



INFORMATION SHEET G39

Sewing patterns: legal protection

July 2005

In this information sheet, we give a brief overview of copyright as it relates to the protection of sewing patterns.

This overview is for people who want to make garments using patterns or designs commercially available in a package (for example, Vogue and Butterick patterns) or patterns for garments in books and magazines.

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 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

- Sewing patterns, and the written instructions for how to make a garment, may be protected by copyright.
- If you want to reproduce a paper pattern, or make a commercial use of it, you may need permission.

How does copyright affect sewing patterns?

Copyright protects a range of materials, including:

- artistic works (such as a design in a grid for a knitted garment, sketch of a dress or the three dimensional garment itself); and
- literary works (such as written instructions for making a garment).

Protection is automatic

There is no system of registration for copyright protection in Australia. Copyright protection is free and automatic. If something comes 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 created.

A work is "**original**" for the purposes of copyright law if it has not been simply copied from another work, and it is the result of skill and labour on the part of its author.

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.

Limitations on copyright protection

The provisions in the copyright dealing with the **design/copyright overlap** in the Copyright Act limit the scope of copyright protection for items that could be protected as designs. Changes to these provisions that took effect on 17 June 2004 have further limited protection for sewing patterns and mass-produced clothes.

Prior to 17 June 2004, the owner of copyright in a pattern for mass-produced clothes could take action for infringement if someone copied the pattern without permission (for example, by taking a garment apart to copy it, or copying commercial clothes patterns).

Since 17 June 2004, the owner of copyright in a pattern now cannot generally take action for copyright infringement against people who “reverse-engineer” garments they have produced, but must rely on protection under the Designs Act.

This area of law is complicated, and how the law applies depends on the particular facts and circumstances (especially where some or all of the relevant events took place before 17 June 2004). Please note that the Australian Copyright Council cannot advise on this issue. For advice on your situation, you should contact a lawyer in private practice.

For more information, see our information sheets *Designs for functional articles* and *Fashion Design*.

The copyright notice

The copyright notice is not required for protection in Australia. Material that comes into the relevant categories will generally be protected, whether or not there is a copyright notice. A copyright notice merely notifies 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: © T.H. Read 2005.

Who can give permission?

Generally, you should ask the publisher for permission to reproduce a sewing pattern. If the sewing pattern hasn't been published, then you will need to seek permission from the person who created it.

When do you need permission from a copyright owner?

Unless copyright has expired or an exception applies, permission will usually be needed from a copyright owner to:

- make a garment which is a copy of another person's garment; and/or
- make a garment from another person's design or pattern.

Different types of permission

Permission to reproduce a work may be **express** or **implied**. If permission is express it has been given directly, either orally, or in writing. For example, there may be express permission included in a pattern, book or magazine about reproducing the garments and patterns shown.

In some cases, permission to reproduce a garment, or a design or pattern for a garment, may be implied. This means the permission is not given directly, but is clear from the circumstances. For example, you will usually have implied permission to make a garment or other item from a pattern or design which you have bought. The fact that the copyright owner allows their pattern to be sold indicates that he or she expects people to use that pattern to make the relevant item. You may also have implied permission to make a garment or other item from a pattern or design in a sewing book or sewing magazine, where it is clear that readers are invited to do this.

There is unlikely to be any implied permission to copy a garment depicted in a book or magazine. In other words, there would be no implied permission to copy a dress depicted in a fashion magazine where there is no accompanying pattern or instructions.

Where permission is implied, it will usually be limited to making items for private and domestic use. If you want to make items for sale, or use them to teach sewing, you will nearly always need permission from the copyright owner.

How to get permission

If you need permission, the first step is usually to contact the publisher of the pattern or 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 contained in a kit, contact the producers or distributors of the kit.

When don't you need permission from a copyright owner?

Material no longer in copyright

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years, or where duration depended upon publication, the year of publication plus 50 years.

As a result of amendments to the Act following the Australia-US Free Trade Agreement (AUSFTA), the rules in relation to duration of copyright changed on 1 January 2005.

The general rule is that copyright in published literary, artistic or dramatic works now lasts for the life of the creator plus 70 years, or where duration depended upon publication, the year of publication plus 70 years.

Note also that if a work was published after 1 January 1955, anonymously or under a pseudonym, and the author's identity is not generally known or cannot be found by reasonable inquiry, then copyright lasts for 70 years from the year of first publication.

The Free Trade Agreement amendments did not revive copyright if copyright had already expired by 1 January 2005.

For detailed information, see our information sheet *Duration of copyright*.

Use of ideas, information, techniques and methods

Copyright does not protect ideas 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, or a piece of writing.

Therefore, if you are simply using someone else's idea, information, technique or method to create a garment, you will not be infringing copyright. For example, the original idea of making a swimming costume in two pieces was not protected, but it is likely that the first bikini and the pattern for that bikini were protected as artistic works. Also, a particular style such as flared pants would not be protected by copyright, however, a particular garment may be.

Special exceptions

In some special circumstances, the Copyright Act does allow the use of copyright material without permission. In some cases, there is no requirement for payment and no special procedures which must be followed. In other cases, payment must be made to the copyright owner, or special procedures must be followed, or both. These exceptions to copyright infringement are outlined below.

Fair dealing for research or study

The Copyright Act allows a fair dealing to be made with copyright material for the purposes of research or study. Using a "reasonable portion" of a literary, artistic, dramatic or musical work is deemed to be fair.

For example, it may be considered a fair dealing for students to copy a design or a garment they have seen in a magazine for the purpose of a pattern making class. Note that this exception would not cover making copies of the pattern or garment to sell.

For more information, see our information sheet *Copying for research or study*.

Copying by educational institutions

The Copyright Act provides a procedure under which educational institutions can make multiple copies of certain print material for distribution to students. Institutions relying on this scheme must undertake to pay equitable remuneration to the copyright owners. This is done through a collecting society, the Copyright Agency Limited (CAL), which collects the licence fees and distributes the money to the relevant copyright owners.

For more information, see our information sheet, *Educational Institutions: introduction to copyright*.

Infringement of copyright

Copyright in a work is usually infringed by someone who reproduces the work without the copyright owner's permission. Copyright in a two-dimensional artistic work may be infringed by making a three-dimensional version—for example, by making a garment from drawings or by downloading a pattern from the internet.

Similarly, copyright in a three-dimensional work may be infringed by making a two-dimensional version—for example, by taking a photograph of a garment.

Reproducing part of a work may also infringe, if the part is important. A person does not necessarily avoid infringement by making changes—you look at what has been copied, rather than what has been changed.

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. Copying “stock” elements of a design, such as a Peter Pan collar or a princess line, will not infringe copyright, as those elements are unlikely to be original enough to be protected by copyright. However, while stock elements will generally lack sufficient originality to be protected by copyright, a combination of stock elements may be protected, if some skill and effort was used in creating a design which is not a mere copy of a prior design.

As noted above, copyright is not infringed just because a new work is based on the same idea as an earlier work, because ideas are not protected by copyright.

You do not infringe copyright in a literary work that consists of a written set of instructions by making something following the instructions. However, if an artistic work accompanies those instructions, you may infringe the copyright in the two-dimensional work by making a three-dimensional version.

Some common questions

If I change 10% of a pattern do I avoid infringing copyright?

Some people think that if they change a certain percentage of a pattern they avoid infringement. As explained above, however, it is not what is changed that is important, it is what is copied. It is not possible to quantify what amount may be copied before an infringement takes place; it is a matter of determining how important the part is that has been taken.

How do I prove a design is my own?

People often ask how they prove that a design is their own when there is a certain sameness to most designs. There are stock elements to many designs which are unlikely to be protected by copyright. For example, a design for an average T-shirt would not be protected by copyright. As explained above, a work must be “original” to be protected by copyright. A dispute about who owns a design, which cannot be resolved by negotiation, will be resolved by a court. The court considers all the evidence, which will include evidence from the designer as to how the design was created and perhaps evidence such as drafts of the design and design sketches made at the time the design was created. It is therefore a good idea to keep copies of drafts and working drawings.

Further information

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

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

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop—<http://shop.copyright.org.au>—or direct from us.

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.



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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