

Churches & Copyright

This information sheet sets out some of the things you need to know to work out whether or not you need permission to use music in your church. It also outlines some of the most important ways in which churches can get permission.

Information relevant to the educational activities of schools, colleges and universities controlled by religious organisations is provided in our information sheet *Education: Copyright Basics (G048)* and our practical guides for educational institutions which are available for purchase in our bookstore: www.copyright.org.au/bookstore

We update our information sheets from time to time. Check our website at www.copyright.org.au to make sure this is the most recent version, and for other information, such as our training program.

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.

Key points

- Permission is likely to be needed to perform or play copyright music and lyrics outside worship services.
- In most cases, you will need permission from the copyright owner and the performer if you want to record music.
- Unless copyright has expired, you may need permission to photocopy music or reproduce tunes and words in overheads or service sheets.

No general copyright exception for churches

There are no general provisions in the Copyright Act allowing churches to use copyright material without the copyright owner's permission. Under copyright law, churches and other religious organisations are in the same position as non-profit organisations, companies, local councils and individuals. Unless they can rely on a special exception, all of these users need permission to use the material in the ways reserved to the copyright owner.

When is permission needed from a copyright owner?

Permission is needed from a copyright owner to:

- use material that is protected by copyright;
- in one of the ways exclusively reserved to the copyright owner;
- where copyright has not expired; and
- there is no special exception that applies to the use.

Identifying what is protected by copyright

Copyright protects:

- literary works;
- dramatic works;
- musical works;
- artistic works;
- films (the moving images and soundtracks);
- sound recordings;
- broadcasts (the skill, effort and cost in assembling, preparing and transmitting programmes); and
- published editions (the layout, typesetting and format of published works).

A single item may include several kinds of copyright material. Each of these may be owned by different copyright owners. For example, a music CD will include some or all of the following, each of which may be separately protected:

- musical works (such as the music to songs) on the recording;
- any arrangements of these musical works;
- any lyrics going with the music (literary works);
- any translations of those lyrics (separate literary works);
- the sound recording itself;
- any photographs or drawings on the cover (artistic works); and
- any printed text, including on the cover or in booklets or liner notes that accompany the CD (literary works).

Arrangements and translations

A work which is “derivative” or based on an earlier work may itself be protected by copyright, provided it is the result of some skill or labour on the part of its creator. Thus arrangements or transcriptions of music, or translations of song lyrics, will often be separately protected by copyright.

Published editions

If you are using sheet music, it is important to be aware that copyright protects the “published edition” of printed material. This refers to the typesetting and typography of the printed edition, and protects the publisher’s investment in preparing the work for publication. So even if copyright in the words and music has expired (for example, in Handel’s *Messiah*), copyright in the published edition may not have.

Exclusive rights of copyright owners

The exclusive rights of an owner of copyright in a musical or literary work (such as the music or words to a song) include the right to:

- **reproduce** the work, including copying by hand, photocopying, scanning, copying a digital file, printing out and recording or filming the work or a performance of it;

- **communicate** the work in a non-domestic context (for example, emailing, faxing or broadcasting the work or putting it on an intranet or internet site);
- **perform** the work live, or play a recording of it, in a non-domestic context; and
- **adapt** the work (for example, making an arrangement of a musical work, or translating song lyrics).

The exclusive rights of an owner of copyright in a sound recording include the right to:

- **reproduce** the sound recording;
- **communicate** it in a non-domestic context; and
- **play** it in a non-domestic context (generally, other than with family or friends).

Has copyright expired?

Once copyright has expired, the material may be used freely, without permission.

For published musical and literary works (such as song music and lyrics), copyright in the music generally lasts until 70 years after the year of the composer's death, and copyright in the lyrics generally lasts until 70 years after the year of the lyricist's death. For films and sound recordings, copyright lasts for 70 years from the year of first publication. Copyright in a published edition only lasts for 25 years from the end of the year of first publication.

Copyright has generally expired in music and lyrics that were created by people who died before 1955 and published before 1955.

For example, copyright in music by Basil Harwood (who died in 1949) or that were published or publicly performed before 1955 (for example, the tune "Thornbury" – often used for the words "Thy hand, O God, has guided") has expired, and may be freely used. In contrast, copyright in Ralph Vaughan Williams' works (such as "For all the Saints") will still be protected as he died in 1958 – generally, copyright in his works will last until 2028.

For detailed information, see our information sheet *Duration of copyright*.

Does a special exception apply to your use?

There are some situations in which people don't need permission to use copyright material: for example, a fair dealing for the purpose of research or study or criticism or review. See our information sheets *Research or Study (G053)* and *Fair Dealing (G079)* for information on some of these exceptions.

Under the special exceptions most likely to be relevant to churches:

- a teacher may make a copy by hand in the course of educational instruction (for example, a Sunday School teacher may copy a work by hand onto an overhead transparency or onto a whiteboard, but not a digital whiteboard that can copy, provided this is done "in the course of educational instruction" rather than as part of worship);
- a teacher or student may perform music, or play recorded music, in the course of giving or receiving educational instruction in class, provided the instruction is not given for profit, and the audience is limited to people taking part in the instruction (this provision is likely to allow copyright material to be performed or played in a Sunday School class, but would not apply to performances at which parents or other family members or members of the congregation are present); and

- we understand that churches are covered by an exception in the Copyright Act that permits registered charities to play sound recordings in public without the permission of the owner of copyright in the **sound recording** (provided the playing is part of that organisation's activities or for its benefit). Note, however, that this exception does **not** cover the music or other material that is heard on the sound recording so you would still need to consider whether permission or a licence is required to perform this material.

Moral rights

Creators (such as the writers of the music and lyrics of a song) have "moral rights" in their work. These are separate from copyright, and cannot be bought and sold: unlike copyright, moral rights can only be held by the individual creator of a work or film. The most important of these rights is likely to be the "right of attribution". Therefore, it is good practice for churches to accurately attribute the creator(s) of the words and music when a song is reproduced (on overheads, in hymn books or service sheets, and in recordings).

For further information, see our information sheet *Moral Rights*.

Performing live music & playing recorded music

Generally, permission is needed to play copyright music and lyrics "in public", whether as a live performance or by playing a recording. For the purposes of copyright, most performances or playing of music outside the home are "in public", and this includes performances or playing of music in churches during services and other church activities.

Playing live music

If the performance is live, permission will generally be needed from the owner(s) of copyright in the music and lyrics. Most public performances of music are licensed by the Australasian Performing Right Association (APRA), a non-profit society that collects and distributes copyright fees on behalf of composers and music publishers.

However, APRA has a policy of permitting performances of musical works in its repertoire during church services (for example, worship services, weddings and funerals) without the payment of a fee.

You will, however, need a licence from APRA if music is performed on your church premises in any other context, such as at concerts, youth group events, meetings, social groups and fêtes.

Note also that APRA does not license the public performance of major musical works such as operas, oratorios, and choral works longer than twenty minutes.

For further information, contact APRAIAMCOS:

<http://www.apra-amcos.com.au/MusicConsumers/MusicinBusiness/Churches.aspx>

Playing recorded music: sound recordings and the music on a sound recording

In general terms, people who want to play recorded music in public need a licence from the Phonographic Performance Company of Australia (PPCA) **in addition** to a licence from APRA. PPCA licenses the public performance of sound recordings.

However, your church does not need a licence from PPCA for situations where a recording is played for the benefit of the church (for example, at events to raise money for the church or for a church-related charity, or during church services such as Sunday services, weddings and funerals,

and youth group activities). For church activities other than worship services, a licence from APRA may still be required, but a PPCA licence is not needed.

If recorded music is played on church premises by other organisations (for example if a church hall is hired out for a function where recorded music is played), generally a licence from both APRA and PPCA will be required.

Recording music

Making audio recordings of services

Recording live music requires permission from the owner of copyright, unless the copyright has expired or a special exception applies.

In general terms, if your church wants to make audio recordings of its services, you will need to get permission either from the Australasian Mechanical Copyright Owners Society (AMCOS) or a Christian music collecting society to record music controlled by their members. (Which organisation you contact for permission will depend on what music you are using: not all Christian music publishers are members of AMCOS.)

If you will be recording any protected sound recordings that are played during the services, you will generally also need permission from each relevant record company.

You also need the consent of each of the **performers** when recording live music. (Note that in the absence of an agreement to the contrary, the performers will co-own the copyright in the recording with the person who owns the master of the recording itself unless you commission someone to make the recording for you or you get each performer to assign his or her interest to you or your organisation or all of the performers are your employees and you haven't agreed that they can own copyright).

The licences available from collecting societies for recording music in church services are set out in the following paragraphs.

Recording church services for people unable to attend

AMCOS and the Australian Record Industry Association (ARIA) grant a free general licence to churches to record church services in which musical works and recordings controlled by members of either of those organisations are played, if the recordings are made for people unable to attend the services due to age, illness or disability or because they are housebound ("shut-ins"). This licence only applies if the recordings are distributed free of charge. You do not need to contact either AMCOS or ARIA in relation to this licence.

However, this licence does not cover music or sound recordings where the copyright owners are not members of AMCOS or ARIA. As noted above, many Christian music publishers are not members of AMCOS. Nor does the licence cover other copyright material (such as recited poems, liturgies or sermons) recorded as part of the service.

For further information, see the APRA/AMCOS publication *Music copyright for Churches*, which can be downloaded from:

http://www.apra-amcos.com.au/downloads/file/Music%20Consumers/churches_2006.pdf

Christian music licences

There are a number of organisations which offer licences to churches in relation to recording Christian music in church: Christian Copyright Licensing International (CCLI), Word of Life and Licensing are the ones we are aware of. Which licences you need and which organisations you

should contact will depend on what you are doing and on which organisation can offer licences for the uses you wish to make.

The licences offered by CCLI permit recording of their member's music within church services. For further information, go to: www.ccli.com.au

If you have a licence from one of the other Christian music collecting societies, you should check whether or not, and if so in what circumstances, your licence allows you to record the music. None of these licences cover sound recordings, or other copyright material recorded as part of the service. Contact details of the organisations we are aware of are listed at the end of this information sheet.

If your church has such a licence, you should return the forms they supply for detailing the music used to the collecting society, **not** to the Australian Copyright Council.

Licence for recording published music

The Copyright Act allows the recording of performances of published music where the recordings are to be sold, provided the copyright owner is notified and receives royalty payments. A licence (known as the "Audio Manufacture Licence") that reflects this statutory scheme is offered by AMCOS.

For further information, see APRA/AMCOS: www.apra.com.au

Making video recordings of services

Weddings, christenings, funerals

AMCOS, in conjunction with ARIA, offers licences allowing music to be recorded onto video of private functions (such as weddings and christenings) for private or domestic use. The licences cover the copyright in both the music and the sound recordings. The licence allows up to 20 copies of the video to be made.

Obtaining this licence is the responsibility of the person making the video (for example, the relevant relative or professional video maker). Churches are not obliged to check whether or not people recording weddings on church premises have a licence to do so.

The CCLI licence permits both audio and video recording of some of its members' works in church services. Of course, separate permission would be needed from the owners of copyright in any sound recordings or other copyright material you are recording, and from any performers being recorded.

Other church services

If the church itself wants to make videos of church services it will need to get a special event licence from AMCOS/ARIA, either on a service by service basis or on an annual basis. For further information about these licences, contact AMCOS.

If your church uses music not licensed by AMCOS/ARIA, you may be able to rely on a licence from one of the Christian licensing organisations. We understand that the CCLI licence permits both audio and video recording of some of its members' works in church services. Of course, separate permission would be needed from the owners of copyright in any other copyright material recorded as part of the service, and from any performers being recorded.

Copying print materials

Generally, permission is needed to copy printed materials, including music and lyrics, unless copyright has expired or a special exception applies.

Text, including song lyrics

Copyright Agency grants a licence which allows churches, in specific situations, to copy material in which Copyright Agency's members hold rights. The licence allows material to be copied for use in church services and in related church activities, such as Sunday School classes. (Note, however, that this licence does not cover copying by church schools for educational use. That copying is done under a statutory licence for educational institutions, which is also administered by Copyright Agency.)

The Copyright Agency licence covers most printed material, including hymn books (if they only contain lyrics), but does not cover music. If you want to copy sheet music, for example to hand out to the choir, then unless all copyrights have expired, permission will be required from the music publisher or from the relevant Christian music collecting society.

For more information see Copyright Agency's information sheets *Worship Licence* and *Worship Licence: Group Option*, or contact Copyright Agency or the relevant Christian music collecting society.

Printed music

Permission to copy printed music should usually be sought from the publisher of the music. However, there is no obligation on the music publisher to give permission, and the publisher is likely to refuse permission if the music is available for purchase.

As noted above, the licence available from Copyright Agency does not cover music. However, the Christian music licensing organisations, such as CCLI, offer licences for reproducing music and lyrics. For further information, contact the relevant collecting society.

You may also be able to obtain information from AMCOS: www.apra.com.au

Frequently Asked Questions (FAQs)

How do I find out what music is in the "public domain"?

Material in which copyright has expired is said to be in the "public domain". Generally, you will need to apply the various rules relating to duration of copyright to work out whether or not copyright has expired. For more information, see our information sheet, *Duration of Copyright (G023)*.

There is no comprehensive list of musical works in the public domain in Australia. AMCOS compiles a list of Christmas carols and similar works and their copyright status. The list is available on AMCOS's website.

AMCOS and the bodies that license church music also have extensive databases and lists which may help you work out whether or not a work is still protected by copyright. Often, however, you will need to consult music reference books (available in public libraries) to find the necessary information about when a composer or lyricist died.

How much of a hymn book may I photocopy?

For the purposes of copyright, a hymn book is not a single “work” but a collection of works; the music to each hymn is regarded as a separate “work”, as are the words to each hymn. This is important when determining whether or not a “substantial part” has been reproduced: the part is assessed having regard to the work it is part of (such as the music for a hymn) rather than the whole book it is in (such as a hymn book).

Copying the whole, or a “substantial part”, of the music or words of a hymn requires permission, unless a special exception applies, or the copyright has expired.

The typographical arrangement in a hymn book (“published edition”) may also be protected by copyright. However, it is unlikely that you would need permission in relation to the typographical arrangement if you are just photocopying a few hymns; rather, you will need to concentrate on whether or not you need permission to copy the music and lyrics of those particular hymns.

The photocopying of some hymns is licensed by the various licensing bodies whose contact details are provided below.

Can I transpose a hymn into another key and photocopy several copies of the transposition?

In general terms, you will need permission from the copyright owner, since transposition involves reproduction of the original work. However, AMCOS states that if you own the original print music of work controlled by its members “you may exactly transpose (that is transcribe but not rearrange) one transposition only for the sole purpose of performing the piece. The resultant transposition may not be photocopied, sold, hired or lent.” (See AMCOS’ publication *A Practical Copyright Guide to the Use of Print Music in Australia*, which can be downloaded from: http://www.apra-amcos.com.au/downloads/file/Music%20Consumers/churches_2006.pdf).

When performing, choir members have to juggle a number of Psalters, hymn books and anthem books. Can we make folders of photocopies to avoid this problem?

There is no special provision in the Copyright Act that allows photocopying in these circumstances – if you want to make photocopies in these circumstances you will need permission, unless you already have a licence that allows the copying or all relevant copyrights have expired.

Members of our congregation meet in one another’s homes for services. Do we need permission to sing hymns at these meetings?

We understand that APRA’s policy of not requiring formal permission for public performances of most music during church services extends to church groups operating in homes.

Copyright collecting societies

APRA/AMCOS: www.apra.com.au; phone: 1300 852 388 (Licensing Services) or (02) 9935 7900.

PPCA: www.pcca.com.au; (02) 8569 1111.

Copyright Agency: www.copyright.com.au; (02) 9394 7600.

Christian Copyright Licensing International: www.ccli.com.au; (02) 9894 5386

MediaCom/LicenSing: www.mediacom.org.au; (08) 8371 1399 or 1800 811 311.

Word of Life International: www.freelink.com.au; (03) 5664 9245.

Further information

For further information about copyright, and about our other publications and seminar program, see our website: www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is 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 information about the service, see:

<http://www.copyright.org.au/legal-advice/>

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.

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.

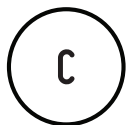


Australian Government



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

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Websites & Copyright

This information sheet is for web developers, bloggers, website designers, startups, businesses and anyone interested in copyright issues relevant to creating and managing websites.

We assume you are familiar with the basic copyright principles set out in our information sheet *An Introduction to Copyright in Australia*.

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.

See also our information sheet *Websites: Social Networks, Blogs, & User-generated Media* for more information on managing user contributions to your website.

Key points

- Whole websites are not protected by copyright. However, component parts of a website, such as video, text, artworks, logos, photographs, music and the underlying source code and files, may be protected.
- When a website designer is paid to create a website, it's a good idea to have a written agreement that, among other things, specifically deals with copyright and moral rights issues.

Copyright protection and websites

A website, as a whole, is not protected by copyright. Rather, individual components of it are likely to be protected. For example:

- articles, blog posts and most content in written form (“literary works”);
- photos, logos, illustrations, charts, graphical elements and other visual content (“artworks”);
- music scores, arrangements and guitar tablatures (“music”);
- recorded audio such as songs and podcasts (“sound recordings”);
- video and animation (“cinematograph films”); and
- tables of words or symbols (“compilations”).

Using third party material in websites

In most cases where you are posting material to your website that you or your organisation didn't create, you will need permission.

If a client owns copyright in material and supplies it to you to use on a website you are creating for him or her, you will have “implied permission” to use it for this purpose (see below).

When can you use material without permission?

You won't need to get copyright permission if:

- the material is not protected by copyright (for example, ideas, information, names*);
- copyright has expired (for example, a photograph taken before 1955);
- you are not using a “substantial part” of the work (for example, you are reproducing one sentence from a full-length novel); or
- a special exception applies (for example, your use of the material is a fair dealing for criticism or review, for reporting news, or for parody or satire).

*Note, however, that in some cases other areas of law may be relevant – for example, trade mark or competition and consumer law may affect your rights to use names or slogans in particular ways.

Exceptions to infringement are limited and for more information, see our information sheets *Fair Dealing* and *Parodies, Satires & Jokes*.

When will you already have permission?

Express permission

In some cases, you may not need to contact the copyright owner directly because he or she has already granted express permission for anyone to use the material in certain ways. For example, statements about how the reader is entitled to use a PDF document downloaded from a website may be included as part of the document or at the location on the website from where the document is offered for download.

Similarly, material available on the internet is sometimes covered by a generic licence such as those promoted by Creative Commons. Many of these permit commercial and non-commercial uses. For more information, see our information sheet *Creative Commons Licenses*.

In each case, check that the licence covers what you want to do. Such permission may be subject to terms and conditions (such as acknowledgment of the source or creator of the material, not making changes to it, or non-commercial use only). If you want to use the material in ways that aren't covered by the express licence, you will have to ask for further permission directly.

Implied permission

In some cases you may have permission (a licence) that is implied from the circumstances, even though the copyright owner has not expressly granted permission. For example, if you commission an artist to create a logo for use on your website, you will have implied permission to use the logo for that purpose.

The scope of an implied licence is the **minimum** necessary to make sense of the situation. For this reason, and because it can be hard to work out the precise limits of an implied permission, it's generally preferable to get **express permission in writing** for all uses you are likely to want to make of the material.

The fact that material is already on the internet does **not** mean you have implied permission to download or otherwise use it.

Getting permissions (clearances)

Identifying and locating a copyright owner

Generally, the creator of the material (or his or her employer, if it was created as part of his or her job) owns copyright in it. However, in many cases, the creator may have assigned or licensed some or all of the rights to someone else. For example, book authors often grant publishers extensive rights to negotiate on their behalf.

The following points will help you to find and contact the person who can give you permission:

- if the material has been published, contact the publisher for permission or information;
- if you find the material on a website, contact the person operating the website for permission (unless it appears that the material is on the site without the copyright owner's permission – for example, a website offering unauthorised film and music downloads);
- if the material is in hard copy, look at the information on the packaging, cover or imprint page for information about the copyright owner, publisher or the appropriate person to contact;
- if the material was published or commissioned by a government, contact that government for permission; and
- relevant collecting societies or professional bodies may be able to help you contact copyright owners.

For more detail, see our information sheets *Permission: How To Get It* and *Artworks: Getting Permission*.

Collecting society licences

Copyright collecting societies will in some cases, be able to grant you a licence to use various material. In such cases, you won't need specific permission from copyright owners to use material within the scope of your licence.

Collecting society licences can cover an extensive range of material, including material created in other countries. This is because most collecting societies have reciprocal arrangements with similar organisations in other countries.

APRA/AMCOS can grant licences for certain online uses of **music**. Information is provided on its website at www.apra.com.au

You will need a separate licence if you wish to use pre-existing sound recordings (like commercially released MP3s or CDs) on your website. For more information, contact PCCA at www.pcca.com.au

Copyright Agency/Viscopy can grant licences for online use of artworks created by members: see www.viscopy.org.au. Viscopy's business is now managed by Copyright Agency. Viscopy remains a separate legal entity, with members and a board.

Points to note when getting permission

When you get permission, it's important to get it from the person or organisation entitled to grant that permission. In practice, if you have any doubts as to whether or not the person or organisation purporting to give you permission is in a position to do so, you could ask for evidence or for a warranty and indemnity from the person granting permission. If you remain unsure, consider using alternative material.

Make sure the rights you ask for "match up" with what you want to do with the material. If for example, you want to allow visitors to your site to print out copies of the material or you wish to sell copies or make translations, you will need to ensure the clearance you get allows you to do so.

For further information, see our information sheet *Assigning & Licensing Rights*.

Moral rights

Creators of copyright material have the following rights:

- to be attributed when their work is used;
- not to have their work falsely attributed to someone else, nor to have the altered work attributed as if it were unaltered; and
- not to have the work treated in a manner that would prejudice the creator's honour or reputation.

In some cases, you may be able to defend yourself against a claim by arguing it was **reasonable** not to attribute a creator or to treat the work in a way that could prejudice the creator's honour or reputation.

However, in most cases it is preferable to get the creator to consent to the way you want to use his or her material, if possible.

For further information, see our information sheet *Moral Rights*.

Linking to third party websites

The legal position

In general terms, and subject to the comments below, it's unlikely that simply providing a link raises copyright issues under Australian law. However, the legal implications of providing links are not entirely settled.

Providing a link to a website's home page is unlikely to raise objections. Many website operators may, however, object to "deep linking" – that is, providing links to pages within a website, bypassing the home page. There may be a number of reasons for this, including a wish to ensure visitors to the website see the home page and are counted for revenue purposes, and a wish to ensure that links to out-of-date material are not maintained. Note also that, in some circumstances, linking may raise issues under areas of law such as trade practices law.

We understand there are **technology-based** methods available to make it difficult or impossible to link to particular pages on a website or to limit access to particular parts of a website. However, it would currently appear difficult for a website proprietor to use **legal** arguments to attack deep linking unless all visitors agree not to make deep links as a condition of access to the website (or particular sections of it).

When can linking get you into trouble?

“Authorising” infringement

If your website links to material that infringes copyright or to websites that you know contain infringing material, you could be held liable for authorising infringements by visitors to your website who follow the links.

In 2005, the Federal Court held that a website operator was liable for authorising infringements because the website encouraged users to post links to music files and download these files by clicking on the links. The website operator hadn't placed the links on the site himself but was aware that many linked to material that infringed copyright. He took no steps to check the legality of the linked files and encouraged his users to access and download material.

“Framing” material from other websites

It is possible to “frame” material from other websites within your own, so that visitors to the site see the material without being aware they are actually looking at a different website. Although it is not entirely clear, this practice may raise issues under copyright law.

Aside from the copyright aspects, this technique may also put you at risk of action under other areas of law, such as consumer and competition law (especially if you are framing material from a commercial rival's website).

It is generally preferable to make it clear to the user that he or she is looking at a different website, and therefore it is probably a good idea not to frame material from other websites without permission.

Agreements between website designers & clients

As with any other agreement in which someone is commissioned to produce material, it is highly desirable to have a written agreement setting out exactly what is required of each party and what rights each party will have in relation to the completed material.

In many cases, especially for website designers who regularly work on commission, it is a good idea to get a lawyer to draft a standard agreement appropriate to your situation.

Some issues that are particularly relevant to agreements relating to the construction of websites are:

- who is responsible for clearing third party material and getting any necessary moral rights consents (this may depend on who provides the material);
- whether or not the client is entitled to revise or update the site;
- whether the designer is required to hand over any digital files (or physical media on which such material is stored) relevant to the website;
- credits for the designer & creators of website material; and
- who will own copyright in any material created for the site (including any material not ultimately used).

Protecting your website

Copyright protection

Any copyright material you create for your website (such as text, photos and artworks) is automatically protected by copyright as soon as it is saved to disk, USB drive, hard drive or otherwise in “material form”.

Copyright protection gives the copyright owner a legal basis for taking action if his or her copyright is infringed. However, it is generally up to the copyright owner to identify infringements and take action: there is no organisation set up to investigate or prosecute infringements on behalf of copyright owners.

Contracts

Legally binding agreements can be a useful way to set legally binding conditions on people accessing information or services on your site. A common way to achieve this is to require users to agree to stated terms and conditions of use in order to get access to the material or service.

Other legal protection

In some cases, you may be able to rely on other areas of law to protect your website. For example, consumer and competition law and the law on passing off may allow you to take action against a competitor who creates a website with a similar “look and feel” in order to mislead your customers into thinking they are using your website.

Practical approaches

Legal methods of protection do not actually prevent others from using your material in ways that may infringe your rights: they simply give you the right to take legal action in those circumstances.

There are, however, various practical or technological approaches you can consider to make it more difficult or less appealing for people to infringe your rights. These include:

- using a “copyright notice” on your site, together with clear statements as to what people can or cannot do with material on the site;
- making it clear how people can contact you for permission to use material on your site;
- preventing users from making direct links to particular pages or areas;
- considering whether there are pages you should make unavailable to search engine indexing “bots”;
- using low-resolution images;
- watermarking images;
- deciding whether material should be available to download or limited to streaming only; and
- limiting access to particular pages or areas of your website (for example, by use of passwords).

Further information

We have published detailed practical guides *Websites, Blogs & Social Media* and *Copyright & Online Technologies*, which are available from our bookstore at www.copyright.org.au/bookstore

For further information about copyright, and about our other publications and seminar program, see our website – www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is 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.

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.

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.

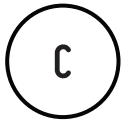


Australian Government



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

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YouTube & Copyright

This information sheet gives a brief overview of the relevant copyright issues for people uploading video to YouTube as well as those with an interest in the copyright issues that may arise when using videos appearing on YouTube.

For more information sheets, other publications and information about our seminar program, see our website www.copyright.org.au

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

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.

Key points

- YouTube's terms and conditions will determine how YouTube and its users can use your material;
- You may need permission to use third party material like music and images in videos you upload to YouTube
- There is no general exception for non-commercial use of copyright material in your videos, but some types of use may be covered by fair dealing.

Elements of YouTube videos that may be protected by copyright

Copyright protects a wide range of material including:

- Film & Video (like home videos, commercially released movies, TV shows and animations)
- Music (like melodies of songs and orchestral scores)
- Sound Recordings (like recorded music or speeches)
- Visual works (like paintings, photographs and sculptures)
- Dramatic works (like screenplays and choreography)
- Literary works (like books, manuals, poems, and all kinds of written works)
- Broadcasts (TV & radio material)

One item may contain multiple types of copyright-protected material. For example, a video will be protected by copyright as a type of film, but a video may also contain sound recordings (such as music on the soundtrack) and dramatic works (like the script the actors are performing) – these would be separately protected in addition to the film.

How do you get copyright protection?

There is no registration procedure nor any other formal procedure you have to undertake to protect your material in Australia, all eligible material is automatically protected as soon as it is written down or recorded in some way (for example, on a file or disk).

We recommend that copyright owners use the “copyright notice” on their work to remind users that the material is protected and that the person named is claiming the rights. Copyright owners can put the notice on their material themselves. The notice consists of the symbol, followed by the name of the copyright owner and the year of first publication: for example, © Freddie Filmmaker 2012.

It is important to note, however, that the notice has no legal effect: copyright material is protected whether or not the notice appears on it.

Who owns copyright?

Different ownership rules apply depending on the type of material that is being protected. For some of the most commonly found material on YouTube, as a general rule:

- Films – If you are shooting your own personal video such as a home video or making your own short film or viral video clip, then the likelihood is that you will own the copyright in that film. However, if you are filming as part of your duties as an employee or you are filming as part of a project that has been commissioned or paid for by a producer, then it is likely that the producer will own the rights to the film.
- Sound Recordings – You will generally own the copyright in any sound recordings you create yourself. Additionally, any other performers on that sound recording will also own a share of the copyright unless you agreed otherwise. If on the other hand someone has paid for the sound recording to be made, then the person that paid will usually own copyright unless there is an agreement otherwise.
- Written material, Visual artworks and music - the person that created the material is usually the copyright owner unless they made an agreement otherwise or created the material as part of their duties of employment (in which case their employer would own copyright).
- Photographs – usually the person that took the photographs owns copyright in it unless there was an agreement otherwise or the photograph was created as part of their duties of employment (in which case their employer would own copyright).
- Broadcasts – often owned by the TV or radio station that broadcast the material unless there was an agreement otherwise.

For more detailed information, see our information sheet *Ownership of Copyright*.

What are your rights as a copyright owner?

If you do own the copyright in your film, sound recording, photographs or other types of material, then you have a bundle of different rights relating to use of that material. You are generally the only person who can (or give others permission to):

- reproduce it: for example, by copying or format shifting the material;
- make it public for the first time;
- screen or play it in public;
- communicate it to the public (including making it available online for download or streaming);

Copyright owners have additional rights that we outline in more detail in our information sheet *An Introduction to Copyright in Australia*.

Uploading your own videos to YouTube

Before you can upload your material to YouTube, you will have to agree to YouTube's terms and conditions. It is important to be aware of these terms and conditions as they determine your responsibilities when uploading content as well as set out the ways in which YouTube (and its users) can use your material.

For general information on dealing with the rights in your material, see our information sheet *Assigning & Licensing Rights*.

You should seek legal advice from a solicitor if you want a full review of what consequences the terms and conditions have for material that you upload to YouTube, but some key points to note are:

- Whilst you retain your ownership rights, you give YouTube a licence to use your material in a number of ways;
- You give YouTube's users permission to use your submitted material in the variety of ways permitted by the site;
- You warrant to YouTube that you already have the necessary copyright clearances for any third party material you use in the material you submit;

If you have created a video or sound recording that doesn't feature any third party material and in which you own the copyright, then you can upload this to YouTube without having to worry about clearances.

On the other hand, if you do use third party material like music, images or extracts of written material that has been created by others, then you should work out whether this material will need to be cleared.

Under YouTube's terms, the onus is very much on the person uploading material to make sure that that uses of any material created by others has been cleared, however, under Australian law, YouTube may also be at risk of being liable for unauthorised material on their site.

YouTube's terms indicate that users found to be repeatedly ignoring copyright rules risk having their account removed.

Using other people's material in your YouTube videos – getting clearances

If the third party material you are using is still protected by copyright, then the general rule is that you need permission to use it if you use a "substantial part" of it your project. This is because using such material in your film would be a type of *reproduction* of that material and then uploading that material for streaming on YouTube will be a type of *communication* of that material - two types of uses, which the copyright owner usually has to permit.

"Substantial part" doesn't refer to a specific amount of material you may be using (like 10% or 15%), rather, it is best considered in terms of whether particularly distinctive or original elements of the other work are being reproduced in your work - it is a qualitative rather than quantitative frame of analysis that you have to apply.

If you are using a substantial part of other material and need to get permission, then we have information sheets that may assist:

- For music – usually the composer or record company owns the rights. See our information sheet *Music: Use in Film*
- For commercially released sound recordings, usually the record company owns the rights. See our information sheet *Music: Use in Film*;
- For artworks and photographs, usually the person that created the material owns the rights. See our information sheet *Artworks: Getting Permission*;
- For written material, usually the publisher or author owns the rights. See our information sheet *Quotes & Extracts*;
- For video material, the producer usually owns the rights. See our information sheet *Film & Copyright*.

Moral rights

In addition to copyright rights, creators of material like written text, music and film have moral rights in relation to their works. The creator of a work has the right to:

- be attributed as the creator of the work;
- take action if the work is falsely attributed as the work of another person; and
- take action if the work is distorted or treated in a way that is prejudicial to his or her honour or reputation.

There are two defences available for not observing moral rights obligations: (i) if it is reasonable in the circumstances not to or (ii) if you have the author's consent not to.

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, see our information sheet *Moral Rights*.

In some cases, YouTube will allow an attribution (such as the artist and title of a song on a music video) to be linked to a legitimate source to purchase that material (such as an online music store).

Performers' rights

If your video was filmed on or after 1 October 1989 and features a person performing in a context like playing live music, giving a speech or performing as part of a show then the people performing have several *performers' rights* in your film or sound recording of them. These are:

- the right to grant or refuse consent to the reproduction and communication of a performance;
- rights in relation to a sound recording of a performance; and
- moral rights in performances (only for performance after 26 July 2007).

You should confirm with the people performing in your video or sound recording that they agree having their performances uploaded to YouTube. For more information, see our *Performers' Rights* information sheet.

YouTube's internal copyright management system

YouTube operates a copyright management tool called "Content ID", which parses through submitted videos and audio recordings and detects and identifies third party material (mostly commercially released songs and films). Once such content is identified, owners can choose from a series of options for what action is to be taken. The options include blocking the content or leaving it up and choosing to monetise it in a variety of ways.

YouTube's partnership program with content owners means that there could be instances in which copyright owners elect to keep and share revenue from material that was originally uploaded without their permission.

Information on this program can be found at www.youtube.com/t/contentid

Using other people's material in your YouTube Videos – when you don't need clearances

Copyright expired material

There are no copyright issues if copyright has expired, as once this has happened, the material enters the public domain. There are two factors to keep in mind:

- material may have expired in Australia but not in other countries, in which case you may need permission to use that material in the other country (this is going to be relevant if you are using material being distributed overseas); and
- one item may contain multiple copyright works (for example, a video clip may contain (a) music and (b) a recording of that music and copyright may have expired in (a) but not in (b).

The rules for copyright expiry vary depending on what that material is. Films will have different expiry rules to music that has different expiry rules to sound recordings, photographs and so on.

For detailed information about how long copyright lasts for particular types of material, see our information sheet *Duration of Copyright* which contains tables outlining when copyright expires in a variety of material.

Pre-cleared material

There are a number of companies and organisation which offer either free or paid music, video footage and images that have been pre-cleared for use on YouTube. These provide an easy way of using third party material in your content without having to directly approach rights holders.

Open licensed material

If you don't want to worry about permissions, consider using material released with flexible or open licences.

One such example is *Creative Commons* material. Material like music, film, text and images released under a Creative Commons licence can in most cases be reproduced and communicated without having to first ask the copyright owner's permission. There are a variety of different Creative Commons licences with varying levels of permission.

Finding such material has become easier with the advent of search engines that limit results to Creative Commons material as well as filters on popular photo sites which can limit results to Creative Commons licensed material.

For more information, see our information sheet *Creative Commons Licences*.

Fair Dealing

Australian copyright law has a number of fair dealing exceptions that allow you to use material without needing permission from the copyright owner.

Fair dealing is tied to specific purposes such as criticism and review, parody and satire, reporting the news and research and study. So if you are using material like a piece of music, image or video in your own material, consider whether the nature of your use of that material falls within these categories.

Fair dealing operates in a limited way and the question of whether a fair dealing applies should always be assessed on a case by case basis and in terms of whether the particular use being assessed is indeed “fair” in the circumstances and is genuinely being used for one of the “fair dealing” purposes.

When thinking about fair dealing and YouTube, questions to ask include:

- is my initial reproduction of the other person’s material in my video a fair dealing of that material, and following this;
- would my subsequent distribution of this material to a mass audience on the internet via YouTube be a fair dealing?

In general terms, other factors to consider include:

- a) whether there was a commercial element to the use of your material in their video, either during the initial use or when the material was uploaded;
- b) whether the copyright owner would usually license this type of use; or
- c) whether your use of the material is genuinely for one of the fair dealing purposes (i.e. are you making a genuine criticism, review, parody or satire of something).

If you answer to (a) and (b) is *no* and your answer to (c) is *yes*, then it is more likely that fair dealing would apply.

For more information on fair dealing, see our information sheets *Fair Dealing* and *Parodies, Satire & Jokes*.

Using YouTube videos

If you have signed up as a member of the YouTube community, you will have agreed to YouTube’s terms and conditions. These terms and conditions will ultimately determine how you are able to use video from the site.

In a general sense, personal viewing of authorised content on YouTube use is not likely to raise any copyright issues. Additionally, linking to a video at its YouTube URL is unlikely to raise a copyright issue unless you know that the material you are linking to is unauthorised material.

YouTube’s platform allows certain types of uses that go beyond just viewing the video from the site:

Embedding

YouTube gives users an ability to “embed” YouTube content on to their websites. Embedding is a web design technique that facilitates users having YouTube videos appear on their site and being able to be viewed without having to leave the site to view it directly from YouTube’s website.

We understand that users uploading video can elect to permit or disallow YouTube to enable embedding of their videos.

API

YouTube gives users access to their Application Programming Interface (API), which enables developers to integrate YouTube content into other applications. For more information, see <https://developers.google.com/youtube/>

People without a YouTube account

It should be noted that if you have never signed up to YouTube’s terms and conditions, then you may have an argument that you are not bound by YouTube’s terms, however, a recent Canadian

court decision has indicated that in some cases, users of a website can be bound by the terms of that website even if the user did not have to actively sign up or agree to the terms. Whilst arguably, actively signing up to website terms may make those terms binding, the issue of how binding terms that you don't have to agree to remains unsettled in Australia.

When your material is uploaded to YouTube without permission

If you discover that someone has used your material on YouTube without permission, then YouTube itself may be your first avenue of approach. YouTube has a process in place for addressing copyright infringement claims, information on this can be found at www.youtube.com/t/copyright_center

Can I screen a YouTube movie at a public function or at a movie night?

Unlike watching a YouTube video at home, on your phone or at friend's house (which would usually be considered private rather than public screenings), planning an event where a video from YouTube is screened publicly may require a bit more investigation on your part. Firstly, check the video itself and see if the uploader has licensed the video in a way that allows public screening without permission (for example, it may be a creative commons licensed video). If no direct permission has been given, then you may need permission.

As YouTube videos are usually displayed with the username of the person that uploaded that video, you are easily able to know whom to approach at first instance to get permission to screen the movie.

If there is live or recorded music on the video, you should confirm that the venue at which your screening will be taking place is licensed by APRA-AMCOS and the PPCA public performances of music (and recordings of music) on the premises. If not, then you may need to approach APRA-AMCOS and possibly the PPCA for a licence to publicly perform music.

For more information, see our information sheet *Music: Playing Music – APRA & PPCA*.

Using YouTube content in your own projects

There are no special rules that allow video artists, filmmakers or other types of users to use material merely because it is posted to YouTube.

YouTube's "embed" and "download" options would not of themselves give you permission to use something from the site in a new video or audio work you may be creating.

In some cases, however, one of the fair dealing exceptions may be available to you (for example, if you are using the material for parody, satire, criticism or review), but each case will depend on its own facts.

In other cases, the content you want to use may be licensed to allow this type of use, for example, creative commons material.

If an exception is not available to you, you will need permission. Given the risk that the person who uploaded the material to YouTube may not own any or all of the relevant copyrights (for example, music and recordings on the soundtrack may be owned by music publishers and record companies), make sure you list each of the relevant copyrights you want to use, and get appropriate warranties and indemnities from anyone purporting to be able to give you permission.

Am I infringing copyright by watching infringing material streamed on YouTube?

When you watch video online, material in the footage and on the soundtrack is temporarily reproduced into the your computer's cache memory. There are provisions in the Copyright Act to the effect that you can ignore these reproductions for copyright purposes if the material is not infringing.

However, this does not mean that you necessarily infringe copyright if you watch infringing material online. This is because, at least for material such as film and sound, you would only yourself infringe if you reproduced a "substantial part" of an infringing copy into your temporary cache. While it's not entirely clear, there are arguments that the small amounts of film footage or sound recording held at any one time in your cache while merely watching something online may not be a "substantial part".

While the legal situation is far from clear, in practical terms, as far as we are aware, copyright owners who are worried about their material being made available over the internet (including on YouTube) are concerned about people who are uploading and downloading copies without permission, rather than people just watching that material.

Make sure you consider each of the relevant pieces of copyright material when considering whether or not you can rely on an exception.

Further information

For related information, see our information sheets *Websites & Copyright* and *Websites: Social Networks, Blogs & User-generated Media*.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is 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 information about the service, see www.copyright.org.au

YouTube's terms and conditions are available at www.youtube.com/t/terms

YouTube's Copyright Center for users and rights holders is accessible at www.youtube.com/yt/copyright/

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