

COPYRIGHT AGENCY LIMITED®

Getting permission to copy

Updated March 2009



More information

Copyright Agency Limited
Level 15, 233 Castlereagh Street,
Sydney NSW 2000

Tel: 1800 066 844
Fax: +612 9394 7601

Email: info@copyright.com.au
Website: www.copyright.com.au

Why you need permission to copy

The *Copyright Act 1968* (the Act) gives certain exclusive rights to authors, publishers, journalists, visual artists and others that allow them to control the way that the material they create is used. One of these rights is the right to reproduce or copy the material.

Generally, if you want to copy someone else's work, you must have permission from the copyright owner. You can do this in one of two ways:

1. contact the rightsholder directly to seek permission for each specific instance of copying you want to do; or
2. if the work is represented by Copyright Agency Limited (CAL), take out a CAL licence which allows you to copy the material (and any other works represented by CAL), without the need to seek individual permission directly from the rightsholders.

However, there are some circumstances when you do not need permission to copy.

When can you copy without permission?

You don't need permission to copy if:

- the work is no longer protected by copyright;
- only an insubstantial part of the work is copied;
- a special "exception" applies; or
- your copying is covered by a "statutory licence".

Copying under a CAL licence

CAL gives permission to copy from material represented by CAL by granting licences. Generally, the licence allows copying only for particular purposes. For example, a licence may allow copying for distribution to staff, but not for selling copies to the public. CAL's licences also usually limit the proportion of the work you can copy.

CAL offers licences for the digital copying of the material it represents. These licences allow the copying of certain copyright material, to or from digital format, such as CD-ROMs and databases.

When to get permission to copy

If you want to copy more than the Act allows or if you want to copy for a purpose not covered by a licence given by CAL, then you need to obtain permission directly from the copyright owner.

Obtaining permission to copy a work is a matter of negotiation with the rightsholder. A rightsholder is under no legal obligation to allow you to copy their work. They may refuse permission, or if they do grant permission, they may do so subject to conditions. These conditions may include a specified acknowledgment of the source of the work and payment of a fee.

How to obtain permission to copy

CAL recommends that you always obtain permission in writing. Formal legal agreements are not always necessary, but an exchange of letters or facsimiles provides a record of the agreement if you need to query any of the terms of the agreement at a later date. There must be a written agreement if rights are being transferred (or assigned) to you.



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The following issues should be covered in your written permission:

- who the rightsholder is and your details, including relevant names and contact details — use letterhead if appropriate;
- precisely identify the material to be copied, including which part or parts of the work you want to copy, page numbers, chapter titles, or any artworks included. This avoids confusion later, and allows the rightsholder to quickly identify the work, especially if they control a lot of material (such as a publisher);
- how the material is going to be used, including information such as number of copies made, who they will be distributed to, where they will be distributed (for example, to staff in overseas offices) and whether the work will be distributed free of charge or for profit;
- how long the permission lasts (eg, is it a one-off copy or will the material continue to be copied for a set period of time?);
- will copying be paid for? And if so how and when will the charges be calculated?
- will the rightsholder be acknowledged as the author or publisher in any way on your copies?
- a warranty (which is a legal guarantee or legally binding promise) that the person granting permission does in fact control the copying rights in the work and that the work does not infringe any existing copyright.

As these issues are merely guidelines, there may be additional issues that should be addressed.

If you are not sure, you may need to get independent legal advice, or contact one of the organisations listed at the end of this information sheet.

When you seek permission to copy, you may be provided with a standard permission form to complete – you should make sure that it covers what you propose to do.

Obtaining permission to copy

You can only obtain permission to copy from the person or organisation that controls the right to copy the work.

Generally the ‘first creator’ of the work is the rightsholder. For example, an author will usually control the copyright over the text in his or her book, unless the publishing contract provides otherwise.

There is often more than one rightsholder in a work and creators make agreements between each other to share copyright rights. For example:

- the author(s) may control the copyright in the underlying text;
- the illustrator(s) may control the copyright in illustrations; and
- the publisher may control a form of copyright called ‘published edition’ as a result of their investment in the typographical layout and arrangement of the text.

You may need to obtain permission to copy from all of these rightsholders.

In addition to publishing arrangements between authors, illustrators and publishers, the Act deems that persons other than the creator will control the copyright in certain circumstances. Employers will usually control the copyright in their employees’ work created in the course of their employment. The government will usually control the copyright in material created for the government.

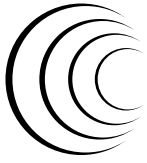
Locating the rightsholder

Locating the rightsholder, particularly a rightsholder who is overseas, can be time-consuming. However, the fact that you have been unable to locate the rightsholder is no excuse for copying without permission. If you do not obtain permission, any copying you do will be a copyright infringement. You should obtain legal advice before deciding to take this step.

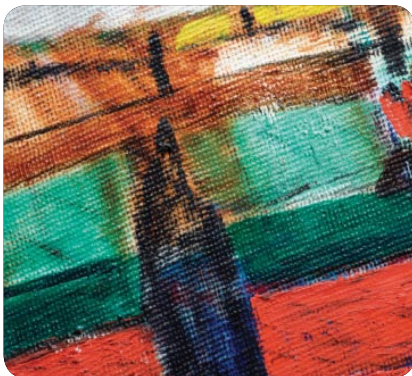
The following information sources may provide a useful start in locating the rightsholder:

The imprint page

The imprint page of a book, journal or magazine is often the inside front cover or first page after the title page. It contains information such as the name and location of the publisher, the ISBN (International Standard Book Number), and a copyright notice.



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The publisher

Call the publisher. Larger publishers often have a permissions department or officer. Some publishers may provide a standard permission request form. If it does not suit your request you will usually be able to negotiate additional terms.

Government materials

To copy Commonwealth government materials, contact AusInfo. For State and Territory government materials, contact the department controlling the copyright – this varies between States and Territories.

CAL

CAL offers a copyright clearance service called Copyright Express that can help you obtain permission to copy and identify the rightsholder. Contact CAL for more information on this service.

Professional associations

Associations can provide useful information on their members. You might try the Australian Publishers Association for local and foreign publishers, the Australian Society of Authors, or the Media Entertainment and Arts Alliance for journalists. Contact details are available at the end of this information sheet.

Literary agents

Literary agents may be able to provide you with information on the authors they represent.

Death or out of business

If the rightsholder has died, the copyright may be passed on. If a company holds the copyright and is no longer in business, contact the Australian Securities & Investments Commission.

Libraries

The bibliographic resources at your State Library may be useful.

Is digital copying different?

Material in digital form can be easily reproduced, accessed, transmitted and manipulated by numerous users with minimal copying or storage costs. When seeking permission to copy material in digital form, the following additional issues should be considered:

- How long will the digital copy be available? Print copies can be limited by number, so access to digital copies may be unlimited but for a set time period.
- How is the work to be used? Will it be emailed, included in a CD-ROM, or available on a computer network (such as a company-wide intranet)? Is the use commercial or non-commercial?
- Are there any limits on the number of times the work can be accessed or downloaded?
- If there is a fee how will it be calculated? Will it be based on the number of times the work is accessed, the number of people eligible to access, or a set fee for the duration?
- Will access be limited to a particular territory, such as a company, Australia, or worldwide?
- Are copyright notices required on the digital copy, and if so, in what form?

What if permission to copy is not granted?

The rightsholder does not have to grant you permission to copy. If you do not have permission you cannot legally copy the work – to do so may constitute an infringement of copyright and leave you open to legal action.

If permission is not granted, there are several options available to you. You may wish to negotiate on amended terms, you may consider seeking permission from a different source or you may decide to create your own original material.

Legal advice can be obtained from:

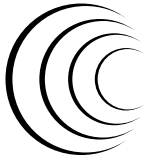
Australian Copyright Council

Suite 3, 245 Chalmers Street
Redfern NSW 2016

Tel: +612 9318 1788 Fax: +612 9698 3536

Email: info@copyright.org.au

Website: www.copyright.org.au



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Arts Law Centre of Australia

The Gunnery, 43 Cowper Wharf Road
Woolloomooloo NSW 2011
Tel: +612 9356 2566
Freecall: 1800 221 457
Fax: +612 9358 6475
Email: info@artslaw.com.au
Website: www.artslaw.com.au

Or contact the Law Society in your state for referral to an appropriate legal adviser.

Australian Publishers Association

60/89 Jones St
Ultimo NSW 2007
Tel: +612 9281 9788
Fax: +612 9281 1073
Website: www.publishers.asn.au

Australian Society of Authors

98 Pitt Street
Redfern NSW 2016
Tel: +612 9318 0877
Fax: +612 9318 0530
Email: asa@asauthors.org
Website: www.asauthors.org

Media Entertainment and Arts Alliance

245 Chalmers St
Redfern, NSW, 2016
Tel: +612 9333 0999
Fax: 1300 730 543
Website: www.alliance.org.au

Who is CAL?

Copyright Agency Limited (CAL) is a not-for-profit company set up by Australian authors, journalists, visual artists, photographers and publishers to manage part of their copying and communication rights. CAL is owned by its members, membership is free and members give CAL a non-exclusive licence in respect of their works.

Code of Conduct

CAL is a signatory to the Code of Conduct for Copyright Collecting Societies (the Code). It is designed to ensure that the rights of all members and licensees are clearly stated, and that the operations of collecting societies are transparent and accessible.

The Code includes requirements for the Complaints Handling and Dispute Resolution procedures that collecting societies must follow. The Code and these procedures are available from CAL's website and on request.

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