



Translations & Copyright

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

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, archives and libraries.

We have a range of information sheets on a number of topics and publish books that analyse specific areas of the law. Check our website at copyright.org.au for information about our publications and details of our seminar program.

We can provide this information sheet in an accessible format on request.

Key points

- Translations are protected by copyright
- In general, you will need permission from the copyright owner to make a translation.
- Any use of a translation will, in copyright terms, also involve use of the underlying original work. Therefore, someone making a translation may also need permission from the owner of copyright in the original work to publish their translation.

What does copyright protect?

Copyright protects different categories of subject matter. Material comprising words may be protected as a literary work, such as a novel, poem or short story. Other textual materials that involve human action, such as scripts, are protected as dramatic works.

There is no system of registration for copyright protection. A literary or dramatic work is protected as soon as it is written down or recorded in some way.

For further information see our information sheet [An Introduction to Copyright in Australia](#).

Copyright in translations

A translation is generally protected by copyright as a literary work. This is separate from copyright in the underlying work, which may also be protected. As a result, it is possible that copyright in the translation and copyright in the underlying work are owned by different people.

The legal rights of copyright owners

The owner of copyright in a literary work has certain exclusive rights to control the manner in which their work is used. These include the rights to:

- make an adaptation of the work (this includes the right to make a translation);
- reproduce the work (for example, by printing, scanning, photocopying or recording);
- publish the work (this is the right to make the work public for the first time); and
- communicate the work to the public (for example, by broadcasting the work over TV or radio or by putting the work online).

How long does copyright last?

The general rule is that copyright lasts for the life of the creator plus 70 years. There are various exceptions to this rule, including:

- Where the creator of the work died prior to 1955, copyright has expired in the work;
- where the work was unpublished at the time of the creator's death copyright may last indefinitely;
- where the work was first published or made under the direction or control of the government, copyright lasts for 50 years from the year of publication; and
- where something was published anonymously or under a pseudonym, and the identity of the creator cannot be reasonably ascertained, copyright lasts for 70 years from the year of first publication.

The term of copyright protection may vary from country to country. Where copies of a translation are to be reproduced or sold overseas, the translator may need to determine whether the underlying work is still protected by copyright both in Australia and in the relevant countries, and what additional permissions, if any, are required.

For detailed information on duration of copyright in Australia, see our information sheet [Duration of Copyright](#).

Moral rights

Creators have moral rights in their work. These include the right:

- to be attributed as the creator of a work;
- to take action against someone else being falsely attributed as the creator of their work; and
- in some cases, to take action if their work is treated in a derogatory way or treated in a way that is prejudicial to the creator's honour or reputation.

This means that not only will a translator have moral rights in their translations, but they will also be required to attribute the creator of the underlying work. Translators also need to be mindful that they may require consent from the creator of the underlying work if their translation may impact on their honour or reputation – for example, if it is a poor-quality translation.

For further information see our information sheet [Moral Rights](#).

Copyright protection in Australia and internationally

Under the terms of various international conventions and bilateral treaties on copyright, certain minimum levels of protection are ensured. Member states (including Australia) have agreed to grant each others citizens and residents the protection of their own copyright laws.

If a protected work is, for example, to be translated in Australia, Australian law applies. Where a translation is to be published, sold or otherwise distributed in another country, the law of that country will apply.

For further information see our information sheet [Copyright Protection in Other Countries](#).

Permissions

Permission is needed to create a translation of a literary or dramatic work if the material to be translated is still protected by copyright. Permission will also be needed from both the copyright owner in the translation and the copyright owner in the underlying work to reproduce the translation.

Getting permission to translate a work

A translator will need to get permission from the copyright owner in order to make a translation of their work. When deciding what rights are required, a translator should consider what he or she intends to do with the translation. For example, additional permission will be required if the translation is to be published and distributed in hard copy, or sold online as an ebook publication. Any subsequent uses of the translation should be covered when obtaining permission from the owner of copyright in the underlying work at the outset.

The terms and conditions upon which any permission is granted will in every case be a matter of negotiation between the translator and the copyright owner. Ideally, an agreement with the copyright owner should be in writing and signed by the parties.

A written agreement giving permission to use a copyright work should ideally include a provision under which the person granting the permission warrants that they are the owner or the exclusive licensee of the copyright in the underlying work and that they are authorised to grant permission to translate the work. As an extra precaution, the provision should also state that they will indemnify (compensate) the translator for any loss, damage or injury suffered as a result of any breach of that warranty.

Getting permission to reproduce a translation

Permission may be needed from both the owner of copyright in the translation and the owner of copyright in the underlying work in order to reproduce the translation.

Who owns copyright?

Copyright in a translation is distinct from copyright in an underlying work. As a result, ownership of copyright in the underlying work is separate from ownership of copyright in the translation.

Under Australian law, the general rule is that the creator of a work will be the first owner of copyright in that work. This rule is, however, subject to a number of exceptions.

For further information, see our information sheet [Ownership of Copyright](#).

The operation of both the general rule and the exceptions may be altered by agreement. For example, authors sometimes grant a publisher subsidiary or ancillary rights, such as the right to make translations; or the author and publisher may have agreed to administer the right to make translations jointly.

The copyright notice

Where the translator is the owner of copyright in the translation, he or she is entitled to place a copyright notice on all copies of the translation. The notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication (for example, © Australian Copyright Council 2020).

A copyright notice is not required for protection in Australia. Nonetheless, it is a good idea to put the notice on all copies of a translation, as it operates as a warning that the work is protected and identifies the person claiming the rights.

Contacting the copyright owner

The first point of contact in obtaining permission to make a translation is usually the publisher. The Australian Publishers Association (APA) publishes a directory of Australian publishers, and there are similar directories for overseas publishers. If the publisher does not control the translation rights, an approach will need to be made to the author or the author's agent.

If the author has died, the rights may still be controlled by the publisher, or may be controlled by the author's heirs. It may be necessary to refer to the author's will or to relevant intestacy laws. In Australia, copies of wills may be found in the Probate Division of the Supreme Court in each capital city.

For more information, see our information sheet [Permission: How To Get It](#).

Types of permission

There are several ways the copyright owner may give permission (a licence) to use a work. Licences can be either exclusive or non-exclusive.

Where an exclusive licence is granted, only the licensee has the right to use the work in the ways specified in the licence. This means that everybody else is prevented from using the work in those ways. To be fully effective, an exclusive licence must be in writing and signed by the copyright owner.

Where a non-exclusive licence is granted, the copyright owner retains the right to use the work and may grant similar licences to others who wish to use the work in the same way.

If a translator intends to publish a translation of a major work, he or she may want to negotiate for the exclusive right to translate that work into the relevant language, in order to prevent the production of rival translations in the geographical area to which the licence relates.

Both the copyright owner of the underlying work and the translator should give careful consideration to what sort of licence is most appropriate in a particular situation, and should generally seek legal advice.

Frequently Asked Questions (FAQs)

Do I need permission to make a translation of part of a work?

Copyright will be infringed where a person other than the copyright owner uses the whole or a substantial part of the material in one of the ways reserved for the copyright owner. Substantial part is not defined in the *Copyright Act*. However, the courts have adopted a qualitative approach to this term, deeming that a small part may still be a substantial part if it is an essential, distinctive, important or recognisable part of the original work. As a result, there is no minimum amount that may be translated without first obtaining permission.

What should I do if I can't find the copyright owner?

If you are unable to identify or locate the copyright owner the material may be an orphan work. There is no general exception that allows for the use of orphan works without permission and making a translation of a work without permission may involve a risk that may not be worth running. It is an infringement of copyright to make the translation and a copyright owner is entitled to take legal action against such an infringement. If successful, a court can award the copyright owner the remedies of damages, account of profits, delivery up of infringing articles and injunctions (orders to do or not do something). The infringer may also be liable not only for their own costs in the action, but also the costs of the copyright owner.

I have been commissioned to do a translation. If it is published do I have any rights to ongoing royalties?

This will depend on the agreement you had with the person who commissioned the translation. Generally, you will retain copyright in your work, and the person who commissioned you will retain the right to use the translation for the purpose for which it was commissioned.

The agreement may have allowed subsequent publication, and if that is the case, you will need to look at the agreement to see whether you are entitled to royalties. If the subsequent publication was not part of the original agreement, you may have the right to seek some compensation for this use.

Further information and advice

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

Reproducing this information sheet

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

About us

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

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

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

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



Australian Government



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

© Australian Copyright Council 2019