



INFORMATION SHEET G073

Craftworkers and copyright

June 2005

This information sheet is intended for professional craftspeople wanting to protect their works or wanting to incorporate other people's copyright works into their craftworks. It also provides some information for people wanting to make use of craftworks.

Information for people making craft items as a hobby, using pre-existing patterns, kits or instructions, is provided in our information sheet *Craftworkers (hobby)*. The information sheet *Sewing Patterns: legal protection* may also be relevant.

There is some overlap between the copyright issues for artistic works and craftworks. If you have questions that are not answered by this information sheet, please read our information sheet *Artworks & Copyright*.

Note that in some cases if you want to protect yourself against people copying functional or mass-produced items, copyright protection may not be available and you will need to look at your options under design law. For more information, see our information sheet *Designs for functional articles*.

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.

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, libraries and governments. For further information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

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

Key points

- Generally, craftworks will be protected as either "artistic works" or "works of artistic craftsmanship".
- A design or pattern for a craftwork may also be protected by copyright as an "artistic work".
- Generally, you will need permission to reproduce a "substantial part" of someone else's craftwork.
- Craftworkers also have moral rights in relation to their works.
- There are some circumstances in which a craftwork should be registered under the Designs Act for protection as a design.

Copyright protection for craftworks

Copyright protects "artistic works" of various kinds:

- paintings, sculptures, drawings, engravings or photographs—whether or not of "artistic quality");
- buildings or models of buildings, whether the buildings or models of buildings is of artistic quality or not; and

- “**works of artistic craftsmanship**” whether or not mentioned in the above two categories.

“Works of artistic craftsmanship” are generally items made with some degree of manual skill, and must be made with an “artistic” intention. Examples include tapestry, lace work, embroidery, fibre arts, woodwork, metalwork, ceramics, crafted glass, jewellery and enamelling.

An “original” craftwork is usually protected by copyright as a work of artistic craftsmanship if it is hand-made, and its maker or designer intended it to be “artistic” rather than purely functional. A work is “original” for the purposes of copyright law if it is not a mere copy of another work, and results from the skill and labour of its creator.

Copyright protection for designs, patterns and instructions

In addition to copyright protection for craftworks, a design, a prototype or pattern for a craftwork may also be protected by copyright as an artistic work (for example, designs for stained glass windows, templates of the shapes for cloth to be made into a garment, or preliminary sketches on which craftworks will be based, may themselves be protected by copyright). Reproduction of such patterns or drawings may be an infringement of copyright: it may also be an infringement of copyright to make an item based on these patterns or drawings, if the item would reproduce a substantial part of the protected work.

Written instructions may be protected by copyright as a “literary work”. Reproduction of them by photocopying or writing them out may infringe copyright. However, it is not an infringement of copyright to make something by following the instructions, since this would merely use the information in the instructions rather than reproduce them.

Note that in some cases if you want to protect yourself against people copying functional or mass-produced items, copyright protection may not be available and you will need to look at your options under design law. For more information, see our information sheet *Designs for functional articles*.

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 recorded in physical form.

Most foreign copyright owners receive protection in Australia, and Australian copyright owners are protected in most other countries, because of the effect 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, “© Anne Artist 2005”.

Copyright does not protect ideas or information

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

For example, a new weaving technique is not itself protected by copyright, but a craftwork making use of the technique is protected. The text of a written description of the technique is also protected by copyright—but the information it contains is not.

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 (for example to a person who commissioned the work). For further information, see our information sheet *Ownership of Copyright*.

Special copyright provisions apply to Commonwealth, State and Territory governments. If a craftwork is created “under the direction or control” of a government department (for example, if the government or department commissions a person to create a work), generally that government will own copyright in the work, unless an agreement is made to the contrary. For further information see our information sheet *Governments (Commonwealth, State and Territory)*.

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, performed or broadcast 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, with permission, first published, performed or broadcast.)

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 year of publication, until 70 years after it is first published).

However, 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).

Note, however, that the duration of copyright varies from country to country. This is especially important where a craftwork incorporates someone else’s material. If you want to make or sell the item overseas, you will need to get advice on whether any different rules apply in the relevant countries.

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

Rights controlled by the copyright owner

Unless copyright has expired, the owner of copyright in an artistic work or craftwork generally has the right to control the uses of the work, which include:

- making a **copy** of the work;
- copying an **important part** of the work in another work;
- using the **design** or **pattern** on which the work is based to make another work;
- taking a **photograph** of the work, **reproducing** such a photograph or **uploading** it to the internet;
- making a work **based** on a photograph of the work.

Giving permission to use copyright works

A person who owns copyright in a work can give permission to someone else to use it in one of the ways protected by copyright. This permission is known as a “**licence**”. It is also possible to transfer some or all of the rights to another person. This is referred to as an “**assignment**” of copyright. In return for granting the assignment or licence, you may require payment of a fee.

If you intend to give permission to someone else to use your craftwork in any of these ways, you can find information on matters you should take into account in our information sheet *Assigning & licensing rights*.

Infringement of copyright

Generally, it is an infringement of copyright in a work to use the work in one of the ways reserved to the copyright owner without permission. Copyright in a two-dimensional work may be infringed by making a three-dimensional version: for example, by making a piece of jewellery 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 copyright, if the part taken is a “**substantial part**”. This is any part of the work that is **essential, important or distinctive**. A person does not necessarily avoid infringement by making changes—what has been copied is looked at, 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.

Copyright is not infringed just because a new work is based on the same idea as an earlier work or uses the same techniques; as noted above, ideas and techniques are not protected by copyright.

Moral rights

Under the Copyright Act, creators of copyright works have moral rights in relation to their works. These rights are separate from copyright and, unlike copyright, cannot be assigned or licensed. Moral rights are:

- the right to be attributed as the creator of the work;
- the right not to have the work attributed to someone else, or as the creator’s unaltered work if it has been substantially altered; and
- the right not to have the work treated in a way that would be prejudicial to the creator’s honour or reputation.

It may be an infringement of the moral right of attribution to exhibit or reproduce (for example, in a photograph) a craftwork without attributing the maker of the work. Similarly, exhibiting or reproducing a craftwork with a notice attributing it to a person who is not the maker is likely to infringe the creator’s moral rights. Alteration or mutilation of a craftwork may infringe the moral right of integrity. Other treatment that may be regarded as infringing the right of integrity includes exhibiting it in a derogatory context.

It may not be an infringement of a person’s moral rights to do one of these things if the person has consented to the action, or if the action was reasonable in the circumstances. For further information, see our information sheet *Moral Rights*.

Using copyright material to make craftworks

Copyright law does not prevent anyone using pre-printed material such as wrapping paper, postcards or lengths of cloth to make their craft items, because no reproduction occurs. For example, you can make collages incorporating items protected by copyright. However, if you subsequently make reproductions of the craft item, you will need permission to reproduce the pre-printed material.

In some cases, you may need to consider the moral rights of the creators of the pre-existing material.

Craft items produced in multiples

If you are making multiples of the same crafted items and those items have a functional purpose, you may need to get advice about design registration with IP Australia before you sell any of the articles. This is because the Designs Act gives protection to designs for functional articles, and there are provisions in the Copyright Act intended to limit copyright protection for designs for functional articles. You may need to get advice because the law on this area is complicated and unclear in some areas.

For more information about this issue, see our information sheet *Designs for functional articles*. For more information about design registration, contact IP Australia: <http://www.ipaustralia.gov.au>.

Common questions

In addition to those set out below, the common questions answered in our information sheet *Artworks & Copyright* will also generally be relevant for craftworkers.

Who owns copyright in a work that was made by a group as a community project?

This situation often arises in relation to group projects such as the creation of mosaics, tapestries and sculptures. If there was a single designer for the project, and the other participants were directed entirely by him or her, the designer will be the first owner of copyright in the underlying design (subject to any agreement to the contrary).

However, where that design is then realised as a result of the skills of the other participants, for example the mosaicists, tapestry makers, carvers or metalworkers, the copyright in the finished item is likely to be owned by the relevant craftspeople (subject to the designer's underlying rights). If several people were involved in designing the work, the position may be more complex.

If one person created a design or drawing on which the work was based, but took no further part in it, that person will own copyright in the original drawing but also has rights in the work, to the extent that the work reproduces the original drawing.

If the work was created as a fully collaborative work, it is possible that all the collaborators are joint owners of the copyright; or that each of them owns copyright in the part for which they were responsible.

For further information, see our information sheet *Ownership of copyright* and our book *Community Arts & Copyright*.

Someone is producing identical copies of a craftwork I have designed and selling them at the markets. Can I stop them?

If the copies reproduce a substantial part of the original (for example, not simply using the idea or technique, but reproducing size, shape or distinctive elements) it is likely that copyright has been infringed. Information on how to proceed in this situation is set out in our information sheet *Infringement: What Can I Do?*

Someone is claiming a something I have made infringes their copyright, but I have not seen their work. Can I have infringed their copyright without seeing it?

On occasion, people do independently produce very similar works without either person being aware of the other person's work. If the similarity is no more than the use of a similar idea (for example, making the item in a particular shape), there is no question of copyright infringement.

However, if the vases are so similar in appearance as to suggest that one of them is a copy of the other, or of important parts of the other, this may raise an inference that copying has occurred. If the similarity is purely a coincidence, copyright will not be infringed, even if the two works are very similar. The more original and complex the works involved, the more likely it is that the inference of copying will be made.

Can my employer continue to make items based on my prototype craftworks after I leave the job, without my consent?

If the person creating the prototypes was an employee, and made them as part of his or her job, then copyright in them is owned by the employer (unless they made an agreement to the contrary). The creator would have no right to prevent the company from reproducing the works, although he or she would retain moral rights in respect of them. Moral rights are outlined above, and explained further in our information sheet *Moral Rights*.

If the prototypes were not made as part of the creator's job but on the creator's own initiative, then whether the company can continue to make craftworks based on them depends on the terms of the agreement—written or verbal—at the time the prototypes were made. If the company paid the creator to make the prototypes, it will have a licence to use them for the purposes understood at the time (but not for any further uses). If the creator simply offered the prototypes to the company, or gave permission for a limited number of reproductions, he or she may be able to revoke or terminate the licence.

I sold jewellery I created to the owners of a shop, to be retailed under my name. They removed my tags and replaced them with their own. Have they infringed my rights?

Assuming the pieces of jewellery are protected as "works of artistic craftsmanship", their creator has moral rights in respect of them. Exhibition and sale of the works without attributing the creator infringes her right of attribution. If the tags imply that another person made the jewellery, there is also an infringement of the creator's right not to have the works falsely attributed.

The actions of the shop may also be in breach of trade practices law.

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.

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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.



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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