



Photographs – Copying Photos You’ve Paid For

In this information sheet, we give a brief overview of the law of copyright as it relates to photographs. It is for people who have paid a photographer and want a copy of the photograph.

We give more detailed information in our book *Photographers & Copyright*. This is available from <http://www.copyright.org.au/bookstore/>

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

- Paying someone to take a photo for you does not necessarily make you the copyright owner.
- Generally, the owner of copyright in a photo is the photographer, unless it is taken for private or domestic purposes.
- If you pay a photographer to take photos, you should carefully read any written agreement to determine what rights, if any, you have to copy the photos.
- If you own copyright in a photo, but someone else owns the physical print or digital file, you won't necessarily have the right access this material.

What does copyright protect?

In Australia, copyright law is contained in the Copyright Act 1968 (Cth) and decisions of courts.

Copyright protects a range of materials, including **photos**. Other things protected by copyright include other **artistic works** (such as paintings, drawings and maps), **written material** (such as journal articles, novels and reports), **musical works** and **films**.

Protection is automatic

A photo is protected automatically from the moment it is taken. There is no system of registration for copyright protection in Australia. Copyright protection does not depend on publication, a copyright notice, or any other procedure.

The copyright notice

The copyright notice is not required for protection in Australia. It notifies people that the work is protected and identifies the person claiming the rights. Copyright owners can put the notice on their work themselves; there is no formal procedure. The notice consists of the symbol ©, the name of the copyright owner and the year of first publication; for example: © Glen Graham 2014.

Only the copyright owner is entitled to put the copyright notice on a work. A person who does not own copyright in a photograph cannot acquire the copyright merely by stamping the copyright notice on the back of the photograph. As we discuss below, it is necessary to look at the circumstances in which the photograph was taken, and whether there was any agreement about copyright between the photographer and the client, to work out who owns copyright.

Who owns copyright?

If there is an agreement about copyright between the photographer and the client, this may state who owns copyright and what right each person has to use the photos. If you have such an agreement, this is where you should look first. The provisions in the Copyright Act will be relevant if there is no agreement, or it does not cover these issues.

Generally, the owner of copyright in a photo is the photographer. This general rule is subject to several exceptions and variations.

If a photographer was paid to take a photo before 30 July 1998, the person who paid for the photo to be taken is the owner of copyright in the photograph unless there was an agreement to the contrary.

If a photographer was paid to take a photo after 30 July 1998, the photographer owns copyright unless:

- there was an agreement to the contrary;
- the photograph was taken for a “private or domestic purpose” (such as wedding photos or family portraits);
- the photographer was paid as an employee and the photo was taken as part of his or her job; or
- the photos were taken under the direction or control of a State, Territory or the Commonwealth government. See our information sheet *Government: Commonwealth State & Territory*

Agreements about copyright

It is common for professional photographers to require clients to sign an agreement, and it is common for such an agreement to deal with ownership of copyright. If you are not sure whether you or the photographer owns copyright, you will need to check any terms or documents the photographer asked you to accept or sign. You may need legal advice about your position.

Right of restraint

Generally speaking, where a client owns copyright in photos (such as wedding photos or family portraits) the photographer may have a “right of restraint”, and be able to stop anyone using the photos for any purpose other than the purposes made known to him or her at the time the photos were taken. For example, if you own copyright in your wedding photos, the photographer might be able to prevent the photos being used in an advertisement and may be able to seek compensation for that use, unless this was agreed between the photographer and the client at the outset.

Copyright owner has exclusive right to make copies

If you own copyright in a photo, you are generally the only person entitled to make copies of the photo – for example, by making new prints from a negative, making colour photocopies or scanning the photograph into computer memory.

Permission is not needed if:

- copyright has expired (see our information sheet *Duration of Copyright*); or
- a special exception applies.

There is also an exception which allows the owner of a photograph to make a copy of the photograph in a different format for private use (unless an agreement has been signed to the contrary) – for example, you can make a digital copy of a photo print or vice versa.

Making a copy of a photo you own, in a different format, for private use

It is legal to make a copy, for private and domestic use, of a photo you own. The requirements are:

- you **own** the photo in hardcopy or electronic form;
- the photo is **not** an infringing copy (for example, it was not an unauthorised copy of the photo sourced from the internet);
- the copy is in a different format from the photo you own (if the photo is in hardcopy form, the copy must be in electronic form; if the photo is in electronic form, the copy must be in hardcopy form);
- the copy is for your private and domestic use.

The legislation says that the copy must be made to use instead of the original, but the government has said that “instead of”

indicates that the owner may view a work by using the original photo and by means of a ... copy; that is, the owner is not required to store the original.

Once you have made a copy from a photo, there are restrictions on what you can do with the copy **and** with the photo. The copy becomes an infringing copy if you:

- sell it offer it for sale;
- rent it or offer it for rent;
- distribute it (for example, give it to someone); or
- dispose of the photo to someone (for example, if you sell it or give it away or donate it).

You can **lend** the copy to:

- people you are living with; and
- members of your family.

You cannot, however, distribute the copy to anyone else.

Once you have made a copy, you cannot make another copy in form which is “substantially identical”. The legislation allows you to make one or more additional copies of a photo you own provided each is in a different form, but it is not clear when a copy will be in a “substantially identical” form to another copy.

If making the copy involves the incidental making of temporary copies of the photo, you must destroy the temporary copies as soon as practicable. If you do not, it is an infringing copy.

The private use exception and your agreement with a photographer

The private use exception in the Copyright Act does not override any legal obligations you may have as a result of an agreement with a photographer. For example, if you have signed an agreement with a photographer, and as part of that agreement you have undertaken not to make

digital copies of photos supplied by the photographer, that obligation is not affected by the new exception in the Copyright Act. If you make digital copies of the photos supplied by the photographer, you may not infringe copyright but you may breach your agreement with the photographer.

Moral rights

A person dealing with another person’s photo has a legal obligation to:

- attribute the photographer;
- not falsely attribute the photograph to someone other than the photographer; and
- not treat the photo in a manner that is prejudicial to the photographer’s reputation or honour.

These obligations may not apply to a person whose actions are “reasonable”, or which have the photographer’s consent. For more information, see our information sheet *Moral Rights*.

Frequently Asked Questions (FAQs)

I commissioned a photographer do a photo shoot—am I entitled to the digital files?

Ownership of a physical item and copyright ownership is not the same thing. Ownership of the physical digital files is a question relating to property law. The owner of a digital file is typically the person who owns the memory card or hard drive where the image is stored. If the photographer owns the memory card or hard drive, unless specified in your agreement, he or she will not be obliged to give it to you, even if you own copyright.

If you own copyright, you may make reproductions from copies of the image in your possession. Even if the photographer owns a copy of the digital file, he or she will not be entitled to make prints for display in the studio or for any other purpose without your consent.

In some situations a person may have possession of prints or film without being the owner. For example, a photographer may charge a client for materials but retain possession of the negatives. In this situation, the client may be the owner of the negatives, and the photographer may be a “bailee” with a duty to keep the client’s property safe. The client may be entitled to request return of his or her property at any time and the photographer may be obliged to return it if requested.

I commissioned a photographer to photograph my wedding but they refuse to provide me all of the image files—am I entitled to all the image files?

This will depend on what was agreed with the photographer. Even if you own copyright in the photos taken, this does not necessarily entitle you to all the files, if this was not agreed at the outset. If you want to receive all the image files this should be negotiated with the photographer at the time of making your agreement with him or her. When you are commissioning a photographer, it is best to put a written agreement in place about who owns copyright and who is entitled to prints and digital files, as well as what each party is allowed to do with these, in order to avoid uncertainties.

I have paid for a print. Can I take a photo of my print and upload it to Facebook?

If you want photos for digital uses, such as for Facebook, you should negotiate this with the photographer at the time of making your agreement with him or her. Generally speaking, photographers will retain copyright in photos they take and so you would generally need

permission to reproduce any prints you purchase and upload them to a social media site like Facebook (unless you negotiated this at the outset).

How can I get extra copies where there is a copyright notice on the back of the photo and the photographer has long since gone out of business?

If you own the copyright in the photograph, you may get copies made even if a copyright notice with the photographer’s name is on the back of the photo.

You may also get extra copies made if the copyright in the photo has expired.

If you do not the copyright, but you own the photo, you can make a copy in electronic form provided you meet the requirements explained above under the heading *Making a copy of a photo you own, in a different format, for private use*.

You may also be entitled to make a copy in a different hardcopy form than the form of the photograph you own, but it is not clear what this means. It also seems that you can make a hardcopy copy from the electronic copy you have made – for example, you can scan the original, and then print a copy from the electronic file.

Note that you can lend the copies you make to members of your family or household, but you are not entitled to give them, or the original photo, to anyone.

If the copyright has expired and you want to make more than one copy in the same form, or you want to do something with the copies that is not allowed by the private use exception (such as give them away), you need permission from the copyright owner. This may be an individual photographer, or it may be a company. If an individual photographer is the copyright owner, but no longer operating the same business, you may be able to track him or her through a professional organisation such as the Australian Institute of Professional Photography. If copyright was owned by a company, and the company has gone out of business, you may be able to get information from the Australian Securities and Investments Commission about what happened to the company’s assets (which include copyrights).

Does the photographer have the right to charge for subsequent prints made from the digital files?

You will need to check your agreement with the photographer, and what the photographer agreed to do in return for the fee you paid. If the photographer agreed to take certain photos and supply you with one set of prints, then the photographer is unlikely to be obliged to give you further prints for free.

If someone takes a photograph of my photo do they need my permission?

If you own the copyright in the photo, the photographer generally needs your permission to make a copy of it. You may need to check your agreement with the photographer, and whether you gave any such permission in that agreement. If the photographer owns the copyright, then he or she may make a copy of the photo. Again, check your agreement with the photographer in relation to this.

Who owns copyright in school photographs?

If there is a written agreement between the photographer and the client (the school) that sets out who owns copyright in the photos, whatever is stated in the agreement will apply.

If the issue is not covered by an agreement, then:

- If the photo was commissioned before 30 July 1998, then the client usually owns copyright.
- If the photo was commissioned after 30 July 1998, the client owns copyright in a photos taken for a “private or domestic purpose”. (If the photo was taken for a student to take home, it is likely it was taken for a “private or domestic purpose”). The photographer owns copyright in all other types of photos.

If a photographer takes photos in a school “on spec”, without an agreed payment but in the expectation that students will buy prints, it is likely that copyright is owned by the photographer.

How long does copyright in a photo last?

The general rule is that copyright in a photos lasts for the life of the photographer plus 70 years. However, there are some important exceptions to this:

- If the photo was taken before 1955, copyright has expired;
- If the photo was first published anonymously or under a pseudonym, copyright lasts for 70 years from the year of first publication;
- If the photo was taken by, or under the direction or control of a Commonwealth, State or Territory agency or department, copyright lasts for 50 years from the year of publication;
- If the photo was first published *after* the photographer died, copyright lasts for 70 years from the year of publication; or
- If the photo has never been published, copyright can last indefinitely.

For further information, see our information sheet *Duration of Copyright*.

The printing service where I want to have some photos printed has asked me to sign a form. What is this form for?

Many copy shops are wary about copying photos for clients, particularly if it looks like the photos were taken by a professional. To protect themselves, copy shops will often ask customers to “warrant” (that is, legally promise) that the copy shop will not infringe copyright by copying the photo. Generally, this warranty will be backed up by an indemnity. This means that if the copy shop infringes copyright, it can take action against you for any damage it suffers as a result of the infringement. If you sign such a form, you may be liable to pay for these losses, which can include the cost of legal advice.

Generally, therefore, you should not sign any form (and not ask for a copy centre to copy photos for you) unless:

- you own copyright in the photos; or
- you have been given permission by the copyright owner to have the copies made; or
- copyright in the photos has expired.

Forms will differ from shop to shop, and if you are uncertain what a form means, or what you are being asked to warrant, you should ask to have it explained to you.

The private use exception only applies to copies you make of photos you own. It does not apply to copies made for you by someone else.

Further information

For further information about copyright, and about our other publications and seminar program, see our website – 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/>

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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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