

Copying for research or study

This guide serves as a general guide to copyright for IBIBS students and staff who are making copies for personal research or study. The making of multiple copies or putting copyright material online is covered under Copying for Teaching, which is authorised by the IBIBS.

The following does not constitute legal advice.

For more information, contact:

IBIBS Legal Officer (Copyright Co-ordinator) : [email legal@ibibs.edu.au](mailto:legal@ibibs.edu.au)

What is Copyright?

Copyright is one type of intellectual property. The others include patents, trademarks and designs. It is a bundle of rights - economic, legal, political and moral. Copyright is a type of personal property right that is founded on a person's creative work. It is designed to protect the copyright owner against unauthorised use by others of their creative work. While there is no requirement to attain a specific literary level, the output must take a tangible form. There is no copyright in ideas.

In Australia, the Copyright Act 1968 gives exclusive (but limited) rights to copyright owners, such as authors or publishers, as to how their material may be used. These rights include the right to copy, adapt, publish, and publicly perform the copyright material. Copyright owners also have an exclusive right of "communication to the public" covering:

- making their copyright material available to the public online (e.g. via the Web); or
- electronically transmitting (e.g. via email or FTP) their copyright material to the public

Note that copyright does not prevent the physical ownership of copyright material, e.g. purchasing a book.

How do you obtain copyright protection?

Copyright protection is granted automatically from the time it is made available or "published". Unlike patents and trademarks, no formal registration is required. While no formal notice is required to be placed on the copyright material it is good practice to do so, e.g.

This work is copyright. Apart from any use permitted under the Copyright Act, no part may be reproduced by any process, or any other exclusive right exercised, without the permission of (name and address of copyright owner and the year in which the work was made)

How do I determine who is the copyright owner?

It is not always obvious who is the copyright owner. It may be an individual or an organisation. There may be multiple owners. Usually it is the creator of a literary, dramatic, musical or artistic work is the first owner of the copyright in it, but there are several exceptions, e.g. copyright in works made during the course of employment are owned by the employer and not the employee. Also, the owner of any copyright in a sound recording or a film is normally the maker of it.

Note that all copyright ownership rules may be varied by agreement with the copyright owner.

What material is covered by the Copyright Act?

- *Literary works* - includes most letters and emails, web pages, articles, novels, poetry, song lyrics, timetables, databases and computer programs.
- *Artistic works* - includes paintings, photographs, sculptures, engravings, sketches, blueprints, drawings, plans, maps and buildings or models of buildings.
- *Subject matter other than works* - includes sound recordings, films (including videos), radio and television broadcasts and published editions of works.

How long does copyright last?

A popular misconception is that copyright dies with the author. It actually varies according to the type of material and whether or not it is published. Generally, it lasts for 50 years after the death of the creator. Specifically:

Literary, dramatic, musical works:

- *Published* - generally lasts for 50 years after the death of the creator (there are some exceptions, e.g. under educational and library copying)
- *Unpublished* - lasts indefinitely in a work that has not been published, performed in public, broadcast or sold as a recording during the life of the author

Artistic works:

- *Published* - photographs varies according to whether it was taken before or after the commencement of the Copyright Act (i.e. 1 May 1969). In the latter case it is 50 years from the year of first publication. For photographs taken before 1 May 1969 it is 50 years from the end of the year in which it was taken. For other artistic works it
- *Unpublished* - lasts for 50 years after the end of the year in which the artist dies, except for unpublished engravings which last permanently

Sound recordings and films - generally 50 years from the end of the year of first publication (indefinite if unpublished)

Radio and television broadcasts - 50 years from the making of the broadcast

Published editions of works - lasts for 25 years from the year of first publication of the edition

What can be copied outside the Copyright Act?

There is no copyright infringement if:

- the copyright is owned by the IBIBS;
- the material has been supplied to the IBIBS with an express licence to copy and/or communicate;
- you obtain permission from the relevant copyright owner;

In the above cases, the limits on copying will vary according to the specific agreement or contract.

Permission by copyright owner

By agreement

Copyright owners may agree to material being copied beyond the limitations imposed by the Copyright Act. This may occur by writing to copyright owner seeking permission. The request should specify should cover the extent of the copying and/or the number of copies. It is good practice to obtain permission in writing (letter, email, fax). The copyright material itself may contain statements regarding copying. Some Web pages have such a statement. Such statements should be included in the copy made.

Permission to copy might also be granted by academics or others in relation to their work, if they own the copyright. Note, however, that the mere fact that a person is the author of work does not mean that he or she retains copyright. This may have been assigned to the publisher of the work.

By licence

Higher Education providers, particularly libraries, enter into licence agreements with the owners of copyright material. IBIBS libraries lease access to databases and electronic journals. In the first instance, these licences are subject to contract law. In many cases they contain clauses covering the copying of material that exclude the jurisdiction of the Copyright Act. This information will be available in the copyright compliance database. Until then, contact the Library for the details of each licence.

In the absence of such clauses, the Copyright Act applies.

What copying is allowed under the Act?

To balance the rights of copyright owners with the needs of the general public and researchers to have access to copyright materials, the Copyright Act provides a number of exceptions to the general rules regarding infringement of copyright. It is the responsibility of the person doing the copying to ensure that the Act is not being infringed. The main exceptions are:

- Insubstantial portion

- Copying for examinations
- Temporary electronic copies
- Fair dealing for certain specific purposes:
 - Research or study
 - Criticism or review
 - Reporting of news

Insubstantial portion: "Substantial" is not defined by the Act. For books, the Act allows one or two pages for a book up to 200 pages in length and no more than 1% if more than 200 pages. For all other categories of copyright material, the Act does not provide a measure for insubstantial. The onus is on the copier to justify that the amount is insubstantial. The exception **does not apply at all to artistic or musical works.**

The insubstantial portion may be freely copied for any purpose, but a single copy only may be made.

Copying for examinations: Material may be copied without infringement as part of a question in an examination, or in answer to such a question. However, this exception applies to print copies only, **not online exam papers.**

Temporary electronic copies: It includes temporary reproductions made in the course of browsing or viewing copyright material online, and in certain types of caching. It is limited to reproductions which have little or no independent economic significance.

Fair dealing: Typically, students and academics will rely on the research or study provision to make single copies of material to support their study and research. It is definitely fair dealing for research or study for:

Print material: to make a single copy of a journal article; one chapter or 10% of a book of 10 or more pages (whichever is greater)

Electronic text: to make a single copy 10% of the words

To copy more substantial portions of books and journals, or to copy other types of copyright material, what amounts to a fair dealing is a matter to be determined on the facts of each case. Fair dealing for research or study, the factors include:

- the purpose and character of the use
- the nature of the work or other subject-matter
- the amount and substantiality of the portion copied
- the possibility of obtaining the work within a reasonable time at an ordinary commercial price and the effect on the commercial value of the material

A single copy only may be made.

What about email?

It is just as possible for an email to constitute a copyright work as a letter. What constitutes an original literary work is not made clear by the Act. Much depends on the content. The content of many emails is the same as those of letters.

For a forwarding to be a breach of copyright it must be a communication to the public. Most emails are forwarded to individuals, who will not be the "public". However, if forwarding is to a widespread group, the danger of crossing the threshold will mount.

As is the case for all copyright material, if in doubt, contact the copyright owner (i.e. the sender) for permission. The best long-term solution is to encourage the inclusion of "a permission to copy or forward" statement in email signatures, e.g. Permission is given to copy or forward this email.

Can I copy graphics?

If a work is being copied under the Act, the fact that the part being copied includes illustrative graphics does not affect the position. The graphics are treated as integral to the part being copied.

However, graphics may only be copied independently (i.e. not so as to illustrate text being copied) if:

- they have not been separately published; or
- copies cannot be readily purchased commercially

What about the Internet and music?

Students may have seen media reports of an increased vigilance on the part of the music industry to seek to control music piracy in universities. Students in the US have been sued, as have some universities, for copyright infringement arising from music piracy. Universities in the UK and Australia are also being targeted by record companies.

This is a timely reminder to students that under the IBIBS's Internet Code of Practice, copyright infringement by students will be treated extremely seriously. The IBIBS provides students with access to computer systems and facilities for academic purposes. Students who are found to be using the IBIBS's systems to engage in conduct which infringes copyright - including uploading and downloading files without the permission of the owner of copyright - are exposing themselves and the IBIBS to legal action, and will be subject to disciplinary action.

The web is NOT a copyright-free zone. DO NOT assume that you are entitled to download everything you can access on the web. Some material may be on the web without the copyright owner's permission.

DO NOT assume that because you can locate a music file through sites such as Kazaa, Grokster or Gnutella that you can download, copy or transfer it, even for personal use.

DO NOT, without the permission of the owner of copyright:

- post music or other files to IBIBS websites
- transfer music or other files to friends and family via IBIBS email
- burn music or other files to CD's

DO NOT use IBIBS equipment or the computer networks to download, redistribute or copy unauthorised files.

As you may be aware, there are some websites which offer - with the copyright owner's permission - MP3 files or other music formats for free download. The IBIBS's computers and network should NOT be used for this purpose. If you want to download or transfer music for any non-academic purpose, this should be done privately, and not on a IBIBS-owned computer or through the IBIBS's computer network.

What can be copied electronically?

Copyright owners have an exclusive right of "communication to the public" covering:

- making their copyright material available to the public online (e.g. via the Web); or
- electronically transmitting (e.g. via email or FTP) their copyright material to the public

It covers both the digitisation of print and analog material, and the copying of existing digital material.

The following is allowable:

- Fair dealing: a reasonable portion is 10% of the words. Other fair dealing provisions have remained much the same. The material must **not** be put online, e.g. on a web site. However, it could be copied to a CDROM, provided only one copy is made and any other copies are destroyed.
- Temporary electronic copies: There is a new exception covering temporary reproductions made as part of the technical process of making a communication. It includes temporary reproductions made in the course of browsing or viewing copyright material online, and in certain types of caching. It is limited to reproductions which have little or no independent economic significance.

Incorporating copyright material in your thesis

Under the Copyright Act, a hardcopy thesis, submitted for examination, is not considered to have been published. The Act therefore gives authors the right to reproduce in their thesis, limited amounts of third-party copyright material for "research and study purposes".

However, where the thesis is

- Made available online
- Subsequently published

the "fair dealing for research and study" protection will be lost. You may need to seek the **written permission** of the copyright owner to publish such material. This will include

- Maps, diagrams and photographs belonging to third-party copyright owners
- Your own material which has been published and the copyright has been assigned to the publisher

An exception in any particular case will be where the author can rely upon the separate defence of "fair dealing for criticism or review" i.e. where the material is incorporated in the thesis for the express purpose of analysis and criticism, but not where it is used in a merely illustrative manner.

In the case of text extracts from books and journal articles, the same rules apply but small text extracts, e.g. a few sentences or paragraphs, may be considered sufficiently insubstantial that their publication in the thesis will not breach the rights of the copyright owner, regardless of whether the 'fair dealing' defences operate.