Other resources on the ALCC website

libcopyright.org.au/content/resources
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creativecommons.org/licenses/by/4.0
PART 1 – COPYRIGHT ESSENTIALS
Sometimes I just can’t get outraged over copyright law.
The art I want to make is illegal!

Hold on while I go reform the law!
What is copyright?
What is copyright?

Copyright

≡

Creative works
What is copyright?

Copyright ≠ Inventions

Copyright ≠ Brands

Copyright ≠ Utilitarian objects

Copyright ≠ Circuit layouts
What is copyright?

- Patent
- Trademark
- Designs

= Inventions
= Brands
= Utilitarian objects
What is copyright?

What is the point of copyright?
What is copyright? / History

Statute of Anne was:

- In response to lobbying by publishers to stop unauthorised reproduction of books using Gutenberg printing presses.
- Passed by the Parliament of Great Britain on Saturday 5 April 1710.
- The first legislative instrument to grant a monopoly right (only over books at that time).
- The genesis of the modern copyright system.
Copyright balances:

The incentive to create & The sharing of knowledge

What is copyright? / Theory
What is copyright?

What are the sources of copyright law and practice?
1. International agreements and treaties.
   - Multilateral agreements and treaties – eg. the Berne Convention and TRIPS.
   - Preferential agreements – eg. the AUSFTA and TPP.
1. International agreements and treaties.  
   ■ Multilateral agreements and treaties – eg. the Berne Convention and TRIPS.
   ■ Preferential agreements – eg. the AUSFTA and TPP.

2. Domestic legislation and case law.  
   ■ Legislation – eg. Copyright Act 1968.
What is copyright? / Sources

1. International agreements and treaties.
   - Multilateral agreements and treaties – eg. the Berne Convention and TRIPS.
   - Preferential agreements – eg. the AUSFTA and TPP.

2. Domestic legislation and case law.

3. Organisational policies and procedures.
What is copyright? / Sources

1. International agreements and treaties.
   - Multilateral agreements and treaties – eg. Berne Convention and TRIPS.
   - Preferential agreements – eg. AUSFTA and TPP.

2. Domestic legislation and case law.

3. Organisational policies and procedures.

4. Community and behavioural norms.
What is copyright?

Your job is to know:

Copyright law and practice VS Behavioural norms
What is protected by copyright?
How do you get copyright protection?
Copyright protection is free.
Copyright protection is automatic.
Copyright protection / Getting protection

Copyright does **not** require:

- Submission of an application.
- Registration.
- Payment of fees.

And it does **not** require:

- Publication of the material.
- Posting a copy to yourself by registered mail.
- A copyright notice.
What material is protected by copyright?
Copyright protection / Protected material

To be protected, material must be:

- An **expression**, not an idea.
- In a **material form**.
- **Original**.
- Made by a **human author**.

Photo by Naruto, Wikicommmons
Public domain
Copyright protects:

Works & Subject-matter other than works
What is a Work?
Copyright protection / Works

Works are:

1. Literary works.
2. Dramatic works.
4. Artistic works.
What is a literary work?
Copyright protection / Works

Literary works may include:

- Books – eg. novels, etc.
- Manuscripts.
- Newspaper, magazine, journal articles.
- Anthologies, etc.
- Essays, theses, etc.
- Poetry, verse, lyrics.

- Screenplays.
- Letters, emails, SMS, etc.
- Text on websites.
- Flyers, brochures, pamphlets, catalogues, etc.
- Tables or compilations.
- Computer programs.
What is a dramatic work?
Copyright protection / Works

Dramatic works may include:

- Choreographic shows, dance, etc.
- Stage plays, puppetry, pantomimes, etc.
- Scenarios or scripts for a film – eg. film treatments.
What is a musical work?
Musical works may include:

- Sound, melody, harmony, rhythm, etc.
- Musical scores – eg. for performance by bands, orchestras, ensembles, etc.
- Songs, jingles, lullabies, etc.
- Instrumental music.
What is an artistic work?
Copyright protection / Works

Artistic works may include:

- Paintings.
- Sculpture.
- Drawings, illustration, sketches, doodles, etc.
- Photographs.
- Engravings, prints, etchings, etc.
- Diagrams, maps, charts, plans, etc.
- Buildings.
- Works of artistic craftsmanship – eg. embroidery, tapestry, ceramics, jewellery, furniture, etc.
Works of artistic craftsmanship must:

Be of artistic quality & Involve craftsmanship
What is Subject-matter other than works?
Copyright protection / Other subject-matter

Subject-matter other than works are:

1. Sound recordings.
2. Films.
3. Television and sound broadcasts.
4. Published editions of works.
What is a sound recording?
Copyright protection / Other subject-matter

Sound recordings may include:

- Recordings of music and songs.
- Recordings of a live performance – eg. a stage or musical performance, a book reading, etc.
- Recordings of lectures, interviews, oral histories, etc.
- Podcasts, audio on websites, etc.
- Instructional sound recordings.
- Soundscapes, field recordings.
What is a film?
Films may include:

- Feature films.
- Documentaries.
- Television programs.
- Animation, cartoons.
- Short films, video clips, mobile phone footage, etc.
- Video ads, trailers, etc.
- Vodcasts, video on websites, etc – eg. web series, YouTube videos.
- Instructional videos.
- Some multimedia – eg. video games.
What is a broadcast?
Copyright protection / Other subject-matter

Broadcasts are:

- Television broadcasts.
- Sound broadcasts – radio broadcasts.
What is a published edition?
Copyright protection / Other subject-matter

A published edition can be of:

- A literary work.
- A dramatic work.
- A musical work.
- An artistic work.
- 2+ works.
Copyright protection / Layers of copyright

An item can have layers of copyright-protected material in it.
Copyright protection / Layers of copyright

- A book = a literary work and a published edition and any literary and artistic works in the book.


- A sound recording of a song = a musical work, a literary work, a sound recording.

- An 12-track album = 12 × musical works, 12 × literary works, 12 × sound recordings and any literary and artistic works in the album booklet.
Copyright protection / Layers of copyright

A film is protected itself, and it may include:

- Literary works – eg. screenplay, script.
- Dramatic works – eg. dance sequences.
- Musical works – eg. score, soundtrack.
- Sound recordings – eg. sound effects.
- Artistic works – eg. photographs or artworks on screen, sets and backdrops, costumes, etc.
- Excerpts of films, videos or broadcasts on screen.
What is not protected by copyright?
What is not protected by copyright?

Copyright does not protect:

- Material in the Public Domain.
- Ideas.
- Information, facts, data, etc.
- Concepts, styles, techniques.
- Equations, formulas, recipes, etc.
- Mass produced fashion and utilitarian objects.
- Single words, names, titles, slogans.
- People and their image.
What rights make up copyright?
What are economic rights?
Economic rights

Prevent use
Economic rights

License, transfer and assign
Rights in copyright / Economic rights

Economic rights

Receive remuneration
What rights are in works?
Rights in copyright / Works

Literary, dramatic and musical works –
The exclusive right to:

■ Reproduce the work.
■ Publish the work.
■ Communicate the work to the public.
■ Perform the work in public.
■ Make an adaptation of the work.
Artistic works –

The exclusive right to:

- Reproduce the work.
- Publish the work.
- Communicate the work to the public.
- Perform the work in public.
- Make an adaptation of the work.
What rights are in other subject-matter?
Rights in copyright / Other subject matter

Sound recordings and films –

The exclusive right to:

■ Make a copy.

■ Cause it to be seen/heard in public.

■ Communicate it to the public.
Rights in copyright / Other subject matter

Broadcasts –

The exclusive right to:
- Make a recording.
- Copy that recording.
- Re-broadcast.
- Communicate it to the public.

Published editions of works –

The exclusive right to:
- Make a facsimile copy of the edition.
Rights in copyright / Copyright owner

Copyright owner of other subject matter

The maker
Except where the material is:

- Made collaboratively by two or more authors - the copyright is owned jointly by co-owners.
- Made under the terms of employment - the copyright is owned by the employer.
- Made under the terms of a contract - the copyright is owned by contractor.
- First published by the Crown - the copyright is owned by the Crown (Crown copyright material)
Rights in copyright / Copyright owner

Except where the material is:

- Made collaboratively by two or more authors - the copyright is owned jointly by co-owners.
- Made under the terms of employment - the copyright is owned by the employer.
- Made under the terms of a contract - the copyright is owned by contractor.
- First published by the Crown - the copyright is owned by the Crown (Crown copyright material)
What are moral rights?
Moral rights

Preserve creators’ connection with their work
Rights in copyright / Moral rights

Moral rights –

The right:

- Of attribution of authorship.
- Not to have authorship falsely attributed.
- Of integrity of authorship of a work.

But not an infringement if it was reasonable not to identify the author.
Moral rights:

- Applies only to individual authors of works / directors, producers and screenwriters of films.
- Occur automatically when a work or film is created.
- Apply to all or a substantial part of a work / film.
- Cannot be assigned, transferred or sold.
- Are enjoyed by each co-owner individually.
- Last as long as copyright.
What is the duration of copyright?
Copyright duration for works:

Life of the creator
Copyright duration for works:

Life of the creator + 70 years
Copyright duration / Other subject-matter

Copyright duration for other subject-matter:

- Sound recordings and films: Year of creation + 70 years
- Television and sound broadcasts: Year of broadcast + 50 years
- Published editions of works: Year published + 25 years
Copyright duration / Other subject-matter

Copyright duration for other subject-matter:

- Sound recordings and films: Year of creation + 70 years
- Television and sound broadcasts: Year of broadcast + 50 years
- Published editions of works: Year published + 25 years

Copyright duration for Crown copyright works:

- Year of creation + 50 years
Unpublished works are protected perpetually
Copyright duration / Orphan works

What if the author is unknown?
Copyright duration / Orphan works

Copyright duration for orphan works:

Year made or made public + 70 years
‘Duration of copyright’ on the Department of Communications and the Arts website

communications.gov.au/documents/duration-copyright
New Years Day 🎉

Public Domain Day
What is in the Public Domain?
Copyright duration / Public Domain

The following is in the Public Domain (as of 1 January 2019):

- Photographs taken before 1955
- Sound recordings made before 1955
- Published literary, dramatic, musical or artistic works or engravings if the author died before 1955
- Unpublished literary, dramatic, musical or artistic works if the author died before 1949
- Works with an unknown creator that were created or made public before 1949
Infringing copyright

Unauthorised use

Infringement
Infringing copyright

Infringement may occur where there has been:

- Direct infringement – ie. doing the act yourself
- Authorisation – ie. allowing someone else to do the act.
- Sale and/or importation of infringing material eg. piracy, bootlegging, etc.
- Commercial dealings with infringing material.
Infringement may occur where there has been:

- Removal or alteration of electronic rights management information without permission.
- Distribution of works or other-subject matter that has had electronic rights management information removal or altered.
- Circumvention of a technological protection measure (TPM) without permission.
Infringing copyright

Technical Protection Measures:

- TPMs or Digital Rights Management (DRM) are digital locks (eg. on DVDs or computer programs)
- Circumvent without permission is a criminal act, even if your use is legal
- Circumvention permitted for certain uses, including all educational and most library exceptions (but not s200AB)
- Review process (in theory) allows to add more uses
Things you can do
What isn’t an infringement?
What can you do?
Non-infringing use / Insubstantial parts

Insubstantial part
Use of an insubstantial part is not an infringement.
What is a substantial part?
Non-infringing use

What if you need more than an insubstantial part?
Licences
You can do anything you have permission to do.
Non-infringing use / Licences

- Assignment of right must be in writing and signed

- Licence can be oral – but writing is good for evidence

- Common term limits:
  - Duration
  - Geographic
  - Exclusive/non-exclusive
Copyright v Contract
Non-infringing use / Licences

- Try not to ask for more than you need (eg non-exclusive licence rather than assignment)
- Try not to accept anything that removes your rights under the Copyright Act
- Get everything in writing
Non-infringing use / Licences

Statutory licences
Blanket licensing that provides access to material on pre-set terms.
Non-infringing use / Statutory Licences

The statutory licensing schemes:

- Remunerate copyright owners for the use of their material.
- Were created to address licensing impracticalities.
- Do not need to be relied on:
  - If an exception applies
  - A permission from the copyright owner has been secured.
Performance
Music on Hold
Non-infringing use / Statutory Licences

Educational Statutory Licences

- Part VA: Broadcasts (recording and showing TV, radio, cable, satellite). *License managed by Screenrights*

- Part VB: Works (photocopying hard copy and electronic) *License managed by the Copyright Agency Limited*
Part VB:

- Allows making of study guides, classroom photocopying etc
- Up to 10 percent, one chapter or one article can be copied as a “reasonable portion”
- More (including whole) can be copied if not commercially available
Non-infringing use / Statutory Licences

Part VB:

- Allows making of study guides, classroom photocopying etc
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Non-infringing use / Statutory Licences

WATCH THIS SPACE

- National Copyright Unit (smartcopying.edu.au)
- Universities Australia
Crown Copying

- Certain government bodies - Commonwealth, State and Territory
- can make *any* use of *any* copyright materials
- provided the purpose is for the service of the government
Non-infringing use / Statutory Licences

Who?

- not local governments
- not educational purposes within educational institutions (specifically excluded)
- some agencies and statutory bodies (may need legal advice)
EXCEPT CYCLES
What copyright exceptions are there?
Fair-use
Fair dealing
Non-infringing use / Exceptions

You can do anything that is fair and is for the purpose of:

■ Research or study.
■ Criticism or review.
■ Parody or satire.
■ Reporting news.
■ Judicial proceedings or professional advice.
■ Access by persons with a disability.
What is fair?
Non-infringing use / Exceptions

Considerations:

■ The purpose and character of the dealing.

■ The nature of the work.

■ The possibility of obtaining the work within a reasonable time at an ordinary commercial price.

■ The impact on the copyright owner.

■ The amount and substantiality of the part copied.
Non-infringing use / Exceptions

There are nearly 90 other exceptions, including for:

- Private copying:
  - Format-shifting of certain works.
- Time-shifting of broadcasts.
- Filming, photographing, drawing or painting sculptures in public places and buildings.
- Public recitation of a “reasonable” part of a literary work
- Incidental filming of an artwork.
- Temporary reproduction as part of technical processes.
What are the exceptions for libraries and archives?
Non-infringing use / Exceptions

Definition of libraries and archives:

- All libraries that are open to the public (includes interlibrary loan)
- All non-profit archives - i.e., a collection of material of historical significance or public interest that is in the custody of a body and is being maintained for the purpose of conserving and preserving those documents or other material (includes museums and galleries)
Non-infringing use / Exceptions

Main exceptions for libraries and archives:

- Reproducing and communicating works for users – ie. document supply.
- Reproducing and communicating works for other libraries or archives – ie. interlibrary loan.
- Preservation.
Non-infringing use / Exceptions

Also:

- Onsite Research.
- Administration of the collection.
- Parliamentary use.
- Publication of unpublished works.
Non-infringing use / Exceptions

Wildcard:

- s200AB – flexible dealing
Non-infringing use / Exceptions

Requirements for document supply:

- Must be for research and study purposes.
- Only applies to published works.
- Client request can be in writing or otherwise (if remote).
- Material must be available in collection of a library.
- Similar (but not identical) exception applies to unpublished sound recordings / films more than 50 years old.
Non-infringing use / Exceptions

Requirements for document supply:

- Only a reasonable portion can be supplied - ie 10 percent, one chapter or one article, or more than one article if on the same subject

- Exception - if the material is not available within a reasonable time at an ordinary commercial price
Non-infringing use / Exceptions

When are items commercially available?

- Must be new copy (second hand doesn’t count)
- Must be part of the work required (don’t have to buy book if want one chapter)
- “Ordinary commercial price” = look at similar works
- “Reasonable time” = take needs of client into account
- Don’t hunt forever - take reasonable steps to find
Non-infringing use / Exceptions

Other requirements:

- A copyright warning notice must be included.
- Any electronic copy must be deleted as soon as practicable.
- If material originally in electronic form, always do commercial availability check

Record keeping:

- Have a written statement of the particulars.
- Keep the statement for four years.
- Enable inspection by copyright owners on request.
Non-infringing use / Exceptions

Requirements for interlibrary loan:

- can request material from other libraries
- can be for client’s research and study (ie document supply) or for inclusion in collection.
- only a reasonable portion can be supplied (ie 10 percent, one chapter or one article) - unless the material is not available within a reasonable time at an ordinary commercial price.
Non-infringing use / Exceptions

Other requirements

- Copies made for inclusion in collection can only be made once, unless the initial copy was lost, damaged or destroyed.

Record keeping:

- Have a written statement of the particulars.
- Keep the statement for four years.
- Enable inspection by copyright owners on request.
Non-infringing use / Exceptions

Requirements for preservation:

- almost none – any number, any format
- only caveat - material must not be commercially available in the preservation format
- best practice allowed – includes preservation at point of purchase
- Can provide onsite access to electronic if take reasonable steps to ensure that person who accesses it does not infringe copyright
- Can use preservation copy for other exceptions
Non-infringing use / Exceptions

Requirements for research:

- Can reproduce etc material in collection in original form (eg manuscripts) for research onsite here or at another library
- No other restrictions – any use, any material, any format
- Can make electronic version available onsite if take reasonable steps to ensure that person who accesses it does not infringe copyright
Non-infringing use / Exceptions

Requirements for administration of the collection:

- Can do anything for purposes directly related to the care and control of the collection
- No other restrictions – any use, any material, any format
- Intended to allow cataloguing, reporting, back up etc.
Non-infringing use / Exceptions

Requirements for parliamentary use:

- can do anything to assist a parliamentarian in their parliamentary duties
- request must come through a Parliamentary library
- no other restrictions - don’t have to worry about reasonable portion or check if commercially available.
Non-infringing use / Exceptions

Flexible dealing – section 200AB

■ Escape valve exception

■ Allows reasonable uses that are part of maintaining or operating a library or archive

■ Similar exception for educational instruction
Non-infringing use / Exceptions

Flexible dealing – section 200AB requirements:

■ No other exceptions apply.

■ The use is noncommercial (cost recovery ok)

■ Three step test:
  ■ The use will not prejudice the copyright holder.
  ■ The use will not conflict with normal exploitation of the work.
  ■ The use is a special case.
Non-infringing use / Exceptions

Considerations:

- The nature of the work.
- The age of the work.
- Potential concerns of the creator.
- Whether it is an orphan work.
- Extent of the planned use.

Can sample for large collections
Non-infringing use / Exceptions

Common uses:

- Onsite access to films etc
- Close to document delivery but not quite (eg private use; published film)
- Book covers for publicity (eg posters, social media)
- Storytime
- Exhibitions
- Orphan works, public interest works
Non-infringing use / Exceptions

In practice:

- Does it fit in s200AB?
- How risky is it?
- Most library and archive uses are low
- What steps can you take to lower risk and impact on copyright owner?
- eg notices on orphan works, lower resolution, opt out letter to copyright owner
Non-infringing use / Exceptions


libcopyright.org.au/our-work/library-resource/section-200ab-flexible-dealing-handbook-online
Golf excitement

great excitement River on when Elaine entered the elite club, by acing To wrap up a great round Elaine also won the trophy for a fine nett 71. was Lorraine nett. In Div Alvin was nett 75 nett and was Elaine nett. Nearest to the Pin at Div 1 was the winner.
# A colonial welcome

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<td><strong>Publisher</strong></td>
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<td><strong>Catalogue record</strong></td>
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