

Using third party copyright material

Fact sheet for agencies

This factsheet provides an introductory guide for Victorian government agencies wishing to use third party copyright material for the services of government.

Key points

- Many kinds of third party copyright produced material, such as photographs, text and video content, are covered by copyright
- Material which is out of copyright can be used without a copyright licence
- Some free uses of copyright material are permitted under copyright exceptions
- In some cases a State whole-of-government licence agreement may cover the use
- In some cases you will need to seek a licence (permission) directly from the copyright owner

If you are not sure whether you are allowed to use third party copyright material or how to licence it, always seek advice from your agency's legal advisor.

What is covered by copyright?

Copyright protects original expressions of intellectual effort. Kinds of material covered by copyright include books, research reports and website text, photographs and drawings, musical words, computer code, and videos.

Copyright generally lasts for many decades. Some older material, such as historical material held in archives, may be out of copyright.

For more information on what material is covered by copyright, its duration and ownership, visit the Australian Copyright Council (see links at the end of this fact sheet).

Rights of the copyright owner

The Copyright Act gives the owner of copyright material the exclusive right to do, or licence other persons to do, certain things with that material.

The key rights that apply are the rights to:

- Reproduce the whole or a "substantial" part of the material (eg to photocopy, download, scan or reproduce it in another work such as a report); and
- Communicate the material to the public (eg put the material online).

Depending on the kind of material, other rights controlled by the copyright owner may include the right to perform the material in public (eg perform a play) or to adapt the material (eg alter, translate or abridge the material).

What is a copyright licence?

A copyright licence simply means that the user has the permission, or "licence", of the copyright owner to do something with the copyright material that would otherwise require the owner's permission.

Linking to copyright material online

Providing a link to a public website does not require a licence from the copyright owner.

Some website terms and conditions request that a link is given only to the home page of a website.

Agencies should not link to any websites which appear to be "pirate" sites – ie sites which appear to be offering access to copyright material without the permission of the copyright owner.

What happens if an agency uses third party copyright material without having the right to do so?

Agencies using third party copyright for the services of the Crown are in a different position to other copyright users. A copyright owner cannot sue for infringement of copyright used for the services of the Crown. However, if no licence is in place, and the copyright owner's permission was needed, the agency must generally notify the copyright owner as soon as possible and negotiate a licence.

If the agency and the copyright owner cannot agree the terms of the licence, the copyright owner may apply to the Copyright Tribunal. The Copyright Tribunal may require the agency to pay the copyright owner "equitable remuneration" (a fair fee) for the period of the unlicensed use.

Case study: Bruce Woodley and Pocketful of Tunes Pty Ltd v Cth (2015)

In 2009 the Commonwealth Department of Immigration and Citizenship (as it then was) commissioned a video montage to be used in citizenship ceremonies. The commissioning budget for the videos was approximately \$40,000.

The video was distributed to over 500 local councils across Australia. The video music track included an excerpt of the song "I am Australian", co-written by Bruce Woodley.

In 2012 the Commonwealth received a complaint from Mr Woodley that it had not obtained a “synchronisation licence” to reproduce and use the song.

The Department withdrew the videos pending resolution of the issue and commenced negotiations for a licence. The parties were unable to agree a fee for the period of unauthorised use.

Mr Woodley and his assignee, Pocketful of Tunes Pty Ltd, filed an action in the Copyright Tribunal. In 2015 the Commonwealth was ordered to pay \$189,737 for the period of unlicensed use, or approximately \$40,000 per year plus interest. In 2016 in a further hearing the Department was ordered to pay the applicant’s costs.

Best practice recommendation

Because of the potential risks and expense of negotiating a licence with a copyright owner after a use has commenced, it is recommended that agencies do not use copyright material owned by third parties unless they have established that the use is:

- permitted under a licence the agency has negotiated with the copyright owner; or
- permitted under a whole of government copyright licence; or
- is not a use that requires permission or payment.

The following provides a *brief outline* to assist agencies in determining when a licence (permission) should be obtained before using third party copyright material. Agencies should obtain their own legal advice on their specific circumstances.

Whole of government collecting society copyright licences

Certain internal uses of copyright material may be licenced under whole of government copyright licences administered by bodies called collecting societies.

The Department of Treasury and Finance negotiates whole of government copyright licences with collecting societies on behalf of the State of Victoria. These licences apply to most Victorian agencies, refer to the information sheets on [DTF’s website](#) for further information.

If a whole of government licence applies, the agency does not need to seek a separate licence from the copyright owner.

These licences entitle employees of many government agencies to use a range of copyright material for internal purposes, such as in-house reports and presentations, without seeking permission directly from the copyright owner. These licences do not apply to external uses such as putting material on a public facing website. Some other exclusions apply.

The relevant collecting societies are:

- **Copyright Agency Limited**, which represents authors, publishers and journalists, and
- **Screenrights**, which represents broadcasters and other rightsholders in audio-visual material.

Copies of the State’s current agreements are available upon request. If you have a query about the scope of these licences, please email us (see details at the end of this fact sheet).

Standard licences given via website terms and conditions and CC licensing

Sometimes a copyright owner grants certain rights to the world provided certain conditions are met. For example:

- statements on publications or websites (usually under headings such as “Copyright”, “Terms of Use”, “Legal”)
- Creative Commons or other “open” licences, which grant free licences for anyone to use the material, subject to certain conditions listed in the licence.

If your use complies with these terms, you do not have to contact the copyright owner for specific permission.

Licences negotiated directly with the copyright owner

If the use you propose does not fit under any pre-existing licence discussed above, you will need to ask for a licence (permission) unless a copyright exception applies.

Common forms of licence include:

- permission granted orally or by letter or email in response to a specific request
- permission granted in a written contract or release

Licences do not have to be in writing to be effective; however it is always best to keep a written record if someone gives you permission to use their work, by keeping a copy of email correspondence or an agreement on file.

A register of key copyright licences held should be maintained in the agency’s records.

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Implied licences

While some licences may be implied by circumstances, do not assume that just because copyright material is shared online by the copyright owner (for example an image or photograph shared on social media) or by others that it is free for use by your agency. There are a number of cases where copyright owners have successfully sued for infringement in such circumstances, or in the context of government, demanded equitable remuneration for unauthorised use.

If in doubt, contact the copyright owner to seek a licence (permission) for the agency's use.

Exceptions to copyright

An agency may be able to use copyright material under a copyright exception. A copyright exception means a licence (permission) is not needed.

Unlike US law, the Australian *Copyright Act* does **not** have a general provision allowing 'fair use' of copyright material. Nor is there any general rule allowing people to reproduce 10% (or some other proportion) of a work. Rather, the Copyright Act has a number of specific exceptions which may apply.

Exceptions to infringement that are likely to be relevant to government agencies include:

- fair dealing for research or study
- fair dealing for criticism or review, reporting news or for purposes of legal advice
- use of copyright material for purposes of court or tribunal proceedings and for reporting such proceedings
- for librarians, making copies of material in the library collection for a client's research or study or certain other purposes; and
- for Parliamentary librarians, use of material to assist a member of Parliament.

These are sometimes described as 'free exceptions'. This means that provided the conditions are met, no payment to the copyright owner is required.

Further information about copyright exceptions can be found on the website of the Australian Copyright Council (link below).

More information

Visit DTF's [IP webpage](#) for more information or email DTF's IP Policy team at IPpolicy@dtf.vic.gov.au.

General information about copyright and moral rights: see Australian Copyright Council website at www.copyright.org.au

Disclaimer

This information sheet is provided for the general reference of Victorian government agencies and is not comprehensive. It does not constitute legal advice.

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