

COPYRIGHT AGENCY LIMITED®

# Copyright for photographers

Updated March 2009



## More information

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## When does copyright protection begin?

Photographs are protected from the moment they are taken.

What's more, this protection is free and automatic. You do not need to register for copyright protection.

## How long does copyright last?

Generally, photographs are in copyright for a period of 70 years after the photographer's death, if the photographer died on or after 1 January 1955.

If a photograph is not published during the lifetime of the photographer, copyright lasts for 70 years from first publication, for photographs first published after 1 January 1955.

If a photograph is made pseudonymously or anonymously, protection lasts for 70 years from first publication for works published after 1 January 1955.

However, if photographs are created, or first published, under the direction or control of a State, Territory or Federal government, different durations apply. For photographs made under the direction or control of government on or after 1 May 1969, copyright protection lasts for 50 years from when the photograph is first published. For photographs made under the direction or control of government before 1 May 1969, copyright duration lasts for 50 years from when the photographs were made.

The deadline operates from the end of the calendar year.

## Who owns the copyright in photographs?

The *Copyright Act 1968* (the Act) contains provisions that determine who owns copyright.

In the case of photographs, the photographer is generally the first owner of copyright. There are however a number of important exceptions. These are:

- **when an agreement has been made to the contrary:** You are free to make an agreement with a client or employer to determine who will own copyright and for which purposes. A prior agreement will also override any of the following exceptions. It is generally a good idea to ensure this agreement is in written form.
- **photographs taken in the course of employment:** If you're on staff (as opposed to working freelance) your employer is generally the first owner of copyright in any photos you take in the course of your employment.

This does not apply if you are working as a freelance photographer and have not agreed to be covered by an industry agreement. Generally, freelance photographers will retain copyright in their work. It should also be noted that the organisation that commissioned the photograph will still be entitled to use it for the purpose for which it was commissioned.

- **working for a newspaper or magazine:** Photographers working for newspapers or magazines (excluding freelancers) are in a unique position, as copyright is split between the employee and employer.

For photographs taken before 30 July 1998, your employer owns both the newspaper and magazine publication rights, while you own the copyright for all other purposes e.g. photocopying.



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In the case of photographs taken after 30 July 1998, you own the copyright for the purposes of photocopying and book publication. Your employer however owns the copyright for all other purposes including online and magazine publishing, and digital copying.

- **commissioned photographs:** If you took a commissioned photograph before the 30 July 1998, your client will own the copyright.

If the photograph was taken after 30 July 1998, you own the copyright. The only exception to this rule is if the photograph was commissioned for a private or domestic purpose (like a wedding or christening). In this case your client owns the copyright, unless otherwise agreed.

- **photographs taken under the direction or control of the Crown:** The copyright in any photographs created or first published, under the direction or control of a Federal, State or Territory government, is owned by the Crown. For example, photographs of roads taken by an employee of the relevant government department in the course of their duties.

### What are the rights of copyright owners?

Copyright owners have a number of exclusive rights. These include the right to publish a photograph for the first time, reproduce the photograph and communicate the photograph to the public in an electronic form.

### What are my rights as the creator of a photograph?

Whether or not you own copyright in your photographs, as the creator, the law grants you certain moral rights that have to be taken into account by users of copyright material.

Firstly, you have the right to be attributed as the creator of your work. Additionally, your photograph must not be falsely attributed to someone else.

Secondly, you also have the right to take action if your photograph is utilised in a distorted manner or in a way that is prejudicial to your reputation.

Moral rights are distinct from copyright (which are economic rights) in that they are not payable or transferable. Copyright Agency Limited (CAL) does not monitor moral rights.

### How do copying licences work in Australia?

In Australia the Act has created statutory licences that allow reproduction and communication to the public by educational institutions and institutions assisting people with disabilities, provided they do so within the limits set out in the Act. It has also created a statutory licence that allows governments to reproduce copyrighted material. CAL administers these statutory licences.

In addition, CAL offers voluntary licences on behalf of its members to organisations that copy, but are unable to rely on the statutory licences. These include corporations, associations, document delivery services and media monitoring services.

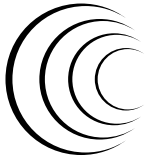
Under these licences, users can copy within the limits of the licence from the repertoire of CAL's author and publisher members, without the need to seek permission directly from copyright owners. If they wish to copy beyond the limits of the licence, they can seek permission directly from the copyright owner.

### So if people are copying my work, how do I get paid?

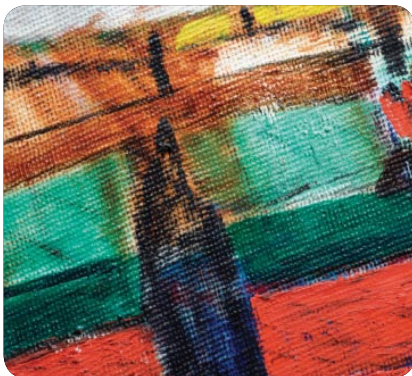
Easy, you just need to be a member of CAL. Remember, membership is free and you do not assign your rights to CAL.

CAL is a not-for-profit company set up by Australian authors, photographers, visual artists, journalists and publishers to manage part of their reproduction rights.

CAL makes things easier for rightsholders. Can you imagine trying to chase up everyone who was using your work? It would be almost impossible, not to mention time consuming and expensive. But when you join CAL, all the hard work is done for you.



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CAL determines how much has been copied by users and who owns the rights to what has been copied. CAL then collects a licence fee and distributes it to those rightsholders whose works have been found to be copied. We also offer members up-to-date and relevant information on copyright issues.

**Remember:** You must be a member of CAL to claim your copyright entitlements.

### Does CAL understand the needs of photographers?

From its inception, CAL has maintained a strong commitment to rightsholders in photographs. Each year since 1989, the date of CAL's first distribution, we have distributed funds to photographers working in a diverse range of industry sectors.

In 1999, CAL instituted the Illustration Fund in order to effectively manage changes to the statutory education copying licence (which is a source of income for rightsholders in photographs). The Illustration Fund has ensured that these legislative changes have not disrupted payments to photographic rightsholders.

### Will you get paid each year?

Not necessarily. To be paid, your works need to have been:

- copied by one of our statutory or voluntary licence holders; and
- recorded as copied in the surveys CAL uses to determine distribution and payment.

**Remember:** CAL is bound by the results of its monitoring systems and therefore can only pay eligible members. Further information can be found in *CAL's Sampling and distribution: how do they work?* information sheet.

### Is a CAL payment 'income'?

Yes. CAL's distribution payments should be treated as income for taxation purposes. You may wish to seek advice from your accountant or financial adviser on the income tax implications of any CAL payments you receive.

### Who is CAL?

Copyright Agency Limited (CAL) is a not-for-profit company set up by Australian authors, journalists, visual artists, photographers and publishers to manage part of their copying and communication rights. CAL is owned by its members, membership is free and members give CAL a non-exclusive licence in respect of their works.

### Code of Conduct

CAL is a signatory to the Code of Conduct for Copyright Collecting Societies (the Code). It is designed to ensure that the rights of all members and licensees are clearly stated, and that the operations of collecting societies are transparent and accessible.

The Code includes requirements for the Complaints Handling and Dispute Resolution procedures that collecting societies must follow. The Code and these procedures are available from CAL's website and on request.