



Logos: Legal Protection

In this information sheet, we give a brief overview of the law as it relates to the protection and reproduction of logos. We focus on copyright law and briefly discuss other laws that may be relevant.

Other information sheets that may be relevant include *Graphic Designers*.

For information about our other information sheets, publications and seminar program, see our website <http://www.copyright.org.au>.

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.

A Copyright Council lawyer may be able to give you free preliminary legal advice about an issue 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 further information about the service, see www.copyright.org.au.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- Logos are generally protected by copyright.
- Unless there is an agreement to the contrary, copyright in a logo is generally owned by its creator.
- Unauthorised use of a logo may not only infringe copyright but may also raise issues under other areas of law such as trade mark rights, passing off laws and consumer protection laws.

Copyright protection generally

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

There is no registration procedure for copyright protection in Australia. If a work is “original” and has been reduced to a “material form” it is automatically protected. A work is “original” for the purposes of copyright law if it has not merely been copied from another work, and it is the result of skill and labour on the part of its author. A work that has been written down, drawn, filmed or recorded in some way will generally be seen as fulfilling the requirements of being in “material form”.

The Copyright Act provides several categories of material which are eligible for copyright protection. One of these is “artistic works”. This category includes drawings, diagrams, charts, maps, plans, paintings, engravings and photographs, as well as sculptures, craft works and buildings.

Copyright protection for logos

In a number of cases, courts have held relatively simple logos to be “artistic works” for the purposes of copyright. For example, a court held that the stylised letter “R” and the stylised letter “B” used as logos by Roland Corporation, a maker of musical equipment, were “artistic works”.

In other cases, courts have held a logo depicting the words “Karo Step” inside a diamond shape, and the “Aussie Home Loans” logo (consisting of three rectangles with the words “Aussie”, “Home” and “Loans” inside them, topped by a filled-in equilateral triangle) were “artistic works”.

Who owns copyright in a logo?

The person or organisation using the logo owns the copyright in the logo in the following situations:

If the logo was created during employment

If the creator is an employee who created the work as part of his or her job, copyright in the work is generally owned by the employer, unless an agreement was made to the contrary. This does not apply to creators who are freelancers, contractors or volunteers.

If a commissioning agreement assigns ownership to them

If a person who is not an employee (for example, a freelancer or contractor) is paid to create a logo, generally that person will own copyright in the logo – unless he or she has **assigned** copyright to someone else (for example, to the client as part of the commissioning agreement). An assignment will only be legally effective if it is in writing and signed by the copyright owner. An assignment can be made before a work is created, in which case it must be signed by the person who would have owned copyright but for the assignment.

Generally, if someone who is not your employer has paid you to create a logo for them, and you have not assigned copyright to them, they are entitled to use the logo for the purposes discussed or understood at the time you made the agreement. If they want to use the logo for some other purpose, they may need permission. However, the situation is not always clear-cut, and it is preferable to make an explicit agreement rather than relying on the provisions of the general law.

In all cases where someone is commissioned to create a logo, we recommend that the parties draw up a written agreement setting out who will own copyright and what rights each party will have to use the commissioned work. A checklist for matters which should usually be covered in a copyright agreement is provided in our information sheet *Assigning & Licensing Rights*.

If the logo was created for or first published by the government

If a work is created under the direction or control of, or first published by, the Commonwealth or a State or Territory government, that government will own copyright in that work. This rule does not apply to local governments. For further information, see our information sheet *Governments (Commonwealth, State and Territory)*.

If none of the above situations apply, the creator may then own copyright. However, in most cases the user will have extensive rights to control the use of the logo and the creator’s rights will be limited accordingly.

In some cases there may be more than one creator, and more than one owner of copyright. The copyright owner may be a company, for example, a graphic design company. Generally, a person who contributes ideas for a logo, but does not actually design and draw it, is not a creator for copyright purposes, and consequently does not own copyright. Similarly, a person who merely

draws up an image that has been developed into a finished logo by someone else is not the creator for copyright purposes.

Rights of a copyright owner

Copyright owners have certain exclusive rights. The scope of these rights varies, depending on the category of copyright material.

Owners of copyright in artistic works such as logos have the right to:

- copy or reproduce the work (including making digital copies and causing copies of the work to be printed);
- publish the work (to make the work available to the public for the first time); and
- communicate the work to the public (to transmit the work electronically, including by broadcasting, emailing or faxing it, or by putting it on a website).

Each of the rights of the copyright owner can be bought, sold or licensed. A "licence" is said to be granted when a copyright owner gives another person permission to use the copyright material in one of the ways reserved to the copyright owner. Permission does not always have to be in writing, but it is always a good idea to have a written record of what the parties have agreed. In most cases, the organisation or person using the logo will have some or all of these rights as a result of a licence agreement, even if they don't own copyright.

Issues relevant to dealing with copyright are discussed in our information sheet *Assigning and Licensing Rights*.

Infringement

If a logo is protected by copyright, it will usually be an infringement to reproduce it without permission from the copyright owner. If the logo is very simple, there may be no infringement if the logo is not copied exactly. Generally, however, reproducing part of a work without permission – even a small part – infringes copyright if it is an important or recognisable part.

There is, however, an **exception** regarding the incidental filming of an artistic work. If an artistic work, such as a logo, is included in a film but is merely "incidental" to the main focus, this will not be an infringement under Australian law. For example, filming of a logo may be "incidental" in circumstances where it is on a wall in the background as characters walk past. A recent case (*Thompson v Eagle Boys Dial-a-Pizza*) has suggested (but not decided) that filming artwork may be incidental even where the artwork has been included deliberately.

Making changes to a logo does not overcome infringement

Note that there is no rule in copyright law that permits reproduction of a logo if a percentage of it is changed, or if a certain number of alterations are made. If you can put the two logos side by side and identify important parts from the original that have been copied, it is likely that an important part of the original has been reproduced.

For example, the "Aussie Home Loans" logo consisting of three rectangles on top of each other, incorporating the three words and topped by a triangle, to represent a house was found to be protected by copyright as an artistic work. Copyright in this work was held to have been infringed by a rival company using a similar logo in which the word "loans" was replaced by "builders". A number of other changes had been made, including the addition of a chimney and changes to the font, proportions of the triangles and shading, but the court had no difficulty in finding that the overall appearance of the two logos was so similar that infringement had taken place.

For further information on infringement, see our information sheet *Infringement: What Can I Do?*

Trade marks

A logo may be protected by copyright and also protected as a trade mark. A person who reproduces the logo without permission may then infringe both copyright and any trade mark rights.

The *Trade Marks Act 1995* (Cth) provides a formal system of registration for signs such as names, logos and other distinctive aspects of a product or packaging. Unlike copyright, protection under the Trade Marks Act depends on registration and payment of a fee. Only marks inherently capable of distinguishing the traders' goods or services can be registered. Registration provides protection against other individuals or companies using the same or a deceptively similar mark in the course of trade. Trade marks are registered at IP Australia. IP Australia has its head office in Canberra and sub-offices in each State capital city. It can be contacted on: 1300 651 010 or via its website at <http://www.ipaustralia.gov.au>.

If a trade mark has not been registered, a person using it may still have rights against others using it or a similar mark.

“Passing off” & consumer protection laws

A company or business that has an established reputation may be able to take legal action against another person who “cashes in” on that reputation in the market place. For example, a person using a name or logo connected with a product in a way that misrepresents the origin of the product, or suggests an endorsement which has not been given, may be in breach of laws such as “passing off”, the Trade Practices Act 1974 (Cth) or the fair trading laws which operate in the States and Territories.

For further information see <http://www.artslaw.com.au> or a private solicitor with expertise in these areas.

Further information

For further information about copyright, see our website – <http://www.copyright.org.au>.

Information from the Arts Law Centre of Australia may also be of interest to you: see <http://www.artslaw.com.au>.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



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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