

Information sheet G57

Creating websites & publishing on the Internet

March 2001

This information sheet is for people involved in creating a website or otherwise publishing material on the Internet. For more detailed information, see our forthcoming publication *Web Sites & Copyright*. See also our information sheet *Copying from the Internet*.

What does copyright protect?

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and court decisions. Copyright protects a range of material, including:

- written material (such as novels, poems, song lyrics, reports, instruction manuals and newspaper articles);
- artistic works (such as drawings, paintings, and graphic art, as well as more technical works such as industrial photographs, buildings, design drawings, maps and plans);
- musical works;
- dramatic works (such as screenplays and choreography);
- computer programs;
- compilations (such as anthologies, directories and databases);
- cinematograph films (such as feature films, television programs, television commercials and music videos); and
- sound recordings (such as music or voice recorded on audio cassette or compact disc).

It is unclear whether a website as a whole will have a separate copyright status (for example, as a compilation).

How do you get copyright protection?

Copyright protection is automatic; there is no system of registration in Australia. A work does not need to be published, or have the copyright notice on it, to be protected. From the time it is first written down or recorded in some way it is protected, provided it has resulted from its creator's skill and effort and is not simply copied from another work.

As a result of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia, and Australian copyright owners are protected in most other countries. For more information about international protection, see our information sheet *Copyright protection in other countries*.

What does copyright mean?

Owners of copyright have the exclusive right to do certain things with their material. This means that anyone who wants to use copyright material in any of these ways may need the copyright owner's permission. Activities which may require a copyright owner's permission are:

- *reproducing* the material (for example, printing, uploading to a website, downloading to a hard disk or floppy disk, caching, keying into a computer, scanning);
- *making* the material *public for the first time* (for example, by making a work available on the Internet);
- *communicating* the material *to the public* (for example, by making it available from a website or from a bulletin board or chat room, or emailing to people other than family or friends).

Who owns copyright in a website?

As noted above, it is unclear that a website, as a whole, will be protected by copyright as, for example, a compilation. The component parts, however, may be protected, and there may be numerous people who are

owners of copyright in those component parts. For example, one person may own copyright in the graphics, another person may own copyright in the text, another person may own copyright in the compilation of material on the site and yet another person may own copyright in the navigation software.

For further information about who owns copyright, see our information sheet *Copyright ownership*, and our discussion paper *Ownership of copyright: current issues*.

Some common questions about copyright protection for a website

How can we protect material we put on the Internet?

You should at least have a statement about copyright on your site. There is no rule about where this statement should be, but it is a good idea to have an easily recognisable link to it from each page on the site.

You may also want to consider technological means of inhibiting unauthorised copying or lifting of material from your site, such as requiring a password to download material from the site, or encoding information in the material on the site.

What should the copyright statement say?

There are no special rules and no special wording, but it is a good idea for the statement to include the following:

- a) who owns copyright in the material in the site (there may be numerous people who own copyright in different elements);
- b) what the copyright owners permit and do not permit visitors to the site to do with material on the site; and
- c) who to contact to get a copyright clearance in relation to any of the material on the site.

Some common questions about what to do if your copyright is infringed

Who is responsible for enforcement of copyright on the Internet?

Generally, it is the copyright owner who must take legal action if their copyright is infringed. Generally, the person who does the infringing act (for example, makes an unauthorised copy) is liable. A person who authorises an infringement by another person may also be liable.

There are criminal penalties in the Copyright Act for serious infringements of copyright, enforceable by the Australian Federal Police – for example, distributing infringing material from your site, or advertising the supply of infringing software are criminal offences.

Somebody has copied material from my website onto their website – what should I do?

If you own copyright in the material which has been copied, and it was copied without your permission, it is likely that your copyright has been infringed. For information about what to do, see our information sheet *Infringement of copyright: what can I do?*

What do I do if someone infringes my copyright on a website overseas?

Australian copyright material is protected in most countries overseas, because of international copyright treaties. Generally, if your work is infringed in another country, and you want to take legal action, you must take legal action in that country. With the Internet, there may be infringements in a number of countries. If you are in this situation, you should get legal advice about your position.

In many cases you may be able to resolve the matter informally, by contacting the relevant person and letting them know that they have used your material without permission. In other cases, you may be able to take advantage of “take down” procedures in other countries: for example, under US law, Internet Service Providers may block sites if they are notified that material on that site infringes copyright. (While we are aware that these procedures exist, please note that the Copyright Council's expertise is in Australian copyright law, and that we are unable to provide advice on the operation of such procedures.)

Some common questions about who owns copyright in a website

If I engage a person to design a website, who owns copyright?

You should make a clear, written agreement with the website designer about who owns copyright in each element of the site. It may be that copyright in some elements – for example, the music, or software – is owned by someone other than you or the website designer. Your agreement should state who is responsible for getting the copyright clearance for any of this material.

For any elements in which copyright is owned by the designer rather than by you, the agreement should clearly state what you can do with these elements.

For more information, see our practical guide *Websites & Copyright*, to be published during 2001.

Can the designer of our website use it as a model for other websites?

This will depend on your agreement with the website designer and who owns copyright.

Who is entitled to make changes to a website?

This will usually depend on the agreement between the website proprietor and the website designer, and on who owns copyright. The process of changing something on the site (such as text) is likely to involve reproducing it, and thus needs the permission of the copyright owner. The agreement between the website designer and the website proprietor may also deal with making changes to the site (this is certainly a good idea).

Some common questions about getting clearances for material on a website

Do I need permission to link my website to another website?

If the link is the name of the other site or its URL, you probably do not need copyright permission to include it on your site, provided it is clear to the visitor to your site that the link takes them to another site (rather than to another part of your site). If you use something else for the link, you may need permission – for example, if you use someone else's logo or graphic.

Do I need permission to show material from another site in a frame on my website?

It is not clear whether this will be a copyright issue or not. Other areas of law, such as Trade Practices law and "passing off", may come into play if the framing might suggest a misleading connection between your site and the other site. As a matter of practice it is probably prudent to get permission, unless your legal advisor or peak organisation has given you advice to the contrary.

What permissions do I need to put music onto my site?

You will generally need permissions in relation to the music, any associated lyrics and the recording. Further, two permissions will generally be necessary: permission to reproduce the material, and permission to communicate it from your site.

For the *reproduction* of music and associated lyrics, you should generally contact AMCOS if the music has been published. However, if the file you want to put up is of a recording someone else has made, you should not take out any licence in relation to music and lyrics until you know whether the owner of copyright in the sound recording (usually a record company) will give you permission.

For information about a licence to cover the *communication to the public* of music from your site, contact APRA in relation to music and lyrics, and PPCA in relation to any sound recording.

For information on AMCOS, APRA and PPCA see our information sheet *Copyright collecting societies*.

Can a student put material onto a website without permission?

There are special provisions in the Copyright Act that allow individuals to copy material for research or study, provided the use is fair (see our information sheet *Copying for research or study*). It is possible that putting material on a pretend site, created for class, could be for the purposes of research or study, but it is unlikely that

it would be fair to then put that site onto the web. The best course of action is to get permission if your site is being used for any purposes other than class use or assessment. For further information, see our information sheets *Quotes and extracts: copyright obligations* and *Copyright owners: how to find*, and our books *Copyright & the Internet*, *A User's Guide to Copyright* and the forthcoming *Websites & Copyright*.

Further information about copyright

We publish other information sheets which you can print from our website. We also publish more detailed publications such as *Copyright & the Internet*, *Multimedia producers & copyright* and *Licensing content for multimedia*. We will be publishing a practical guide entitled *Websites & Copyright* later this year. For further information, see our website or ask us to send you our publication list.

Legal advice

The purpose of this information sheet is to provide general introductory information about copyright. If you need to know about 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 legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations. For further information about the service, see our information sheet *Australian Copyright Council: who we are, what we do* or see www.copyright.org.au (click the Advice button).

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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.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body. The Copyright Council also acknowledges the financial assistance of the Australian Film Commission. The Australian Copyright Council is solely responsible for the editorial content and accuracy of this information sheet.

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