



INFORMATION SHEET

G67

Translations

August 2006

In this information sheet, we give a brief overview of copyright as it relates to translations.

For information about our other information sheets, other publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Generally, you need permission from the copyright owner in order to make a translation of his or her work.
- Generally, copyright subsists in a translation.
- Any use of a translation will, in copyright terms, also involve the “underlying” original work. Therefore, a translator may need permission from the owner of copyright in the original work, to use his or her translation in certain ways.

What does copyright protect?

Copyright protects a range of creative material, including literary and dramatic works. A literary work does not need to be “literary” or “dramatic” in the artistic sense before it is protected. Essentially, any work made up of words may be protected as a literary work, and a trade manual will be protected to the same extent as a novel, poem or short story. Similarly, scripts for advertisements may be protected as much as a stage play or script for a feature film.

There is no system of registration for copyright protection. A literary or dramatic work is protected as soon as it is written down or recorded in some way (whether by hand or typed or recorded on tape).

Copyright in translations

A translation is generally protected by copyright as a literary work. This is separate from copyright in the underlying work, which is also protected. As a result, it is possible that copyright in the translation and copyright in the underlying work are owned by different people.

The legal rights of copyright owners

The copyright owner’s exclusive rights in Australia, in respect of a literary work, include the rights to:

- make an adaptation of the work (this includes the right to make a translation);
- reproduce the work (for example, by printing, scanning, photocopying or recording);
- “publish” the work (this is the right to make the work public for the first time); and
- communicate the work to the public (for example, by broadcasting the work over TV or radio, or by putting the work onto a website).

How long does copyright last?

Until 1 January 2005, copyright generally lasted for the life of the relevant creator plus 50 years. There were various exceptions to this rule, including:

- where a work was not published, performed in public or broadcast during a creator's lifetime; and
- where something was published anonymously or under a pseudonym, and the identity of the creator couldn't reasonably be ascertained.

(In each of these cases, copyright lasted for 50 years from the end of the year the work was, with permission, first published, performed in public or broadcast.)

Under the Free Trade Agreement with the US, Australia agreed to extend the general duration of copyright. As a result, the general rule now is that copyright lasts for the life of the creator plus 70 years (or, where duration depends on year of publication, until 70 years after it is first published).

However, the Free Trade Agreement did not include any obligation to **revive** copyright if copyright had already expired. This means that if, under the old rules, copyright had already expired by 1 January 2005, it stays expired, and the material can be used freely (at least within Australia).

Note, however, that the duration of copyright varies from country to country. Where copies of a translation are to be reproduced or sold overseas, the translator may need to determine whether the underlying work is still protected by copyright both in Australia and in the relevant countries. Relevant permission must be obtained in respect of countries in which the underlying work is still in copyright; without such permission, you will only be able to deal with the underlying work in those countries where the copyright has expired.

For detailed information on duration in Australia, see our information sheet *Duration of copyright*.

Moral rights

Creators of material eligible for copyright protection (including translators) have certain moral rights:

- to be attributed as the creator of a work;
- to take action against someone else being falsely attributed as the creator of their work; and
- in some cases, to take action if their work is treated in a derogatory way or treated in a way that is prejudicial to the creator's honour or reputation.

Translators have moral rights in relation to the translations they create. Since the translation also reproduces the underlying work, the creator of the underlying work also has a right to be attributed, and to have the integrity of his or her work respected by the translator.

Moral rights in literary and dramatic works endure for the same period as copyright rights.

Copyright protection in Australia and internationally

Under the terms of various international conventions and bi-lateral treaties on copyright, certain minimum levels of protection are ensured. Member states (including Australia) have agreed to grant each others' citizens and residents the protection of their own copyright laws.

If a protected work is, for example, to be translated in Australia, Australian law applies. Where a translation is to be published, sold or otherwise distributed in another country, the law of that country will apply.

When is permission needed?

Generally, permission is needed to create a translation of a literary or dramatic work. Permission will also be needed from both the copyright owner in the translation and the copyright owner in the underlying work to reproduce the translation.

Getting permission to translate a work

A translator will need to obtain permission from the relevant copyright owner in order to make a translation of a protected work. When negotiating this right, a translator should consider what else he or she will subsequently be doing with the translation. For example, is it to be published and distributed, or broadcast or put onto a website,

and so on. These subsequent uses of the translation will need to be covered by the permission from the owner of copyright in the underlying work, and any such permissions should be negotiated early (for example, either by way of a full agreement, or by means of an option on these rights).

The terms and conditions upon which any permission is granted will in every case be a matter of negotiation between the translator and the copyright owner.

A written agreement giving permission to use a copyright work should ideally include a provision under which the person granting the permission warrants that they are the owner or the exclusive licensee of the copyright in the underlying work and that they are authorised to grant permission to translate the work. As an extra precaution, the provision should also state that they will indemnify (compensate) the translator for any loss, damage or injury suffered as a result of any breach of that warranty.

Getting permission to reproduce a translation

Permission will be needed from both the owner of copyright in the translation and the owner of copyright in the underlying work, to reproduce the translation.

Who owns copyright?

Copyright in the translation is distinct from the copyright in the underlying work. As a result, ownership of copyright in the underlying work is separate from ownership of copyright in the translation.

Under Australian law, the general rule is that the creator of a work will be the first owner of copyright in that work. This rule is, however, subject to a number of exceptions. For further information, see our information sheet *Ownership of copyright*.

The operation of both the general rule and the exceptions may be altered by agreement. For example, authors sometimes grant a publisher subsidiary or ancillary rights, such as the right to make translations; or the author and publisher may have agreed to administer the right to make translations jointly.

Where the translator is the owner of copyright in the translation, he or she is entitled to place the "copyright notice" on all copies of the translation. The notice consists of the symbol ©, followed by the name of the copyright owner and the year of first publication (for example, © Trent Slater 2006).

A copyright notice is not required for protection in Australia. Nonetheless, it is a good idea to put the notice on all copies of a translation, as it operates as a warning that the work is protected and identifies the person claiming the rights.

Contacting the copyright owner

The first point of contact in obtaining permission to make a translation is usually the publisher. The Australian Publishers Association (APA) publishes a directory of Australian publishers, and there are similar directories for overseas publishers. If the publisher does not control the translation rights, an approach will need to be made to the author or the author's agent.

If the author has died, the rights may still be controlled by the publisher, or may be controlled by the author's heirs. It may be necessary to refer to the author's will or to relevant intestacy laws. In Australia, copies of wills may be found in the Probate Division of the Supreme Court in each capital city.

For more information, see our information sheet *Owners of copyright: how to find*.

Types of permission

There are several ways the copyright owner may give permission (a licence) to use a work. Licences can be either exclusive or non-exclusive.

Where an exclusive licence is granted, only the licensee has the right to use the work in the ways specified in the licence. This means that everybody else, including the copyright owner, is prevented from using the work in those ways. To be fully effective, an exclusive licence must be in writing and signed by the copyright owner.

Where a non-exclusive licence is granted, the copyright owner retains the right to use the work and may continue to grant similar licences to others who wish to use the work in the same way.

When granting any licence, the copyright owner may choose to limit the permission granted by specifying the types of use that are included. Licences may limit permission to use the work:

- for a specific period of time;
- within a particular geographical area (e.g. Australia); or
- in a certain language (e.g. English language rights)
- in any other way that is practical in the circumstances.

If a translator intends to publish a translation of a major work, he or she may want to negotiate for the “exclusive right” to translate that work into the relevant language, in order to prevent the production of rival translations in the geographical area to which the licence relates.

Both the copyright owner of the underlying work and the translator should give careful consideration to what sort of licence is most appropriate in a particular situation, and should generally seek legal advice.

Common questions

Do I need permission to make a translation of part of a work?

In Australia, infringement is said to have occurred if the whole or a “substantial part” of a work is used. The phrase “substantial part” is not defined in the Copyright Act. In their interpretations, the courts have adopted a “qualitative” approach to this term, deeming that a small part may still be substantial if it is an essential, distinctive, important or recognisable part of the original work. As a result, there is no minimum amount that may be translated without first obtaining permission.

What should I do if I can't find the copyright owner?

Making a translation of a protected work without permission involves a risk that may not be worth running. It is an infringement of copyright to make the translation, and a copyright owner is entitled to take legal action against such an infringement. If successful, a court can award the copyright owner the remedies of damages, account of profits, delivery up of infringing articles and injunctions (orders to do or not do something). The infringer may also be liable not only for their own costs in the action, but also the costs of the copyright owner.

Also, a publisher may not be willing to publish a translation of a work where the translator cannot show that permission to make the translation has been obtained.

I have been commissioned to do a translation. If it is published do I have any rights to ongoing royalties?

This will depend on the agreement you had with the person who commissioned the translation. Generally, you will retain copyright in your work, and the person who commissioned you will retain the right to use the translation for the purpose for which it was commissioned.

The agreement may have allowed subsequent publication, and if that is the case, you will need to look at the agreement to see whether you are entitled to royalties. If the subsequent publication was not part of the original agreement, you may have the right to seek some compensation for this use.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au> or contact us.

The purpose of this information sheet is to give general introductory information about copyright. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, libraries and governments. For information about the service, see <http://www.copyright.org.au/advice> or our information sheet *Australian Copyright Council: who we are, what we do*.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au> or telephone (02) 9356 2566.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop – <http://shop.copyright.org.au> – or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

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



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

© Australian Copyright Council 2006