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## Competitions

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In this information sheet, we give an overview of copyright and moral rights issues that are relevant to competitions where entrants **create** material such as stories, poems, photographs, paintings, music and films. This information sheet is relevant both to people organising such competitions and people entering them.

If you need information about the copyright aspects of a competition in which entrants will **perform** copyright works (for example, an eisteddfod), please refer to our information sheet *Music: Concerts, Musicals & Plays*

**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.**

### Key points

- When you submit your material for a competition, you should check the terms and conditions to see how this may affect your rights in the material.
- Event organisers should be mindful that they do not necessarily require a transfer of copyright ownership to make use of the material entrants submit.
- It is important to ensure that you own the rights in material you submit to a competition, as you may be responsible for any claims that arise in relation to the material,

### Copyright overview

- Copyright is automatic; there is no need to register for copyright protection (see our information sheet *An Introduction to Copyright in Australia*).
- Copyright does not protect ideas or information (see our information sheet *Ideas: Legal Protection*).
- Copyright has a term of protection, usually the life of the creator plus 70 years (see our information sheet *Duration of Copyright*).
- Copyright can be owned by people other than the creator (see our information sheet *Ownership of Copyright*).
- Copyright is personal property that may be assigned or licensed (see our information sheet *Assigning & Licensing Rights*).

### What should be covered in the terms and conditions for a competition?

Terms and conditions should be clearly drafted, and competition entrants should read them carefully.

If you are entering a competition and are not happy with the terms and conditions, you could try contacting the organisers to find out whether a variation is possible. If you can't change the terms and conditions, and you are unhappy with them, **you should not enter**.

Generally, in deciding what rights to seek from entrants, a competition organiser needs to identify both why the competition is being run, and the legitimate expectations and interests of the entrants. Organisers need to make sure that entrants grant all rights the organiser is likely to require to enable them to use the material as intended. Excessive demands for rights (especially where these demands relate to all entries, rather than only the winning entries) may deter some people from entering, as it may limit their ability to license rights in the material to other parties. As such, organisers need to make their decisions on this issue on the basis of their particular circumstances, for example, their purpose in running the competition, and the types of entrants they wish to attract.

In general, it is not advisable for an artist or other creator to enter a competition if one of the conditions of entry is that the entrant agrees to assign copyright in their entry to the organisers of the competition, unless the condition applied only to the winning entry or entries, and the value of the prize or prizes was so attractive as to outweigh the likely royalty earnings that the work might otherwise be capable of earning.

### **Ownership of copyright in material entered in a competition**

Unless there is an agreement to the contrary, the first owner of copyright in the material (usually the creator) continues to own copyright. However, the terms and conditions of entry to the competition may require the winning entrant to assign copyright to the competition organiser, or grant them a licence to exercise certain rights in the material.

It is important for entrants to be able to establish ownership in the material that they submit to a competition. The reason for this is that it is typical for competition terms and conditions to include a warranty from the person submitting the material that he or she is the owner of copyright in the material in which rights are being granted, and has not entered any other arrangements which may affect the granting of the rights. The person giving the warranty also agrees to compensate the organiser for any loss incurred if the warranty turns out to be false. This is known as an indemnity.

### **Some considerations for competition entrants**

Competition entrants should consider whether the benefits associated with entering their material into a competition (for example, the value of the prize or the amount of publicity it will generate if they win) is proportional to the rights that the competition organisers acquire in the material. As a general rule, any rights acquired should be non-exclusive, and should only be acquired in relation to winning entries. You should check to see how long the rights can be exercised and under what conditions the rights granted can be revoked. (For more detail, see our information sheet *Assigning & Licensing Rights*)

Even where an assignment or exclusive licence of copyright in the winning entry will be necessary in practical terms (for example, in a competition to design a logo for an organisation), it may be reasonable for the creator to retain certain rights, such as the right to use the work in his or her portfolio and website for self-promotion purposes.

For a useful discussion of the issues in the context of art competitions, see the *Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector*, which is available online at <https://visualarts.net.au/code-of-practice/>

The Arts Law Centre of Australia also has useful information about competitions in its information sheet competition conditions, which is available on their website at <http://www.artslaw.com.au/info-sheets/info-sheet/competition-conditions/>

### The ways in which a competition organiser may use entries

Generally, organisers of competitions will **not** acquire any rights in entries unless there is something in the terms and conditions of entry, or the advertising for the competition, which allows them to use the entries in particular ways.

Competition organisers should ensure that the terms and conditions of entry spell out the ways in which all, or the winning entry or entries, may be used. It is a good idea to require competition entrants to sign a statement that they permit their entry to be used in the stated ways, as a condition of entry.

Note, however, that stating something to the effect that “entries become the property” of the competition organisers is unlikely to mean that copyright in entries is assigned. Rather, a statement such as this merely means that the physical items become the property of the organisers, and the organisers do not have to return entries to the people who entered.

### Liability for copyright infringements in competition entries

An organisation inviting entries to a competition will not generally be liable for any infringements of copyright by entrants, unless it reproduces the entry or uses it in any of the other ways reserved to the copyright owner. For example, organisers would not infringe copyright simply by displaying a painting that infringed another person’s copyright. However, if they reproduce the artwork in a poster or put it on a website, they are likely to infringe copyright in the underlying work.

This issue is particularly problematic for organisers of film and multimedia competitions, as they could infringe copyright either when they screen entries or when they make copies for such screenings.

It is therefore common for organisers of competitions to require entrants to **warrant** that their entry is entirely their own work, or that they have obtained all necessary clearances for any copyright material incorporated in their entry. The type of warranty required will depend on the nature of the competition. For example, it is normally expected that entries to a poetry competition are solely the work of the competitors entering them. On the other hand, films almost always include material created by someone other than the film-maker, and therefore comprehensive warranties are likely to be needed.

Terms and conditions should also address the consequences if a competitor’s entry turns out to infringe copyright. For example, the terms and conditions might state that entries that infringe copyright may be disqualified. In addition, the competitor may be required to indemnify the organisers against costs they incur as a result of the infringement. Such costs might arise, for example, from a copyright owner suing the organisers of a film competition for screening a film based (without permission) on a book, or reproducing a painting that copies another artist’s work.

### Crowdsourcing

Crowdsourcing is method for commercialising projects by using funding, services or other forms of input contributed by many individuals. If you are running a crowdsourcing competition where you are asking members of the public to contribute material to your project, you will need to be careful to ensure that contributors have the appropriate rights in the material you want to use. If the material is for commercial purposes or to be used as part of an advertising campaign, a potential infringement may be damaging to your brand or reputation.

Other laws may be relevant to crowdsourcing activities. The Australian Securities and Investment Commission has relevant information on its website at <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-196mr-asic-guidance-on-crowd-funding/>

## Moral rights

Creators of literary, musical, dramatic and artistic works, and the screenwriter, director and producer of a film have “moral rights”. These rights are personal to the creator, and belong to individual creators whether or not they also own copyright.

The moral rights of creators are:

- to be attributed;
- not to have someone else attributed as having created their material;
- not to have any material which someone else has altered attributed to them in a way which suggests that it hasn't been altered; and
- not to have their work subjected to “derogatory treatment” (that is, treatment which is damaging or potentially damaging to their reputation or honour).

Generally, organisers of competitions will be under obligations to respect the entrants' moral rights, whether or not they undertake to do so in the terms and conditions of entry. They will be under this obligation not only in relation to the way that they display any entries (such as artworks) during the competition, but also in relation to the way they use entries after the event.

However, if organisers want to do something that might infringe an entrant's moral rights (such as reproducing or displaying it without attribution), they should consider making this clear in an entry form which, preferably, the contestant signs and delivers with his or her entry. (Creators can consent to what otherwise would infringe moral rights. However, such consent must be in writing to be effective under the relevant provisions in the Copyright Act.)

For more information, see our information sheet *Moral Rights*.

## Ownership of items entered into a competition

Ownership of the physical items entered in the competition is separate from ownership of the copyright: ownership of the physical items is determined under general law.

This issue should be addressed in the terms and conditions for entry. Common ways of addressing this issue include a provision that the competition organisers keep all entries, or that entrants can have entries returned provided they pay the costs of returning the items (for example, by providing a stamped, self-addressed envelope).

## Frequently Asked Questions (FAQs)

### ***Can the organisers of an art competition require me to assign copyright as well as sell my actual painting?***

There is nothing to prevent competition organisers from including an assignment of copyright in the work as part of the terms and conditions of entry. However, this may deter people from entering.

From the point of view of artists entering the competition, it would be preferable to limit the rights granted, especially if the rights are granted in relation to all entries and not only the one that ultimately wins. For example, artists might be more willing to give the organisers limited permission to use the work for certain purposes related to the competition, but not to assign copyright. We would generally advise artists that any licence to use winning entries should be non-exclusive, or should be stated only to last a reasonably short period (not more than a year).

Where the art competition is acquisitive (that is, the organisers get to own the winning entry or entries), the value of the prize should correspond with the value of the expected entries.

### ***Can we stage a play that wins the competition we are running?***

Generally, inviting entries for a playwriting competition will not, by itself, mean that the winning entry may be produced. On the other hand, if it is clear from the promotional material or terms and conditions of the competition that entries may be given a reading or a production, permission may be implied from all the circumstances, or may be express if entrants have signed an agreement to this effect as part of their entry.

The Australian Writers Guild (which represents writers for stage, film, television and radio) may be able to provide you with further assistance in determining whether or not the terms and conditions of a competition are appropriate for your particular circumstances. The Guild also offers sample agreements relating to the staging of plays. For further information see its website at [www.awg.com.au](http://www.awg.com.au)

### ***Who owns copyright in entries from school pupils or university students?***

Generally, the person who creates something is the first owner of any copyright.

However, an ownership issue can arise with pupils of State and Territory departmental schools, as there is a provision in the Copyright Act which gives first ownership of copyright to a government if it "directs" or "controls" the creation of copyright subject matter. In our view (and as far as we are aware, in the view of some State and Territory Departments), it may be difficult for a government to argue that it directed or controlled the creation of copyright material when pupils are expected to do their own work.

The issue can also arise in relation to some universities. Such claims are generally based on by-laws or other quasi-statutory documents which students may have agreed to accept, or agreements which students may have signed.

There are some legal problems in a number of these universities' claims, as agreeing to abide by by-laws would not generally amount to an agreement by a student to assign copyright to an institution such as a university. However, some organisations, including many film schools, specifically ask students to sign documents dealing with copyright in material created by them while at the school. In these cases, any assignment of copyright is likely to be effective.

#### *Considerations from the point of view of a competition organiser*

From the point of view of a competition organiser, it is probably reasonable to assume that a student owns copyright in what they have created. However, if you are concerned that someone else, such as a government or an educational institution, may have a claim to copyright in an entry from a student, you might either enquire further of the relevant institution, or ask the student or pupil to warrant that he or she owns copyright.

### **Further information**

For further information about copyright, and about our other publications and seminar program, see our website [www.copyright.org.au](http://www.copyright.org.au)

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 and libraries. For information about the service, see <http://www.copyright.org.au/legal-advice/>

### **Reproducing this information sheet**

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

## About Us

The Australian Copyright Council is an independent, non-profit organisation. Founded in 1968, we represent the peak bodies for professional artists and content creators working in Australia's creative industries and Australia's major copyright collecting societies.

We are advocates for the contribution of creators to Australia's culture and economy; the importance of copyright for the common good. We work to promote understanding of copyright law and its application, lobby for appropriate law reform and foster collaboration between content creators and consumers.

We provide easily accessible and affordable practical, user-friendly information, legal advice, education and forums on Australian copyright law for content creators and consumers.



**Australian Government**



*The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.*

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