

INFORMATION SERIES

E - C O M M E R C E F O R S M A L L B U S I N E S S

FACT SHEET # 19

COPYRIGHT ISSUES

In running a website, you should be mindful of the copyright in works of others. You should also understand how copyright law can work to protect your own intellectual property.

WHAT IS COPYRIGHT?

The Copyright Act protects the expression of original ideas and information through such means as words, drawings, computer programs and images. This law gives the copyright "owner" of a work the exclusive right to reproduce, publish, broadcast, transmit, adapt or perform the work or cause the work to be communicated to the public.

The rights given to a copyright "owner" are the same as the rights to other forms of property. The "owner" may transfer or assign all or any of the rights conferred by the Act.

The Internet presents a special problem for copyright protection because everything on the Web is in a digital format, which can be copied and manipulated from anywhere in the world.

WHO "OWN'S" COPYRIGHT MATERIAL?

The general rule is that the "owner" of copyright in a work is the creator or author of the work. However, an important exception is where an employee creates a work in the course of his/her employment, in which case the employer owns the copyright in that work. Given that many employees now work online rather than in the office, you should be sure to deal with the question of copyright ownership material in the employment contract.

Where an independent contractor creates works, the ownership is vested in the contractor unless the relevant contract specifies otherwise. When you contract with someone to build your Web site, the "contractor" will be the owner of the material created for the Web site. You should ensure that you have a written agreement to transfer that copyright to you or there can be difficulties later when, for example, you want to rebuild the Web site with a different

developer. The contractor should also agree that any material used on your Web site does not breach someone else's copyright (especially multimedia such as video, audio, graphics).

PROVING OWNERSHIP

There is no system in Australia for the registration of copyright and it can be difficult to prove ownership of copyright. Therefore, you should consider implementing a system to record the creation of, or entitlement to, copyright material.

DATABASES

Databases form the basis of most ecommerce Web sites. The creation of a database will often involve copying the contents of another database or other databases. Generally, this will require obtaining the permission of the "owner" of the copied material. For you to be the copyright owner of the new database, its creation must have involved a qualitatively significant change to the original material. It is usually enough that some labour was used to give the new work a unique quality not found in the original data.

DIGITAL AGENDA LAW

The Copyright Act deals specifically with digital material and its protection on the Internet. This digital agenda law makes it a crime to deal in devices used to get around technological protection measures such as encryption. It also makes it a crime to remove or alter electronic rights management information (ie "ownership" of information embodied in a copy of the work electronically which cannot be seen visually).

INFRINGEMENT OF COPYRIGHT

Infringement of copyright occurs one of the copyright "owner's" exclusive rights are exercised by a third party without permission in relation to the whole or a substantial part of the work. "Substantial" does not necessarily mean a large percentage of the work, if it is the essence of the work which is copied.

An employer may be liable for the infringement of copyright by its employees downloading Internet materials using work computers if no action has been taken to prevent this. Therefore, your IT policy should prohibit employees downloading materials which may breach copyright.

UNAUTHORISED COPIES OF SOFTWARE

You should ensure that your business is not using any unauthorised copies of software. In Australia, the Business Software Association of Australia investigates reports of unauthorised software as well as providing an education program and assistance in relation to software.

MORAL RIGHTS

Moral rights are personal rights that a creator retains in his/her work even if the copyright is transferred. These rights include the right of the creator to be identified with his/her work (attribution) and the right to object to derogatory treatment of the work which would damage the creator's reputation. The existence of these rights means that you need to take care when material (such as images) on your Web site is changed to make sure that the correct creator is acknowledged.

USEFUL LINKS

Copyright Information Sheets

<http://www.copyright.org.au/page3.htm>

This page is run by the Copyright Council of Australia and contains links articles on issues related to copyright.

"Copyright Law in Australia – A Short Guide"

<http://www.ag.gov.au/agd/Department/Publications/publications/copyrightlawaustralia/contents.html>

This is an article produced by the Commonwealth Attorney-General which gives a very good introduction to the law of copyright in Australia

"Ownership and Infringement of Copyright"

http://www.copyright.com.au/info%20sheets/CR12_ownership-infringement.pdf

This article by the Copyright Agency Ltd (CAL) gives a fundamental overview of what is copyright and how it is infringed.

"Copyright and the Internet"

http://www.copyright.com.au/info%20sheets/CR20_copyright%20and%20the%20internet.pdf

This article by the Copyright Agency Ltd provides a summary of the issues involved with copyright and the Internet.

Australian Copyright Council

<http://www.copyright.org.au>

The Australian Copyright Council is an independent, non –profit organisation copyright services to members and subscribers.

Copyright Agency Ltd (CAL)

<http://www.copyright.com.au>

CAL is an Australian copyright management company that seeks to bridge between creators and users of copyright, by acting as an agent to licence the copying of the works of various groups to the general community.

Business Software Association of Australia (BSAA)

<http://www.bsaa.com.au>

The BSAA aims to combat the increasing problem of software theft and piracy in Australia. It is made up of major computer software manufacturers and a number of Associate Members, including Australian developers.

World Intellectual Property Organization (WIPO)

<http://www.wipo.org>

WIPO is an international organisation dedicated to promoting the use and protection of works of intellectual property.

IMPORTANT LEGAL NOTICE

The information in this Fact Sheet is provided in good faith and every attempt has been taken to ensure its accuracy. However, neither the Australian Capital Territory nor the Internet Industry Association (IIA) nor any of its officers, employees, agents or directors give any representation or warranty as to the reliability, accuracy or completeness of the information, nor do they accept any responsibility arising in any way, including negligence, for errors in, or omissions from, the information. The information on this Fact Sheet is not intended as business advice and must not be relied upon as such. Professional advice should be obtained as necessary or prudent according to the specific circumstances of a person before making any business decisions in relation to the subject matter or issues referred to in the Fact Sheets. A reference to any product, service or entity referred to in this Fact Sheet does not imply, nor should be construed as implying, any recommendation or endorsement of it by either the Australian Capital Territory or the IIA.

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