



## GENERAL GUIDE TO COPYRIGHT LAW

**Sources:** *Copyright Act 1968 (Cth) (Act)* and its Regulations. Copyright Council publications.

**CURRENT** as at October 2019.

**DISCLAIMER:** The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances.

U3A Network NSW Inc accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide. **NOTE:** the collecting agencies involved in the licencing of use of copyright works all have a legal advice hotline.

### GENERALLY

#### A. NFPs

There are no general exemptions from copyright law for non-profit organisations.

#### B. U3As & EDUCATIONAL USE

Copyright Agency and Screenrights treat U3As as educational institutions. APRA/AMCOS do not. Section 113N of the Act provides:

*An educational institution may copy or communicate certain copyright material for educational purposes if the body administering the educational institution agrees to pay equitable remuneration to a collecting society.*

Section 113P of the Act provides that an educational institution does not infringe copyright in a work by copying or communication the whole or a part of the work relevantly if:

- a) A remuneration notice that applies to the educational institution and the work is in force under section 113Q; and

- b) the copying or communicating occurs solely for the educational purposes of the educational institution; and
- c) the amount of the work copied or communicated does not unreasonably prejudice the legitimate interests of the owner of the copyright.

Remuneration agreements are in place between U3A Network NSW Inc and Copyright Agency, and U3A Network NSW Inc and Screenrights.

**Note:** section 113 P of the Act provides that the relevant collecting society may, in writing (the entry notice ), notify the body administering the educational institution ( the U3A) that the society wishes, on a day specified in the notice, to enter the premises of the educational institution for the purpose of reviewing the body's compliance with the remuneration notice; and any relevant licence agreements.

### **C. SPECIFIC EXEPTIONS RE EDUCATIONAL USE**

**Section 28 of the Act** provides that the performance in class of a work (literary, dramatic or musical) and the playing of a sound recording or a cinematographic film by a teacher in the course of giving educational instruction, not being instruction given for profit, or by a student in the course of receiving such instruction, is deemed not to be a public performance. It therefore does not infringe copyright in the literary, dramatic or musical work, the sound recording or the cinematographic film. This deeming provision only applies if the audience is limited to persons who are taking part in the educational instruction.

“Performance” now means in relation to a dramatic work or a musical work making an acoustic representation of the work or a visual representation of a dramatic action in the work: section 10 (2) of the Act.

**Section 200 of the Act** allows for the making of copies and the making of an adaptation of a work (literary, dramatic or musical) in the course of educational instruction by a teacher or student provided it is done by hand on a whiteboard or paper.

**Note:** this exemption does not allow for the making of a copy by hand and the photocopying of the handwritten copy!

**Fair Dealing Provisions:** Use of copyright material for the purpose of research or study will not infringe copyright, provided the use is “fair”. See the conditions to which this exempted use is subject:

[https://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/Fair\\_Dealing\\_What\\_Can\\_I\\_Use\\_Without\\_Permission.aspx](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Fair_Dealing_What_Can_I_Use_Without_Permission.aspx);

[https://www.copyright.org.au/acc\\_prod/ACC/Information\\_Sheets/Research\\_or\\_Study.aspx?WebSiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/acc_prod/ACC/Information_Sheets/Research_or_Study.aspx?WebSiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

There are also limited statutory licences where the Copyright Act allows certain uses under a statutory licence scheme. These are discussed in the Guide to The Statutory Licence Scheme.

**EDUCATIONAL PURPOSE LICENCES: see separate Guide for details.**

Two of the copyright licences acquired by U3A Network NSW Inc. allow the use of copyright materials but only in specified circumstances. Both are known as educational licences and their protection only extends to a use of copyright materials as part of a course of educational instruction. Watching a movie or listening to music simply for pleasure does not fall into the category of doing an act protected by copyright in connection with a course of instruction.

### **CREATIVE COMMONS**

Creative Commons is an American non-profit organization devoted to expanding the range of creative works available for others to build upon legally and to share. The organization has released several copyright-licenses, known as Creative Commons licenses, free of charge to the public.

SEE <https://creativecommons.org.au/learn/licences/> for the conditions imposed on users under the Creative Commons licences.

**TED Talks:** Please read carefully: [www.ted.com/about/our-organization/our-policies-terms/ted-talks-usage-policy](http://www.ted.com/about/our-organization/our-policies-terms/ted-talks-usage-policy)

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## **THE LAW**

### **A. WHAT IS COPYRIGHT**

[https://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/An\\_Introduction\\_to\\_Copyright\\_in\\_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/An_Introduction_to_Copyright_in_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

*Copyright is a legal right, existing in many countries, that grants the creator of an original work exclusive rights to determine whether, and under what conditions, this original work may be used by others. This is usually only for a limited time: Wikipedia.*

There is no registration procedure for copyright in Australia. The protection extended by the Act is extended to works created by foreign nationals and residents pursuant to *the Copyright (International Protection) Regulations 1969 (Cth)*. The best way to check if copyright is claimed for a work is to check for a copyright notice. Lack of such a notice is not definitive of expiry of copyright as such a notice is not compulsory.

## B. WHAT ARE MORAL RIGHTS

[https://www.copyright.org.au/acc\\_prod/ACC/Information\\_Sheets/Moral\\_Rights.aspx](https://www.copyright.org.au/acc_prod/ACC/Information_Sheets/Moral_Rights.aspx)

These are obligations to attribute creators and treat their work with respect. These creators' rights are known as "moral rights". They mean you must:

- a) attribute (give credit to) the creator.
- b) not say a person is a creator of a work when they're not.
- c) not do something with a work (such as change or add to it) that would have a negative impact on the creator's reputation

These obligations do not apply if you have the creator's consent, or if you act reasonably (as set out in the legislation; industry practice can be relevant).

Creators have moral rights even if they do not own copyright in their work. They cannot sell or completely waive their rights, but they can give consent for certain things that may otherwise breach their moral rights.

Moral Right cannot be excluded.

## C. COPYRIGHT ACT 1968 (CTH)

Both copyright and moral rights are dealt with by the *Copyright Act 1968 (Cth) (Act)* and its Regulations.

### 1. What does the Act Protect?

[https://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/An\\_Introduction\\_to\\_Copyright\\_in\\_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/An_Introduction_to_Copyright_in_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

It protects:

- a) **Works** being original literary, dramatic, musical and artistic works, includes computer software.
- b) **Subject Matter other than Works** such as sound recordings, cinematograph films, TV and sound broadcasts\published edition (including sheet music).

### 2. Duration of Copyright

[https://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/Duration\\_of\\_Copyright.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Duration_of_Copyright.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

**Works** other than photographs: generally, for the life of the author plus 70 years. Applies to works created before and after May 1, 1969 and in which copyright subsisted as at 1 January 2005: s. 211, *US Free Trade Agreement Implementation Act 2004 (Cth)*.

Since 2005, the law has provided that if the creator died before 1 January 1955, and the work was published before January 1955, then copyright has already expired. This is because the previous rule was that copyright lasted for the life of the creator plus 50 years, and the 2005 changes to duration did not restore copyright to materials that were already out of copyright by that date.

**How do you try and work out whether a work is still in copyright?** First check for a copyright notice. If that proves unhelpful do the following:

- a) Identify the author of the work (may be different to the owner of the copyright in the work);
- b) Determine if the author has died, and if he has, the date of his/her death.
- c) If the author died prior to 1 January 1955, determine whether the work was published prior to 1 January 1955. If it was, the work is out of copyright.
- d) If the author died after 1 January 1955, then copyright continued for 70 Years from that date.

**Subject matter other than Works:**

**Sound recordings & cinematograph works:** 70 years after the end of the calendar year work in which first publication occurred. Copyright in the sound recording itself lasts for 70 years from the year of first publication.

**TV broadcasts & sound broadcasts:** 70 years after the end of the calendar year in which it was first made.

**Published editions:** 25 years after the end of the calendar year in which the first publication first occurred.

Because of the 2005 changes, copyright may have expired.

### 3. Rights of Copyright Owners.

[https://www.copyright.org.au/ACC\\_Prod/ACC/Information\\_Sheets/An\\_Introduction\\_to\\_Copyright\\_in\\_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/An_Introduction_to_Copyright_in_Australia.aspx?WebsiteKey=8a471e74-3f78-4994-9023-316f0ecef4ef)

**WORKS: the exclusive rights.**

They are:

- a) reproduce the work (including by photocopying, copying by hand, filming, recording and scanning);

- b) make the work public for the first time; and
- c) communicate the work to the public (for example, via fax, email, broadcasting, cable or the internet).

Owners of copyright in literary, dramatic and musical works have two additional exclusive rights:

- a) to perform the work in public (this includes reading from a book, performing a play, or playing a recording or showing a film containing the work, in a non-domestic situation); and
- b) to make an adaptation (for example, making a translation of a book, a dramatized version of a book, a translation or, or an arrangement or transcription of a musical work).

### **Subject Matter Other Than Works: the Exclusive Rights.**

**They are:**

***Sound Recordings:*** the exclusive right:

- a) to make a copy of the sound recording;
- b) to cause the recording to be heard in public;
- c) To communicate the recording to the public;
- d) to enter into a commercial rental arrangement in respect of the recording.

***Cinematograph films:*** the exclusive right:

- a) to make a copy of the film;
- b) to cause the film, in so far as it consists of visual images, to be seen in public, or,
- c) in so far as it consists of sounds, to be heard in public;
- d) to communicate the film to the public.

***Television broadcasts and sound broadcasts:*** the exclusive right:

- a) in the case of a television broadcast in so far as it consists of visual images--to make a cinematograph film of the broadcast, or a copy of such a film;
- b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds--to make a sound recording of the broadcast, or a copy of such a sound recording; and
- c) in the case of a television broadcast or of a sound broadcast--to re-broadcast it or communicate it to the public otherwise than by broadcasting it.

**Published editions of works,** such as sheet music: is the exclusive right to make a facsimile copy of the edition.

#### **4. Meaning of "Public"**

To do an act in public refers to a non-domestic use of a copyright work. In determining whether an act is a public one, critically the court considers the nature of the audience. For example, a court has held that the screening of an information video to eleven employees of a bank outside business hours was a “public performance” of the music on the video. Further, the attendance at a concert by members of a club open to all the women living in a particular village was held to be a “public” performance despite the fact it was held in private premises and was restricted to members only. The court held that the performance formed part of the public life of the club’s members who were not bound together by any domestic or quasi domestic ties. A performance which is given for free or which has a small audience may still be regarded as a “public” performance for the purposes of copyright.

The coming together of a group of U3A members for a U3A purpose that includes the use of copyright material in a manner identified above will constitute an infringement of copyright if done without the requisite licence from the copyright owner or the relevant collecting agency. It is a “public” use unless section 28 of the Act applies: see above.

## 5. Copyright Infringement

Infringement occurs when you do any of the things comprised in the copyright without the copyright owner’s permission and without any relevant defence.

In the case of Works, it is not necessary for an infringer to copy or use all of the copyright work in order to be infringing copyright. It is sufficient for the infringer to have used a substantial part of the copyright work without consent or a relevant defence.

The question of what is a “substantial part” is not defined in the *Copyright Act 1968 (Cth)* but courts have generally been interpreted it meaning as an important, recognisable, essential part of the whole. **The test of what is substantial is qualitative, rather than quantitative.**

In other words, there’s no rule that copying 10% or less of a work is okay.

## 6. Defences to Copyright Infringement

- a) What has been used without the copyright owner’s consent is an insubstantial, unrecognisable, unimportant part of the copyright work. That is a highly technical issue and should not be the subject of guess work.
- b) the alleged use was a fair dealing for the purposes of research etc.

[https://www.copyright.org.au/acc\\_prod/acc/information\\_sheets/fair\\_dealing\\_what\\_can\\_i\\_use\\_without\\_permission.aspx?websitekey=8a471e74-3f78-4994-9023-316f0ecef4ef](https://www.copyright.org.au/acc_prod/acc/information_sheets/fair_dealing_what_can_i_use_without_permission.aspx?websitekey=8a471e74-3f78-4994-9023-316f0ecef4ef)

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