



INFORMATION SHEET

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Websites: creating and publishing on the internet

February 2005

This information sheet is for people involved in creating a website or otherwise publishing material on the internet. For more detailed information, see our book *Websites & Copyright*. See also our information sheet *Internet: copying from*.

For information about our other information sheets, other publications and training program, see our website, www.copyright.org.au, or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give 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. For further information about the service, see www.copyright.org.au (click the Advice button) or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Whole websites are not protected by copyright. However, component parts of a website, such as text, artworks, logos and computer software, may be protected.
- When a website designer is paid to create a website, it is a good idea to have a written agreement between the designer and the client that sets out each party's responsibility in relation to copyright and moral rights.

What does copyright protect?

In Australia, copyright law is contained in the *Copyright Act 1968* (Cth) and court decisions. Copyright protects a range of material, including:

- written material (such as novels, poems, song lyrics, reports, instruction manuals and newspaper articles);
- artistic works (such as drawings, paintings, and graphic art, as well as more technical works such as industrial photographs, buildings, design drawings, maps and plans);
- musical works;
- dramatic works (such as screenplays and choreography);
- computer programs;
- compilations (such as anthologies, directories and databases);
- cinematograph films (such as feature films, television programs, television commercials and music videos); and

- sound recordings (such as music or voice recorded on audio cassette or compact disc).

It is unclear whether a website as a whole will have a separate copyright status (for example, as a compilation).

What rights do copyright owners have?

Owners of copyright have the exclusive right to do certain things with their material. This means that anyone who wants to use copyright material in any of these ways may need the copyright owner's permission. Activities which may require a copyright owner's permission are:

- **reproducing** the material (for example, printing, uploading to a website, downloading to a hard disk or floppy disk, caching, keying into a computer, scanning);
- **making** the material **public for the first time** (for example, by making an unpublished work available on the internet); and
- **communicating** the material **to the public** (for example, by making it available from a website or from a bulletin board or chat room, or emailing it to people other than family or friends).

How do you get copyright protection?

Copyright protection is automatic; there is no system of registration in Australia. A work does not need to be published, or have the copyright notice on it, to be protected. From the time it is first written down or recorded in some way it is protected under Australian law, provided it has resulted from its creator's skill and effort and is not simply copied from another work.

As a result of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia, and Australian copyright owners are protected in most other countries. For more information about international protection, see our information sheet *Copyright protection in other countries*.

Who owns copyright in a website?

It is not clear that a website as a whole would be protected by copyright. The component parts, however, may be protected, and copyright in each of these component parts may be owned by a different person. For example, one or more people may own copyright in the graphics, others may own copyright in the text, others again in the compilation of material on the site and yet another person or company may own copyright in the navigation software.

For further information about who owns copyright, see our information sheet *Ownership of copyright*.

Moral rights

The creators of copyright material included in the website have moral rights in relation to their work. These rights are separate from copyright in the work. In general terms, a person using all or part of a copyright work should attribute the creator(s), unless the creator(s) have given written consent not to be attributed. Where a website owner has attributed the creator of a work but later changes the work, the attribution should state that the work has been changed, unless the creator's written consent has been obtained. The creator of a copyright work (whether or not the creator is the copyright owner) also has the right not to have the work treated in a way that would prejudice his or her honour or reputation. Again, it may be possible to get the creator's written consent concerning any changes made to their work, and for its use in a particular context. For further information, see our information sheet *Moral rights*.

Agreements between website designers and clients

Whenever a person is paid to create a website for another person, the designer and client should make an agreement covering matters including:

- who is responsible for clearing copyright in third party material;
- who is responsible for obtaining moral rights consents, if these are needed;

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- who owns copyright in elements of the completed website;
- who has the right to make changes to the website; and
- attribution of individuals who have created copyright material included in the website.

Such agreements should also address issues such as ownership of digital files used in creating the site, especially if access to such files is needed to make changes to the website. For further information on issues that may need to be addressed, see our information sheet *Assigning & licensing rights* and our detailed practical guide *Websites & Copyright*.

Some common questions about copyright protection for a website

How can we protect material we put on the internet?

You should at least have a statement about copyright on your site. There is no rule about where this statement should be, but it is a good idea to have an easily recognisable link to it from each page on the site.

You may also want to consider using technological means of inhibiting unauthorised copying or lifting of material from your site, such as requiring a password before people can download material from the site, or you could encrypt information on the site so that it can't be read without a decryption device.

What should the copyright statement say?

There are no special rules and no special wording for copyright notices, but it is a good idea for the statement to include the following:

- a) who owns copyright in the material in the site (as noted above, there may be numerous people who own copyright in different elements);
- b) what the copyright owners permit and do not permit visitors to the site to do with material on the site (whether or not, and on what conditions, users are permitted to create links to the site, download material and print material from the site); and
- c) who to contact to get a copyright clearance in relation to any of the material on the site.

Some common questions about what to do if your copyright is infringed

Who is responsible for enforcement of copyright on the internet?

Generally, it is the copyright owner who must take legal action if his or her copyright is infringed. Generally, the person who does the infringing act (for example, makes an unauthorised copy) is liable. A person (including an internet service provider) who authorises an infringement by another person may also be liable.

There are criminal penalties in the Copyright Act for serious infringements of copyright. Distributing infringing material from your site, or advertising the supply of infringing software are criminal offences, for example. The penalties are enforceable by the Australian Federal Police. For further information, see our information sheet *Infringement: actions, remedies, offences and penalties*.

Somebody has copied material from my website onto their website — what should I do?

If you own or control copyright in the material which has been copied, and it was copied without your permission, it is likely that your copyright has been infringed. For information about what to do, see our information sheet *Infringement: what can I do?* Often the issue can be resolved by a simple email or letter to the proprietor of the other website.

Another possibility is to contact the internet service provider (ISP). As a result of the Australia–US Free Trade Agreement, it is in the ISP's interests to remove or disable access to copyright material on its system if it becomes aware that copyright is being infringed or "becomes aware of facts and circumstances that make it apparent that the material is likely to be infringing". Generally, when you contact the ISP, you need to provide them with several pieces of information: you should identify the material which is allegedly infringing copyright; you should indicate the basis on which you own copyright (for example, that the material was created by you or by your employee) and

you should indicate that you did not license the other party either to reproduce that material or to make it available online.

What do I do if someone infringes my copyright on a website overseas?

As a result of international copyright treaties, Australian copyright material is protected in most countries overseas. Generally, if copyright in your work is infringed in another country, and you want to take legal action, you must take legal action in that country. With the internet, there may be infringements in a number of countries. If you are in this situation, you should get legal advice.

In many cases you may be able to resolve the matter informally, by contacting the relevant webmasters and letting them know that they have used your material without permission. In other cases, you may be able to take advantage of “take down” procedures: for example, under US law, ISPs may block sites if they are notified that material on that site infringes copyright. (While we are aware that these procedures exist, please note that the Copyright Council’s expertise is in Australian copyright law, and that we are unable to provide advice on how such procedures actually operate.)

Some common questions about who owns copyright in a website

If I pay a person to design a website, who owns copyright?

You should make a clear, written agreement with the website designer about who owns copyright in each element of the site. It may be that copyright in some elements for example, the music, or software is owned by someone other than you or the website designer. Your agreement should state who is responsible for getting the copyright clearance for any such material. If there are any elements in which the website designer owns copyright, the agreement should clearly state what you can do with these elements.

If no specific agreement has been made, in general terms, the creator of the copyright material owns copyright in that material, but the person who paid for the website to be created (the website proprietor) has the right to use it in the ways that have been agreed. If there has been no express or implied agreement about who is responsible for getting permission to use pre-existing copyright material, the website proprietor should get permission.

For more information, see our practical guide *Websites & Copyright*.

Can the designer of our website use it as a model for other websites?

This will depend on your agreement with the website designer and on who owns copyright in the relevant material.

Who is entitled to make changes to a website?

This will usually depend on the agreement between the website proprietor and the website designer. The process of changing something on the site (such as text) is likely to involve reproducing it, and thus needs the express or implied permission of the copyright owner. The agreement between the website designer and the website proprietor should deal with making changes to the site.

Note that moral rights issues (discussed above) may be relevant when making changes to material on a website: it may be a good idea for website proprietors to get written consents from creators for the types of changes that may be made to their work as part of the original consent — this would mean that further contact and/or consents are unnecessary.

Some common questions about getting clearances for material on a website

Do I need permission to link my website to another website?

If the link is the name of the other site or its home page URL, you probably do not need permission to include it on your site, provided it is clear to the visitor to your site that the link takes them to another site (rather than to another part of your site). If you use something else for the link — someone else’s logo or graphic, for example — you will generally need permission.

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Website proprietors sometimes object to users making “deep links” to pages within their website. This may be for a number of reasons, but one common one is that people using deep links bypass the site’s homepage; this means they are not included in a count of “hits” on the website, and they miss out on important information.

It is unclear whether deep linking raises copyright issues under Australian law; in some cases other areas of law may be relevant. You will need to decide on the most appropriate approach for your situation: you may decide to seek permission before making deep links, or you may decide that you are prepared to delete links if the other website proprietor complains.

If you are aware (or become aware) that the other website contains infringing material, then it would be best not to include the link on your website. It may be that the user’s activation of the link infringes copyright, therefore potentially making you liable for authorising the reproduction and communication of infringing material.

Do I need permission to show material from another site in a frame on my website?

“Framing” material means linking to another website in such a way that it is not obvious to the person accessing the page that what they are viewing is from another website. It is not clear whether this will be a copyright issue or not. Other areas of law, such as trade practices law and “passing off”, may come into play if the framing might suggest a misleading connection between your site and the other site. As a matter of practice it is probably prudent to get permission, unless your legal advisor or peak organisation (for example, if you work in an educational institution or library) has given you advice to the contrary.

What permissions do I need to put music onto my site?

If you wish to include recorded music in your website, you will need to get permission from the owner(s) of copyright in the music itself, in any lyrics (protected separately as “literary works”) and in the sound recording. You will need permission to **reproduce** the music in digital form and to make it available online (**communicate** it). You may be able to get permission from the copyright collecting societies that represent copyright owners in the music industry.

For information on getting permission to reproduce published music and associated lyrics, you should generally contact AMCOS/APRA. You will also need permission from the owner of copyright in the sound recording (usually a record company). If the music has not been published, you will need to contact the copyright owner directly.

For information about a licence to cover the communication of music from your site, contact APRA in relation to music and lyrics, and PCCA in relation to sound recordings.

For information on AMCOS, APRA and PCCA see our information sheet *Copyright collecting societies*.

Can a student put material onto a website without permission?

There are special provisions in the Copyright Act that allow individuals to copy material for research or study, provided the use is fair (see our information sheet *Research or study*). It is possible that putting material on a pretend website, created for class, could be considered fair dealing for the purposes of research or study. However, this exception does **not** apply if the material is reproduced or communicated for purposes other than research or study: for example, putting the material on a “live” website on the internet.

If your website is accessible by people other than your teacher and other students, or is being used for purposes other than class use or assessment, you are likely to need permission to include copyright material in it. For further information, see our information sheets *Quotes and extracts* and *Owners of copyright: how to find*. Detailed information is provided in our books *A User’s Guide to Copyright* and *Websites & Copyright*.

Further information

For further information about copyright, see our website: www.copyright.org.au or contact us.

Information from the Arts Law Centre of Australia may also be of interest to you: www.artslaw.com.au; phone: (02) 93562566.

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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.



Australian Government



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

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