



INFORMATION SHEET G21

Hobby crafts and copyright

April 2005

In this information sheet, we give a brief overview of copyright law as it relates to:

- people who create original craft works; and
- people who want to copy other people's craft works, or use other people's patterns and designs.

The sorts of craft works we are referring to include pottery, glass work, sewing, jewellery, tapestry, woodwork, lace work, embroidery, découpage, paper tolling, folk art, and hand-made toys.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au/> or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give 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.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Generally, hand-made craft works will automatically be protected by copyright from the moment they are created.
- Two dimensional designs and patterns for craft works may also be protected by copyright.
- If you want to protect a three dimensional design that can be used to create a functional item, you may need to register it under the Designs Act.
- Generally, you will need permission to reproduce a craft work, or a design or pattern for a craftwork, though in some situations there will be an implied licence allowing you to make up craft items from patterns for personal or domestic use.

What is protected by copyright?

Copyright protects a range of materials, including:

- artistic works, such as drawings, diagrams, photographs and paintings;
- written material, such as written instructions; and
- craft items.

Protection is automatic

There is no system of registration for copyright protection in Australia. Copyright protection is free and automatic. If something is within one of the categories of material listed in the Copyright Act, and it is “original”, it is automatically protected as soon as it is recorded in some way (for example, when a set of instructions is written out or typed, or when an artwork is created).

A work is “original” for the purposes of copyright law if it is not a mere copy of another work, and it results from the skill and labour of its creator.

Most foreign copyright owners are protected in Australia, and Australian copyright owners are protected in most other countries because of international treaties such as the Berne Convention.

The copyright notice

The copyright notice is not needed for protection in Australia. It does, however, remind people that the work is protected and identifies the person claiming the rights. Copyright owners can put the notice on their work themselves; there is no formal procedure. The notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication; for example: © Papa Toll 2005.

Copyright protection for craft works

A craft work is usually protected if it is hand-made, and its maker or designer intended it to be “artistic” rather than purely functional. Things which can be regarded as “works of artistic craftsmanship” for the purposes of copyright law include hand-made knitted garments, toys, pottery, glass work, jewellery, lace-work, embroidery, tapestry, woodwork and découpage.

Copyright protection for designs & patterns

In addition to copyright protection for a craft item, a design or pattern for a craft item may also be protected by copyright. For example, templates and drawings of the shapes to make into a soft toy or piece of clothing, a design in a grid for a knitted garment, a sketch of a dress, or a diagram of a wooden toy. These designs or patterns may be purchased as part of a kit, published in a book, or created by the person making the craft item.

Copyright protection for instructions

The written instructions for making a craft item may be protected by copyright as a “literary work”, and copyright may be infringed if these instructions are copied—for example by photocopying them. However, copyright in instructions is not infringed merely by making something following the instructions.

Copyright does not protect ideas or information

Copyright does not protect ideas, concepts or information. Nor does it protect styles or techniques or methods. Copyright protects the way in which an idea or concept is expressed—for example, as a drawing, as a craft item or as a piece of writing.

Thus, the idea of making a quilt showing the arrival of the First Fleet is not protected, but the actual quilt which embodies this idea may be protected; the technique of découpage is not protected by copyright, but a person’s written description of this technique is protected; the idea of making a moving wooden toy depicting a kangaroo is not protected, but drawings of the component parts are protected, as is the particular toy.

How long does copyright last?

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus fifty years. There were various exceptions to this rule, including:

- where a work was not published during a creator’s lifetime; and
- where something was published anonymously or under a pseudonym, and the identity of the creator couldn’t reasonably be ascertained.

In each of these cases, copyright lasted for fifty years from the end of the year the work was published.

Under the Free Trade Agreement with the US, Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts for the life of the creator plus 70 years (or, where duration depends on the year of publication, until 70 years after the material is first published).

The terms of the Free Trade Agreement did **not** include any obligation to **revive** copyright if copyright had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

For detailed information on duration in Australia, see our information sheet *Duration of Copyright*.

Who owns copyright?

Generally, copyright in a work is owned by the person who creates the work. The situation may be different if the person created the work as part of their duties of employment, or assigned copyright to someone else (for example, to a book publisher).

For more information, see our information sheet *Owners of copyright*.

Infringement of copyright

Copyright in an artistic work is usually infringed by someone who reproduces the work without the copyright owner's permission. Copyright in a two-dimensional work may be infringed by making a three-dimensional version—for example, by making a toy from drawings. Similarly, copyright in a three-dimensional work may be infringed by making a two-dimensional version—for example, by taking a photograph of a pottery vase.

Reproducing part of a work may also infringe, if the part is a “**substantial part**”. A substantial part is an important, essential or distinctive part of the work.

If the work is highly original, copying even a small part may infringe copyright. On the other hand, if a work is very simple, copyright is unlikely to be infringed unless the work is copied exactly or very closely.

A person does not necessarily avoid infringement by making changes—as infringement is determined by what has been copied, rather than what has been changed.

Copyright is not infringed just because a new work is based on the same idea as an earlier work, as ideas are not protected by copyright. For example, making a moving wooden toy depicting a kangaroo does not infringe copyright in another person's toy, unless you reproduce important or distinctive original elements of the other person's toy.

When do you need permission from a copyright owner?

Unless copyright has expired, permission will usually be needed from a copyright owner to:

- make a craft work which is a copy of another person's craft work; or
- make a craft work from another person's design, ink-pad stamp or pattern.

Permission may be implied

In many cases, permission to reproduce a craft work, or a design or pattern for a craft work, may be implied. For example, you will usually have implied permission to reproduce a craft item, pattern or design from a craft book or craft magazine, where it is clear that readers are invited to do this. In some cases, there may be an express direction in the book or magazine about reproducing craft items and patterns shown. You are even more likely to have implied permission to make an item from a pattern sold as a kit, although again there will often be an express direction about use of the pattern. Similarly, if you buy an ink-pad stamp, you would have an implied licence to use it to create designs or decorate items.

However, where permission can be implied, it will usually be limited to making items for private and domestic use. If you want to make items for personal profit, you will nearly always need permission from the copyright owner.

There is unlikely to be any implied permission where a craft work is depicted in a book or magazine which is not accompanied by a pattern, instructions or an invitation to make copies. For example, there would be no implied permission to copy an item depicted in an exhibition catalogue.

How to get permission

If you need permission, the first step is usually to contact the publisher of the book or magazine in which the item or pattern appeared. The publisher may be able to give you permission, or may help you to contact the copyright owner. If the item or pattern is shown in a kit, contact the producers or distributors of the kit.

For more information, see our information sheet *Owners of copyright: how to find*.

Designs for functional articles

Artistic works used as the basis of functional articles—such as furniture, household appliances or crockery—are often registrable as designs under the Designs Act. Design registration protects the “look” or visual appeal of functional articles. Information about design registration is available from the Australian Industrial Property Organisation (formerly the Patents Trade Marks and Designs Office), which has an office in most capital cities.

If you have made something three-dimensional which is to be used as a design for functional articles, you may need to get legal advice about whether to register the design under the Designs Act. This is particularly important if the work is **not** a “work of artistic craftsmanship”. For further information, contact IP Australia (www.ipaustralia.gov.au) and see our information sheet *Designs for functional articles*.

Re-using postcards, wrapping paper, lengths of material

The rights of copyright owners do not generally extend to re-using items which contain or bear copyright images. For example, in the case of découpage, merely cutting up wrapping paper or pages from magazines will **not** involve any of the exclusive rights which copyright owners are given under the Copyright Act. Similarly, merely appliquéing around the edges of material which has a printed design on it would not involve any of the copyright owner’s exclusive rights unless the shape of the stitching itself which outlines the appliqué (for example, the outline or features of Thomas the Tank Engine) reproduces a distinctive part of the copyright work.

Note, however our comments under the title “Other areas of law” (below), which can sometimes apply to the re-use of items in commercial contexts.

Photocopying artistic works (for example, for découpage) may require permission from the relevant copyright owner if the artistic work is still in copyright.

Other areas of law

Copyright law does not prevent people using pre-printed material such as wrapping paper, postcards, or lengths of cloth in their craft items.

However, in some cases other areas of law may apply if you will be selling your craft. These areas of law may come into play if the item you are selling contains images or words associated with another person or company. For example, the “passing off” action prevents others from profiting from the reputation created by another trader, such as by adopting the trader’s name or other distinctive features so as to misrepresent the origin or endorsement of the product to consumers. There are similar provisions in the Trade Practices Act 1974 and other legislation such as the Fair Trading Acts in each State, concerning conduct which may mislead or deceive the public.

These areas of law may be relevant, for example, if you want to use Disney images in a way which suggests that the items you are selling are official Disney merchandise, or if you were to use a brand name or trade mark such as Harley Davidson on a T-shirt.

The Copyright Council does not advise on these other areas of law. If these areas of law are of concern to you, you should obtain advice from a solicitor with the relevant expertise.

Common questions

Can I use another person's work without permission if I make changes?

Generally, you will need express or implied permission even if you are making changes or additions to a work (such as changing the colours). If you can put two works side by side and still identify important parts which have been copied, it is likely that you need permission.

Do I need permission to make things from items containing copyright material?

You generally do **not** need permission if you do not copy—for example, if you make a collage from photographs cut from magazines, or if you mount postcards on trays or teapot stands, you will not need permission from the copyright owner. Similarly, you do not need copyright permission to make things from fabric which contains pictures or designs (for example, cloth with Thomas the Tank Engine printed on it).

You may, however, need permission if you subsequently wish to photograph or sketch the craft item containing the image (for example, in a catalogue). Generally, you will need permission from any copyright owner whose work is substantially reproduced in the photo or sketch. In some commercial contexts, you may also need advice from a solicitor in private practice as to whether your use of images or logos gives rise to issues under other areas of law.

Can I sell craft items which I have made from another person's pattern?

Generally, where permission to make a craft item can be implied, it will usually be limited to making that item for private and domestic use. If you want to make items for profit you will nearly always need express permission from the copyright owner. The publisher of the pattern is often the first point of contact in getting permission.

If I buy an ink-pad stamp, can I use it to decorate cards or paper for sale?

Generally, any implied permission to use an ink-pad stamp will usually be limited to using it to decorate items for private and domestic use. If you want to use an ink-pad stamp to decorate items for profit you will nearly always need express permission from the copyright owner. The manufacturer is often the first point of contact.

Can I sell craft items which I have made from items containing copyright material?

You will not generally infringe copyright by selling an item such as a coat hanger made from Bananas in Pyjamas material, or a play suit or cushion made from material which the manufacturer printed with Simpsons or Disney designs. However, you may need to consider other areas of law if your item looks as if it is authorised merchandise. If this area is of concern to you, you should consult a solicitor with the relevant expertise.

Can I borrow templates, designs or patterns, or buy them second hand?

Generally, you do not require permission from the copyright owner to sell, buy, lend or borrow templates, patterns, kits and so on, because copyright law does not give copyright owners the right to control such uses of items in which they own copyright. Generally, anyone borrowing or otherwise acquiring the item is likely to have the same right to use it as the person from whom they acquired it.

Further information

For further information about copyright, see our website: <http://www.copyright.org.au/>.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au/>; phone: 02 9356 2566.

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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.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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