This information sheet gives a brief overview of copyright as it applies to people who write computer software. It also contains information which is relevant to people who use computer software. For detailed information, see our practical guide Computer Software & Copyright.

For information about copyright in other areas, see the Copyright Council’s list of publications. Our publications include Copyright & the Internet and Copyright for Multimedia Producers.

What is the purpose of copyright?

The purpose of copyright is to encourage people to use their skill, time and resources to create material which is of cultural and economic benefit to society. It does this by giving the copyright owner legal rights to control others’ use of that material and earn income from the skill and effort which went into creating the material.

What laws govern copyright?

In Australia, copyright law is determined by federal legislation, the Copyright Act 1968, and decisions of courts which have interpreted the provisions of the Act.

What does copyright protect?

Copyright protects computer programs as “literary works”. The Copyright Act defines a computer program as:

“a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.”

Other material protected by copyright includes written material, tables and compilations, drawings (including maps and plans), paintings, sculpture, craft work, films (such as feature films, television programs, commercials and computer video games), sound recordings, broadcasts and the typographical arrangement in a published edition of a work.

What is not protected by copyright?

Copyright does not generally protect names, titles or single words as they have generally not been considered by the courts to constitute “literary works”. For further information see our information sheet, Names, titles & slogans: legal protection.

Copyright does not protect ideas, as such; rather, it protects the way an idea is expressed in the particular program. For further information see our information sheet, Ideas: legal protection.

Copyright does not protect information. Rather it protects the way in which information is expressed. Nonetheless, if someone uses skill and effort to select and arrange information, the resulting compilation may be protected. For further information see our information sheet, Compilations, tables & forms: copyright protection.

Copyright does not protect the function of a computer program. Copyright does not give a copyright owner a monopoly on what the program does. Rather it gives the owner the right to prevent someone else from duplicating the expression of the set of instructions that constitute the program. In one case, the court stated that the fact that two programs perform the same function does not, by itself, mean that there is any similarity between the two sets of instructions.

Copyright does not protect circuit layouts. Circuit layouts were once eligible for protection as “artistic works” under the Copyright Act and they were also registrable as designs under the Designs Act. However, these forms of protection are no longer available. For a short summary of the Circuit Layouts Act, see our publication Computer Software & Copyright. If you need advice on a circuit layout, you will need to see a private solicitor with the relevant expertise.
How do you get copyright?

There is no system of registration for copyright protection in Australia. Copyright protection does not depend upon publication or any other procedure – the protection is free and automatic. Because of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia.

On some works you see the “copyright notice”: the symbol © with the name of the copyright owner and the year of first publication (for example, © W. Doors 2000). The copyright notice is not required for protection in Australia; a work may be protected even though the copyright notice is not on it.

It is a good idea to put the copyright notice on computer software – both on the packaging and in the program itself – as it serves as a warning to others that the software is protected by copyright. In addition to the copyright notice, you may want to include a more detailed warning against unauthorised use.

Who owns copyright?

The general rule is that the creator of a work is the first owner of copyright in it. In the case of a computer program, it will generally be the programmer (or programmers) who writes the program who is the first owner of copyright in it. There are a number of exceptions to this general rule. The following exceptions may be relevant to computer programs.

Where a work is made by an employee (rather than a freelancer or volunteer contributor) in the course of employment and as part of the employee’s usual duties, the first owner of copyright will be the employer.

A government will be the first owner of copyright in material created, or first published, under its direction or control.

These exceptions may be altered by agreement between the parties.

Merely owning a disk or piece of hardware which contains computer software does not mean that you own copyright in the software.

What rights do copyright owners have?

Owners of copyright in computer programs have a number of exclusive rights, including the right to:

- reproduce the program in a material form (this includes copying the program to the hard disk of a computer, and writing or typing the source code of the program);
- publish the program (this means to make the program public for the first time in Australia);
- make an “adaptation” of the program (this means making a version of the program in either the same or a different language, code or notation: for example, a program in object code may be an adaptation of its source code version); and
- communicate the program to the public (by making it available online, or by electronically transmitting it, using any type of cable or wireless technology including the Internet).

If anyone other than the copyright owner wants to do any of these things with the program, he or she will generally need the owner’s permission. Generally, computer programs which are commercially available are accompanied by licences, which set out the terms and conditions on which the computer program and the accompanying material may be used. The terms and conditions of licensing agreements vary considerably, and in many cases may impose terms or conditions which relate to matters other than copyright issues.

How long does copyright protection last?

Copyright in a computer program lasts for the life of the “author” of the program plus 50 years. The “author” is the individual, or individuals, who created the software, not the company which published it. If there is more than one author, copyright will last for the life of the last surviving author plus 50 years.

The length of copyright protection is measured by the life of the author even if the copyright is owned by someone other than the author, such as a company that employed the author.

When is copyright infringed?

A person infringes copyright if they deal with protected material in one of the ways exclusively controlled by the copyright owner, without obtaining permission from the copyright owner. For computer programs, the uses which require permission include making a reproduction and making an “adaptation” (such as an object code version of a
program in source code). If the computer program has been made commercially available, the relevant licensing agreement may set out what permissions the copyright owner has given in relation to the way that program and any accompanying material (such as text or graphics) is used.

Dealing with a “substantial part” of a computer program without permission in one of the ways controlled by the copyright owner may also infringe copyright. The term “substantial part” is not defined in the Copyright Act and it is left to the courts to decide the question with regard to the particular circumstances of each case. The courts have adopted a qualitative as well as a quantitative approach so that a small part may still be “substantial” if it is essential, important or vital in relation to the whole work from which it is taken. In one case a court held that a “look-up table”, which formed part of a program, was a substantial part of that program. The fact that the “look-up table” was not a program in itself did not mean it could not form a substantial part of a program. In another case, a court held that an error text table in a computer program was not a substantial part, apparently on the basis that the error table “was not the linchpin of the program”, and that the program could function without an error text table.

A person may also infringe copyright by importing computer programs (even legitimate copies) for sale or other commercial purposes without a licence from the copyright owner. In addition, a person may infringe copyright by selling, or otherwise commercially dealing with, an infringing (pirate) copy of computer software or by selling or dealing with an unauthorised import.

Copyright is also infringed by someone who “authorises” someone else to infringe copyright. In one case, a court said that the word “authorise” has the meaning of “endorse, sanction or countenance”.

**Technological protection measures**

There are criminal penalties and civil remedies for making, importing or commercially dealing in devices and services which circumvent technological copyright protection measures (such as decryption software). The penalties and remedies do not apply if the recipient of the device or service makes a written declaration that the device or service is only to be used for a “permitted purpose”; a “permitted purpose” includes certain activities by libraries, educational institutions, governments, and decompilers of software.

There are also civil remedies and criminal penalties for manufacturing or dealing in devices designed to enable the unauthorised reception of encoded subscription broadcasts (for example, decoders designed to allow unauthorised reception of pay TV signals).

**Rights Management Information**

There are sanctions against tampering with electronic rights management information, and against distributing or commercially dealing with material whose rights management information has been tampered with. Rights management information is information attached to or embodied in digital material that identifies the material and its author or copyright owner, or which relates to the terms or conditions of use.

Some situations where the copyright owner’s permission is not required

There are a number of situations where permission from the copyright owner is not required, even though the use would otherwise be an infringement.

Each of the exceptions discussed below is subject to various limitations – for detailed information, and for a discussion of the full range of exceptions, see our practical guide Computer Software & Copyright.

**Making a backup copy of a computer program**

The owner of a legitimate copy of a computer program may make a back-up copy of a program, either to use in place of the original copy, or to store as a backup for use if the original or an earlier backup is lost, destroyed or rendered unusable.

The provisions also allow copying of software as part of a normal process of backing up files for security purposes.

The provisions do not allow copies to be made from an infringing copy of a computer program, or if the owner of copyright in the program has blocked the making of copies of the program (for example, by the use of ‘locks’ or other technological devices built into the program). Also, the provisions do not apply if the licence governing the use of the original has expired or been terminated.

The back-up copy may be made whether or not the copyright owner makes an express direction to the contrary at or before the time of purchase, for example on the package.
Note, however, that this exception applies only to computer programs, and not to items such as computer games and CD-ROMs.

**Making inter-operable products**

A computer program may be reproduced or adapted in order to get information necessary to enable an interoperable product to be made. The relevant provision also allows the person making the interoperable product to reproduce or adapt the original program in the interoperable product, but only to the extent necessary to enable interoperability either with that program or any other program.

**Security testing and error correction**

A non-infringing copy of a program may be reproduced or adapted by or on behalf of the owner or licensee of the copy for various security testing purposes, and to correct errors and security flaws, if such reproduction or adaptation is reasonably necessary to achieve the relevant purpose, and only where the resulting information is not readily available from another source.

**Fair dealing**

"Fair dealing" with copyright material for certain purposes does not infringe copyright. These purposes are: research or study; criticism or review; reporting news; and giving legal advice. In each case, the use must be genuinely for that purpose and must also be fair. A use which has a detrimental effect on the copyright owner's market is unlikely to be fair.

Also, copyright in a program is not infringed by someone who owns or has a licence to use a non-infringing copy of a program, and runs the program to study the ideas behind it and the way in which it functions.

**Government use of copyright material**

The Government may use copyright material without the permission of the copyright owner provided the use is for "the services of the Government". This is likely to cover most uses which are governmental in nature. Government departments may rely on this provision, as may some statutory authorities. Although permission is not required to use the work, the copyright owner must be notified of the use as soon as possible and may negotiate payment for the use. If the negotiation is unsuccessful, a determination of the amount payable may be made by the Copyright Tribunal.

**Some common questions about computer software**

**How do I protect computer software which I have created?**

Copyright protection is free and automatic; there is no requirement to register or to go through any other formal procedure. A computer program is protected from the moment it is "fixed" in a "material form" from which it can be reproduced – for example, on a hard disk or on paper. It is a good idea to put the copyright notice (see above) on your program to warn others that it is protected and that you own the rights in it.

In addition to copyright protection, you may also want to consider technological measures such as "locks" or encoded information to inhibit or discourage unauthorised copying.

In some cases, patent protection may be available for aspects of computer programs. For information about patent protection, contact IP Australia (tel: 1300 65 1010; www.ipaustralia.gov.au) or a patent attorney.

**I was commissioned to write a computer program. Who owns copyright in it?**

Where there is no agreement about who owns copyright:

- a person who creates a computer program in return for a fee (that is, an independent contractor rather than an employee) owns the copyright in it;
- if an organisation such as a company is contracted to create a program, the organisation owns the copyright if the program is created by an employed programmer;
- copyright in a computer program made under the direction or control of a State or Federal government is owned by the government.
In most cases, a commissioning party which does not own copyright is nevertheless entitled to use the program for the purposes for which it was commissioned.

It is advisable for all commissioning agreements to be in writing, and to state clearly who will own copyright and what uses the other party may make of the program.

It may not be necessary for a commissioning party to be the owner of copyright in a program. In some cases it may be appropriate that the client owns some parts of commissioned software and the software creator owns others (for example, where a programmer uses “standard” program elements in software which they would use for various clients).

**What should I do if someone infringes my copyright?**

See our information sheet Infringement: what can I do?, available from our website.

**Is it a criminal offence to copy computer software?**

The Copyright Act provides that a person who infringes copyright may, in some cases, be committing a criminal offence (as well as being liable to the owner of the copyright). It is, for example, an offence to make an infringing copy of a program to sell. It is also an offence to advertise the supply of an infringing program. The penalties vary according to the type of infringement, and whether the offender is an individual or a company. A court also has power to jail offenders for a first time conviction for an infringement of copyright in a cinematograph film, or in relation to second or further convictions. Also, a court has the power to order that equipment used to make infringing copies (such as a computer used to copy software onto diskettes) be confiscated.

**Is there an exception which allows copying of computer programs for personal use?**

The Copyright Act does not contain any provisions which allow “personal” use of copyright material without permission.

The Act does, however, allow a person to copy a program for research or study, if this is “fair”. For example, it may be fair dealing for research or study for a computing student to copy part of a program in order to study it. On the other hand, the Act is unlikely to permit a student to copy a word processing program to use to write essays. As outlined above, the Act also contains provisions allowing back-up copies to be made.

**I bought a computer which already had software loaded on it, but no disks or books were supplied with it. What should I do?**

In some cases, software already loaded on a computer you purchase may be infringing software. Whether the copies of the programs you have are infringing copies will depend upon whether the supplier was authorised to copy the relevant computer programs onto the hard disk. It used to be the case that if no manuals or disks were provided, the software was likely to infringe copyright. However, nowadays some software is meant to be pre-installed by suppliers of hardware, and does not come with paper versions of manuals, these all being accessed via the program itself. If you are uncertain whether your supplier may have the right to pre-install programs, check with the relevant software company or companies.

It is important, from your point of view, that you ensure that all copies of software are licensed copies, as it may be an infringement of copyright to run an infringing copy of a computer program.

**Can I sell second-hand copies of computer programs?**

Generally, the Copyright Act does not give copyright owners the exclusive right to control the sale or resale of copyright material. However, special considerations apply to computer programs and where material is made available in digital form (for example, where material is on a CD-ROM). This is because the person using or accessing the material will be making a reproduction of that material each time they access it. As reproduction is one of the rights controlled by copyright owners, copyright owners are generally in a position to control the sale or resale of computer programs and items, such as CD-ROMs, which contain computer programs and material in digital form.

To work out whether you can sell a second-hand copy of a computer program or CD-ROM, you will need to look at the licensing agreement which accompanies that item. Generally, you will not be able to re-sell computer programs or CD-ROMs if the licence states, for example, that the item may not be re-sold, or states that the item may only be used by the purchaser. In each of these cases, the person purchasing the item from you is likely to
be infringing copyright if they use it and you are likely also to be liable on the basis that you have authorised
that infringement. In other cases, re-sale may be allowed, but only if certain terms or conditions are followed
(for example, that all material, including any disks and printed material, be given to the purchaser, and that the
purchaser accept all the terms and conditions of the original licence).

If you are uncertain as to whether you can re-sell particular computer programs or particular CD-ROMs, you may
need to get advice from a solicitor in private practice who has the relevant expertise.

What should I look out for if I want to buy a computer program second hand?

As noted above, commercial dealings with second-hand computer software may be prohibited by the licensing
agreement into which the purchaser entered when the software was first bought. Some licences may allow
transfer of ownership of the software from one person to another but usually on condition that the terms of the
licensing agreement are also accepted by the new owner. Other licences expressly prohibit the transfer of
ownership of the software or limit a licence to the original purchaser.

If you do purchase second-hand software make sure you are given all the relevant paperwork including the
original licence and proof of purchase. Check that the sale of the software is allowed under the licence. Proof of
purchase may help to ensure that you are dealing with the person who is able to transfer ownership of the
software and on-license the use of that software.

If a company that developed software goes out of business, does the software go
into the “public domain”?

No. As mentioned above, copyright protection for software lasts for the life of the individual author of the
program plus 50 years. If the company which published the program owns copyright in the program and goes out
of business, ownership of the copyright may be transferred to whoever buys the assets of the publisher.

I have used a spreadsheet program to create another program to make calculations.
Can I put my program on disk and sell it? Do I own copyright in my program?

You should check the licence that applies to the spreadsheet program to see whether it allows you to
commercialise products created with the program as, if the licence does not allow this, you may be infringing
copyright in the spreadsheet program by copying your program to disk for sale.

Your program is likely to be protected by copyright in its own right as a computer program or otherwise as a
“literary work”. You will generally own any copyright you create, unless you create it in the course of your
employment.

Further information about copyright

We publish a large range of information sheets which you print from www.copyright.org.au or buy from us in
printed form. We also publish a range of book titles - see www.copyright.org.au or contact Customer Service for
further information.

Legal advice

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

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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.

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