

GUIDE TO:
**AUSTRALIAN
COPYRIGHT BASICS**



MARK MY WORDS

TRADEMARK SERVICES PTY LTD

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Contents

What is Copyright?	3
Rights & Infringement	5
Proving Ownership	5
International Copyright Protection.....	6
More Information	7



What is Copyright?

Copyright is an automatic right and protection granted over 'works' that are original. Many things are considered 'works' covered by copyright, such as literary, dramatic, musical and artistic works. Broadcasts, sound recordings and computer software are 'works' that comprise copyright. Some items will contain several types of copyright, such as a DVD or Video – these usually contain images and sounds that are copyright works, but will also include a screenplay that would be separately protected as a copyright work.

Essentially, copyright will protect the way a person has chosen to express an idea; the form in which it is expressed, be that as a literary expression, an artistic expression or a musical expression. Generally speaking, the owner of a copyright work has the right to communicate the work to others, reproduce and/or copy it and publish it.

What is not considered a "Copyright" work?

Ideas and concepts are not protected by Copyright. As noted, copyright covers the way ideas are expressed. For example, if you have an idea for a story, the written version of the story is your copyright. This does not prevent someone else from using the same 'idea' and writing the story in their own words. Another person could not use a substantial or important part of your writing, as this could be infringement, however, if they wrote it entirely differently infringement would not occur.

Names & Slogans are not protected by Copyright. If you use a name, title or slogan to brand or distinguish your 'work' from the works of others this would be dealt with under trademark law. Some names, titles or slogans are simply too short or at times are not 'original' enough to constitute being copyright.

People and their images are not protected by Copyright. If someone uses a person's image without permission, other laws may apply. Note that copyright does exist in a photograph of a person, but is in the photograph itself such that others cannot use/reproduce that photograph without the copyright owner's permission but does not extend to the actual person's image contained in the photograph.

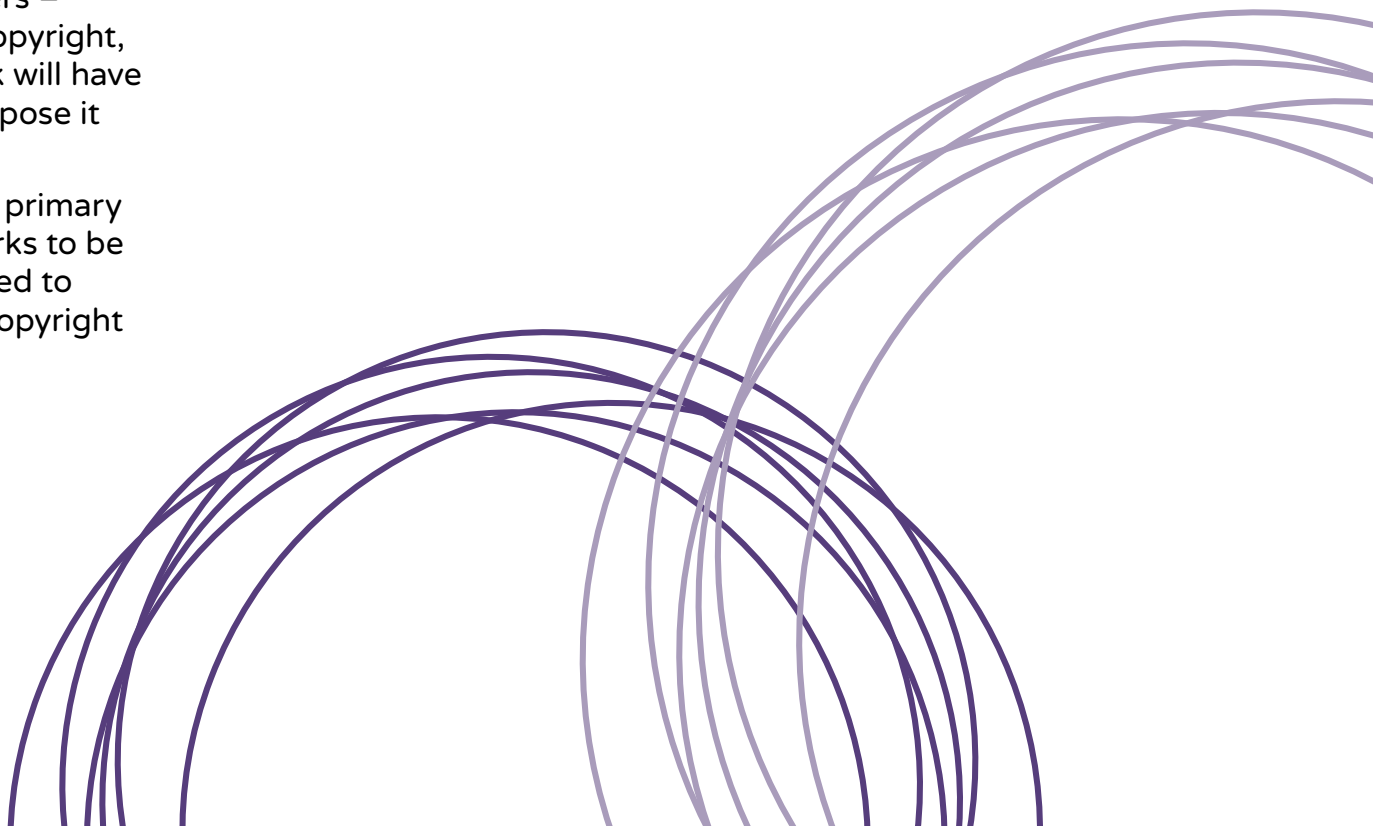
Who owns Copyright?

Generally speaking the original creator or author of a 'work' covered by Copyright is the owner. It's a good idea to have a written agreement in place if someone other than the creator is to be the owner. There are some exceptions to this, including:

- Employees - generally speaking, if an employee creates a copyright work during the term of employment, ownership will fall to the employer;
- Freelance works, such as freelance photographers – generally speaking the freelancer will own the copyright, but, the person who has commissioned the work will have the right to use and publish the work for the purpose it was commissioned;
- Where film and sound works are concerned, the primary owner is usually the person who paid for the works to be made. In some cases the performers who are used to produce the recordings will own a share in any copyright in those recordings.

How long does Copyright last?

In 2005, under a Fair Trade Agreement with the USA, Australia agreed to extend the life of copyright protection. Prior to 2005 copyright lasted, generally, for 50 years past the life of the creator of the work. Since 2005 this has been extended so that copyright generally lasts for the life of the creator, plus 70 years. In some instances, the life span of copyright is determined by the year of publication and in such cases will last for 70 years after first published.



Rights & Infringement

Copyright owners have certain rights in connection with the works covered. For literary, artistic, musical and dramatic works they have the right to reproduce the work, communicate it to the public, make the work 'public' for the first time and the right to perform the work in public, and to make adaptations of the work. The owners of copyright in films, sound recordings and broadcasts have the right to copy the work, but also to show the 'recordings' in public, transmit the recordings or broadcasts by any means and also to rebroadcast. Further, the owner of copyright in computer programs and sound or video recordings have the exclusive right to rent out articles, such as CDs or DVDs, containing their copyright.

Infringement, generally speaking, occurs when a person who is not the owner uses the copyright, or an important part of the copyright (without permission) to do one of the things that the owner has the exclusive right to do. So, an unauthorised party transmitting a sound recording without permission could be found to be infringing the copyright or a person making copies of a book without permission could be found to be infringing copyright, as these 'acts' are acts the owner has the exclusive right to do.

There are situations where use of a person's copyright, or part thereof will not infringe. If you believe your copyright is being infringed, we encourage you to seek further assistance to help determine whether action is appropriate.

Proving Ownership

As copyrights do not require registration, proving ownership can at times be difficult. There are a few things you can do to assist in the event you are ever questioned on ownership, or require it in taking action against infringers.

- Keep dated drafts and records of your work from the very beginning of your creation process;
- Show and discuss the drafts with others, as appropriate of course. This will ensure you have 'witnesses' who can attest to your creating of the copyright works at the earliest stages;
- Keep copies of any written agreements with others concerning the work that speak to you being the owner.
- Additionally, whilst the following won't make you the owner or necessarily prove ownership, they can be useful in showing dates on which you were claiming ownership.
- Use the copyright notice on your copyright works whenever possible. The notice usually uses the © symbol, followed by the owner's name and year of creation.
For example:
© Mark My Words Trademark Services Pty Ltd 2011
- Email yourself (or post yourself) copies of the copyright works. Whilst this doesn't prove you are in fact the owner— if you have other evidence that you are the owner, this can help show a date on which you were at least claiming ownership.

International Copyright Protection

Due to particular treaties and agreements in place, to which Australia is a signatory, generally speaking copyright that is created in Australia will provide the owner/creator **automatically** with rights in most other countries.

Likewise, a work that is created outside of Australia will generally be protected **automatically** in Australia.

Therefore, just because something is 'copyright' in another country does not mean it's free for use in Australia. And, if you become aware of someone else using your copyright outside of Australia without permission, you may still have the right to stop them.



More Information

Copyright can be a complex area because so many things fall under Copyright and can be protected accordingly, and rights claimed accordingly.

The Australian Copyright Council has made many fact sheets available to assist creators in determining their rights, when permission is needed, when infringement occurs. At their website you can browse these by what type of work you do to obtain the most accurate information for your works. These are available at www.copyright.org.au

Alternatively, please contact our office with questions.

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ADDITIONAL INFORMATION AVAILABLE:

- Trademark forms (Australia)
- Guide to international trademark registration
- Guide to Australian trademark registration
- Designs
- Licensing & royalties
- Other types of intellectual property

Disclaimer:

Please note that this publication is provided for information purposes only and is not intended to be legal advice, nor should it be substituted for such advice. Areas of law are complex, and professional advice should be sought prior to the commencement of any action related to trademarks.

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