



Logos: Legal Protection

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

Our books *Graphic Designers & Copyright* and *Advertising, Communications & Copyright* are relevant to this information sheet. You may buy our books from our bookstore:

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

- Logos are may be protected by copyright as artistic works.
- Unless there is an agreement to the contrary, copyright in a logo is generally owned by its creator.
- Unauthorised use of a logo may infringe copyright and raise issues under other areas of law such as trade mark, passing off and competition and consumer laws.

Copyright overview

- Copyright law in Australia is contained in the *Copyright Act 1968* (Cth) and in decisions of courts.
- 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 protection for logos

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, buildings, and relevantly, logos.

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 original “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?

In the absence of an agreement or if the logo was created for a government, the creator of the logo will own copyright in the logo. See our information sheet *Ownership of Copyright* for more detail.

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 printing copies);
- 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.

Issues relevant to dealing with copyright are discussed in our information sheets *Assigning and Licensing Rights* and *Fees & Royalties for use of Copyright Material*.

Infringement

If a logo is protected by copyright, it will usually be an infringement to use a “substantial part” without permission from the copyright owner. If the logo is very simple, there may be no infringement if the logo is not copied exactly and a substantial part not used. Generally, however, reproducing part of a work without permission – even a small part – infringes copyright if it is a substantial part. Courts have held that a substantial part is an important, distinctive or essential part and the test is considered qualitatively, not quantitatively.

There are exceptions to copyright, which allow people to use copyright material without permission. One relevant exception for logos is the **exception** allowing 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. One 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.

If you are commissioning a logo from a designer, or you are using a logo from another company, ensure that they have the right to use the image. There have been situations where companies have commissioned logos that are infringing and where people hosting logos on their website have been sent letters of demand for hosting infringing copyright material.

Making changes to a logo does not overcome infringement

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 two logos side by side and identify important parts that have been copied, it is likely that there is a copyright issue.

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 important parts of the original had been reproduced and that therefore, 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 usually 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.

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

For more information, see: www.ipaustralia.gov.au

"Passing off" and competition and consumer law

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 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", competition and consumer legislation, or the fair trading laws which operate in the States and Territories. For further information, see a private solicitor with expertise in these areas.

Frequently Asked Questions (FAQs)

Does copyright protect an idea for a logo?

No. Copyright protects the expression or form that an idea takes, not the idea itself. For example, the idea of creating a logo in the shape of a house is not protected by copyright. But it would be an infringement of copyright to copy the way in which a particular logo incorporated this idea. A person using a logo which is too similar to that used by another company or business might also run into problems with other areas of law, such as trade marks, passing off or competition and consumer laws.

I'm a graphic designer and a client has asked me to copy an existing logo design. Am I at risk of being held liable for copyright infringement if I carry out this work?

Yes, there is a risk. Both you and the client, who has "authorised" you to carry out the work, could be held liable in the event that the new design infringes copyright in someone else's logo. Practically speaking, it is more likely that the copyright owner would take action against the client who ends up using the design. However, technically, the copyright owner could take legal action against either, or both of you. If you suspect that what the client wants you to do will infringe

someone else's copyright, it would be best not to carry out the work or propose options that don't involve copying an existing logo design.

We paid a graphic designer to create a logo for us so we assume this means we own the copyright. Is this correct?

No. In many situations where you pay someone to create copyright material for you, this won't mean you automatically own the copyright (unless the person is your employee and creating the material as part of their duties as an employee). In this situation, it is best to obtain a written agreement with the creator setting out who owns copyright in the material and what each party's rights are in relation to the use of the material. Where there is an agreement in place, this will determine who owns the rights.

I really like another graphic designer's logo style. Can I use her style in my projects?

Using someone else's style or technique to produce a new logo does not infringe copyright provided you do not copy a work produced using that style or technique. There may, however, be legal issues other than copyright to consider. For example, if you use a style made famous by another designer, and people think that your work is the other designer's work, then laws protecting consumers and business reputations may apply.

A client wants me to use a special typeface for their logo. Are there any copyright issues?

Stylised individual letters can be protected by copyright, if they are the result of skill and effort and not merely copied from somewhere else. Copying someone else's font or typeface may require copyright permission. Installation of a font onto a computer may involve installation of a computer program that is protected by copyright, and that is likely to require copyright permission. Check the licence conditions associated with the font software and ask the client for more information.

Further information

For further information about copyright, and about our other publications and training 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 www.copyright.org.au

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.

Australian Copyright Council

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.

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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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