

## Information sheet # 34



# Using quotes & extracts



**April 1998**

This information sheet is for people who want to reproduce quotations or extracts from other people's writing – for example, in a book, article or newsletter. For information about copyright in other areas, see the Copyright Council's list of publications. These include *Writers & Copyright*, *Journalists & Copyright* and *Copyright for Book Publishers*.

### **What does copyright protect?**

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and decisions of courts. Materials protected by copyright include novels, poems, song lyrics, reports, articles in newspapers and magazines, plays and screenplays.

### **Copyright does not protect ideas or information**

An idea or concept, in itself, is not protected by copyright. Nor are facts, information, systems, methods or techniques protected by copyright. Copyright protects the way the idea or information is expressed.

For example:

- The actual words, order of words and paragraphs used in a newspaper article about the Olympics are protected but the information contained in the article is not protected.
- The information in a physics textbook is not protected by copyright, but the choice and combination of words used in the book are protected, as are any illustrations or charts.
- The idea of writing a biography of Miles Franklin is not protected by copyright, and nor is information about her life, but the manner in which the biographer described her life is protected.

### **Copyright is automatic**

There is no system of registration for copyright protection in Australia. Copyright protection does not depend upon publication or any other procedure – the protection is free and automatic. Because of international treaties such as the Berne Convention, most foreign copyright owners are protected in Australia.

On some works you see the "copyright notice": the symbol © with the name of the copyright owner and the year of first publication (for example, © Max Silver 1968). The copyright notice is not required for protection in Australia; a work may be protected even though the copyright notice is not on it.

### **How long does copyright last?**

The period of copyright protection varies according to the type of material. In most cases, copyright lasts from the time the material is created until 50 years after the year of the author's death. If copyright in a work has expired, the work is sometimes said to be "in the public domain". Once material is in the public domain, permission is not required to reproduce it.

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## When is copyright infringed?

Copyright owners have the exclusive right to deal with their material in certain ways, including to reproduce it by photocopying, typing, copying by hand, and scanning into computer memory. Reproducing copyright material without the copyright owner's permission, will usually infringe copyright. Reproducing part of a work may also infringe copyright, if the part is important.

### Reproducing part of a work

It is a question of fact in each case whether a part is so "important" that permission is needed to reproduce it. There are many court cases about whether reproducing part of a work infringed copyright, such as the case where the court held that reproducing 4 lines from a 32 line Kipling poem infringed copyright. However, these cases each depend on their own facts, and do not give clear guidelines about the number of words, or percentage of a work, which may be used without permission.

The quality of the part is more important than the quantity or proportion. The part may be a small proportion of the whole work, particularly if it has resulted from a high degree of skill and labour.

The purpose of the use may also be relevant; if you are using the part for a commercial purpose or to include in a competing work, it is more likely you will need permission.

Copyright in a literary or dramatic work may be infringed by quoting directly from the work or by paraphrasing the work if either involves a reproduction of a substantial (in the sense of important) part of the work.

## Special exceptions to infringement

There are special exceptions in the Copyright Act which allow use of copyright material for certain purposes without permission. The special exceptions most relevant to readers of this information sheet are:

- fair dealing for criticism or review; and
- fair dealing for research or study.

### Criticism or review

You may reproduce a work, or part of a work, for the purposes of criticism or review without the copyright owner's permission. For example, you may reproduce an extract from a book in a newspaper review provided your use is fair, and genuinely for the purpose of criticism or review. You must also identify the work and its author. In one case, the court referred to the following *Macquarie Dictionary* definitions:

"criticism" 1. the act or art of analysing and judging the quality of a literary or artistic work, etc:  
*literary criticism*. 2. the act of passing judgment as to the merits of something...4. a critical comment, article or essay; a critique."

"review" 1. a critical article or report, as in a periodical, on some literary work, commonly some work of recent appearance; a critique...

### Research or study

You may reproduce a work, or part of a work, for the purposes of research or study without the copyright owner's permission. For example, you may reproduce a quote or extract in an essay or thesis written as part of a course of study. Your use must be fair, and genuinely for the purpose of research or study. The Copyright Act provides that it is fair to copy up to 10% or one chapter of a literary, dramatic or musical work published in an edition of more than 10 pages, and up to one article from a periodical, or more than one if they relate to the same subject matter. Copying more than this amount may be permissible in some circumstances.

## When is permission needed to use a quotation?

You are likely to need permission to reproduce a quotation if:

1. a) the quotation is a “work” for the purposes of copyright, or  
b) the quotation is an important part of a “work”;

**and**

2. the copyright has not expired

**and**

3. no special exception applies.

### **Some quotations too small to be a “work”**

If the quotation you propose to use is not an extract from a longer work, but “stands alone” as a short phrase, it may be too small or unoriginal to be a “work”, and thus not protected by copyright. For example, short combinations of words such as titles, slogans and headlines are generally too short to be “works”.

In one case, the court said:

An original literary work must be the product of some substantial application of knowledge, labour, judgment, or literary skill or taste on the part of the author of it, but the precise amount of these several things which is required cannot be defined and must depend largely on the special facts of the case and must in each case be very much a question of degree.

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## Common questions about using quotes & extracts

### **If I use only 10% of a work, do I infringe copyright?**

There is no standard percentage or proportion of a work or number of words that can be used without infringing copyright. In every case it is a question of whether an important, rather than a large, part of the work has been reproduced. Clearly, the number of words or proportion of a work which constitutes an important part will differ in every case.

### **If I say where the quote came from, can I use it without permission?**

If you need permission to reproduce from a work, identifying the work is not enough. When giving permission, the copyright owner may require attribution as a condition of the permission.

As noted above, you need to identify the work and its author if you reproduce from a work without permission for criticism or review.

In other cases (for example, reproducing from a work as part of your thesis), there is no requirement under copyright law to attribute a work you quote from, although it is usually courteous and good academic practice to do so.

### **If a work is anonymous, or has no copyright notice, can I use it without permission?**

A work does not need to have the copyright notice or the author's name on it to be protected. The absence of a copyright notice or the author's name may of course make it more difficult to obtain permission.

### **If I use another person's work for a non-profit purpose, do I need permission?**

There is no special exception which allows you to use a work without permission just because it is used for a non profit purpose. The copyright owner may give permission for a low fee, or no fee, if the use is non profit, but you still need to get the permission.

### **Can I reproduce a quote or extract if I change it a little?**

Generally, you do not avoid infringement by making changes. If the altered version includes an important part of the work, then you should get permission.

### **Can I avoid infringement by paraphrasing?**

You do not infringe copyright if you write something new based on information or ideas you have learned from the works of others, provide the expression of the information and ideas is yours.

In some cases, you may infringe copyright if you paraphrase another person's work, closely following the structure of the other person's work or the detailed order in which the information or ideas were expressed. This is because the structure and order in which the information or ideas are set out are part of the other person's expression of that information or those ideas, as well as the words used.

### **If copyright in a work has expired, can you revive copyright by republishing it?**

Once copyright in a work has expired, it cannot be revived by subsequent publication or otherwise. A publisher who publishes an edition of a "public domain" work (such as a work of Shakespeare) may own copyright in the typographical arrangement of that particular edition (and thus be able to prevent another publisher making an exact copy of that edition). However, the copyright in the work is not revived by republishing; anyone can still reproduce all or parts of it.

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## Do I infringe copyright by compiling a bibliography or list of references?

It is unlikely in most cases that a name or a title is an original “literary work” for the purposes of the Copyright Act. In several cases the courts have denied protection to particular names and titles. Also, in most cases a title is unlikely to be a substantial part of a literary work.

Therefore, you are not likely to infringe copyright by compiling a bibliography or list of authors’ names and the titles of their works.

## Where do I get permission to reproduce a quote or extract?

If you want to use published material, the first point of contact is usually the publisher, who may be able to give you permission or give you some information about who to contact. For unpublished material, the first point of contact is usually the author.

Copyright Agency Limited (CAL), a collecting society whose members are authors and publishers, operates a copyright clearance service called *Copyright Xpress* for one-off uses of its members’ works and the works of overseas authors and publishers it represents. CAL also has available a range of other licences for associations, businesses and professionals, which are available on an annual basis. CAL can be contacted on: telephone (02) 9394 7600, fax (02) 9394 7601.

## What if I cannot find the copyright owner?

There is no provision in the Copyright Act which allows you to reproduce a work after you have tried, but failed, to find the copyright owner.

In some cases, publishers and others make a commercial decision to reproduce a work after they have tried, but failed, to find the copyright owner. They weigh the risks of a copyright owner bringing an infringement action against the benefits of reproducing the work. They sometimes include a note saying they tried to find the copyright owner, and that they are willing to pay the copyright owner a reasonable fee. Such a note does not provide a legal defence to infringement.

## What if the copyright owner is dead or has gone out of business?

If the author has died, copyright is usually owned by the author’s spouse or children. You may be able to check this if you can get a copy of the author’s will (in Australia, contact the Probate Division of the Supreme Court in the State where the author died).

If copyright was owned by an Australian company which has gone out of business, you may be able to get information about what happened to the company’s assets (which include copyrights) from the Australian Securities Commission.

## Is plagiarism the same as copyright infringement?

Plagiarism generally means taking and using another person’s ideas, writing or inventions as your own. Plagiarism is not a legal term, and not all acts of plagiarism are necessarily infringements of copyright. A student or academic may breach the ethical standards expected of them by presenting another’s ideas as his or her own, but not infringe copyright because the other person’s ideas are expressed in a new way.

Generally, academic practice requires that acknowledgment be made of other people’s research and ideas. Further information on proper practice should be available from university faculties or departments.

## Further information about copyright

The Copyright Council publishes a series of pamphlets and information sheets, such as: *An Introduction to Copyright in Australia* and *Legal Protection for Names, Titles & Slogans*. We publish many of these on the Internet. The Council also publishes a series of more detailed publications such as: *Writers & Copyright*, *Journalists & Copyright*, and *A User’s Guide to Copyright*. These cost \$25 each. We publish summaries of these on the Internet.

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For further information about our publications, please ask us to send you our publication list. Please contact us if you would like further information about the Copyright Council or its services.

## Advice

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

In some cases, the Copyright Council's staff lawyers provide free legal advice about copyright law. A staff lawyer provides advice by telephone from Monday to Thursday, 9 am to midday and 2 pm to 5 pm (Sydney time). You may also post or fax a written enquiry (please include your telephone number).

## Photocopying this information sheet

You may photocopy this information sheet for a non-profit purpose, provided you copy all of it, and you do not make any changes or additions. Make sure you have the most recent version by checking our web site or contacting us.



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