



## **BSB40215 - Certificate IV in Business Study Support materials for**

# **BSBIPR401 - Use and Respect Copyright**



## **STUDENT HANDOUT**

## **BSBIPR401 Use and respect copyright**

This unit describes the skills and knowledge required to use and respect copyright. It covers maintaining control over the copyright owner's work, commercialising copyright material, preventing the unauthorised use of an original work and using other party's original work legitimately.

It applies to people who may be authors, creators or other owners of works covered by copyright. It also applies to employees who have a role in ensuring that their organisation's copyright is protected and/or that their organisation uses others' copyright appropriately to benefit the organisation without infringing the rights of copyright owners.

ELEMENT	PERFORMANCE CRITERIA
Elements describe the essential outcomes.	Performance criteria describe the performance needed to demonstrate achievement of the element.
1. Identify extent of copyright protection for original works	1.1 Research copyright and its application to original works 1.2 Identify legislative requirements governing copyright 1.3 Determine the copyright owner of original works within or used by the organisation 1.4 Research the rights of the copyright owner, including moral rights 1.5 Determine whether a copyright notice is required 1.6 Identify sources of information and advice regarding copyright issues and use copyright professionals where required
2. Ensure that copyright protection is effective when using original works	2.1 Identify material within the organisation that may attract copyright 2.2 Identify and review organisation policies and procedures to ensure that own and others' original works are protected against direct or indirect infringement of copyright 2.3 Implement policies and procedures to protect the organisation's copyright, recognising exceptions that allow the legitimate use of own copyright material by others 2.4 Provide advice to relevant personnel about the legal and economic implications of copyright infringement 2.5 Evaluate and make recommendations for the commercialisation potential of copyright material 2.6 Research issues that need to be considered when licensing or selling copyright rights, including the use of copyright collection societies
3. Monitor policies and procedures for use of own copyright materials by other parties	3.1 Monitor policies and procedures to ensure that the organisation's copyright is respected locally and internationally 3.2 Create and maintain documentation in relation to copyright agreements where established 3.3 Implement procedures to limit or deter infringement of organisation's copyright and/or encourage the proper use of the organisation's copyright 3.4 Make recommendations to appropriate personnel when real or potential infringements of organisation's copyright may require further action

<p>4. Monitor policies and procedures for legitimate use of others' copyright materials</p>	<p>4.1 Research when permission is needed to use copyright material belonging to others  4.2 Advise appropriate personnel about restrictions on and licensing requirements for the use of others' copyright material, and implement training if required  4.3 Advise appropriate personnel of legislative exceptions that allow use of copyright material without permission  4.4 Monitor policies and procedures covering organisational use of others' copyright material to ensure it is to the benefit of the organisation  4.5 Monitor organisational use of others' copyright material to reduce the risk of infringement  4.6 Take action to minimise damage if infringement of others' copyright material occurs</p>
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1. Copyright is a form of intellectual property that protects a variety of literary, artistic, musical and dramatic endeavours as well as other things such as sound recordings and films.

<http://www.copyright.com.au/get-information/about-copyright/copyright-in-australia>

2. Copyright is a legal right created by the law of a country, that grants the creator of an original work exclusive right to its use and distribution, usually for a limited time, with the intention of enabling the creator (e.g. the photographer of a photograph or the author of a book) to receive compensation for their intellectual effort.

<http://en.wikipedia.org/wiki/Copyright>

3. Copyright is a bundle of rights which visual artists, musicians, writers and video and film makers own in relation to their work. It exists in every kind of creative work you can imagine.

<http://www.artslaw.com.au/legal/raw-law/what-is-copyright/#sthash.bihUCOi0.dpuf>

Copyright is a form of intellectual property that protects the original expression of ideas. It enables creators to manage how their content is used.

The copyright system provides an environment that fosters the creation of new content for the benefit of society as a whole by:

- providing an incentive for people to create and invest in new content by enabling them to set the terms on which others can use the content; these can (but might not) include payment
- providing a financial reward to people who have created content that others find valuable, and lack the skill or time to produce for themselves.

There is no registration system for copyright under Australian law. Certain forms of expression, such as text, images and music, are automatically covered by copyright under the Copyright Act.

To achieve its objectives, the copyright system treats different uses of content in different ways. Some uses require permission, enabling the copyright owner to set the terms of use. Some uses do not require permission or payment. These include (subject to conditions) individual research or study; criticism, review, parody, satire, reporting news and private time-shifting, format-shifting and space-shifting.

Other uses do not require permission but do require fair payment. These include uses covered by the statutory licence for education and statutory licence for government managed by the Copyright Agency.

See the most common copyright myths to test your knowledge.

## **INTERNATIONAL COPYRIGHT**

Australian content is protected by copyright in most other countries. The Copyright Agency and Viscopy have reciprocal agreements with similar organisations in other countries, which enables the licensing of foreign content in Australia, and Australian content in other countries. See more about International Copyright.

### **Other forms of intellectual property**

Other forms of intellectual property are patents (for inventions), trade marks (for branding) and design rights: see IP Australia.

More information

The Australian Copyright Council publishes information sheets and detailed guides, offers a legal advice service and runs an annual training program.

<http://copyright.com.au/about-copyright/>

**Copyright** is a legal right created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution. This is usually only for a limited time. The exclusive rights are not absolute but limited by limitations and exceptions to copyright law, including fair use. A major limitation on copyright is that copyright protects only the original expression of ideas, and not the underlying ideas themselves.

Copyright is a form of intellectual property, applicable to certain forms of creative work. Under US copyright law, legal protection attaches only to *fixed* representations in a tangible medium. The Berne Convention allows member countries to decide whether creative works must be "fixed" to enjoy copyright. Article 2, Section 2 of the Berne Convention states: "It shall be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." Some countries do not require that a work be produced in a particular form to obtain copyright protection. For instance, Spain, France, and Australia do not require fixation for copyright protection. The United States and Canada, on the other hand, require that most works must be "fixed in a tangible medium of expression" to obtain copyright protection.<sup>[2]</sup> U.S. law requires that the fixation be stable and permanent enough to be "perceived, reproduced or communicated for a period of more than

transitory duration." Similarly, Canadian courts consider fixation to require that the work be "expressed to some extent at least in some material form, capable of identification and having a more or less permanent endurance." It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works, distribution, public performance, and "moral rights" such as attribution.

Copyrights are considered *territorial* rights, which means that they do not extend beyond the territory of a specific jurisdiction. While many aspects of national copyright laws have been standardized through international copyright agreements, copyright laws vary by country.

Typically, the *duration* of a copyright spans the author's life plus 50 to 100 years (that is, copyright typically expires 50 to 100 years after the author dies, depending on the jurisdiction). Some countries require certain copyright formalities to establishing copyright, but most recognize copyright in any completed work, without formal registration. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions.

Most jurisdictions recognize copyright limitations, allowing "fair" exceptions to the creator's exclusivity of copyright and giving users certain rights. The development of digital media and computer network technologies have prompted reinterpretation of these exceptions, introduced new difficulties in enforcing copyright, and inspired additional challenges to copyright law's philosophic basis. Simultaneously, businesses with great economic dependence upon copyright, such as those in the music business, have advocated the extension and expansion of copyright and sought additional legal and technological enforcement.

## Scope

Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Specifics vary by jurisdiction, but these can include poems, theses, plays and other literary works, motion pictures, choreography, musical compositions, sound recordings, paintings, drawings, sculptures, photographs, computer software, radio and television broadcasts, and industrial designs. Graphic designs and industrial designs may have separate or overlapping laws applied to them in some jurisdictions.

Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed. For example, the copyright to a Mickey Mouse cartoon restricts others from making copies of the cartoon or creating derivative works based on Disney's particular anthropomorphic mouse, but does not prohibit the creation of other works about anthropomorphic mice in general, so long as they are different enough to not be judged copies of Disney's. Note additionally that Mickey Mouse is not copyrighted because characters cannot be copyrighted; rather, Steamboat Willie is copyrighted and Mickey Mouse, as a character in that copyrighted work, is afforded protection.

In many jurisdictions, copyright law makes exceptions to these restrictions when the work is copied for the purpose of commentary or other related uses (See fair use, fair dealing). It should be noted that US copyright does NOT cover names, title, short phrases or Listings (such as ingredients, recipes, labels, or formulas). However, there are protections available for those areas copyright does not cover – such as trademarks and patents.

Copyright laws are standardized somewhat through international conventions such as the Berne Convention and Universal Copyright Convention. These multilateral treaties have been ratified by

nearly all countries, and international organizations such as the European Union or World Trade Organization require their member states to comply with them.

### Exceptions to copyright

There are some exceptions to what copyright will protect. Copyright will not protect:

- Names of products
- Names of businesses, organizations, or groups
- Pseudonyms of individuals
- Titles of works
- Catchwords, catchphrases, mottoes, slogans, or short advertising expressions
- Listings of ingredients in recipes, labels, and formulas, however the directions can be copyrighted

### Obtaining and enforcing copyright

Typically, a work must meet minimal standards of originality in order to qualify for copyright, and the copyright expires after a set period of time (some jurisdictions may allow this to be extended). Different countries impose different tests, although generally the requirements are low; in the United Kingdom there has to be some "skill, labour, and judgment" that has gone into it. In Australia and the United Kingdom it has been held that a single word is insufficient to comprise a copyright work. However, single words or a short string of words can sometimes be registered as a trademark instead.

Copyright law recognizes the right of an author based on whether the work actually is an original creation, rather than based on whether it is unique; two authors may own copyright on two substantially identical works, if it is determined that the duplication was coincidental, and neither was copied from the other.

In all countries where the Berne Convention standards apply, copyright is automatic, and need not be obtained through official registration with any government office. Once an idea has been reduced to tangible form, for example by securing it in a fixed medium (such as a drawing, sheet music, photograph, a videotape, or a computer file), the copyright holder is entitled to enforce his or her exclusive rights. However, while registration isn't needed to exercise copyright, in jurisdictions where the laws provide for registration, it serves as *prima facie* evidence of a valid copyright and enables the copyright holder to seek statutory damages and attorney's fees. (In the USA, registering *after* an infringement only enables one to receive actual damages and lost profits.)

The original holder of the copyright may be the *employer* of the author rather than the author himself, if the work is a "work for hire". For example, in English law the *Copyright, Designs and Patents Act 1988* provides that if a copyrighted work is made by an employee in the course of that employment, the copyright is automatically owned by the employer which would be a "Work for Hire."

Copyrights are generally enforced by the holder in a civil law court, but there are also criminal infringement statutes in some jurisdictions. While central registries are kept in some countries which aid in proving claims of ownership, registering does not necessarily prove ownership, nor does the fact of copying (even without permission) necessarily prove that copyright was infringed. Criminal sanctions are generally aimed at serious counterfeiting activity, but are now becoming more commonplace as copyright collectives such as the RIAA are increasingly targeting the file sharing

home Internet user. Thus far, however, most such cases against file sharers have been settled out of court. (See: Legal aspects of file sharing) <https://en.wikipedia.org/wiki/Copyright>

## **SAMPLE POLICY AND PROCEDURES FOR COPYRIGHT**

### **Intellectual Property and Copyright Use**

Version Number: 4.1

Implementation Date: 3/09/2014

Scope: Department-wide

Purpose:

Defines intellectual property and outlines the responsibilities of departmental employees and key processes in managing intellectual property.

Overview:

Intellectual Property (IP) covers a wide range of rights that protect the product of original and creative effort, including copyright, patents, industrial designs and trademarks. Copyright makes up a major part of the department's IP.

The *Copyright Act 1968* (Copyright Act) gives copyright owners exclusive rights over how others may use their work subject to statutory licences and exceptions available under the Copyright Act.

The Statutory Licences for Educational Institutions under Part VA and Part VB of the Copyright Act allow teachers to reproduce in digital and hard copy formats, literary, dramatic, musical and artistic works as well as record off-air TV and radio broadcasts, for educational purposes within the limits described in the [National Copyright Guidelines](#). As part of these statutory licence agreements schools must participate in copyright surveys, as required.

The department is also a signatory to the [National Education Access Licence for Schools \(NEALS\)](#) agreement that allows Australian schools to copy from each other's websites and publications free of charge, for educational purposes.

Permission from the copyright owner is required if the educational licences or exceptions of the Copyright Act, or [NEALS](#) licence, do not apply.

State schools seek a student's permission to use their copyright works in accordance with procedure [Obtaining and Managing Student and Individual Consent](#).

The Copyright Act provides that the State (as the employer) owns the copyright in material created by its employees in the course of their duties unless otherwise agreed between the employer and employee.

It does not matter that the employee creates the material (either wholly or in part) outside normal work hours and without using departmental facilities or equipment. Generally, the deciding factor is whether the materials created relate to the employee's official duties. Written agreement between the employer and employee, recognising an employee's copyright ownership is required prior to the employee creating works connected with employment or using the departments IP in a private capacity.

However, the department recognises an employee may have moral rights in the copyright material created during employment. Refer to the Guidelines on Moral Rights.

The State (through the Department of Education, Training and Employment) also owns copyright in an original literary, dramatic, musical or artistic work if first published in Australia by, or under the direction or control of the State, subject to any contrary agreement. All agreements involving IP are to stipulate who legally owns the IP as well as address any moral rights.

The department will endeavour to commercialise intellectual property assets that it owns or manages for the benefit of the State but will not do so in a manner, which would significantly interfere with the department's operational activities or service delivery.

The Queensland Government's framework for licensing government information is the Australian Governments Open Access and Licensing Framework (AusGOAL) and the department must make its public sector information available for use by the community under an appropriate Creative Commons (CC) licence (AusGOAL requires the selection of the least restrictive of the licences appropriate to the material being published).

Responsibilities:

#### **All Staff**

- Identify and record ownership of IP created, acquired, received, held or used by the department.
- Apply the least restrictive of the Creative Commons licences appropriate to the department's materials.
- Inform Directors, Executive Directors and Principals of IP assets of special value or importance including IP assets of public, strategic, innovative or financial value including copyright materials to be sold or licensed to a third party.
- Take reasonable steps to keep IP of special value or importance confidential, prior to its publication or commercialisation.
- Avoid infringing the IP rights or moral rights of others.
- Ensure all DETE publications containing third party copyright materials, are marked "not available under NEALS", unless appropriate licences have been obtained.
- Seek the necessary approvals in writing, clarifying IP ownership, before creating IP or using DETE IP (software app, website, textbook, video, game, curriculum resource etc.), connected with employment in a private capacity.
- Request permission from your HR line manager before entering into an agreement to create and develop IP for another entity including another employer. Refer to Notification of other employment procedure.

#### **Directors / Executive Directors / Principals**

- Inform Director, Information Management of all IP assets of special value or importance owned by the department including assets to be sold or licensed to a third party.
- Assert State ownership of IP by ensuring all contracts (including outsourcing, consulting and contracting agreements), in which IP might be created, address issues of pre-existing IP and IP created under the contract.
- Approve publication of DETE Public Sector Information (PSI) with an appropriate Creative Commons (CC) licence in accordance with DETE Information Management procedure and AusGOAL principles.

- Approve permission requests from other parties to use departmental IP including copyright materials not licensed under a Creative Commons (CC) Licence.
- Approve the transfer or assignment of DETE IP to other parties in accordance with applicable policies and procedures.
- Acknowledge the moral rights of employees/consultants where appropriate
- Approve requests from employees wishing to enter into an agreement to create and develop IP for another employer, publisher, organisation or individual, Refer to Notification of other employment procedure
- Provide advice to LALB about copyright materials that are subject to a copyright permission request from a third party.

**Director, Information Management**

- Record all significant DETE owned IP in the Intellectual Property Register.
- Assist employees to identify IP assets suitable for inclusion in the register.

**Executive Director, Legal and Administrative Law Branch:**

- Provide legal advice on copyright issues.
- Advise on agreements between the department and other parties to ensure they adequately address IP ownership issues (including terms and conditions of use) and clearly state all relevant details regarding the departmental publications and products to be utilised or created under the terms of the agreement.

**Policy officer/Senior Lawyer, Intellectual Property and Copyright Law Unit:**

- Assist applicants and departmental officers with requests, seeking permission to use departmental IP;
- Provide advice on any proposed transfer or assignment of intellectual property rights to other parties.
- Process permission requests to use departmental IP excluding copyright materials licensed under a CC licence.

Process:

**Identifying significant IP for inclusion in the DETE IP Register**

- Determine significant departmental IP assets by using the following criteria:
  - significant time and effort expended to create the IP;
  - significant funds spent to create/acquire the IP (i.e., more than \$20,000);
  - the IP is important to the department's core activities;
  - the IP is registered with a relevant authority (i.e., patents, trademarks, plant breeder's rights and designs);
  - revenue is earned from licensing the IP;
  - it comprises a collection of IP assets (e.g., photographs, data contained in a database, advertising materials);
- Seek advice from Director, Information Management on issues related to identifying significant departmental IP assets.
- Inform the relevant Director / Executive Director/Principal of significant departmental IP.

## Ensuring ownership and control of DETE IP

- Mark all works owned and published by the department with a copyright notice that includes the name of the department and year of publication.
- Mark materials, published by DETE that contain third party copyright materials, with a supplementary notice, "not part of NEALS", unless appropriate licences have been obtained.
- Apply CC licence on all DETE publications that comprise public sector information in accord with AusGOAL principles.
- Create and maintain records for all DETE published works including online print materials, videos, podcasts, images, brochures, etc. and include:
  - who created the materials (employees, volunteers, consultants or service providers)
  - copies of associated agreements
  - copies of permissions allowing the department to use third party owned copyright materials and the terms of the permissions.
- Seek legal advice from Legal and Administrative Law Branch (LALB) on issues of ownership and control of IP.
- Where appropriate protect IP of special commercial value or importance by use of a confidentiality deed or AusGOAL Restricted licence or terms of contract.
  - Seek advice from LALB to ensure the confidentiality deed, restricted licence or contract meets the business unit's objectives.
- Assist persons wishing to use DETE owned copyright materials by directing them to the online copyright permission request form.
- Forward all requests received from third parties, to use DETE owned copyright materials not licensed with a CC licence, to [advicerequest.Legal@dete.qld.gov.au](mailto:advicerequest.Legal@dete.qld.gov.au).

## Using third party IP

- Seek the least restrictive CC licence from third party copyright owners for use of their materials
- Comply with the terms of any relevant copyright licence/permission/contract.
- Comply with terms of Statutory Education Licences, Part VA and Part VB or exceptions available to schools as described in the National Copyright Guidelines
- Obtain copyright authorisation from copyright owners whenever required in accordance with the Use of copyright materials guideline.
  - For permissions from volunteers and students enrolled at a school follow the department's procedure described in Obtaining and Managing Student and Individual Consent.
- Conduct trademark, business name, patent and design searches when relevant.
- Inform copyright owners in accordance with section 183(4) Copyright Act (relating to acts done "for the services of the State"), when necessary.
- Obtain copyright approvals from custodial agencies for use of Queensland Government copyright materials not publicly accessible or where the material intended to be distributed to individuals or organisations outside the department.
- Attribute third party copyright owners clearly for all uses of their works within departmental publications.
- Recognise the moral rights of authors who are employees or consultants, on request and if appropriate and feasible.
- Mark materials published on the department's internet and containing third party owned works with "not available under NEALS", unless appropriate licences have been obtained.

<http://ppr.det.qld.gov.au/corp/governance/Pages/Intellectual-Property-and-Copyright-Use.aspx>

## What is copyright?

**Copyright** is a bundle of rights which visual artists, musicians, writers and video and film makers own in relation to their work. It exists in every kind of creative work you can imagine.

**Copyright** exists automatically once you create a work and is free.

**Copyright** can be shown by a symbol that looks like this: ©

**Copyright** is one of the most powerful rights you can own as a creator. It enables you to:

- control your work
- get money for your work

**Copyright** can be owned by anyone who creates a work, including:

- visual artists
- musicians
- writers video and film makers
- performers

**Copyright** gives you:

- ownership rights relating to your work
- automatic and free legal protection as soon as you create your work
- the support of Australian and international laws

**Copyright does not protect ideas and styles. For copyright protection to exist you must express your idea in some physical, material or digital form.**

## What does copyright mean?

Copyright means that only you have rights to do certain things with your work. You have the right to:

- reproduce or copy your work
- communicate your work to the public, for example by broadcasting (TV, radio), by email or on the internet
- publish your work
- perform your work
- adapt your work

Other people need your permission to do any of these things, even if they have bought or own the original work. This is because copyright ownership is different from ownership of the physical work you created.

For example, if you create an oil painting on canvas, the physical work is the canvas with the oil paint you used. You own it until you have sold it or given it to someone else. Once you have done that, you do not have ownership of the physical painting but you still own copyright in relation to the image you painted.

**How long does copyright last?**

Copyright begins when a work is created. It continues for your lifetime and for up to 70 years after your death.

**What does copyright protect?**

Copyright protects the following categories of creative works:

**Artistic works**

- paintings
- drawings
- engravings
- photographs
- sculptures
- installations
- cartoons and graphic art
- craftwork
- maps and plans

**Dramatic works**

- choreography
- theatre plays
- screenplays
- mime

**Musical works**

- melodies
- tunes
- compositions

**Literary works (material in text form)**

- short stories or novels
- poems
- song lyrics
- scripts
- letters or articles in a newspaper
- reports

**Sound recordings**

- compact discs (CDs)
- tapes
- digital recordings

**Broadcasts**

- television
- radio

- internet podcasts
- films

This protects the visual images and sounds in films, videos and DVDs, including

- short films
- feature films
- documentaries
- corporate or training videos

### Licences

- For someone to use your work, you must first give them your permission. When you give permission to use your work, you should use a written licence.
- If a theatre director wants to use your painting for the set of a play, or a composer asks to use your poem for a song you would ask them to draft a license or contract. You can learn more about this in the “What is a Contract” section.

### Copyright infringement

- A copyright infringement is when someone does not ask your permission before using, changing or showing your work for the first time.
- Learn how to protect yourself against a copyright infringement in Taking action: what are the legal steps?

### Summary

- Copyright automatically gives you, the creator of a work, legal protection and is free.
- © is the symbol used to show copyright. It shows that your work is protected. Write it by putting a circle around a ‘c’.
- Copyright lasts for your lifetime and up to 70 years after your death.
- Nobody can use or change your work, unless you say they can.
- If you say that someone can use your work, or if someone says you can use their work, it is best to make a contract in writing.
- No one is allowed to use your work without your permission.
- If someone uses your work without your permission, this is called copyright infringement. The law gives you protection if your copyright is infringed.

### Legal tips

- Keep drafts, photos, sketches or notes about your work.
- These are proof of you creating your work.
- Show you own the copyright by adding to your work:
  - the copyright notice: ©
  - your name
  - the year you made it
  - Example: © Name Surname 2010.
  - A visual artist would put this on the back of an artwork.
  - A film maker would put this in the end-credits of a film.
  - A musician would put this on a CD.
- There are situations where you might not own copyright, for example:

- if you are employed to create a work
- if you are paid to make portraits or photographs for private use
- If someone has infringed your copyright, take action straight aw

<http://www.artslaw.com.au/legal/raw-law/what-is-copyright/#sthash.bihUCOi0.dpuf>

## **Direct and Indirect Copyright Infringement**

### **Direct Infringement**

"Anyone who violates any of the exclusive rights of the copyright owner [reproduction, adaptation, distribution to the public, public performance, public display, rental for commercial advantage or importation] is an infringer of the copyright or the right of the author..." Section 501(a) of the Copyright Act.

For example, this includes:

- downloading software
- uploading software
- making software available for download
- transmitting software files

### **Indirect Infringement**

*Contributory Infringement.* Anyone who knows or should have known that he or she is assisting, inducing, or materially contributing to infringement of any of the exclusive rights by another person is liable for contributor infringement.

For example, this includes:

- posting of serial numbers
- posting of cracker utilities
- linking to FTP sites where software may be unlawfully obtained
- informing others of FTP sites where software may be unlawfully obtained
- aiding others in locating or using unauthorized software
- supporting sites upon which the above information may be obtained
- allowing sites where the above information may be obtained to exist on a server

*Vicarious Liability for Infringement by Another Person.* Anyone who has the authority and ability to control another person who infringes any of the exclusive rights and who derives a financial benefit therefrom, is vicariously liable for the infringement of another person.

For example, this includes:

- ISPs who have warez or pirate sites on their system and do not comply with the Digital Millennium Copyright Act.
- ISPs who have pirates for customers and do not comply with the Digital Millennium Copyright Act
- system administrators for newsgroups or IRC where pirate activity takes place

## **What to Do If You're Accused of Copyright Infringement**

You may receive an e-mail, regular letter, telephone call or otherwise be notified by a copyright owner or his lawyer that you are infringing his copyright. The claim may relate to an article published in your newsletter or to a photograph on your Web site. Often this notification states that if you do not take steps to remedy the situation, either by paying an "after-the-fact" copyright license fee, or by stopping any and all use of the content, the copyright owner will institute a court action. Do not panic. Prior to evaluating the validity of the claim and analyzing your options, it's best not to take

any radical steps. In other words, take the time to understand the claim and see what makes most sense to your organization in the circumstances.

### You're accusing us of *what*? What exactly *is* copyright infringement?

Copyright infringement is when someone uses the copyright-protected work of someone else, (a book, an article, a song, etc.), without permission. If something is protected by copyright, you generally cannot legally make it available to the public in any format, digital or otherwise, without permission of the person or body who holds the copyright.

### Determine the Validity of the Claim

If you receive what in legal jargon is called a "demand letter," your first step is to review the materials specifically subject to the claim of copyright infringement. Are these the actual materials you are using? Are you using these materials in the manner claimed in the demand letter? If so, are they still protected by copyright, or are they perhaps in the public domain? Have you licensed the materials, or obtained an assignment of them?

If you require permission to use these materials, have you in fact obtained that permission? Hopefully, any permission you received is in writing and is part of a database that is easily accessible. Check the permission or license. Is your use covered by it? Have you followed the terms and conditions in the license? Perhaps the person charging you is claiming that, although you only obtained a license to put the material on your Web site for 6 months, you have neglected to remove it after a year. After the six-month period of use has expired, you could be in breach of copyright.

The license may also state that only a certain number of authorized users may have access to the content. For example, an organization may obtain the right to post an article about brand management on its Web site for a week-long program on Online Marketing. The license states that you must have the Web site password-protected and may only issue 50 passwords. If your organization either keeps the article accessible for longer than one week or grants permission to more than 50 users to view the article, you could be violating your license and subject to a claim of either breach of contract or copyright infringement, or both.

### Is it Fair Use?

If you are facing a claim of copyright infringement, you may turn to fair use as a defense; check what your national law on fair use say. In the U.S. the fair use provision in Section 107 of the United States *Copyright Act* is confusing and difficult to apply to particular uses of copyright-protected material. It must be applied on a case-to-case basis and often non-lawyers and non-judges are put in the position of determining what may be considered fair use. Many individuals or librarians in corporations do not want to have this responsibility. And it may be costly to get a legal opinion from your lawyer each time you wish to apply fair use to a particular use of content.

Fair use is primarily for the use of copyright-protected work for commentary, parody, news reporting, research and education. The U.S. *Copyright Act* lists four factors to help judges determine, and therefore help you determine, when a usage may be "fair use." These relate to the **purpose and character** of the use, including whether such use is of commercial nature or is for nonprofit, educational purposes; the **nature** of the copyright-protected work; the **amount and substantiality** of the portion used in relation to the copyright work as a whole; and the effect of the use on the **potential market for or value** of the copyright-protected work. Commercial uses are less likely to be considered fair use.

Examples of uses that may be fair use are: a quotation of excerpts in a review or criticism for purposes of commentary; quotation of short passages in a scholarly or technical work for clarification of the author's discussions; and reproduction of material for classroom use where the reproduction was unexpected and spontaneous – for example, where an article in the morning's paper is directly relevant to today's class topic.

### Contact Your Lawyer

Once you have gathered factual information relating to whether the claim against you is valid, discuss the issue with your legal counsel. It is best to deal with a lawyer who has a lot of experience in intellectual property claims. Provide your lawyer with your license agreement (if you have one), and any other documents supporting your position. Discuss your options with your lawyer. Your lawyer may advise you to ignore the claim if it does not seem valid, or to let the other party know this and that you will be continuing to use the content. If your use is not legal, you may wish to stop using the content, or to enter into negotiations with the copyright holder to pay a copyright fee.

[http://www.wipo.int/sme/en/documents/copyright\\_infringement\\_fulltext.html](http://www.wipo.int/sme/en/documents/copyright_infringement_fulltext.html)

### **Benefits of copyright protection explained**

Copyright is a legal concept, which falls under the subject area of intellectual property, and is available in most jurisdictions globally. Fortunately for owners of creations, most copyright law is favoured towards the holder, and not the general public. Becoming a copyright holder is important for a number of reasons, but primarily, owning a copyright enables the person to be fairly credited for their work.

There are many reasons for an owner of a creation to obtain copyright over it, some of which are included below:

#### Right to copy

As a copyright holder, you effectively have the right to determine exactly how the work can be adapted, used and ultimately, who can financially benefit from it.

#### Protection from third party use

Once your work has obtained a copyright, you can successfully prevent third parties from using your work without your expressed permission. Where copyright infringement does occur, you will have the right to take legal action.

#### Right to seek damages

Owners of a registered copyright can file a claim for damages to a court of law. Where the infringing party has caused financial or irreparable harm to a registered copyright, the owner can seek the appropriate legal remedy. The burden of proof is on the infringing party, not on the copyright holder.

#### Right to sell or lease your copyright

All copyright holders can sell or lease their copyright to selected third parties whilst retaining the moral rights and legal ownership over the original work.

### Economic gain

For a copyright to be used, leased or sold to a third party, the owner must receive financial gain in terms of remuneration for the rights to use the work. Financial profit can also be obtained through royalties.

### Overall control

Holders of a copyright ultimately retain control over their work, whether it is literary or artistic material, and have the right to prevent it from being misused by competitors, the public, and other third parties.

<http://www.registertrademarks.net/1367/benefits-copyright-trademark/>

### **Advantages of Registering Your Copyright**

The advantages of registering a copyright include the following:

1. Establishes a public record of the copyright holder's ownership.
2. Enables copyright holders to sue infringers in federal court.
3. If made before or within 5 years of publication, establishes sufficient evidence in court concerning the validity of the copyright and the facts stated in the copyright certificate.
4. If registration is made within 3 months of publication of the work or at any time prior to an infringement of the work, the copyright owner is entitled to seek statutory damages and attorney's fees in federal court. Without registration, only an award of actual damages and profits will be available, and these can be quite difficult to prove.
5. Allows the copyright owner to record the registration with U.S. Customs to protect against the importation of infringing copies into the US.

LegalZoom can help you quickly and easily register a copyright. Simply answer a few questions online. LegalZoom will complete your **copyright registration** and file it with the U.S. Copyright Office.

<https://www.legalzoom.com/knowledge/copyright/topic/copyright-advantages>

