

AbaF

Intellectual property and copyright

What is Intellectual Property & Copyright?

The National Association of Visual Artists (NAVA) defines intellectual property and copyright as follows:

Intellectual property (IP) refers to property rights in creations of the mind, such as inventions, industrial designs, literary and artistic works, symbols, and names and images. IP is generally divided into two main categories: the protection of industrial property (protected by patents, utility models, industrial designs, trademarks, service marks, trade names etc); and copyright, which includes literary and artistic works... Copyright is a bundle of rights, which include economic and moral rights, protected in law. These both prevent other people from making unauthorised use of a work and can also provide the artist with additional economic gain from their work¹.

Understanding your rights and obligations regarding intellectual property and copyright will assist you in protecting the representation and reproduction of your artwork. It will also ensure you do not infringe the rights of others.

A number of organisations produce a range of intellectual property and copyright material specifically for the visual arts. These include the:

- Australian Copyright Council
- Arts Law Centre of Australia and
- National Association for the Visual Arts (NAVA).

The main legislation governing copyright and intellectual copyright in Australia is the Commonwealth *Copyright Act*, 1968. The Act details how copyright applies to material created before and after 1968.

In Australia, copyright protection is automatic and it is not a requirement to register copyright ownership.

Australia is also a signatory to the international treaty protecting the expression and reproduction of literary and artistic works. *The Berne Convention*, established in 1886 and revised in 1971, is considered to be the oldest international copyright agreement. The Berne Convention offers copyright protection to owners of member states and their citizens. For a list of foreign countries that are not signatories see The Australian Copyright Council website.

In some countries, a copyright registration system exists for the protection of copyright. If you regularly exhibit work overseas in a particular country, it may be useful to register your work with that country. For example, the United States of America (USA) has a copyright registration system and if you intend to exhibit or sell your artwork in the USA it may be useful to register at www.copyright.gov

Indigenous rights and copyright

The collective nature and differing cultural values towards copyright within indigenous communities is sometimes at odds with the legal parameters of copyright and intellectual property. Therefore, whilst there are currently no laws offering different forms of copyright protection for Indigenous peoples, there are recommendations for dealing with Indigenous copyright and cultural issues in ethical ways.ⁱⁱ These ethical guidelines are more fully explored in the NAVA publication *Valuing Art, Respecting Culture*.

Copyright protection

Copyright protects art works, provided they are:

- not copied from something else
- recorded in a form that can be reproduced, such as a painting, photograph or craft item.

An original artwork is protected as soon as it is created.

It is important to remember that copyright DOES NOT cover the ideas, information, styles or techniques used in creating the works. For example, if you discuss an idea you have for a painting with someone and that person goes on to use that idea in a painting then they become the owner of the copyright of that material outcome.

The copyright notice

The copyright notice serves as a warning to others that the artwork is protected by copyright and informs them that you are the person claiming copyright ownership.

Although it is not necessary to include the copyright notice on your artwork to have copyright protection in Australia it is a good idea.

The Copyright Notice is the symbol © followed by the name of the copyright owner and the year the work was created or first published. For example, on the back of a painting it is good practice to include © John Citizen 2007.

Copyright ownership

As a copyright owner of an artistic work, generally you and others you have given permission to, are allowed to:

- reproduce the work by photographing it
- publish the work
- communicate the work to the public by putting it on the internet, emailing or broadcasting it.

Copyright ownership cannot be used to prevent an artwork being hung in an exhibition.

Duration of copyright

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years.

Under the Free Trade Agreement with the United States, Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts the life of the creator plus 70 years. However, if copyright had already expired prior to 2005 then the copyright remains expired and the material can be used freely in Australia.

Moral rights

Creators of artistic works have moral rights to their work and these rights allow for artists to ensure that:

- they are attributed as the creator of their artwork
- their work is not falsely attributed to someone else and
- their work is not used in a way that is prejudicial to their honour or reputation.

For example, an artist can claim that their moral rights have been infringed if a damaged artwork is displayed in an art exhibition.

Resources:

IP Australia

IP Australia is the Australian Government agency responsible for administering patents, trademarks and designs. They have information sheets on copyright, patents, trade-marks and designs.

Ground Floor
Directory House
47 Bowes Street
Phillip ACT 2606
T: 02 6283 2999 or 1300 651 010
F: 02 6283 7999
W: www.ipaustralia.gov.au

National Association of Visual Artists (NAVA)

NAVA has a range of resources for visual artists in relation to intellectual property and copyright.

These include the following publications:

- "Visual Artists and Craftspeople as Copyright Owners And Users", *Professional Practice Kit: Sheets for Visual Artists*, NAVA, Sydney, 2004
- "Copyright, Moral Rights, Resale Royalty, Equal Opportunity and Restrictions on Freedom of Expression", *The Code of Practice for the Australian Visual Arts and Craft Sector*, (2nd edition), NAVA, Sydney, 2004.
- Mellor, Doreen ' *Valuing Art, Respecting Culture: Protocols For Working With The Australian Indigenous Visual Arts And Craft Sector*', NAVA, Sydney, 2001 (Legal section by Terri Janke).

Level 1

43-51 Cowper Wharf Road
Woolloomooloo NSW 2011
T 02 9368 1900
F 02 9358 6909
E nava@visualarts.net.au
W www.visuatarts.net.au

The Arts Law Centre of Australia

The Arts Law Centre of Australia is the national community legal centre for the arts. Established in 1983 it provides specialised legal and business advice, referral services, professional development resources and advocacy for artists and arts organisations.

The Arts Law Centre of Australia gives preliminary advice and information to artists and arts organisations across all art forms on a wide range of arts related legal and business matters including contracts, copyright, business names and structures, defamation, insurance and employment.

The Arts Law Centre of Australia provides a range of information on Copyright in the Legal Information section of their website.

The Gunnery

43-51 Cowper Wharf Road
Woolloomooloo NSW 2001
T: 02 9356 2566 or 1800 221 457
F: 02 9358 6475
E: artslaw@artslaw.com.au
W: www.artslaw.com.au

The Australian Copyright Council

The Australian Copyright Council is an independent, not for profit organisation that provides information, prepares submissions, researches, and provides advice and training about copyright in Australia. The Council has a number of excellent information sheets, especially for visual artists (including photographers, designers and craftspeople) that can be downloaded from the web. They also provide a range of other publications and training, as well as free legal advice about copyright issues not addressed in the information sheets.

245 Chalmers Street
Redfern NSW 2016
T: 02 93818 1788
F: 02 9698 3536
E: info@copyright.org.au
W: www.copyright.org.au

VISCOPY

VISCOPY is the copyright collecting society for visual artists in Australia and New Zealand. They negotiate related intellectual property transactions between the artist and the user for reproductions of artistic work in advertising, publications, newspapers and electronic media such as television, cinema, internet and CDROM. VISCOPY handles associated contracts, negotiations, legal requirements and the distribution of royalties. Currently, they represent over 5000 Australian artists, including Aboriginal and Torres Strait Islander artists and estates.

VISCOPY licenses the copyright in artistic works and pays the artist or copyright owner a royalty for the reproduction. In all cases, the fee charged to the client for the reproduction is returned to the artist or copyright holder less VISCOPY's administration costs.

Copyright collecting agencies and societies such as VISCOPY provide the most efficient and effective way for visual artists and copyright owners to administer their copyrights on a national and international basis. Through reciprocal agreements, these agencies and societies agree to administer each others' repertoire in their respective territories for specific or non-specific rights. The agencies are traditionally non-profit, non-government, and directed by their members.

45 Crown Street
Woolloomooloo NSW 2011
T: 02 9368 0899
F: 02 9368 0899
E: viscopy@viscopy.com
W: www.viscopy.com.au

State/Territory Economic Develop Departments

Each of the State/Territory Economic Development Departments or their equivalent has advice on intellectual property and copyright. See the AbaF Business Resources Fact Sheet for these details.

References and further reading:

- Australian Copyright Council, *Information Sheet G33 Artworks & Copyright*, Australian Copyright Council, January 2006
- Australian Copyright Council, *Information Sheet G73 Craftworkers and Copyright*, Australian Copyright Council, August 2006
- Australian Copyright Council, *Information Sheet G75 Graphic designers*, Australian Copyright Council, March 2006
- Australian Copyright Council, *Information Sheet G11 Photographers and copyright*, Australian Copyright Council, January 2006
- Australian Copyright Council, *Information Sheet G84 Protecting your copyright*, Australian Copyright Council, August 2006
- NAVA, “Copyright, Moral Rights, Resale Royalty, Equal Opportunity and Restrictions on Freedom of Expression”, *The Code of Practice for the Australian Visual Arts and Craft Sector*, (2nd edition), NAVA, Sydney, 2004.
- NAVA, “Visual Artists & Craftspeople as Copyright Owners & Users”, *Professional Practice Kit: Sheets for Visual Artists*, NAVA, Sydney, 2004 edition.
- James, Stokes “Protecting your work: Copyright and related issues”, *Earning a living in the visual arts and crafts*, (3rd edition), Hale & Iremonger, Sydney, 1997.

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i “Copyright” from www.visualarts.net.au/advicecentre/legalcopyright/gettinglegaladvice/copyright

ii “Copyright”, from www.visualarts.net.au/advicecentre/legalcopyright/gettinglegaladvice/copyright