Government use of copyright material

A decision-making flowchart

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Copyright is a complex area of the law. This flowchart contains general guidance only and should not be relied on as comprehensive or specific advice. Obtain formal legal advice when necessary.

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|  |  |  |  | **Notes** |
| Q1. | Is the material entitled (or has it ever been entitled) to copyright protection? | **No →** | **Copyright not infringed** | * Ideas, concepts, techniques and systems are not protected by copyright, until they are embodied in a copyright work (e.g. written down, drawn, mapped out etc.) * Titles are not generally protected by copyright law. * Individual facts, not expressed originally, generally also have no copyright protection * Databases and datasets *may* be protected by copyright; for example, datasets on the Queensland and Australian government open data portals are arranged for re-use and licensed under a Creative Commons licence. Users must attribute the work in the manner specified in the licence. * The justification for licensing datasets available for public re-use, whether or not they attract copyright protection, is explained by the Australian National Data Service: [[1]](#footnote-1) * A dataset may attract copyright protection if it meets certain threshold criteria. Significant quantities of research data will attract copyright protection. * Since the output of most research is intended for re-use, it is recommended that a licence, such as a Creative Commons Attribution licence, be applied to research data to make that intention explicit. * Should the data not meet the threshold criteria for copyright protection, no harm will arise from the application of a Creative Commons licence. It will make known how the creator of the data would like to be attributed, in addition to applying a limitation of liability and warranty clause to the data. |
|  | **Yes ↓** |  |  |  |
| Q2. | Is the intended use covered by copyright? | **No →** | **Copyright not infringed** | Uses covered by copyright include:  (this is not an exhaustive list)   * reproduction * publication * performance in public\*, e.g. performing a play * communication (making available online, electronically transmitting) to the public\* * adaptation * causing to be seen/heard in public, e.g. playing the radio * retransmission of broadcasts * making a facsimile copy   \* In some circumstances, ‘public’ might arguably include a forum including government agencies and others.  Reading and non-commercial lending are not covered by copyright. |
|  | **Yes ↓** |  |  |  |
| Q3. | Has copyright in the material expired? | **Yes →** | **Copyright not infringed** | * For unpublished work, protection can last indefinitely but for works published after 1 January 2019, copyright terms will apply. See <http://www.communications.qov.au/documents/duration-copyright>For published literary, dramatic and musical works, copyright lasts from the time the work is created until seventy years after the end of the year of the author’s death (shorter in certain cases). * With written works protected by Crown copyright, the duration of protection is generally fifty years from the date of publication. |
|  | **No ↓** |  |  |  |
| Q4. | Will a substantial part of the material be used? | **No →** | **Copyright not infringed** | There is no convenient rule of thumb defining what is meant by ‘substantial’’. If the portion is a significant, distinctive or essential part of the whole work, it is likely to be regarded as substantial. Copying does not have to be exact. Any substantial reliance on a copyright owner’s work may require permission. Even a quotation could be considered to be substantial. |
|  | **Yes ↓** |  |  |  |
| Q5. | Does one of the free exceptions to infringement apply? | **Yes →** | **Copyright not infringed** | Free exceptions include:   * fair dealing for criticism or review if sufficient acknowledgement made (s 41) * things done for a judicial proceeding (s 43(1)) * the library provisions (e.g. ss 49 and 50) * backup copying of computer programs (s 47C) * making a copy of Australian legislation or judgment (s 182A) * copying by educational institutions for examination purposes and making single copies by hand for instructional purposes (s 200). |
|  | **No ↓** |  |  |  |
| Q6. | Is there an express licence covering the intended use? | **Yes →** | **Copyright not infringed** | An express licence is a clear and unequivocal statement of permission to use certain copyright material for particular purposes, e.g. The Education Place website says, *‘These maps may be printed and copied for personal or classroom use.’* |
|  | **No** **↓** |  |  |  |
| Q7. | Is there an implied licence covering the intended use? | **Yes →** | **Copyright not infringed** | In some circumstances a copyright licence might be implied. For example in some agreements, a copyright licence will be implied if necessary. It is recommended that an agency seek legal advice if it intends to rely on what it considers to be an implied licence. |
|  | **No** **↓** |  |  |  |
| Q8. | Is the intended use covered by a statutory licence **apart** from section 183(1) of the Copyright Act? | **Yes →** | **Copyright not infringed**  **Other obligations might apply.** | Reliance on some statutory licences also entails complying with obligations, for example paying remuneration. See, for example, licences relating to educational institutions under Part VB of the Copyright Act. |
|  | **No** **↓** |  |  |  |
| Q9. | Is the use by the State or a person authorised by the State, and “’or the services of the State’ within the meaning of section 183(1)? | **Yes →** | **Copyright not infringed.**  **May need to inform copyright owner under s183(4) and comply with terms under s183(5)**  **Go to Q10.** | The Copyright Act s. 183(1) provides under a statutory licensing scheme that the copyright in a work or other subject matter is not infringed by the State, or an authorised person, doing any acts comprised in the copyright if the acts are done for the services of the State.  Under s. 183(1), the State must either:  ·         inform the copyright owner of the use (section 183(4)) and agree terms with the owner for the use (section 183(5)), **or**  ·         in the case of reproductions (copies), where **a declared collecting society** is operating, pay ‘equitable remuneration to the collecting society in relation to those reproductions’ (section 183A).  The expression ‘services of the State’ (when used in section 183(1)) does not include 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 a State (section 183(11)). |
|  | **No → Go to Q14.** |  |  |  |
| Q10. | If ‘yes’ to Q9, does the use consist of making a copy which is covered by the CAL declaration or the Screenrights declaration? | **Yes →** | **Copyright not infringed by making the copy.**  **Ss 183(4) & (5) do not apply to making the copy.**    **Go to Q11.** | Section 183A of the Copyright Act sets out the role of the declared collecting societies in reaching agreement with the State for copies made in a particular period for the services of the State. The two declared collecting societies, Copyright Agency Ltd (CAL) and Screenrights, act on behalf of copyright owners when entering agreements with the State in relation to certain copying under s 183 (1).   Section 183A sets out that the method of working out equitable remuneration must take into account the estimated number of copies made, informed by a sampling system. The declared copyright collecting societies are responsible for collecting and distributing payments to the relevant copyright owners. Where such arrangements have been made, they override the application of ss 183(4) and (5). This exemption from ss 183(4) and (5) only applies so long as the relevant declared collecting society continues to operate as such.  The CAL and Screenrights declarations do not cover computer programs. These declarations do not cover making material available online or electronically transmitting material (e.g. by email). |
|  | **In any case ↓** |  |  |  |
| Q11. | If ‘yes’ to Q9, does the use involve either -  (a) making a copy not covered by the CAL declaration or the Screenrights declaration; or  (b) any other copyright use (e.g. communication to the public, performing in public?) | **Yes →** | **Copyright not infringed.**  **May need to inform the copyright owner under s183 (4) and comply with terms under s183(5).**  **Go to Q 12.** |  |
|  | **No → Go to Q13.** |  |  |  |
| Q12. | If ‘yes’ to Q9, has s183(4) been waived and terms agreed for s183(5) in relation to the use, under the Queensland Government arrangement with the relevant copyright collecting society? | **Yes →** | **Copyright not infringed.**  **Ss 183(4) & (5) satisfied by compliance with the Queensland Government arrangement.** | For information about Queensland Government arrangements with collecting societies, please inquire by email to [crown.ip@qld.gov.au](mailto:crown.ip@qld.gov.au) or contact Crown IP, HPW, by phoning 07 3719 7839.  . |
|  | **No ↓** |  |  |  |
| Q13. | Is the use by the State or a person authorised by the State and also ‘for the services of the State’ within the meaning of section 183(1)? | **Yes →** | **Copyright not infringed.**  **Inform copyright owner**  **under s183 (4) unless the use is against the public interest (or otherwise indicated above).**  **May need to comply with terms determined under s183 (5).** |  |
|  | **No ↓** |  |  |  |
| Q14. | Is there any other reason why copyright would not be infringed by doing the act? | **No →** | **Obtain permission from all relevant copyright owners before using the material.** |  |

1. The Australian National Data Service (ANDS) is a partnership led by [Monash University](http://www.monash.edu.au/), working in collaboration with the [Australian National University](http://www.anu.edu.au/) (ANU) and the [Commonwealth Scientific and Industrial Research Organisation (CSIRO)](http://www.csiro.au/) [↑](#footnote-ref-1)