likely infringe copyright, recounting the major points would not. Tables or arrangements of facts that lack original expression, such as [TV listings](#) presented in an obvious way, are unlikely to be protected. Some things are too insubstantial to be considered an expression - a person's name for example does not attract copyright protection.

Originality

The work must be original. For example, if someone wrote out every single word of Shakespeare's *Romeo and Juliet*, despite the time and effort they expended, they would not have copyright over the words because they are not original. If the work is adapted, for example translated into Wajarri, then the author would have copyright over the translation but would still not hold copyright over the original. To put this in practical terms, another person could not copy the translation without infringing copyright in the translation, but they could independently translate the original work into Wajarri.

Human author

The Australian [Copyright Act 1968](#) protects the copyright of human authors. Works without a clear human author, such as phone books, [library catalogues](#), or [animal creations](#) may not receive copyright protection at all.

Material form

To be protected the expression needs to be "fixed" in some way – such as being written, broadcast or recorded. If you simply say something in conversation and it is not recorded, you cannot assert copyright over the words used. Similarly, choreography is only protected if it is recorded some way – such as by video or dance notation.

Multiple copyrights

Be aware that there are often multiple copyrights in one object! For example a translated book has two protected literary works, the original story and the translation, as well as copyright in the published edition. A sound recording of a song may have copyright in the sound recording, performance, music and lyrics. Movies are especially complex, as they can contain hundreds of different copyright works, from the script to music to artistic works in the background.

Often all of these copyrights will have been arranged so that one entity holds the rights for the entire work, or at least a licence that allows the work to be used as a whole, but you should always check. If they are not, and you need permission, you must obtain it from all the different copyright owners of all the works you are using. Even if they are, you may still need to consider the different authors when thinking about the [term of protection](#) (as it often dates from the death of the author) and for attribution under [moral rights](#).

About published editions

A “published edition” is a particular edition of a work. The publisher of the edition receives a low level copyright protection designed to prevent others from copying its physical layout and editorial elements. The protection lasts 20 years and only controls exact copies (ie facsimiles). Published editions rarely cause copyright problems, but you should be aware that you need the publisher’s permission to, for example, digitise a recent edition of a public domain work.

FAQs

[I have digitized a public domain photo from the collection, do I own copyright over the digitization?](#)

Best practice is not to assert copyright over digitisations, for example the National and State Libraries Australasia ([NSLA](#)) “supports the principle that public domain is a permanent state: the digital conversion of public domain works undertaken by NSLA libraries does not create a new copyright”. However, some reproductions of public domain works will create a new copyright. For example if an art photographer takes a photo of a painting that includes elements of composition such as special lighting or angles, the photograph will be a separate copyright work. As such, when you are having your public domain material copied it is prudent to ensure the library or archive owns any new copyright created, and consider marking the material as public domain online, so users know they are free to use it.

[We own a painting by a prominent local artist – do we need permission to photograph the painting and use it in a publication?](#)

As a general rule yes, you should ask the copyright owner for permission. Physical ownership of copyright work does not mean that you own the copyright. Obviously you will be okay if the work is [no longer in copyright](#), if you purchased or were gifted the copyright along with the painting (in which case you should find the paperwork) or if you are operating under a copyright exception or a licence. And don’t forget to [attribute the creator](#).

We have an oral history in our collection which a client has transcribed and returned to us. Who owns the copyright in the transcription?

If it is a straight transcription then there's no separate copyright - the person who owns copyright in the oral history also owns copyright in the written version. Anything more than a straight transcription (arrangement, selection, edited highlights etc) means that the writer probably has separate copyright protection over the written product. A safe option is to get the transcriber to assign any copyright to the library/archive.

I want to paraphrase findings from an article - do I need permission?

Copyright only protects [expression](#), not facts or ideas, so there is no problem recounting major points from an article as long as you do not copy the expression. Good academic practice is to reference the source of the ideas/facts even if you don't need permission to state them.

Our library is hosting an event. I would like to make a flyer which shows where we are located. Can I use a screenshot from an online map?

Maps are copyright protected works as a general rule, but there are a number of [public domain maps](#) or openly licensed maps you can use. With all freely accessible internet materials it is essential that you check the terms and conditions on the website for copyright status and permissions. It may be that the map service you have found is happy to allow use with or without conditions, but you need to check each service individually. Don't assume that because you can access it online you also have the right to reproduce it. Note that terms and conditions may change from time to time but you only need to check that you are compliant at the time when you are doing the copyright action (so when you create and print the flyer, you don't have to recheck before dropping the flyers into letterboxes).

A local group wants to perform Shakespeare's "A Midsummer Night's Dream" in the library. The play is obviously in the public domain, but they want to use a modern edition. Do they need to get permission?

If the modern edition changes the play (modernizes the language, is an abridged version etc) then yes, there will be a separate copyright in the adaption that you will need to get permission to perform. Note that a library needs to be careful that it doesn't host infringing events and you may want to get the group to warrant that they have the necessary rights to perform the play or even indemnify the library against any infringement action. If you are an educational institution [special rules](#) apply.

Further resources

[A Short Guide to Copyright](#) Attorney-General's Department

[About Copyright](#) National Library of Australia

[Copyright - a general overview](#) Smartcopying

[An Introduction to Copyright in Australia](#) Australian Copyright Council

[Ideas: Legal Protection](#) Australian Copyright Council

[Names, Titles and Slogans](#) Australian Copyright Council

[Copyright](#) ArtsLaw Australia

The [Australian Libraries Copyright Committee](#) is the primary policy body for the discussion of copyright issues affecting libraries and archives in Australia. For more information and resources on copyright for libraries, including regular training opportunities throughout Australia, see <http://libcopyright.org.au>.