



# Ownership of Copyright

This fact sheet is for people who want to know who owns copyright in material protected by copyright. To identify the current copyright owner, you may need to identify the first copyright owner, then trace any transfers of title by that owner and subsequent owners.

For information about how to find a copyright owner, see our fact sheet [Permission: How To Get It](#).

Our [Copyright Essentials](#) book provides in-depth guidance on the provisions of the Copyright Act set out in this fact sheet. It is available for purchase from our website: [copyright.org.au](http://copyright.org.au). Information about our education programs is available [here](#).

The purpose of this fact 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 creator of copyright material is not necessarily the copyright owner.
- If there is an agreement specifying who owns copyright this will take precedence over the ownership provisions set out in the *Copyright Act 1968* (Cth) (Copyright Act).
- Copyright may be jointly owned so, in some instances, there may be more than one copyright owner.
- Ownership of copyright is separate from ownership of the physical item.
- Creators of copyright works have moral rights in relation to what they create, whether or not they are the copyright owner.

### 1. The general rule: the 'author' is usually the first copyright owner

The general rule is that the 'author' is the first owner of copyright if the material is a text-based work, a musical work, a dramatic work, a computer program or an artistic work (such as a drawing).

For the purposes of copyright law, an 'author' is a person who creates the work, for example, writing an instruction manual, or drawing graphics, or writing a computer program. For photographs, the author is the person who takes the photograph.

A person who contributes ideas or information or suggestions but does not contribute to the expression of a work, is not considered to be an 'author' for the purposes of copyright.

The Copyright Act also provides that works may be jointly owned, when they are produced by two or more authors and the contribution of each author cannot be distinguished.

The general rule that the author is the first owner of copyright may not apply if:

- the author has signed a document which says that someone else will own copyright
- the author was an employee (rather than a freelancer or volunteer) and created the work as part of their usual duties
- the work is a commissioned photograph, portrait or engraving
- the work was made by, or under the direction or control of, the Commonwealth Government, or a state or territory government, or
- the work was first published by, or under the direction or control of, the Commonwealth Government, or a State or Territory government.

(Note, that the special rules relating to government direction or control do **not** apply to local councils and may not necessarily apply to statutory bodies).

There are differences in the rules about ownership of copyright in material made **before 1 May 1969** (the date the present Copyright Act commenced) and material made after that date. In this fact sheet, we focus on ownership of copyright in material made **on or after 1 May 1969** (although we do note the most common differences).

### **1.1 Employees**

The terms of the employment agreement will usually set out what the employer and employee have agreed in relation to ownership of copyright material made by the employee. If the employment agreement does not address copyright ownership, the rule is that the employer will be the first owner of copyright in any works created by an employee in the course of their employment. This requires that:

- the creator of the work must be an employee rather than a freelancer or independent contractor, and
- the copyright material must have been created as part of the duties that the person is employed to carry out.

This is a complex area of copyright law, and these distinctions depend on the facts of each case. There are a number of factors that a court may consider in determining whether or not someone is an employee. For example: does the employer deduct PAYG tax? Are holiday, sick leave and other benefits provided? Does the role involve a high or low level of autonomy in relation to how and when the work is to be made, and the level of supervision provided?

Even if the person is an employee, the material must have been created as part of their duties as an employee. It is important to note that something will not necessarily fall outside an employee's duties merely because it took place outside normal working hours or outside the specific duties of the employee set out in an employment agreement.

### **1.2 Employees of newspaper and magazine proprietors**

Where people employed by publishers of newspapers, magazines or other periodicals create copyright material as part of their jobs, certain rights in the material are divided between the employees and the employers (unless they have agreed to the contrary). This may be relevant not only to journalists but also to photographers taking shots for the publication that employs them.

Copyright in works created by employed journalists and photographers **before 1 May 1969** is owned solely by the employer (unless there is an agreement to the contrary). However, in this case, the journalist has a right to restrain the publication of the work other than in a newspaper, magazine or similar periodical if the work was created for that purpose.

For works produced by employed journalists and photographers **on or after 1 May 1969 and before 30 July 1998**, the newspaper or magazine proprietor owns the rights for certain specific purposes including publication in any newspaper, magazine or similar periodical (unless there is an agreement to the contrary). The journalist generally owns the rights for all other purposes, including photocopying and book publication.

For works created **on or after 30 July 1998**, the author owns copyright for the purposes of book publication and photocopying, and the proprietor owns copyright for all other purposes, including publishing in newspapers and magazines, broadcasting and electronic publication (unless there is an agreement to the contrary).

#### *Freelance journalists and photographers*

Subject to the comments below relating to commissioned photographs, freelance journalists and photographers will usually own copyright in the work they create and subject to any contract they have with the publisher. Where material was created by a freelancer, or was re-published from another source, the publisher may be able to authorise use of the material. The publisher is more likely to be entitled to authorise the use of photographs commissioned from freelancers than other material.

### **1.3 Commissioned photographs**

Where a **photograph** was commissioned **before 30 July 1998**, the client is the owner of copyright unless there was an agreement to the contrary. For photographs commissioned **after 30 July 1998**, the photographer is the owner of copyright except if the photograph was commissioned for a **private or domestic** purpose. If the photograph was commissioned for a private or domestic purpose, for example a family portrait, the client owns copyright, unless there is an agreement to the contrary. Where an artist is commissioned to create a photograph, portrait or engraving for a particular purpose, and the client owns copyright in the commissioned work, the artist may stop the work being used for any other purpose.

#### **Other commissioned works**

For other commissioned works – such as music and text – the commissioning agreement may set out what the parties have agreed in relation to ownership of copyright material made under the commission. If there is no agreement in place, or the agreement does not address copyright ownership, the general rule applies and the creator will own copyright. However, the client is usually entitled to use the work for the purposes for which it was commissioned.

### **1.4 Films & videos**

The first owner of copyright is the person or company which made the arrangements for the making of the film. Otherwise, if a person agrees to make a film or video for you in return for payment or some other 'valuable consideration', you own the copyright in the film or video unless you make some other agreement about ownership of copyright.

Note that the copyright in the film or video only relates to the moving images and sound – works incorporated into the film or video, such as the screenplay and the music, must be considered separately. For example, if you commission the making of a video, and you have no agreement about who will own copyright, you will own copyright in the moving images and sounds, but not in the screenplay or the music.

For further information see our fact sheet [Film & Copyright](#).

### **1.5 Sound recordings**

The first owner of copyright is the 'maker' of the sound recording. However, where the sound recording was made in pursuance of an agreement for 'valuable consideration', the person who pays owns copyright.

The 'maker' is typically the person or company who owns the equipment on which the first recording is made, but will also include the performers where the sound recording is of a live performance **made on or after on 1 January 2005**.

Performers have very limited rights in relation to recordings **made before 1 January 2005**, and unless they reached some agreement in relation to ownership of copyright at the time, are not entitled to exercise these rights where this would interfere with the rights of those who already owned copyright in those sound recordings.

Even for recordings **made on or after 1 January 2005**, performers' rights are likely to be very limited in practice. In particular, unless the performer reaches an agreement assigning all or part of the future copyright to him or her, a performer does not own a share in the copyright in the sound recording if:

- the performance was given in the course of his or her employment, or
- the recording was commissioned (for example, a record company engages a production studio to produce a master recording).

Note also that, as with films and videos, different provisions apply to any works recorded on the sound recording – such as music and lyrics. For example, if you commission the making of a CD, and you have no agreement about who will own copyright, you will own copyright in the sound recording but not in the music or the lyrics.

For further information see our fact sheets [Music & Copyright](#) and [Performers' Rights](#).

## **1.6 Government**

Under the Copyright Act, a government owns copyright in works created by it, or under its direction or control; or first published by it, or under its direction or control. This may be modified by agreement between the parties.

For further information see our fact sheet [Government: Commonwealth, State & Territory](#).

## **2. Agreements about who will be the first owner of copyright**

If there is an agreement specifying who is the owner of copyright in material, the terms of the agreement will apply. It is common for people involved in creating copyright material to enter into agreements about who will own the rights when the material is created. For example, songwriters often make agreements with music publishers that the music publisher will be the owner of copyright in all future songs, in return for an agreed percentage of the income from the songs.

In some cases, agreements relating to who will own copyright must be in writing and signed by the copyright owner. Even when it is not a legal requirement, it is always a good idea to put agreements in writing. If there is no agreement about who will own copyright, you need to work out who is the copyright owner by looking at the general rules on ownership, which are set out in the Copyright Act.

For more information about agreements about copyright material, see our fact sheet [Assigning and Licensing Rights](#).

## **3. The owner of an object is not necessarily the owner of copyright**

Copyright ownership is not the same as ownership of the physical article – such as a painting, sculpture, manuscript or transparency – in which the copyright is embodied. For example, an art gallery may not own copyright in a painting in its collection or the National Film and Sound Archive may not own copyright in a film in its collection.

Copyright owners have certain exclusive rights in their work including the right of reproduction. Buying a picture, a book, a photograph or CD does not give you rights to copy it. For more information on the exclusive rights of copyright owners see our [An Introduction to Copyright in Australia](#) fact sheet.

The owner of an object may, however, be entitled to charge a fee for access to the object or to impose other conditions on use. If you want to reproduce copyright material (for example, by photographing or filming it), you will usually need a separate permission from the copyright owner.

#### **4. Moral rights**

Separately from copyright, creators of works have moral rights. These are the right:

- to be attributed (or credited) for their work
- not to have their work falsely attributed, and
- not to have their work treated in a derogatory way.

Moral rights cannot be assigned or transferred and remain with the author/creator of the work. While a creator may not therefore necessarily be the copyright owner, they (as the creator) will hold moral rights. For more details, see our fact sheet [Moral Rights](#).

### **Frequently Asked Questions (FAQs)**

#### **How do I prove that I am the copyright owner if there is no system of registration?**

If there is a dispute about who created a copyright work which cannot be resolved by negotiation, it may need to be resolved by a court. A court considers all the relevant evidence when determining a dispute. The most important evidence is usually the creator's and the evidence of witnesses to the creation of the work. Other evidence may include drafts of the work. Such cases are extremely rare: someone else alleging they own copyright generally runs large financial risks in bringing such a case without any basis. In addition, a person who gives false evidence in court is committing perjury (a criminal offence).

#### **If I write a book based on someone else's idea, who owns the copyright?**

The first owner of copyright is usually the 'author'. The 'author' of a book is the person who writes it. A person who provides suggestions or ideas, but does not do any of the writing, is not an 'author' or copyright owner. For more information, see our [An Introduction to Copyright in Australia](#) fact sheet.

#### **What is the difference between an author and a copyright owner?**

An author is the person who creates a work. An owner of copyright is the person, or company, which owns the rights in the work. The author and the owner are not necessarily the same person. For example, an employee may be the author of a work but his or her employer is likely to be the owner of copyright in it. Also, the author may have been the first owner of copyright but may have transferred the copyright to someone else who is now the owner of copyright.

### Can copyright be jointly owned?

Yes. This can happen in two ways:

- there may be joint authors of a work – that is, two or more authors have made contributions to the creation of the one work
- there might be an agreement that copyright will be jointly owned, whether or not the contributions are joint. For example, some bands decide that everyone in the band will jointly own copyright in all music and lyrics created by band members, even though all the band members may not be joint authors of each piece of music and lyrics.

### How do I avoid having disputes about ownership of copyright with my clients?

Often clients believe that they own copyright in anything they pay to be created, whereas this is not always the case. To avoid disputes about ownership of copyright, it is a good idea to have a written agreement which clearly states who will own copyright in any material your client pays you to create and, if you own the copyright, what your client is entitled to do with that material. For more information, see our fact sheet [Assigning & Licensing Rights](#). Other fact sheets that address this topic include [Photography & Copyright](#) and [Graphic Designers & Copyright](#).

### I have commissioned a graphic artist to create a logo. Do I own the copyright?

Unless the artist has signed a written document stating that you are the owner of copyright, the artist owns copyright, but you would usually be entitled to use the logo for the purposes for which it was created. If you want to use the logo for another purpose, you will probably need the artist's permission.

### Does a company own copyright in resources, such as databases, created by an employee?

Generally, a company owns copyright in copyright material created by an employee, provided:

- the author is an employee, not an independent contractor or freelancer; and
- the work is created as part of that person's job.

If there is any doubt about either of these factors, it is a good idea to have a written agreement which clearly sets out who is the copyright owner.

### Does an organisation own copyright in material created by volunteers?

Usually, volunteers retain copyright in material such as reports, logos and so on that they create. Generally, the organisation will have the licence, or permission, to use the relevant material for the purposes for which it was created.

A person who has been **paid** to create something protected by copyright is unlikely to be in a position to revoke the commissioning party's use of the material for the purposes for which it was created. However, a **volunteer** may be able to revoke permission for the organisation to continue to use the copyright item (for example, to stop using a logo). Organisations concerned about this should get specific legal advice, and should consider entering formal agreements with volunteers.

### Further information

We also have a range of other fact sheets on a number of topics and publish books that focus on specific interest groups. Check our website for information about our publications [here](#) and details of our seminar/webinar program [here](#).

We can provide this fact sheet in an accessible format or in hard copy on request.

An Australian Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in a fact 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 [Legal Advice](#) on our website [copyright.org.au](http://copyright.org.au).

## Reproducing this fact sheet

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

## About Us

The Australian Copyright Council is an independent, not-for-profit, non-government 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. Our objectives include:

- to assist creators and other copyright owners to exercise their rights effectively
- to raise awareness in the community about the importance of copyright
- to identify and research areas of copyright law which are inadequate or unfair
- to seek changes to law and practice to enhance the effectiveness and fairness of copyright
- to foster co-operation amongst bodies representing creators and owners of copyright.

The 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.



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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