

Picturing your website

A brief guide to the copyright management of digital images in library collections

Colette Ormonde, ALIA copyright advisory service

You want to digitise a collection of local history photographs, or jazz up your website with reproductions of paintings or cartoons or clip art software. All of these activities require compliance with the *Copyright Act*.

The rights management of pictorial material is more complex than that for print. With all creative works, one must establish whether the work is within the period of copyright protection and, if so, who is the copyright owner to whom you apply for permission to copy. With books and journals, the imprint and copyright statements usually answer these questions. Artistic works often carry no information to help establish ownership of copyright. There are often further questions of shared ownership between client and artist, publisher and creator, as well as changes to the original work. A photograph of a painting where both have been commissioned by different clients, executed by different creators and published in different media offers a complex web of ownership possibilities.

A further complication relates to the amount which may be copied without permission under fair dealing provisions, that is for study and research, criticism or review. For print and digital text, this is straightforward, ten per cent or a book chapter or one article in a journal issue (two if on the same subject). Artistic works are usually not amenable to this formula.

The ease of digital copying and alteration of images and the opportunities which digital technology offers librarians in the effective use of artistic material require librarians to understand clearly the principles of copyright protection of this type of material, to create appropriate management systems and to educate their users about the legal regulation of this material. Here are some basic questions and answers.

Is the item a legally recognised artistic work?

Artistic works are defined in s.10(1) of the *Copyright Act* as a painting, sculpture, drawing, engraving or photograph, a building or building model or a work of artistic craftsmanship. For legal purposes, artistic quality is expressly irrelevant.

Is the item within a copyright period?

The period of copyright protection of artistic works is as follows:

Artistic works (except photographs and engravings unpublished in the creator's lifetime): Life of creator, plus fifty years from the end of the year of the creator's death.

Photographs taken before 1 May 1969; artistic works (except engravings) made for or first published by government or under government copyright: fifty years from the end of the year of making.

Photographs taken after 1 May 1969; engravings first published after the creator's death; engravings first made for/published by a government or under government copyright; anonymous works: fifty years from the end of year of first publication.

Once the copyright period has expired, the work is in the public domain. If copyright is still protected, the next question is ownership of rights.

Who owns copyright?

Australian law gives automatic rights to the creator. There is no system of copyright registration, nor any requirement to assert rights with a specific statement. Photographs and pictures may have no evidence or sparse evidence of ownership or conversely may have, as in the example quoted above, competing ownership rights. Librarians' reference skills will be, in some instances, well tested.

When librarians acquire artistic works, they should record as much information as possible from the donor or seller, including any details of creator, publisher and dates, (the date of creation of the work, its date of publication, and date of receipt by the donor and subsequently by the library) as well as information about the content or context of the work which may not be obvious from looking at it. Librarians should also ask for and record any contractual information which clarifies rights ownership. Those dealing in art and photography will know this process as establishing provenance for the purposes of establishing authenticity and value. For copyright and moral rights purposes, this information helps librarians track ownership and establish

a legal framework and record of permissions for future uses of the work.

The creator, artist or photographer is the first likely copyright owner. They also independently own the moral rights of acknowledgment and integrity.

Employers will usually own copyright, but not moral rights, in artistic works created by staff in the course of employment. However, if artists are working on a freelance basis, the publisher paying for the work does not automatically own copyright, but will usually be entitled to use the work for the purposes commissioned. Both artist and publisher should be contacted for copying permissions. The artist will own the moral rights, that is, the right to be acknowledged accurately and the right to refuse uses which breach the integrity of the work.

Governments generally own copyright in artistic or photographic works created for them, unless otherwise contracted.

Photographs in newspapers and magazines

Photographs taken by employees of newspapers or magazines have special conditions.

For photographs taken before 30 July 1998 (unless otherwise agreed), the publisher owns the rights for newspaper and magazine publication and for broadcasting. The photographer owns book publication and other rights. The photographer owns the moral rights.

For photographs taken after 30 July 1998, the photographer owns the rights for photocopying and book publication and moral rights. The publisher owns all other rights, unless otherwise agreed.

Commissioned works

For commissioned works, for example, portraits or photographs or engravings, created before 30 July 1998, the first owner of copyright is the commissioning client unless otherwise agreed. The creator has the right of restraint, that is, the right to prevent any use of the work not covered by the agreement. This may mean that the artist or photographer, even if they do not own copyright, could demand further payment for digital uses.

► For art or photographs commissioned *after 30 July 1998*, the artist or photographer owns copyright, unless the work was commissioned for 'private or domestic purposes', for example, wedding photographs, or unless there has been some other agreement. Here again the creator may still retain a right of restraint and a right of further payment. This right of restraint is separate from the creator's moral rights.

Therefore, all parties identified in the creation and publishing of an artistic work or photograph should be contacted for permission for further copying or usage.

Indigenous works

Indigenous works require special acknowledgment of communal as well as individual ownership, the ownership of moral rights and appropriate cultural uses. VI\$COPY will provide useful information.

Clip art software

The copying of clip art images must be done within the terms of the software licence agreement. If you are unsure about what you are permitted to do, contact the software producer or vendor.

Amount which can be copied under fair dealing provisions without permission

A further complication is the amount of a picture, photograph or image which can be copied without permission. The fair dealing provisions governing print or digital text permit certain familiar amounts to be copied without permission, for example, ten per cent or a chapter of a book or one article in a journal issue (or two if on the same subject).

The guidelines for copying or altering parts of pictorial works rest on substantiality and identification.

You will need permission to scan and alter images to create a new work, such as a collage of pictures or photographs on a website, from any copyright owner whose work is substantially reproduced, even if it is a small part of the collage.

If you alter a work, but it can still be identified as the original, you must seek permission from the copyright owner and from the creator, whose moral rights remain. This includes permission for changing the colours of a work.

However, you may draw or photograph a sculpture or work of art (but not

a mural) on permanent public display or a building, without permission. For photographing works in galleries, you require permission.

VI\$COPY Limited

VI\$COPY is the designated copyright collection agency for 180 000 artists and photographers in Australia and New Zealand and for obtaining copyright clearances and licences. It will advise on ways of tracking down copyright owners here and overseas. It specialises in advising on indigenous art.

You may contact VI\$COPY at: VI\$COPY Limited, Level 1, 72-80 Cooper Street, Surry Hills NSW 2010, telephone 02 9280 2844; fax 02 9280 2855; <http://www.viscopy.com>, or e-mail: viscopy@viscopy.com, Aboriginal and Torres Strait Islander officer: atsi@viscopy.com.

This information is based on information from legal sources, the Australian Copyright Council and VI\$COPY. For further inquiries, contact Colette Ormonde, ALIA copyright advisory service, PO Box E441, Kingston ACT 2604, phone 02 6285 1877 fax 02 6282 2249 e-mail: Colette.Ormonde@alia.org.au. ■

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