



Film & Copyright

This information sheet gives an overview of copyright as it relates to making and using film.

The purpose of this information 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.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, archives and libraries.

We have a range of information sheets on a number of topics and publish books that analyse specific areas of the law. We can provide this information sheet in an accessible format on request. Check our website for information about our publications [here](#) and details of our seminar program [here](#).

Key points

- Audio-visual material is protected by copyright as a “cinematograph film”. The underlying materials incorporated in the recording may also be separately protected by copyright (e.g. the screenplay and any music incorporated into the soundtrack).
- If you are making a film, you will usually need to get clearances for any third party copyright material which appears in the film or which can be heard on the soundtrack.
- You will usually need legal advice on contracts that deal with financing, distribution and licensing of films.
- Copyright is automatic; there are no registration or copyright notice formalities required for subsistence or enforcement of Australian copyright, see our information sheet [An Introduction to Copyright in Australia](#).

Protection of a “cinematograph film”

Copyright protects the visual images and soundtrack that together comprise a film. This includes feature films, documentaries, short films, home videos, animated films, video clips and television commercials. The film elements of software may also fall into the category of “cinematograph film”. For example, in one case, a court found that computer games could be protected by copyright as “cinematograph films”.

Copyright protects the film separately from any copyright material that may be incorporated into the film. For example, a film will generally contain literary, dramatic, artistic and musical works and, in many cases, sound recordings or excerpts from other films. Each of these elements may be separately protected by copyright.

Films will be protected by copyright regardless of the format in which they are recorded. For example, a film may have been recorded onto digital betacam, hard disk, 16mm film video tape or

a variety of other digital and analogue formats, or it may have been reproduced into a different format at a later date (e.g. something shot on 16mm film that has been transferred to DVD).

What are the rights of the copyright owner?

Owners of copyright in a film have the following exclusive rights:

- to make a copy of the film;
- to cause the film to be seen and/or heard in public (e.g. screening); and
- to communicate the film to the public (e.g. broadcasting, streaming, downloading, etc.).

When is copyright in a film infringed?

Copyright in a film is infringed where someone uses all or a substantial part of the film in any of the ways exclusively controlled by the copyright owner **unless** the copyright owner has given permission for the use **or** one of the exceptions to copyright infringement set out in the *Copyright Act* applies. For more details concerning the exceptions to infringement see our information sheet [Exceptions to Copyright](#).

As a film typically incorporates a range of copyright material, one act may result in the infringement of several copyrights (e.g. copying part of a film will generally also reproduce a part of the music and of the screenplay).

Substantial part

An infringement occurs if the whole or a substantial part of copyright material is used.

A substantial part means a part that is important, essential or distinctive. A part may be important, essential or distinctive even if it is a small part. When deciding whether or not a substantial part has been used, a court will focus on the **quality** of the part used (how important, essential or distinctive it is in relation to the material it is taken from) rather than the **quantity** (how much is used).

Moral rights

Creators of copyright material have certain personal rights over their work. Creators have these rights whether or not they own copyright. These rights are:

- to be attributed as the creator of their work;
- not to have their work falsely attributed to someone else or to have their work described as unaltered when it's been altered; and
- not to have their work altered or otherwise treated in a manner that is prejudicial to their reputation or honour ("derogatory treatment").

The creators of a film, for the purposes of moral rights, are the producer, the screenwriter and the director. (A screenwriter will also have a separate set of moral rights in his or her script.)

Generally, moral rights must be respected whenever a film is:

- copied;
- screened in public; or
- communicated to the public.

Moral rights only apply to films and material included in a film if the film was made on or after 21 December 2000. For more information about moral rights and the ways they apply to different copyright materials, see our information sheet [Moral Rights](#).

From 26 July 2007, performers have had moral rights in relation to (i) their live performances and (ii) performances embodied in sound recordings. For further information, see our information sheet [Performers' Rights](#).

Who owns copyright in a film?

Generally, the owner of copyright in a cinematograph film is the maker of the film i.e. the person who makes the arrangements for the film to be made. For certain limited purposes, each director of the film (or their employer if the director directed the film under the terms of their employment agreement) will be the owner. See section 98 of the *Copyright Act*.

The exceptions to this rule are as follows:

- if someone commissions the film (pays for the film to be made), the person who commissions the film will be the copyright owner; or
- if the film is made under the direction or control of the government, the government is the copyright owner.

Ownership of copyright can be varied by agreement. Therefore, if there is an agreement in place which deals with ownership of copyright in the film, the agreement will determine who the copyright owner is. If there is no agreement in place, or the agreement does not deal with ownership of copyright in the film, the general rules of ownership set out above will apply.

In practice, the person who makes the arrangements for the film to be made is usually the producer. If the production is on a small scale, the copyright owner may well be the person who shoots the film, if he or she also directed the film and arranged for it to be made.

For more information about ownership of copyright generally, see our information sheet [Ownership of Copyright](#).

Directors' retransmission rights

The director of a film (other than a commissioned film) made after 19 December 2005, is the copyright owner of the film only in respect of the specific right to include the film in a retransmission of a free to air broadcast. In practice, this means that a director has a right to receive a share of royalties generated for retransmissions of free-to-air broadcasts of the film. However, if the director directed the movie in the course of their employment – then the employer owns this right.

Ownership of this right can be varied by agreement. Accordingly, if there is an agreement in place with deals with ownership of this specific right, the agreement will determine who the owner is.

Where someone pays for filming

Where a person commissions a film (pays another person to film or make arrangements for a film to be made), the person who pays for the making of the film will be the owner of copyright in the film. For example, if a producer pays for filming, that producer will own copyright in the film. If a company pays for a training video to be made, the company will own copyright in the video. This can be varied by agreement.

The copyright owner of the film is not necessarily the owner of copyright in any underlying material that is incorporated into the film, such as the script, the music and the artwork. Unless there is an agreement to the contrary, the writer, composer and artist will own copyright in these materials. If this type of material is commissioned, the person who pays for the work to be created will at least have an implied right to use the work for the purposes for which it was commissioned. If there is an

agreement in writing, it might expressly set out what the person who paid for the work may do with it. It is always good practice to have written agreements in relation to the creation of material that is to be used in a film.

Filming for a government department or agency

A government will be the copyright owner of material created or first published under its direction or control. In many cases, a statutory authority or agency may be “government” for the purposes of the government ownership rules.

A government, like a person, will also own copyright if it pays for filming, however these rules may be varied by agreement.

Note that a government will not necessarily own copyright just because it funds a filmmaker (e.g. through Screen Australia, the Australia Council or a state arts or film body). Generally, the funding agreement will state who owns copyright.

For more information see our information sheet [Government: Commonwealth, State and Territory](#).

Dealing with copyright in films

Copyright in films can be transferred or licensed. Transfers of ownership must be in writing and signed by the copyright owner. For more information about transferring and licensing copyright, see our information sheet [Assigning & Licensing Rights](#).

If you are considering entering into an agreement to obtain finance for the production of your film, and/or to license the rights to screen it, broadcast it, make it available online or distribute it, you should obtain specialist legal advice about your rights and obligations.

Ownership of copyright versus ownership of a physical item

Ownership of copyright is separate to ownership of the physical item in which the copyright material is embodied. The fact that you own a digital or analogue copy of a film does not mean that you own copyright in that film or have the right to use the film in the ways reserved to the copyright owner. For example, owning a DVD of *Star Wars* does **not** give you the right to screen it in public or make a copy of the film.

Sometimes, the owner of a physical copy of copyright material (such as a gallery, museum or archive) may impose access controls on that copy, even if they do not own copyright. For example, some cultural institutions may charge a fee for access to certain material even if copyright in the material has expired.

Has copyright expired?

You do not need permission to use material in which copyright has expired.

In general terms, copyright in individual frames of films made before 1 January 1955 has now expired under Australian law, as has copyright in material created by people who died before that date (provided that the relevant material was published during their lifetime).

This means that under Australian law you will not need a copyright clearance to, for example, include **still** images of World War II in your film or to make a new film adaptation of a Jane Austen novel or a Shakespeare play. However, you are likely to need permission to include **moving** images, such as footage from a Charlie Chaplin movie, in your film because even though each individual frame of the Chaplin movie is in the public domain, the footage may contain a substantial part of an underlying dramatic work that is still protected by copyright (such as the screenplay or the unfolding events portrayed in the footage).

Different periods of protection apply in other countries. Therefore, if you intend to release your film overseas, you may need permissions for material that is protected by copyright in any of the countries in which your film will be made available, even if the material is no longer protected by copyright in Australia.

For detailed information on how long copyright lasts under Australian law, see our information sheet

Making a film: when will you need a clearance?

If the material you want to use is still protected by copyright, you are likely to need to ask for permission to use it. For information about how to contact the copyright owner see our information sheet [Permission: How To Get It](#).

It is important to ensure you get your copyright clearances right. This is not only to limit exposure to infringement proceedings, but also because in order to obtain financing and/or distribution for your film, or even to make it available online on a platform like YouTube or Vimeo, you are likely to be required to give warranties (contractual promises) that your film has clear “chain of title” (that is, that all necessary rights in the underlying copyright materials incorporated in your film have been appropriately cleared).

Music

If you want to include music in a film or video you will generally need permission from the relevant copyright owners. Note that permission will generally be needed even if the music is incidentally captured on your soundtrack (e.g. there is a radio on in the background or you are filming a person and a band is playing out of shot).

If you film or otherwise record people performing music, you will need consent from each of the performers.

Artistic works

If you want to use an artistic work that is protected by copyright in your film, you will generally need permission. There are, however, some special exceptions available under Australian law.

First, if an artistic work is included in your film but is merely incidental to the principal matters represented in the film, you will not need permission. For example, the filming of an artwork may be incidental if there is a painting on a wall in the background as characters walk past.

Second, sculptures or works of artistic craftsmanship (such as woodwork or enamelling) which are in public places (including, for example, inside public areas of town halls and shopping centres) may be filmed and photographed without permission, provided they are not there just temporarily.

If you are making a film that you hope will have international release, you may need specialist advice from a private solicitor on the extent to which you should rely on these exceptions.

Literary works

If you want to include all or a substantial part of a literary work that is protected by copyright in your film, whether spoken by a character or displayed on the screen, you will generally need permission.

You will also need permission to adapt a copyright protected literary work into a dramatic form such as a screenplay.

Dramatic works

If you want to include a dramatic work such as a play, dance or mime that is protected by copyright in your film you will generally need permission. A screenplay is a dramatic work and you will need the permission of the copyright owner to use the screenplay as the basis for your film.

If you film a performance of a play, mime or choreographed show you will also need permission from the performers.

Using part of a film in another film

If you include footage that is protected by copyright in your film, you will generally need permission.

Check the footage and soundtrack you want to use for any underlying copyright material, such as artistic works and any important, essential or distinctive parts of the script. In many cases, these copyrights may be owned or controlled by whoever owns copyright in the footage, but this won't necessarily be the case in relation to music or any pre-existing sound recording that has been incorporated into the soundtrack.

Ideas for films

Copyright does **not** protect ideas, instead it protects the way those ideas are expressed.

If you have an idea for a film, you may want to keep it confidential until you have written a screenplay or recorded your idea in some other form that is protected by copyright. If you **do** want to disclose your idea to a producer or television station, for example, it may be best to get advice about the law of "confidential information" before you do so. For more information see [Ideas: Legal Protection](#).

Film titles

Names and titles are not generally protected by copyright. However, other areas of law, such as trade marks and competition and consumer laws, may be relevant. See our information sheet [Names, Titles and Slogans](#) for further information.

Filming sporting events and filming in parks and other locations

There is no copyright in sporting events. However, people who control a venue may impose restrictions on entry. These restrictions may include a prohibition on filming and photography. In this way, organisers of events such as sporting events are able to maintain some control over the distribution of images of their event.

In addition, legislation may restrict photography and filming for commercial purposes in particular areas and many local councils have rules about commercial filming, particularly where this may involve inconvenience to the public.

Commonwealth reserves

The *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) introduced important procedures and restrictions in relation to commercial activities in Commonwealth reserves.

A Commonwealth reserve is defined as one proclaimed by the Governor-General. They include Kakadu National Park, Uluru–Kata Tjuta National Park, Booderee National Park, Australian National Botanic Gardens, Christmas Island National Park, Pulu Keeling National Park, Norfolk Island National Park and Commonwealth Marine Parks and Reserves.

To photograph or film in a Commonwealth reserve for commercial purposes you need to:

- contact the Commonwealth reserve and get a permit (you will be asked to enter into a “Location Agreement”); and
- abide by the conditions imposed by the Director.

If you breach a Location Agreement (or do not enter into one), a ranger or warden may require you to hand over all copies of any footage or photographs taken and any camera or other device you have used.

For further information, contact the relevant National Park. You can download application forms for permits from the Commonwealth Department of Environment at www.environment.gov.au/topics/national-parks/parks-australia/permits-and-licences or you can also contact the Department of Environment on (02) 6274 1111.

The regulations extend not only to photographing and filming in Commonwealth reserves, but also to later commercial (i.e. non-domestic) uses of images and footage taken in those reserves.

Sydney Harbour Foreshore

The *Sydney Harbour Foreshore Authority Regulations 2006* (NSW) restrict the taking and subsequent use of photographs and film footage for commercial purposes within public areas unless authorised by the Sydney Harbour Foreshore Authority.

Public areas are defined as any part of the Sydney Harbour foreshore that is managed by the Authority and that the public is entitled to use; these include Luna Park, the Rocks and Circular Quay, Darling Harbour, Woolloomooloo, Pyrmont, White Bay and Rozelle Bay. For further information, contact the Sydney Harbour Foreshore Authority at www.shfa.nsw.gov.au or on 1300 655 995.

Similar State legislation may apply in relation to areas within capital cities in other States.

Filming people

Under the *Copyright Act*, you will need to get consent to film anyone who is performing something (including music, circus and variety acts and mime). However, there is no general law of privacy in Australia which prevents people being filmed without permission.

Nonetheless, there are laws that affect certain uses of a person’s image, even if they are not performing something. If, for example, the person’s image is used in a way that suggests the person has authorised that use, the person may be able to take legal action for breach of fair trading or competition and consumer laws. The law of defamation may also be relevant (if the image is used in a way that would lower the public’s estimation of that person).

If you are planning an international release of your film, you should seek specialist legal advice about relevant laws in other countries.

Filming houses and buildings

Buildings are protected by copyright, but Australian law allows a building or a model of a building to be filmed without the copyright owner’s permission. In some cases, the use of the image may breach other laws, such as “passing off” and competition and consumer laws. These areas of the law may be relevant, for example, where a well-known house is used to advertise a product – people seeing the advertisement might be misled into thinking that the use of the house in this way had been authorised by the owner.

Also, owners of buildings and houses have the right to restrict physical access to their property and may therefore prevent filming in this way.

If you are planning an international release of your film, you should seek legal advice about relevant laws in other countries.

Using films and parts of films: when will you need a clearance?

In this section, we look at when permission may be needed from the copyright owner to screen films or use elements of other people's films.

Screening a film

If you screen a film for people outside a private or domestic sphere, it is likely that the screening will be "in public" for copyright purposes. If this is the case, you will generally need permission from the copyright owner.

For more information see our information sheets [Films: Screening in Public](#) and [Films: Screening in Class](#).

Using a still image from a film

It is unclear whether, under Australian law, reproducing an individual frame or still image from a film made **on or after 1 May 1969** requires the copyright owner's permission. Arguably, a famous or recognisable still could be regarded as an important, distinctive or essential part of the film. There is also a technical argument: a still image from a film could be a photograph. If this were the case, any unauthorised reproduction could infringe copyright regardless of the importance of the still to the film as a whole.

You will generally need permission to reproduce a still from a film made between **1 January 1955 and 1 May 1969**. (This is because footage of this vintage is, for copyright purposes, protected as a series of photographs, and photographs of this vintage are all protected by copyright.)

Copyright in the photographs which make up the footage of a film made before **1 January 1955** has now expired. In some cases, however, such photos may include images of a protected artistic work, such as a costume or set.

Using a soundtrack

If you want to use excerpts from a soundtrack from another film in your film, you may need permission from several people.

First, you may need permission from the owner of copyright in the film. This is because the soundtrack forms part of the film and permission may be needed if you are using an important, essential or distinctive part of the film.

In addition, you may need permission for the use of any pre-existing works and sound recordings of those works that have been used as part of the soundtrack. The most common example of this is where a pre-existing recording of music is incorporated into a soundtrack. In such cases, permission may be needed both in relation to the music (usually from a publisher) and the sound recording (usually from a record company).

Using the screenplay

The screenplay of a film is protected by copyright as a dramatic work. If you want to reproduce the screenplay (for example, by doing a remake of the film), perform it in public, adapt it into a novel, or translate it, you will need permission. The first person to contact will usually be the relevant studio but check to see if the film's credits have any specific information.

If you want to quote a film script in a work you are creating, see our information sheet [Quotes & Extracts](#).

Using characters or plot

Although ideas and characters are not protected by copyright under Australian law, you may infringe copyright in a film if you use a selection of characters and plot in a way that is substantially similar to someone else's film. For example, the film studio that made the film *Jaws* successfully sued another film company that made a film using a similar combination of events and characters.

Even if copyright isn't infringed, passing off and competition and consumer laws may prevent you from using characters from other films without permission. These areas of law are likely to be relevant if consumers are likely to believe that the use of the characters is authorised by a legitimate source when in fact it is not.

Frequently asked questions

I have an idea for a film. How can I make sure no one else uses it?

Ideas are not protected by copyright. If you have an idea for a film or a television show, the best way to prevent other people from using it is to keep it secret. If you want to divulge your idea to a producer or anyone else who may use the idea without your permission, you should get advice about the law of confidential information. See our information sheet [Ideas: Legal Protection](#).

Once an idea is reduced to "material form" (such as a written outline, treatment or script), it will be protected as a literary work or as a dramatic work. This means that if you give it to a producer, and he or she then uses it for a film without your permission, he or she might not only be in breach of a duty of confidentiality to you, but is also likely to be infringing your copyright.

What should I do to protect my script?

As a legal matter, your script is protected by copyright from the moment you begin to type it up or write it down. As a practical matter, it is always worth putting the "copyright notice" onto copies that you distribute, to remind people that it is protected, and to let them know that you're the copyright owner. The notice consists of the "copyright symbol" followed by your name. You can also put the relevant year. For example: "© Australian Copyright Council 2019".

As a service to members, the Australian Writers Guild (AWG) has a script registration service. For more information, see the AWG's website, <https://awg.com.au/membership>.

Registration with the AWG is **not** a means of registering copyright. As stated above, your script is protected by copyright from the moment you begin to write it down or type it up. However, the registration service is a good way of establishing the completion date and identity of your work.

Can I reproduce a television commercial?

A television commercial is protected by copyright. The footage will be protected as a cinematograph film and there may be separate copyright material such as music or scripts or storyline used in the ad. If you want to reproduce or screen a commercial in public, you will, therefore, generally need permission from all the relevant owners of copyright.

Can I base my film on an idea from a book?

If a book is simply the source of inspiration for your idea, you may not need permission, as ideas and information are not protected by copyright

However, the owner of copyright in a literary work, such as a history book or a novel, has the exclusive right to adapt the work. This right includes the right to convert the book into a dramatic work such as a screenplay. If you want to create a screenplay based on a book, you will need

permission. Usually this is done by securing an option agreement with the publisher or writer (this agreement deals both with making the adaptation, and with later permission to actually make the film – the option is exercisable if, for example, finance and so on is secured).

If I enter my film in a competition, who owns copyright?

If you have made a film and you want to enter it into a competition, you should check whether there are any conditions of entry. The competition organisers may require that copyright be transferred to them in the event that you win the competition (or on some other terms). You should be aware of such conditions and make an informed decision about whether those conditions are acceptable to you **before** you enter the competition.

Can I copy a film I own into a new format?

If you want to copy a film that is protected by copyright, you will need permission from the copyright owner unless all the copyrights have expired, or a special exception applies. If you own a copy of a film, you may satisfy the private use copying exception.

If no exception applies, then the fact you own a physical copy of a film does **not** mean that you have the right to copy the film into either the same or a different format.

Further information and advice

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information 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 the Legal Advice section of our website copyright.org.au.

Reproducing this information sheet

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

About us

The Australian Copyright Council is an independent, non-profit 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.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice education and forums on Australian copyright law for content creators and consumers.

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.



Australian Government



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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