

Uses controlled by copyright

Only some uses of copyright materials are controlled by copyright, and which depends on the type of material being used. Examples of actions that aren't copyright protected would include lending physical books, displaying objects in an exhibition, or library/archive clients listening to a CD on a player provided by the library/archive.

Performers also have rights in relation to recording their performances and creators are protected by moral rights. There may be other limitations on how you can use materials from sources such as contractual terms, technological protection measures (TPMs), cultural protocols or privacy concerns.

Copyright protected actions

For [dramatic, artistic, literary and musical works](#) the protected uses are:

- Reproduction - eg photocopying, scanning, recording
- Publication - eg as a book or online
- Communication to the public - eg including transmission and making available online by internet, email, broadcast
- Public performance - eg performing a musical work or reading a book aloud in public, including in the background eg music in a restaurant (doesn't apply to artistic works)
- Adaption of the work - eg translating a book or turning it into a film (doesn't apply to artistic works)

For [films, sound recording and broadcasts](#), the protected uses are:

- Reproduction
- Public performances
- Communication to the public

[Published editions](#) are only protected against reproduction, though the underlying works will be protected as above.



Performer's rights

There are also [performers' rights](#) that require a performer's consent before their performance is recorded and give performers a share in the copyright of sound recordings. Performers, like all other creators, are also protected by moral rights.

Moral rights

Finally, Australian law also provides authors with moral rights. These rights stay with the author(s) of a work, not with the copyright owner. There are three moral rights:

- 1) the right to be attributed as the author;
- 2) the right against false attribution (ie others claiming you wrote something you didn't); and
- 3) the right against derogatory treatment of the work, such as mutilating it or displaying it in way that damages the creator's reputation.

If the author(s) give written consent or it is "reasonable" then you can treat the work in a way that would otherwise breach moral rights. However, legally it is never reasonable to misattribute a work.

Infringing Copyright

If you use a [substantial part](#) of a work protected by copyright in one of the above ways, without an exception or permission from the copyright owner, then you will be infringing copyright. You can also infringe copyright by authorising another person to perform an infringing act, or by importing or selling infringing items commercially.

Substantial part

Copyright restrictions only apply if you are using a substantial part of the work. Whether something is substantial depends on both the quality and quantity of the material used. So for example, a 16 word quote from a textbook is unlikely to be substantial, but an integral, recognizable 16 note phrase from a popular song such as "Kookaburra sits in the old gum tree" likely [is substantial](#).

Uses not protected by copyright

Anything that is not one of the protected uses is not a matter for copyright. This includes lending or selling a physical copy of a book, linking to materials on social media, displaying items (whether on a shelf or in an exhibition) or quoting an insubstantial amount.

Other usage restrictions

Contractual terms

Often libraries or archives will have acquired content under a contract arrangement. These typically include acquisitions under subscriptions, digital content licences, bequests or donations, as well as other arrangements. Digital subscriptions or agreements with donors of collection material need to be negotiated carefully, so that rights and responsibilities are clearly understood by both parties, including ownership, access and potential uses. Contractual terms that override copyright exceptions are [likely to be enforceable](#).

Technological protection measures

Often referred to as TPMs or DRMs (digital rights management), these are the digital locks that manufacturers use to protect content - for example the technology that stops you burning commercial DVDs to a computer. Breaking a TPM is a criminal offence. There are a limited number of exceptions that allow you to circumvent a TPM, which are detailed in [Schedule 10A of the Copyright Regulations 1969](#). These include exceptions for document delivery, interlibrary loan and preservation copying under 51A, 110A or 110B of the [Copyright Act](#).

Legislative or record keeping requirements

The storage, access or preservation of certain materials may be governed by legislation such as Archives or Public Records Acts, Library Acts, Corporations Act or Privacy Act. You should check what (if any) legislation covers your institution and the records you keep.

Defamation

Another legal issue to be aware of is [defamation](#). An action for defamation arises from the publication of defamatory material, which includes putting previously published material (such as newspapers) online. Even if you have copyright permission to publish a work, you could still be liable for any defamation it contains.

Indigenous cultural protocols

For Indigenous materials it is important to abide by indigenous protocols for access and use of cultural materials. For more information you can consult the [ATSILIRN Protocols](#) for libraries and archives or your state library. The Protocols are intended to guide libraries, archives and information services in appropriate ways to interact with Aboriginal and Torres Strait Islander people in the

communities which the organisations serve, and to handle materials with Aboriginal and Torres Strait Islander content. They are a guide to good practice which will need to be interpreted and applied in the context of each organisation's mission, collections and client community.

The protocols address:

- the recognition of the moral rights of Aboriginal and Torres Strait Islander peoples as the owners of their knowledge;
- other important issues arising from Aboriginal and Torres Strait Islander content in documentary materials, media and traditional cultural property;
- issues in access to libraries, archives and information resources by Aboriginal and Torres Strait Islander peoples;
- encouragement for both the involvement and the participation of Aboriginal and Torres Strait Islander peoples in the governance and operation of libraries, archives and information services; and
- appropriate representation of Aboriginal and Torres Strait Islander peoples and their cultures in libraries, archives and information services.

FAQs

[How many words can I quote before I need to get permission?](#)

There is no hard or fast rule. Anything that is more than insubstantial will need permission or a licence. As a general rule you will be able to quote more from longer, non-fiction works.

[The licence for a database subscription I have says that the agreement is under US law. Does that mean I get to use US fair use?](#)

If the licence specifies that fair use, or other exceptions in the US [Copyright Act](#), are allowable, then yes, you get fair use. A general statement that the contract is subject to the jurisdiction of a US State and their courts will not be sufficient. Note that it is unclear at the moment whether contractual terms [override Australian copyright exceptions](#), so if possible it is preferable to have them specifically allowed under the contract.

[I need to circumvent a DVD TPM in order to preserve it, but I don't know how. Can I get a company to do it for me?](#)

Unfortunately not, as the exception to bypass a TPM for the purposes of preservation only extends to libraries and archives, not to external businesses.

Our library has a mural along an outside wall that was painted by local school children. The paint is beginning to peel and look shabby - can we paint a new mural over the top without breaching moral rights?

Obviously painting over the mural does not infringe copyright, but the destruction of the mural may breach the moral right of integrity of authorship if it's prejudicial to the artist(s) honour or reputation. Helpfully, there's an exception for works attached to buildings, which sets out the [legislative steps](#) for contacting and consulting with the author(s) (there are also [steps](#) if the author(s) can't be contacted). This may be a good opportunity to document a piece of local history and culture in collaboration with the school.

Further resources

[Moral Rights](#) Australian Copyright Council

[Linking to other websites](#) Smartcopying

[Technical Protection Measures](#) Smartcopying

[Artists: Indigenous](#) Australian Copyright Council

The [Australian Libraries Copyright Committee](#) is the primary policy body for the discussion of copyright issues affecting libraries and archives in Australia. For more information and resources on copyright for libraries, including regular training opportunities throughout Australia, see <http://libcopyright.org.au>.