

# Use of copyright materials guideline

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## Copyright

*Use of copyright materials guideline*

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# 1 Introduction

## 1.1 Purpose

Queensland Government agencies make frequent use of copyright material, including material in which the copyright is not owned by the State of Queensland ('third party copyright material').

This guideline provides information and guidance for Queensland Government agencies regarding their obligations under the [Copyright Act 1968 \(Cth\)](#) (the Act) when using third party copyright material. Further information on copyright can also be obtained via the [Australian Copyright Council's](#) information sheets. The guideline also provides information for agencies seeking to use material in which copyright is owned by the State of Queensland.

The guideline is not a mandatory component of the Queensland Government Enterprise Architecture (QGEA) and is provided to assist agencies to use copyright material in accordance with the Act and relevant policies. Whilst some information is included regarding mandatory obligations under legislation (e.g. copyright collecting society arrangements), agencies are strongly encouraged to investigate these obligations in light of their own business requirements and seek legal/expert advice where necessary.

## 1.2 Audience

This document is primarily intended for all:

- senior officers responsible for the effective use of copyright material
- intellectual property/copyright staff
- information management/communications staff.

## 1.3 Scope

Agencies' management of copyright material owned by the State of Queensland (Crown copyright) is not covered in detail in this guideline. For further guidance, agencies should refer to the [Queensland Public Sector Intellectual Property Principles](#) (IP Principles), owned by the Department of Housing and Public Works (DHPW), the agency with whole of government responsibility for the administration of Crown intellectual property (Crown IP), including copyright material.

Obligations relating to copying or communicating material of an educational institution (e.g. outside the 'Crown Use' provisions) for educational purposes are not covered within this guideline.

Software is not covered under Queensland Government arrangements with the copyright collecting societies. Please refer to the [Software asset management policy](#) and [position](#).

Queensland Government information licensing is outside the scope of this guideline. Agencies should refer to the [Information access and use policy \(IS33\)](#) and the IP Principles when licensing Queensland Government public sector information that is to be made available to the public.

Agencies should bear in mind that, in addition to their legislative obligations in relation to copyright, moral rights and performers' protection, they may also need to consider other legal issues that restrict what they can do with particular copyright material. Such issues

might include, for example, confidentiality, privacy, defamation and contractual obligations. This guideline is not intended to address such issues.

## 1.4 QGEA domains

This guideline relates to the following QGEA domains:

Classification	Domain	
<a href="#">Business</a>	SL-2.1.5 Legal Services	BP-11.7 Manage Legal and Ethical Issues
<a href="#">Information</a>	I-1.3 Law	I-3.1 Arrangement
<a href="#">Information management</a>	IM-4.2 Licensing and rights management	IM-4.5 Intellectual property
<a href="#">Application</a>	A-5.3 Contract Management	

## 2 General concepts relating to rights

### 2.1 Copyright material

Copyright is a type of intellectual property. Material protected by copyright (copyright material') can be divided into:

- works - literary, dramatic, musical and artistic
- subject matter other than works – for example, sound recordings, films, sound and television broadcasts and published editions.

The Act grants copyright owners a set of exclusive rights (during the life of their copyright) to do certain acts in relation to their material. Examples of such 'acts comprised in the copyright' are:

- reproducing the material or a substantial part of the material
- making the material (or a substantial part) available to the public.

### 2.2 Performers' protection

The Act confers certain rights on performers. These rights relate to the making and use of unauthorised recordings of live performances (e.g. drama, speeches, music and dance). (See part XIA of the Act.)

### 2.3 Moral rights

Separate from the ownership of copyright, the Act confers certain rights on authors, being the right of attribution of authorship, the right not to have authorship of work falsely attributed, and the right of integrity of authorship of a work. (See part IX of the Act.)

### 2.4 Infringement

Generally, copyright is infringed by someone doing an act comprised in the copyright without the permission of the copyright owner, unless the Act provides otherwise.

If copyright is infringed, a copyright owner may be entitled to seek certain legal remedies against the infringer. For example, making an unauthorised recording may entitle a performer to civil remedies (e.g. damages) and may also give rise to criminal penalties.

## 2.5 'Use of copyright material for the services of the Crown'

Section 183(1) of the Act makes an exception from their copyright obligations for agencies performing activities for the State:

*'The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a State, or by a person authorised in writing by the Commonwealth or a State, doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or State.'*

For the purposes of section 183, a 'literary work' does not include a computer program or a compilation of computer programs (section 182B).

Note that an agency can only rely on section 183(1) if:

- the activity in question is 'for the services of the State'
- the agency is the State (e.g. a core department) or is authorised in writing by the State.

Government departments are entitled to rely upon section 183(1), as they form part of the State of Queensland. Other agencies should seek legal advice if they are uncertain about their legal status, and whether they are entitled to rely upon section 183(1).

An act done 'for the services of the State' includes an act done by an agency exercising its normal government duties and powers but does not include copying or communicating material for the educational purposes of a state educational institution (see section 183(11)). Section 183(4) provides, among other things, that where an act comprised in a copyright has been done under section 183(1), the State shall as soon as possible inform the copyright owner, in the manner and form prescribed by section 124 of the Copyright Regulations 2017, unless informing the owner would be contrary to the public interest. Section 183(5) provides for the method for determining 'the terms' for the doing of an act under section 183(1).

Sections 183(4) and (5) do not generally apply in relation to a copy made by the State under section 183(1) if the Australian Copyright Tribunal has declared (i.e. appointed) a relevant copyright collecting society for the purposes of section 183(1) in relation to that type of copy. In these circumstances, section 183A provides for the State to pay 'equitable remuneration' to the society. More information is provided below about Queensland Government arrangements with collecting societies. Further information on informing copyright owners is at [section 6.4](#).

General enquiries about using copyright materials for the services of government should be emailed, in the first instance, to the agency copyright contact officer, before contacting Crown IP administration at [Crown.ip@dsiti.qld.gov.au](mailto:Crown.ip@dsiti.qld.gov.au).

## 3 Agency obligations

Queensland Government agencies must meet their obligations under the Act relating to the use of third party material by:

- obtaining permissions or licences from copyright owners to use their material (and paying fees required) when necessary
- obtaining moral right consent when necessary
- obtaining authorisations from performers to record live performances when necessary
- complying with State Government agreements with copyright collecting societies (for example, by participating in surveys of copyright use and paying remuneration)

- complying with licences, permissions, consents, etc. on which the agency is relying
- obtaining necessary copyright approvals from custodial agencies to use Queensland Government copyright materials
- informing copyright owners in relation to acts done 'for the services of the State' when necessary (see section 183(4) of the Act).

## 4 Agency management of copyright use

Each agency should adopt management practices to ensure that:

- the agency does not infringe copyright or moral rights
- the agency does not make unauthorised use of performances as defined in the Act
- the agency fulfils its obligations under the Act regarding the use of copyright material.

As a minimum, agencies should:

- develop an agency copyright use policy setting out its approach to the use of third party copyright materials (or include that information in its intellectual property (IP) policy)
- ensure staff are made aware of their obligations with regard to copyright use through appropriate awareness programs.

### 4.1 Copyright use policy

Each agency should develop a copyright use policy, which may form part of the agency's existing IP policy. The policy should be based on the [Queensland Public Sector Intellectual Property Principles](#) (IP Principles) and should cover issues such as:

- copyright awareness, including third party copyright ownership
- statutory and other obligations relating to the use of copyright material
- moral rights
- copyright contact officer roles and responsibilities
- employee responsibilities
- consequences of copyright infringement
- when to seek permission from copyright owners
- when and how to inform copyright owners about government use of copyright in accordance with section 183(4) of the Act
- equitable remuneration to be paid to a declared collecting society under section 183A.

### 4.2 Training and awareness programs

Agencies should ensure all employees are informed of their agency's IP/copyright use policy, the risks involved in misuse and the importance of managing the use of third party copyright materials. Awareness programs may be provided via the agency's intranet, in-house seminars and, for new employees, during induction training.

Queensland Government agencies should complete the online IP training modules accessible via the [BiiG \(Business Improvement and Innovation in Government\) website](#).

Staff at state schools and TAFE institutes should be referred to the National Copyright Guidelines ([www.smartcopying.edu.au](http://www.smartcopying.edu.au)), which are designed to provide a reference guide to copyright issues affecting Australian educational institutions.

Agencies should also support employees seeking government-related copyright training opportunities. The [Australian Copyright Council](#) holds a variety of annual training courses, seminars and education programs covering a range of copyright issues.

Each agency should also ensure that, if it has been selected for participation in a sample survey of copyright use by government employees, appropriate staff members attend pre-survey training and that the survey is undertaken in accordance with the agreement between the Queensland Government and the copyright collecting society. In the case of surveys conducted for the purposes of section 183A of the Act (relating to the making of 'government copies' under section 183(1)), the Department of Housing and Public Works (DHPW) will notify the agency of its selection and facilitate training.

Note that schools and TAFE institutions must also participate in copyright surveys, as required, under separate educational agreements administered by the Department of Education. They are not involved in surveys conducted for the purposes of section 183A of the Act relating to the making of government copies.

## 5 Queensland Government arrangements with copyright collecting societies

### 5.1 Crown use provisions and copyright collecting societies

The Queensland Government enters into arrangements with certain copyright collecting societies to discharge some of its obligations under sections 183 and 183A of the Act ('the Crown use provisions'). Sections 183 and 183A do not apply to the reproduction, copying or communication of the whole or a part of a work or other subject matter for the educational purposes of an educational institution of, or under the control of, the State. The relevant collecting societies are:

- Copyright Agency Limited ([CAL](#)) relating to government copies of works and published works, other than works included in a sound recording, film, or television or sound broadcast
- Audio-visual Copyright Society Ltd ([Screenrights](#)) relating to copying transmissions of radio and television broadcasts
- Australasian Performing Right Association ([APRA](#)) relating to certain public performances of certain musical works.

CAL and Screenrights are declared copyright collecting societies under section 183A of the Act. The State enters agreements with these declared collecting societies as required by the Act, so that the State is not required to inform the copyright owner about copying material covered by the agreements, when it is for government purposes.

The State has entered a **voluntary** agreement with APRA, a non-declared collecting society, so that the State is not obliged to inform the owner about copying material covered by the APRA agreement, in accordance with section 183(4) of the Act.

Arrangements between the Queensland Government and copyright collecting societies fall into two broad categories:

- arrangements for the purposes of 'Crown use' provisions
- copyright collecting society arrangements with educational institutions.

DHPW is responsible for negotiating and managing whole-of-government arrangements on behalf of core departments and other eligible agencies that choose to be covered by those arrangements. It is the responsibility of agencies (other than core departments) to consider whether they are eligible to utilise and should be covered by arrangements for the purposes of sections 183 and 183A.



Queensland Government agencies that are covered by such arrangements must comply with the relevant copyright collecting societies' requirements, which may, for example, require agencies to:

- nominate a copyright survey manager when requested
- participate in surveys of copyright use in accordance with the arrangements
- make annual provisions for payment of copyright fees through DHPW.

In the unlikely event of an agency contemplating entering into an independent arrangement with a copyright collecting society for the purposes of sections 183 or 183A, the agency will need to consult with DHPW beforehand.

Details about the Queensland Government copyright collecting society arrangements for the purposes of the 'Crown use' provisions of the Act (sections 183 and 183A) can be obtained from the DHPW manager responsible, at [Crown.IP@qld.gov.au](mailto:Crown.IP@qld.gov.au).

## 5.2 Copyright contact officer

DHPW provides information to each agency on arrangements with collecting societies. This includes information relating to the 'Crown use' provisions of the Act, survey obligations and annual invoices. To assist, agencies are requested to nominate an appropriate officer with whom DHPW will liaise.

Employees should use their agency's copyright/IP contact officer as their first point of contact if they need advice on copyright related issues. Where legal advice is required on a particular matter, this should be sought from the agency's legal services unit.

## 5.3 Copyright fees

Fees payable under the Queensland Government arrangements with copyright collecting societies, which are negotiated and managed by DHPW on behalf of the State, are normally calculated for each financial year and are due during that financial year. Invoices are paid by DHPW, which then recovers the cost from agencies covered by the arrangements, in accordance with the Cabinet-endorsed funding model. DHPW maintains a list of agency contacts to which its invoices are addressed.

Note: The payment of fees in respect of educational copyright agreements covering the government schools and TAFE institutions is managed by the Department of Education.

## 5.4 Copyright collecting society arrangements with educational institutions

Educational institutions (schools, TAFE institutes and the Queensland Police Academy) have separate arrangements with the copyright collecting societies for the purposes of Part IVA of the Act. These arrangements cover limited uses of copyright materials (other than computer programs) and broadcasts for educational purposes. Those arrangements are administered by the institutions' respective agencies. Further information can be accessed via the [Department of Education website](#) and the [National Copyright Guidelines](#) produced by the National Copyright Unit on behalf of the Copyright Advisory Groups (Schools and TAFEs).

Note that schools and TAFE institutions must participate in copyright surveys, as required, under separate educational agreements administered by the Department of Education. They are not involved in surveys conducted for the purposes of section 183A of the Act relating to the making of government copies.

## 6 Copyright materials not covered by Queensland Government arrangements with copyright collecting societies

### 6.1 Agencies' responsibilities

If any agency's use of copyright material is not covered by a [Queensland Government arrangement](#) with a copyright collecting society, the agency will need to:

- obtain licences from copyright owners when necessary
- comply with applicable provisions of licences, permissions, consents, etc. on which the agency is relying
- when necessary, inform copyright owners in accordance with section 183(4) of the Act and the procedure set out in section 124 of the *Copyright Regulations 2017*
- comply with any terms of use (including the payment of a fee) as indicated in section 183(5) of the Act as agreed with the copyright owner or, in default of agreement, as fixed by the Copyright Tribunal.

### 6.2 When to obtain a copyright licence from a copyright owner

General guidance about when it is necessary for an agency to obtain a copyright licence from a copyright owner (or the owner's representative) is contained in the [Use of copyright material flow chart](#). In addition, the [Australian Copyright Council](#) provides additional guideline through its information sheets. When in doubt, agencies should seek specific advice.

A copyright licence will be necessary if all the following apply:

- the proposed use involves the whole or a substantial part of a third-party copyright work
- one or more copyrights have not expired
- the agency's use is not covered by existing licence/s from the copyright owner/s
- it is not possible to rely on section 183(1) (for example, the use is not 'for the service of the State' or the agency is not eligible to rely upon section 183), or the proposed use is commercial
- no other statutory licences or exceptions apply
- no implied copyright licence exists.

Some examples of when it will not be necessary to obtain a copyright licence from a copyright owner (or owner's representative) are:

- where section 183 applies to the agency and the agency wishes to do an act 'for the services of the State' within the meaning of section 183(1) of the Act (however in some cases the agency will still need to inform the copyright owner and may be required to pay the copyright owner (see sections 183(4) and 183(5));
- where all relevant third-party copyrights in the material have expired; or
- where a section of the Act provides that certain activity does not infringe copyright (for example: section 43(1) relating to anything done for the purposes of a judicial proceeding, and various sections in Part IVA of the Act relating to certain educational institutions).

### 6.3 Complying with licence provisions

Agencies should take steps to ensure that they are aware of the licence conditions on which they are relying. Copyright licences obtained from copyright owners are often limited regarding the activities being licensed and may be subject to various conditions. Examples include licences obtained in relation to computer programs and online journal subscriptions.

The various statutory licences and exceptions provided by the Act only operate if certain conditions are fulfilled, e.g. 'fair dealing' provisions. Reliance on some statutory licences also involves associated obligations, e.g. obligations to take part in sampling systems and pay remuneration to copyright collecting societies.

Agencies should carefully consider the effect on terms and conditions relating to access to, and use of, copyright material (including terms and conditions on websites) before accepting them. For example, some terms and conditions may impose onerous obligations on an agency or purport to restrict the agency's use of copyright material in ways that would not normally infringe copyright. Legal advice should be sought where the effect of such terms and conditions is unclear.

### 6.4 Informing copyright owners in accordance with section 183(4)

Section 183(1) of the Act provides that copyright is not infringed by the State, or by a person authorised in writing by the State, doing any acts comprised in the copyright if the acts are done 'for the services of the State'.

Subject to significant exceptions, when an agency relies on section 183(1) of the Act to perform a particular activity that does not infringe third party copyright, section 183(4) will generally require the State to inform the copyright owner as soon as possible in accordance with that section and the procedure set out in section 124 of the *Copyright Regulations 2017* (Information of use of copyright material for services of the Crown).

Notice should be given in the name of the State or, where the agency is authorised in writing by the State for the purposes of section 183(1), by the State agency responsible for granting that authorisation.

### 6.5 Exceptions to the State's duty to inform

#### 6.5.1 Exception 1 - contrary to public interest

Section 183(4) does not require the State to inform the copyright owner if it appears to the State that it would be contrary to the public interest to do so.

#### 6.5.2 Exception 2 - collecting societies declared in relation to making certain copies

As a result of section 183A and certain declarations made by the Copyright Tribunal of Australia, section 183(4) does not currently require the State (or agency) to inform the copyright owner about:

- copying literary works (other than computer programs), dramatic or artistic works, except for any such works included in sound recordings and films
- copying radio and television broadcasts (including works, sound recordings and films included in the transmission).

*Examples:*

Section 183(4) does not require the State (or agency) to inform the copyright owner if the agency makes a copy of a book, journal, or magazine.

If an agency copies a commercially produced sound recording (e.g. CD) or a film (e.g. DVD) and wishes to rely on section 183(1) as the reason for not infringing copyright, then section 184(4) would generally require the State (agency) to inform the copyright owner.

#### 6.5.3 Exception 3 - other arrangements with copyright owners for the purposes of section 183(1)

A copyright owner may choose to enter into an arrangement with the State that relieves the State of its obligation to inform the owner in accordance with section 183(4), e.g. the State has voluntarily entered into such arrangements with APRA.

## 6.6 Communicating copyright material to the public

One of the acts comprised in copyright is the right to 'communicate' the copyright material 'to the public'. In this context, 'communicate' means to make copyright material available online, e.g. on the internet, or electronically transmit copyright material, e.g. by email.

The Act does not enable the Copyright Tribunal to declare (appoint) a copyright collecting society in respect of communicating material to the public under section 183(1). Accordingly, if an agency relies on section 183(1) as the reason why 'communicating' certain third-party copyright material online or by electronic transmission 'to the public' does not infringe copyright, the State (agency) should inform the copyright owner as required by section 183(4). That is, unless exception 1 (contrary to the public interest) or exception 3 (other arrangements) applies.

If there is a reason (apart from section 183(1)) why an agency's communication to the public does not infringe third party copyright (e.g. another statutory licence or exception applies, or the agency has a licence granted by the copyright owner), then section 183(4) will not require the State (agency) to inform the copyright owner.

## 7 Agency use of Queensland Government copyright materials

The State of Queensland is the owner of all copyright material created by its agencies. Each agency has overall custodial responsibility for this copyright material, and specific management responsibility for copyright material that the agency has created.

Where one Queensland Government agency intends to use the copyright material of another Queensland Government agency, it does not have to seek permission to reuse the Queensland Government material. Note, however, that only agencies that form part of the State of Queensland can rely on this exclusion. Refer to the agency's legal unit if there is doubt whether an agency forms part of the State of Queensland.

Other agencies must obtain copyright approval from the custodial agency before doing any acts comprised in the copyright in that agency's copyright materials, unless a statutory exception provides that copyright is not infringed.

All agencies must, at a minimum:

- ensure that if the intended use is not 'for the services of the State' within the meaning of section 183(1) of the Act, the use is either approved by the custodial agency or covered by a statutory exception contained in the Act
- obtain approval from the custodial agency where the copyright material is not publicly accessible

- obtain approval from the custodial agency where the user agency intends to distribute the material (whether or not embodied in other material) to individuals or organisations outside the user agency
- comply with any legitimate use restrictions brought to the user agency's attention by the custodial agency - including those relating to privacy, accuracy and/or any third-party copyright material embedded in the work
- comply with any Creative Commons or restrictive licence conditions applicable
- not infringe the moral rights of the author/s (where applicable)
- not make unauthorised use of performances (as defined in the Act).

## Appendix A Copyright use flowchart

Copyright is a very complex area of the law. The [decision-making flowchart](#) contains general guidance only and should not be relied on as comprehensive or specific advice. It is strongly recommended that agencies obtain formal legal advice where necessary.