

COPY RIGHT



Copyright protection lasts throughout the life of the author or creator, plus an extra 70 years from the author or creator's death.

COPYRIGHT

Copyright is relevant to visual communicators because it can provide protection for websites, photographs, graphics and illustrations along with a host of other creative outputs. It also covers the typographical arrangements of published editions, as well as the literary works they contain. For example, the design layout of this publication is covered by copyright, as is the text you are now reading.

Copyright is free and automatically safeguards your original work from the moment you create your graphic design.

Remember, it is not the concept or the idea in the work, but its expression that is protected by copyright law. Copyright does not protect your ideas, or the information, styles or techniques, used in creating the work.

The Australian Copyright Council advises that if you own copyright in a creative work generally only you, and those who have your permission, are allowed to:

- reproduce the work (for example, by photographing, photocopying, copying by hand, filming, scanning into digital form or printing from a digital file)
- publish the work for the first time (for example, by making copies available for sale)
- communicate the work to the public (for example, by putting it on the internet or an intranet site, emailing or faxing it, or broadcasting it).

Myth: You are allowed to copy up to 10 per cent of a work

There is a 10 per cent rule that applies in relation to fair dealing, which allows copying for the purposes of research or reporting the news. However, you can't reproduce any percentage of someone's work for commercial purposes without their permission.

Myth: fonts are free

If you are supplying a font to a client, you need to be aware of the copyright licence. The Font Shop, for example, is an online company that sells customised fonts to graphic designers under a limited licence.

Your client should pay this fee. This means you can only use the font for the client who has paid for the licence. If you need to use the font for another client you will need to purchase it again.



UNDERSTANDING THE SYMBOL

The Australian Copyright Council says it's not necessary, but it is a good idea, to put the copyright notice on your work.

The copyright notice is the symbol © followed by the name of the copyright owner and the year the work was created or first published. For example, © John Smith 2008.

SO WHO OWNS WHAT?

Think twice before you borrow or use other people's creative as part of your work, even if it's just for an initial creative concept. The Council also advises that scanning an image to produce a digitised version, or producing a new image by altering a digitised image, can be a breach of copyright.

Generally, if you create an artistic work, like a logo design, photograph or website, you're the copyright owner. There are some exceptions however. According to the Council, if you're an employee and create the work as part of your job, generally your employer will own the copyright.

The exception to this rule is if you work as a freelancer or volunteer. If you are working for a client, the copyright ownership will be according to the agreement with the client.

If you create work for the Australian Government, or for a state or territory government, or if a government is the first publisher of your work, they will generally be the copyright owner.



Want to copyright your work?

CHECKLIST

- ✓ You don't need to go through a formal copyright registration process—it is automatic and free in Australia.
- ✓ Producing a logo, website, photograph or other artistic creation? It is a good idea to include the copyright notice and symbol on your artwork.

- ✓ Preparing a design concept or preliminary creative? Think twice before borrowing or using other people's creative to express your ideas, even if it's just temporary.
- ✓ Want further protection? Keep reading for information on other forms of IP protection that might suit your requirements.



INFRINGEMENT

If your work has been reproduced, communicated or published without your permission, your copyright may have been infringed. You'll need to get advice from a lawyer about the steps you need to take to enforce your copyright, as it can be costly if you need to go to court to defend it. Visit www.copyright.org.au for more information.

INTERNATIONAL COPYRIGHT

Most countries grant copyright protection to Australian material as a result of international treaties. Some countries have copyright registration systems. In most cases, registration is not necessary for protection, but can provide advantages if your work is distributed in that country.

For example, in the United States there is a registration process available through the Copyright Office of the Library of Congress. For more information about international copyright, visit www.copyright.org.au.

A competitive pitch

A design firm found itself in a competitive pitch for corporate identity work.

When they finally got a chance to present their ideas, the client's marketing manager cooed over the "wonderful approach" taken with the proposed identity, so the partners of the design firm started to feel very confident about their chances. It came as a huge shock to them when they were told that they had lost the pitch to the incumbent designer. Worse still, they were outraged to find out that the designer had adopted many of their innovations in her work.

Their lawyer advised them that the unauthorised use of their ideas was a breach of their copyright, and, after a few stern letters, the incumbent designer agreed not to copy.



TRADE MARKS

TRADE MARKS

A trade mark can be a logo, picture, word, phrase, letter, number, sound, scent, shape, an aspect of packaging or a combination of these.

Trade marks are used to distinguish the goods and services of one trader from those of another. For example, Australian brand Lonely Planet® has built its reputation over 30 years as a producer of well-researched and current travel guides. The Lonely Planet® logo is what distinguishes it from other travel guides, such as Rough Guides™ and Eyewitness™. Without trade mark protection, Lonely Planet® would be at risk of others trading under its name or using its logo, compromising its reputation.

Shapes, sounds and even smells can also be trade marks. The distinctive triangular peaks of the famous Swiss chocolate Toblerone® is a registered shape trade mark and the well-known Nokia® mobile phone ringtone is a registered sound mark in Australia. IP Australia has also received an application for a scent trade mark for the smell of beer on dart flights (the feathers on the end of darts).

As a graphic designer you may be asked to develop a logo for a company. Australian graphic designer Ken Cato has designed some well-known registered Australian trade marks, including the yellow and black Commonwealth Bank logo, which symbolises the Southern Cross, and the SBS logo, which symbolises opening up the globe.



Trade mark tips

Not all logos or names can be registered as a trade mark.

To increase chances of registration, a trade mark needs to be something that other traders don't need to use in the normal course of their trade.

Invented words like Kodak and names that don't have a direct correlation to the product, such as Apple for computers, are often more likely to be able to be registered.

It's also very difficult to register a geographic name or a common surname as a trade mark. There may be an exception for an applicant who has used one extensively for a considerable time.

WHY REGISTER A TRADE MARK?

A trade mark is an integral part of the marketing strategy for any business. The public identifies a certain quality, reputation and image with goods and services bearing a trade mark.

Essentially everything a business does can affect the way consumers view their trade mark. Thus, the more successful a business is, the more valuable the trade mark becomes.

You don't have to register a trade mark to use it (this is known as an unregistered trade mark). The symbol ™ can be used with a trade mark at any time and indicates you are claiming that word or logo as a trade mark. However, without a registered trade mark it's harder to stop others from copying or imitating your IP.

The symbol ® is used to indicate a registered trade mark. The benefits of registration are that it's much easier to protect and defend yourself against infringement—that is, someone else using your trade mark without your permission. To pursue infringement action of an unregistered trade mark, you will have to rely on common law, which can be time-consuming, expensive and stressful. To register a trade mark you need to submit an application to IP Australia. Visit www.ipaustralia.gov.au for more details.

GETTING READY TO REGISTER

Before going through the process of registering a trade mark, you and your client should brainstorm a range of names or logos in case the preferred option is unavailable.

IP Australia has a service called TM Headstart to help you determine whether or not a proposed mark is suitable for registration. It's simple, easy to use, fast, and can help reduce costs in the long run. To find out more, visit www.ipaustralia.gov.au/trademarks/tmhs_start.shtml.

When you apply you need to nominate the goods and/or services you want to register or trade mark for. Goods and services are divided into 45 classes. For instance, cars are in class 12, while beer is in class 32. A plain English information kit about trade marks and the application process is also available. To download a copy, visit www.ipaustralia.gov.au.

EXTENT OF YOUR RIGHTS

A trade mark can live forever. A trade mark is initially registered for a period of 10 years and continues indefinitely as long as the renewal fees are paid every 10 years and the mark is used.

TM

TIME FOR YOUR TRADE MARK TO TAKE A TRIP?

Thinking about launching a brand overseas? Maybe your graphic design company is working on international projects. Or perhaps you have a client who trades internationally.

Trade mark protection operates on a country by country basis so if you or your client have a registered trade mark in Australia, then protection is for Australia only.

Australians can access trade mark protection overseas through an international treaty called the Madrid Protocol.

The protocol has a number of advantages:

- only a single international application is required
- protection can be sought in one, some or all of the other member countries
- it is filed through the trade mark office of the home country
- it's in three languages—English, Spanish and French.

It is always wise to seek professional advice before embarking on overseas strategies as there can be a number of different processes.



Designing a logo or slogan?

CHECKLIST

- ✓ Brainstorm a range of ideas to increase your chances of securing one that you want.
- ✓ Always search the trade marks database and check out other goods and services in the market to ensure you're not infringing on an existing mark.
- ✓ IP Australia can help. TM Headstart at www.ipaustralia.gov.au is easy to use and can save you time and money.
- ✓ If you have any doubts, get professional advice.

Myth: your business or company name gives you trade mark protection

The difference between trade marks, business, company and domain names can be confusing. Registering a business, company or domain name doesn't in itself give you any proprietary rights—only a trade mark can give you that kind of protection.

For example, a new Victorian graphic design business registered its company name (also its trading name) with the Australian Securities and Investments Commission believing this was sufficient protection for its brand.

After six months of operation, it received a "cease trading" letter from another company that used the same name and held a registered trade mark.

The Victorian company was forced to re-brand at the cost of over \$50,000 and faced demands of \$25,000 to cover legal costs of the other company.

It also risked losing a component of its client base, which would not recognise the new company and trading name.





Australian Government
IP Australia

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