

Summary of subjects Photographers can legally photograph

Introduction

Following is a series of extracts for quick reference about key areas of what you can photograph in Australia (It also varies from State to State) from a legal perspective. Photographers are generally not from the legal profession and if you are unsure (where laws seem cryptic to the lay person) read the full handouts in this part of our APJA Website. Further, freely available for reading are laws about photography and copyright, refer to the websites Arts Law Centre of Australia and the Australian Copyright Council.

Photography and the arts

Sculptures, monuments and artwork may be protected by copyright. Unless an exception applies, you need permission from the copyright owner of the work. Exceptions to this general rule are found in the Copyright Act. For example, photographing and publishing a photograph of a sculpture or work of artistic craftsmanship that is permanently situated in a public place, or in premises open to the public, does not infringe copyright (s.65). This does not apply to other public art, such as murals. If the public place is a gallery or museum, remember that your rights to photograph may be limited by the conditions of admission on your ticket. As previously discussed, you can also take pictures of buildings without infringing copyright. (REF: Arts Law Centre of Australia, *Street Photographer's Rights*)

Taking photographs in a public place

It is generally possible to take photographs in a public place without asking permission. This extends to taking photographs of buildings, sites and people. In a case involving street surveillance photography used as evidence in a criminal case, an Australian judge stated "a person, in our society, does not have a right not to be photographed." There are, however, some limitations to this statement, which are discussed in this information sheet.

Some photographers have been approached by the police while on the street taking photographs. The police are usually responding to a complaint by some member of the public who is concerned about children being photographed and who have a mistaken belief that the consent of the parents or guardian must be obtained before children can be photographed. Street photographers should be prepared to respond to this situation, either by acknowledging the concerns of the parents and adopting appropriate strategies, such as explaining what you are doing and asking it is OK to take photographs; or otherwise have the information on street photographer's rights so that you can have a conversation in which you explain what you are doing and why you have a right to engage in street photography. (REF: Arts Law Centre of Australia, *Street Photographer's Rights*)

(APJA NOTE: What is perceived as a public place may not be. It could be a privately owned public space such as Chadstone Shopping Centre. Signage in some sites may not be evident about where and how photographs can be made so check first)

Can works entered in a competition be reproduced without the artist's permission?

This depends on the rules of the competition, and whether the artist has agreed to those rules by entering the competition. If you are considering entering a competition, you should look carefully at the rules, and perhaps get advice. For information on this subject, see our information sheet *Competitions*. (REF: Australian Copyright Council, Jan 2017, *Artists and Copyright*)

No right to prevent exhibition

People do not need your permission to exhibit the original version of your work (for example, in a gallery) but they usually need to credit you if they do so. However, the copyright owner does have the right to prevent the work being put on the internet (even if it was uploaded in a way that could only be looked at and not printed off) because this would be both a “reproduction” and a “communication” of the work. Even if you do not own copyright, people who use your work usually need to attribute you, and to avoid treating your work in offensive ways. This is because of obligations in the Copyright Act relating to “moral rights”. For more information see our information sheet Moral Rights. (REF: Australian Copyright Council, Jan 2017, *Artists and Copyright*)

Do I need permission to photograph or draw public art?

You may draw, paint, photograph or film a sculpture or work of artistic craftsmanship, which is publicly displayed “other than temporarily” without permission from the copyright owner. This does not apply to other public art, such as murals. You may draw, paint, photograph or film a building without permission. (APJA NOTE: Murals include ‘graffiti’ &/or illustrative wall paintings, e.g. the silos in central Victoria).

(REF: Australian Copyright Council, Jan 2017, *Artists and Copyright*)

Do I need permission to photograph a building?

Generally, no. Although a building is protected by copyright, a special exception in the Copyright Act allows buildings to be photographed without permission. Be aware though, that the owner of a property may impose restrictions regarding entry onto the property. It may sometimes be the case, as with photos of people, that certain unauthorised uses of a photo of a particular building may raise issues under other laws, such as competition and consumer legislation. (REF: Australian Copyright Council, 2014, *Photographers and Copyright*)

Do I need permission to photograph artworks displayed in public places?

The generally accepted interpretation of the relevant provision in the Copyright Act is that you may photograph a “sculpture or work of artistic craftsmanship” which is publicly displayed “other than temporarily” without permission. There is, however, a technical argument that neither underlying works in such sculptures and craft works nor pre-existing design drawings are covered under that provision, and that permission is still required for the indirect reproduction of these works in a photograph of the sculpture or craft work. Although, we are not aware of any cases in which this argument has been raised in court. You will generally need permission to photograph other public art, such as murals. (REF: Australian Copyright Council, 2014, *Photographers and Copyright*)

Do I need permission from people I photograph?

A person’s likeness is not protected by copyright. However, in some cases, using a person’s likeness without permission may be prevented under other laws, such as the law of passing off, competition and consumer legislation, and State and Territory fair trading laws. These areas of law concern conduct which may mislead or deceive the public and may particularly come into play if the photo you are taking is of a well-known person, and is to be used, for example, as a poster or as a postcard or in advertising. In some cases, uses of photos may be defamatory of people in them. If you are commissioned to take photos, it should not generally be your job to check these issues. However, it may be a good idea to alert clients to the fact that they may need to seek advice from a solicitor with the relevant expertise (note that the Copyright Council does not advise on these other areas of law). Generally, if you have asked somebody to sit for you, it’s a good idea to get a “model release” from that person so you won’t have to worry later about whether or not your use of resulting photos will raise issues under areas of law such as passing off. (For a sample photographer's model release, with explanatory notes, see the Arts Law Centre of Australia website: www.artslaw.com.au In other

cases, photographers may take more casual shots, for example, photos of people in the street or at markets, or playing sports. If you know that you might later be using such a photo commercially, it's generally a good idea to get a model release from the people you have photographed. If it's impractical to get the people in your shots to sign model releases, or if they refuse to do so, your ability to use or license the use of the photo in certain ways might be limited because of the laws discussed above. (REF: Australian Copyright Council, 2014, Photographers and Copyright)

NOTE:

Photographs can generally be made of:

- People in public places (Without the need for a model release provided it is not used for commercial reasons).
- Buildings from Crown Land (Public places). (See also the Summary of subjects Photographers cannot photograph) .
- Sculptures or works of artistic craftsmanship that are permanently situated in a public place, or in premises open to the public, does not infringe copyright (BUT - if a gallery check first).
- For appropriation purposes, other artworks, provided copyright has not been violated.