

Family Histories & Copyright

In this fact sheet, we give a brief overview of copyright law as it relates to preparing family histories. It includes information on copyright protection for what you create and on using source materials and materials that other people have created.

Our [Historians & Copyright](#) book provides in-depth guidance on the provisions of the *Copyright Act 1968* (Cth) (Copyright Act) set out in this fact sheet. It is available for purchase from our website: copyright.org.au. Information about our education programs is available [here](#).

This fact sheet gives general introductory information about copyright. If you need to know how the law applies in a particular situation, we recommend you seek legal advice.

Key points

- The first owner of copyright in a family history is usually the person who wrote it.
- Unless copyright has expired, you generally need permission to use all or an important part of someone else's copyright material in your family history.
- There are some exceptions to copyright infringement that may sometimes allow you to use copyright material in your family history without permission.
- It is not an infringement of copyright if someone else writes a family history which incorporates the same information found in a family history you wrote, as long as they have not copied the way you expressed or described the information.

1. Copyright overview

- Copyright is automatic; there is no need to have a copyright notice or to register for copyright protection (see our fact sheet [An Introduction to Copyright in Australia](#)).
- Copyright does not protect ideas or information (see our fact sheet [Ideas: Legal Protection](#)).
- Copyright has a limited period of protection, usually the life of the creator plus 70 years (see our fact sheet [Duration of Copyright](#)).
- Copyright can be owned by people other than the creator (see our fact sheet [Ownership of Copyright](#)).

2. Issues to consider when preparing family histories

2.1 Who owns copyright in material used to prepare my family history?

The general rule is that copyright in a work is owned by the person who creates it. The situation may be different if the person creates the work as part of their duties of employment or for a government, or if they assigned copyright to another person (for example, to a book publisher).

As with any other form of property, copyright passes to another person (or organisation) when the owner dies. If the copyright owner's will does not specify to whom copyright is given, it is inherited by the person who inherits the residue of the estate. If there is no will (the copyright owner dies 'intestate'), then all property (including copyright) is distributed to the next of kin under the relevant state (or territory) 'intestacy' laws.

If someone receives the manuscript of an **unpublished** literary, dramatic or musical work, or an unpublished artwork as a bequest under a will, it is presumed that that person also inherits the copyright. This rule only applies however, if the testator was the copyright owner at their death and provided the will does not give the copyright to someone else.

For more information, see our fact sheets, [Ownership of Copyright](#) and [Wills & Copyright](#).

2.2 When do I need permission to use copyright material in my family history?

Permission is needed from a copyright owner if:

- you want to use a substantial part of their copyright material
- you want to use the material in one of the ways exclusively reserved to the copyright owner, and
- there is no exception to infringement that applies to your use.

We discuss each of these in further detail, below.

Permission may be needed whether you intend publishing the work through a book publisher or only intend to provide copies to relatives and friends.

2.2.1 *Substantial part*

There is no particular amount which may be used before you need to consider the copyright implications. Rather, you will have to consider copyright issues anytime you use a '**substantial part**'. The courts have interpreted substantial part as a **distinctive, important** or **essential** part of the original work.

Depending on the nature of the work, using small parts might raise a copyright issue. Generally, the more original or recognisable the part taken, the greater the likelihood of it being a 'substantial part'. However, if the first work consists of commonplace elements, the degree of similarity required between the two works will be greater.

For further information, see our fact sheet [Quotes and Extracts](#).

2.2.2 Exclusive rights of copyright owners

Copyright is a bundle of different rights. Owners of copyright in literary, artistic and dramatic works have exclusive rights including the rights to:

- ‘**reproduce**’ the work (such as by making photocopies, copying it by hand, reciting it onto an audio tape, scanning it onto a computer or printing out a copy of a digital file)
- ‘**communicate**’ the work to the public (such as by putting the written work onto a website, broadcasting it or emailing digital files containing the work), and
- ‘**publish**’ the work (that is make the work public for the first time).

Unless an exception applies, you will need permission from the copyright owner if you are dealing with all or a ‘substantial part’ of copyright material in any of these ways.

2.2.3 Does an exception apply to your use?

In some circumstances you do not require permission to use copyright material.

For example, you do not infringe copyright if you make a **fair dealing** with a work for the purposes of your **research** or **study**. Generally, it is ‘fair’ to deal with copyright material for research or study if you copy no more than:

- 10% of the number of pages or words
- one chapter (such as from a book or report), or
- one article from a magazine, newspaper or journal (although you may copy more than one article if each article relates to the same subject matter).

If you want to reproduce more than these amounts, or if you want to use other material (including drawings, photographs and unpublished material), you will need to consider certain factors listed in the Copyright Act to work out whether in all the circumstances it is ‘**fair**’ to use the material or whether you will need to get permission. For further information, see our fact sheet [Research or Study](#).

This exception will only be available to you, however, at the research stage. When it comes to publication, there is another ‘fair dealing’ exception you may be able to rely upon – the **criticism** or **review** exception. To be able to rely on this exception, you must acknowledge the author and title of the work and the purpose of the criticism or review must be genuine. For further information, see our fact sheet [Fair Dealing: What Can I Use Without Permission](#).

Also, an **unpublished** work may be copied and communicated to you by a library for a patron’s research or study if:

- it forms part of the collection and is available for public inspection, and
- its author died more than 50 years ago.

There are no administrative or paperwork requirements associated with this provision.

You may also publish a literary, dramatic or musical work if:

- it is unpublished, is held in a library or archive open to public inspection, and 50 years have elapsed since the death of its author
- the identity of the copyright owner is unknown, and
- a notice is published in the Commonwealth Government Gazette between two and three months before the date of publication of the work (for information about the content and form of the notices, see regulation 7 of the Copyright Regulations).

You may also **format-shift** certain items for private and domestic use. Under these provisions individuals can format-shift certain copyright materials from an analogue format to digital format or vice versa. The following types of material can be format-shifted:

- a book, newspaper, or periodical publication (for example, reproducing a hardcopy book as a PDF format)
- a photo (for example, reproducing a photograph in hardcopy format as a JPEG), or
- a film on a videotape (**not** a DVD)(for example, reproducing a film on VHS videotape as an MP4 or DVD).

We discuss these provisions in further detail in our fact sheet [Copying & Converting Formats for Private Use](#).

2.3 How do I get permission?

If you need permission for material which has appeared in a published source, the first step is usually to contact the publisher of the item in which that material appeared. The publisher may be able to give you permission or refer you to the person or organisation that can.

If you need permission for unpublished material, such as personal letters, sketches, photographs or diaries, you should contact the copyright owner (generally the creator). If the creator has died, copyright may have passed to that person's next of kin. Copyright can be bequeathed to a number of people under a will. If this is the case, you will need to get permission from each of the joint copyright owners.

If you need permission for military records, it is best to contact the Department of Defence or the agency from where the records have been sourced.

For more information, see our fact sheets [Permission: How To Get It](#) and [Artworks: Getting Permission](#).

2.4 When is copyright infringed?

Generally, copyright is infringed if you should have obtained permission to use material protected by copyright but didn't.

Note, however, that copyright is not infringed just because a new work is based on the same idea or the same information as an earlier work. For example, writing about the same family or the same events does not infringe copyright in another person's work, unless you reproduce original

elements of the way the other person has expressed themselves (including the way the other person has selected and arranged their information).

Authorising other people to infringe copyright can itself be an infringement (for example, by asking a printer or publisher to make copies of something which infringes).

2.5 Moral rights

Creators of copyright material have 'moral rights' in their material, whether or not they also own copyright. These are separate from copyright and impose certain obligations on people who use a copyright work. These obligations include:

- attributing the creator as author of a work
- not falsely attributing something to someone, and
- not degrading a work or treating it in a way that will damage the creator's honour or reputation.

Therefore, if you are using someone else's copyright material you will need to properly attribute the work and treat the work with respect.

For more information, see our fact sheet [Moral Rights](#).

3. Copyright in your work

3.1 Who owns copyright in the family history that I have prepared?

The general rule is that copyright in a work is owned by the creator of the work. Therefore, if you write about your family history, you will own copyright in what you have written.

Generally, commissioning a copyright work does **not** make you the owner of copyright unless you reach an agreement to the contrary. There are exceptions to this general rule (for example in relation to some commissioned photos). For more information, see our fact sheet [Ownership of Copyright](#).

3.2 What rights do I have as the copyright owner?

As the copyright owner, you will have the rights discussed above **2.2.2 Exclusive rights of copyright owners**.

3.3 Providing a copy of a family history to a library

Even if you give a copy of your family history to a library for its collection, you will still own copyright in the work you created. However, there are situations in which material, including material in libraries, may be copied for research or study.

If your family history is likely to be copied by governments or educational institutions, you should consider joining [Copyright Agency](#). This organisation administers a range of schemes under the Copyright Act under which material can be copied without permission, provided payment is made. For more information see Copyright Agency's website: www.copyright.com.au

Frequently Asked Questions (FAQs)

My sister is using information which I have researched for my family history book in her book. Can I stop her?

No. Copyright protects the expression of ideas or information, not the actual ideas or information themselves. Therefore, individuals are free to research material and to take information, facts or ideas from other sources to write about a topic. In some cases, however, people who acquire information can be prevented from disclosing it without consent under the law of confidential information. You would need to get specific advice from a lawyer in private practice if you wanted to investigate whether this area of law might apply in your situation.

Who owns copyright in an oral interview?

Where an oral history is given as a monologue which the interviewer merely records, copyright in the interview will be owned solely by the person being interviewed. However, where an interview is structured, or where the taking down of the history has involved some skill on the part of the interviewer, copyright may be owned by both the interviewer and the person being interviewed, or even by the interviewer alone.

It is unclear what degree of prompting will 'convert' a monologue oral history into a literary work created by more than one 'author'. It is always advisable to seek an interviewee's permission to use material and it is advisable to have some form of written agreement with the person giving the interview which states the uses you may make of the interview. Generally, to make the grant of permission binding, you should give an interviewee something in exchange for their permission – for example, a copy of the recording or a transcript on paper or disk.

Who owns copyright in a sound recording of an oral history?

There are two distinct copyrights in an oral history recording: one in the words of the oral history and one in the recorded sounds.

In the absence of an agreement to the contrary, the first owners of copyright in a sound recording of a 'performance' (such as the recitation of an oral history monologue) are the performer/s (for example, the person reciting the oral history monologue) and the person who owns the master recording medium.

However, performers will not own a share in the copyright in the sound recording if:

- the interview was given in the course of their employment, or
- the recording was commissioned (for example, a museum pays a freelancer or company to record the interview).

Great Aunt Agatha has told me all about the family. Will she own copyright in the history I am preparing?

Merely contributing information to a family history does not mean that Great Aunt Agatha will own copyright.

Generally, Great Aunt Agatha would only own copyright in the history you are writing if you were writing her story down as she dictates it. Where you are using information given to you by relatives, but writing the history in your own words, you will own copyright.

Your ownership of copyright will not, however, prevent someone else writing their own version of the family history.

Are personal letters protected by copyright and, if so, who owns copyright in them?

Generally, a personal letter is protected as a 'literary work' and copyright in it will usually be owned by the person who wrote the letter. If the writer has died, copyright will usually be owned by their spouse or children. You may be able to check this if you can get a copy of the writer's will (in Australia, contact the Probate Division of the Supreme Court in the state or territory where the author died).

I have commissioned someone to write our family history. Do I own copyright?

Even if you provide all the information for the history, the writer of the history will generally own copyright, unless you reach some arrangement to the contrary.

This is because the general rule is that the 'author' of a work is the first owner of copyright. When a work is commissioned, the person who creates the work is the owner of the copyright, but the paying client has a licence to use the work for the purpose(s) for which it was commissioned. This general rule can be altered by an agreement.

If you want to own copyright in a particular written version of your family history, you will need to persuade the writer to assign the copyright to you. An assignment must be in writing and signed by the copyright owner to be legally effective.

For more information, see our fact sheet [Ownership of Copyright](#). See also the Australian Society of Authors at www.asauthors.org.

Can I use family photographs to illustrate my history?

Photographs taken prior to 1 January 1955, are now in the public domain. As a result, you can reproduce them without permission. However, you may need permission to gain access to the photographs if they are owned by someone else.

If a photograph was taken on or after 1 January 1955, it is still protected by copyright and you will generally need to get permission from the copyright owner before publishing your history.

Can I use another person's work without permission if I make changes?

Making changes to someone else's work does not mean that you will necessarily have avoided any copyright issues. In copyright law, it is not a matter of what you change but what you have copied that is relevant. If the part you use is an important or distinctive part of the original, you still have a copyright issue to deal with even if it is proportionally small.

I am writing a family history book to distribute amongst relatives. Do I need to get permission to use quotes in the book?

You will need to get permission if a quote is a 'substantial part' of something which is protected by copyright. It may be, however, that some pieces of text are not protected by copyright, because they are not either significant enough or substantial enough to be 'literary works'. Alternatively if a quote or extract is taken from a longer piece of text, it may not be a substantial part.

For further information on using quotes, see above at **2.2.1 Substantial part** and our fact sheet [Quotes and Extracts](#).

Note that, even if a part is not a ‘substantial part’ for copyright purposes, you may still need to attribute it to the person who wrote it (see **2.5 Moral Rights** above).

While researching for my family history, I found a Copyright Certificate from 1917. What does this mean?

Prior to the operation of the *Copyright Act 1968* (Cth), people could voluntarily register their copyright with the Australian Intellectual Property Office. The current Act does not provide for a copyright registration system.

For further details, write to the National Archives of Australia: website www.naa.gov.au

Further information and advice

We have a range of other fact sheets on specific topics and publish books that focus on particular interest groups. Check our website for information about our publications [here](#) and details of our seminar/webinar program [here](#).

An Australian Copyright Council lawyer may be able to give you free preliminary legal advice about an issue not addressed in a fact sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries and members of our [affiliate organisations](#). For further information about the service, see [Legal Advice](#) on our website.

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About us

The Australian Copyright Council is an independent, not-for-profit, non-government organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia’s creative industries. Our objectives include:

- to assist creators and other copyright owners to exercise their rights effectively
- to raise awareness in the community about the importance of copyright
- to identify and research areas of copyright law which are inadequate or unfair
- to seek changes to law and practice to enhance the effectiveness and fairness of copyright
- to foster co-operation amongst bodies representing creators and owners of copyright.

The Australian Copyright Council acknowledges the Traditional Owners and Custodians of the lands on which our office is located, the Gadigal people of the Eora nation, and all Traditional Owners of Country throughout Australia. We pay our respects to all Elders past and present, and recognise their continuing great, creative and cultural expressions.



The Australian Copyright Council is assisted by the Australian Government through Creative Australia, its principal arts funding and advisory body.

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