



## Assigning and Licensing Rights

In this information sheet, we give a brief overview of the ways in which copyright may be transferred from person to person and licensed for other people to use. This information is mainly for owners of copyright who intend to give other people the right to use their material. It is also useful for people who are asking copyright owners for licences (permission).

**The purpose of this information sheet is to give general introductory information about copyright. If you need to know 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 preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, archives and libraries.

We have a range of information sheets on a number of topics and publish books that analyse specific areas of the law. We can provide this information sheet in an accessible format on request. Check our website for information about our publications [here](#) and details of our seminar program [here](#).

### Key points

- Copyright owners can choose to assign or license their rights in copyright material.
- Assignments and exclusive licences of copyright **must** be in writing and signed by the copyright owner before they are legally effective. It is also a good idea to put the grant of a non-exclusive licence in writing.
- Copyright owners are free to choose whether or not to license their rights. There is nothing in the *Copyright Act* that compels a copyright owner to license their rights.

### Ways of dealing with copyright rights

Copyright is not a single right, but rather a bundle of rights. For all material which is protected by copyright, the copyright owner has the exclusive right to reproduce or make copies of that material. Depending on the type of material, the copyright owner usually has other rights as well, for example to perform or play the material in public and to broadcast or communicate it to the public (e.g. over the internet). For information about what material is protected by copyright and what rights copyright owners have, see our information sheet *An Introduction to Copyright in Australia*.

Copyright may be **assigned** (which means transferred or sold) or **licensed**. When copyright is assigned or licensed, it may be divided in any number of ways, including by territory, time and type of use.

## Assignment

An assignment must be in writing and signed by or on behalf of the owner of copyright to be legally effective. Electronic communications, such as emails, will generally satisfy this requirement. Where copyright is assigned, the person to whom the copyright is transferred becomes the new copyright owner. For example, it is common for film production companies to get an assignment of copyright in a screenplay from the screen writer. The film production company then becomes the owner of copyright in the screenplay.

## Licences

### *Exclusive licence*

For the purposes of copyright, an exclusive licence must be in writing and signed by the copyright owner. As with assignments, electronic communications such as emails will generally satisfy this requirement. Under an exclusive licence, the licensee is the only person who can use the copyright material in the ways covered by the licence. For example, it is common in book publishing agreements for a writer to grant the publisher an exclusive licence to print and publish the writer's novel. The writer is not entitled to license another publisher to publish the same book during the period of the licence. Like the copyright owner, an exclusive licensee may take legal action for copyright infringement by third parties. In the example above, if copyright in the novel is infringed, both the publisher and the writer may take legal action.

### *Non-exclusive licence*

A licence may also be non-exclusive. If you grant someone a non-exclusive licence to do something with your copyright material, you may continue to use your copyright material in that way and you can also grant other people non-exclusive licences to use your copyright material in that way. For example, if you grant a non-exclusive licence to a publisher to reproduce your illustration in a book, you may also grant other publishers the same non-exclusive licence and you may reproduce the illustration yourself.

### *Implied licences*

In some cases, permission from a copyright owner to use copyright material may be implied from all the circumstances.

For example, when a person sends a letter which comments on current events to the editor of a newspaper, it is likely that the newspaper will have an implied licence to publish that letter on its letters page. Similarly, when copyright material is commissioned or prepared for a particular purpose, it is likely that the person or organisation for which the material is created will have an implied licence to use that material for that purpose, unless there is something to indicate otherwise.

However, the nature and scope of an implied licence, and who can rely upon it, will always depend on all the circumstances. For this reason, it can often be difficult to work out whether a licence can be implied for someone to use copyright material. Therefore, if permission is needed it is generally best to get express permission, rather than rely on an implied licence.

### *No obligation to licence*

There are no provisions in the *Copyright Act* that compel a copyright owner to license their copyright material. A copyright owner is free to choose whether to grant or refuse a licence.

## Some points about contracts

A contract is essentially a bargain between parties that the law will enforce. A contract generally involves the parties agreeing to do certain things.

Dealings with copyright do not have to be by way of contract. For example, a copyright owner can transfer ownership of their copyright to someone else merely by signing a piece of paper which records the transfer. Likewise, a copyright owner can grant someone an exclusive licence to use their copyright material by signing a piece of paper to this effect. A non-exclusive licence may be given merely by saying that a person can use the copyright material or by putting a statement on a website.

However, in many cases assignments and licences of copyright are included in contracts which contain detailed provisions recording the obligations of each party. If you expect to get something in return for the rights you are granting, such as payment, you will generally be entering into a contract.

Most contracts don't need to be in writing to be legally binding. However, contracts which assign copyright or grant exclusive licences must be in writing and signed by the copyright owner before they are legally effective. It is also a good idea to have a written agreement when dealing with non-exclusive uses of copyright material. A written agreement has at least two benefits: it minimises the potential for arguments and provides evidence of what was agreed.

The following four elements are needed for a contract to be binding:

1. An **offer**. For example, a publisher offers an artist \$200 for a licence to include the artist's work in a book.
2. An **unconditional acceptance** of the offer. If the artist asks for a free copy of the book in addition to the fee, this is regarded as a counter-offer and the contract is not made until this or some later offer is accepted.
3. Some **"valuable consideration"** or benefit must pass between the parties. In this case, the publisher gets the benefit of using the work in the book and the artist receives some money. Consideration does not, however, need to be financial; receiving a free copy of the book could be sufficient.
4. An **intention to be legally bound**. This will usually be the case in commercial contexts.

### Things to note

- Once a contract is final, neither party can vary it without the other party's agreement.
- Written contracts are presumed to contain all the terms of the agreement. If there is a written agreement, it is difficult to argue later that something that was discussed is part of the agreement if it is not in the written contract.
- A contract is only binding on the parties who made the agreement. Obligations or rights cannot usually be imposed on people who are not party to the contract.
- You should always obtain legal advice before finalising any agreement or signing any document. It is usually difficult to get out of a contract once it has been signed.

### Granting rights: things you should think about

It is not essential for a grant of rights to take place within a written contract, but it is common and good practice to do so. If you are contracting to obtain rights or grant rights you should consider dealing with the following matters in your agreement (we refer to the person granting the rights as the grantor, and to the person acquiring rights as the grantee):

- the identity and contact details of the parties (the grantor and grantee);
- a description of the material in which rights are being granted;
- the identity of the copyright owner (usually the grantor);

- the rights granted;
- how long the agreement lasts;
- the territory;
- payment and payment terms;
- terms of attribution and copyright notice;
- whether alterations to the material are permitted and who will own the copyright in such alterations;
- appropriate warranties and indemnities;
- whether the grantee can assign rights granted under the contract;
- circumstances in which either party may terminate the contract; and
- appropriate dispute resolution procedures.

Make sure the agreement is signed and dated by all parties.

### **Licensing without payment**

The Creative Commons and Open Source movements promote standard licence formats under which copyright owners grant others a range of rights to use, remix and re-purpose their material. The licences are not granted to specific people with whom the copyright owner has a contractual relationship but are available to anyone interested in using the material, or broadly within a particular field (such as education under the National Education Access Licence for Schools). Generally, the licences are offered without payment, although this may not always be the case.

While the idea of freely swapping and re-using content has some appealing aspects, it is important for creators and copyright owners to think carefully before offering these licences for their material. If you earn your income from creating copyright material, there may be circumstances in which such licences are unlikely to be appropriate for you.

For more detailed discussion of the Creative Commons licences, see our information sheet *Creative Commons Licences*.

### **Common question**

#### ***What are the implications for managing rights if I co-own copyright with one or more people?***

If more than one person co-owns copyright in the same material (e.g. a play resulting from the collaboration of two writers or a novel in which copyright has been inherited by the writer's children) then anyone who needs permission to use the material will need permission from all co-owners.

Where there are co-owners – particularly if there are many – it can be useful for them to appoint one person who has authority to grant certain permissions on behalf of all the co-owners.

### **Further information and advice**

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For further information about the service, see the Legal Advice section of our website [copyright.org.au](http://copyright.org.au).

## Reproducing this information sheet

Our information sheets are regularly updated. Please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

## About us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice education and forums on Australian copyright law for content creators and consumers.

Australian Copyright Council respectfully acknowledges the Gadigal people, the owners and custodians of the land on which our office is located. We pay our respects to the elders and to all First Nations elders: past, present and emerging. This always was and always will be Aboriginal land.



Australian Government



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

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