

Questions? More
information?

Copyright Office, Hawthorn
Library

Email:
copyright@swin.edu.au

Web:
www.swin.edu.au/copyright

Phone: 9214 4669/8227



COPYRIGHT AND THE STUDENT FILMAKER

What you need to know

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When studying filmmaking or multimedia at Swinburne you will both create your own media and use media materials created by other people. Most of this will be protected by copyright law so it will be helpful for you to understand how copyright works, as a student and also for when you plan to use your skills after graduation.

The copyright law in Australia is contained in the Copyright Act 1968 <http://www.comlaw.gov.au/Details/C2010C00476>

Under this legislation, the owner of copyright in a literary, dramatic, musical or artistic work or a cinematograph film or sound recording has the exclusive right to control how that material is used. No-one else is permitted to use the material without the owner's permission except in certain cases. One of those special cases allows students to make certain uses of material as part of their research or study.

This brochure will provide you with some basic information on how you can use copyright material as part of your study at Swinburne and later when you are working in the industry. It will also provide introductory information on some other legal issues to consider when making a film or multimedia production.

We hope you find it useful. If you have any more detailed queries please contact the Copyright Office on copyright@swin.edu.au

USEFUL LINKS

Australian Copyright Council

Copyright news and information. The fact sheets are particularly useful.

<http://www.copyright.org.au/>

<http://www.copyright.org.au/find-an-answer/browse-by-a-z/>

Copyright information from the Australian Attorney General's Department

General information on Australian copyright law

<http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright>

Swinburne Copyright Website

Swinburne Copyright website with information for staff, students and researchers.

<http://www.swinburne.edu.au/copyright>

Creative Commons search

You can search for a number of different types of media licensed for use under a CC licence by using the CC search facility at

<http://labs.creativecommons.org/demos/search/?q=>

Flickr Creative Commons

Flickr contains millions of images uploaded by users all around the world on just about any subject and topic you can think of.

<http://www.flickr.com/creativecommons/>

Wikimedia Commons

Wikimedia Commons is a vast resource of open licence material such as Creative Commons and public domain material.

http://commons.wikimedia.org/wiki/Main_Page

USING OTHER PEOPLE'S MATERIAL

Can I use other people's material in my work?

Yes you can.

Australian law provides some exceptions to the rights of copyright owners that allow students to use limited amounts of material without permission from copyright owners as long as they comply with certain conditions. This is called fair dealing for research or study. You must comply with the following:

- The purpose of your proposed use must be research or study. This includes work you are required to undertake as part of the course you are enrolled in at Swinburne.
- The proposed use must be 'fair'. This is determined by taking into account the following factors:
 - The purpose and character of the dealing
 - The nature of the work or adaptation
 - The possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price
 - The effect of the dealing upon the potential market for, or value of, the work or adaptation
 - The amount and substantiality of the part copied taken in relation to the whole work or adaptation
- In most cases you can only copy a reasonable portion of a work. As a guide a reasonable portion is the whole of one or more articles from a periodical publication if they are for the same research or course of study, 10% or one chapter of a book or 10% of the number of words in an electronic copy. (There are no guidelines for the copying of artistic or audio-visual works).

USING OTHER PEOPLE'S MATERIAL

Is Fair Dealing the same as Fair Use?

No. Fair Dealing is quite different to US Fair Use which is a much broader exception and only applies within the United States of America. Fair Dealing in Australia applies for the following purposes:

- Research or study
- Criticism or review
- Parody or satire
- Reporting the news

ATTRIBUTION/REFERENCING MATERIAL USED

What are Moral rights?

Creators of copyright material have the right to be correctly attributed as the author of their work and not to have that work treated in a derogatory manner.

You must always ensure that you properly attribute the author when you use copyright material by providing the correct credits in your work. This also helps you to avoid plagiarism in your academic work. More information regarding plagiarism is available here http://www.swin.edu.au/ltas/plagiarism/files/plagiarism_guide.pdf

How do I reference any copyright material that I use?

You must always make sure that you credit any copyright material that you use in your study. Swinburne Film and TV uses the APA (American Psychological Association) style of referencing. Information is available from the APA website <http://www.apastyle.org/index.aspx> or the Library has booklets available in hard copy. Harvard referencing is also used at Swinburne and a guide is available online at http://www.swinburne.edu.au/lib/researchhelp/harvard_style.html

Creative Commons

If you are using a Creative Commons licensed material then you must make sure that you cite the work properly, including the source URL, the author/creator's name and the type of licence that has been applied to it

Remember that there are several different Creative Commons licences available and different licences will have different conditions of use. See the website for more information <http://creativecommons.org/licenses/>

There are also details on attribution requirements at http://wiki.creativecommons.org/FAQ#How_do_I_properly_attribute_a_Creative_Commons_licensed_work.3F

FILMING IN PUBLIC – WHAT YOU NEED TO KNOW

If you are filming or recording in public it is possible that you may record material that is protected by copyright. This could include ambient sound (such as a song playing on the radio in a café or a phone ring tone); artistic works (such as a painting or billboard in the background); film (on a TV, computer or phone screen) or trademarks/logos on a building or product (like a car or food wrapper). If you only intend to use what you have recorded for your course of study (and your use would be 'fair') you are likely to be able to rely on Fair Dealing for Research or Study. However; if you intend to use your material elsewhere, such as for a future commercial project or in a film festival, you may need to obtain a licence to include the material. This is particularly likely for sound recordings. So be careful of ambient sound - you don't want to include something in your work that you may not be able to afford to purchase a licence for at a later date.

The copyright law allows incidental filming of permanent artistic works, such as sculptures or buildings, without having to obtain the permission of the copyright owner. This is in sections 65 – 68 of the Copyright Act 1968. However this does not extend to the (non-incidental) filming of graphic material such as advertising posters (which are artistic works). Trade marks can be protected by copyright, but Trade mark law itself only provides protection against the use of the mark in relation to goods or services, so any risk of infringing any of the owner's rights in a Trade mark will depend on your intended use.

The other area to consider is incidental filming of people. There is no general right of privacy in Australia, as there is in the USA. However; courts have been considering the need to protect people from invasion of privacy here and there are other potential concerns such as breaching fair trading or defamation law that may apply, so you should always obtain permission from any people you film in public for all the use of your work you anticipate.

The Australian Copyright Council publishes a useful info sheet 'Filmmakers Film & Copyright' (under 'F' at <http://www.copyright.org.au/find-an-answer/browse-by-a-z/>) that covers some of these issues in more detail.

USING YOUR WORK OUTSIDE OF SWINBURNE

Can I use my film outside Swinburne?

You may want to re-use the work you create while studying at Swinburne outside of Swinburne or after you graduate.

The main thing to remember is that if you make your work publicly available then you cannot rely on Fair Dealing for Research or Study to allow your use of other people's material anymore. Fair Dealing for Research or Study only applies within an educational context and not when the work is taken out of the educational setting.

Examples of making your work publicly available could include:

- Uploading your film online to YouTube, Facebook, your blog, etc
- Entering your film in a film festival
- Holding a public screening at Swinburne
- Screening your film in a gallery (ACMI, NGV, etc)

To use your film outside Swinburne you will need to make sure you are not breaching anyone else's copyright before you do so. The main thing to ask yourself is whether or not you can re-use any other person's copyright material you have included in a public setting. You may not be able to at all, or may have to seek permission for that material. You may also have to provide proof that you have permission for any other person's copyright material you've used to enter your film in a festival, so good planning is essential when creating your film.

USING YOUR WORK OUTSIDE OF SWINBURNE

Planning for re-use/future use of your film

It is a good idea to get into the habit of considering how you may want to use your film in the future while you are creating it at Swinburne. Think carefully about any copyright material belonging to someone else that you might want to include in your film. You may not be able to re-use it in future without seeking permission for that material.

If possible you might want to use material in your film that is available under an open licence which can allow you to freely re-use the content in other situations (always check the licence terms carefully).

It's also a good idea to create a log of copyright material you have used so you can easily identify what you have used in your film. This will help when/if you need to seek permission for any material and also when placing credits on your film.

OBTAINING PERMISSION

When do I need to seek permission to use other copyright material in my work?

Remember that if you intend to make your work publicly available – for example in the instances mentioned above – then you will need to seek permission for any substantial portions of copyright material you included in your work. You cannot rely on fair dealing for research or study once you have taken your work out of an educational context.

How do I go about seeking permission?

First check the material you are using to see if there are any use/terms and conditions statements. If there are these may indicate whether or not you do in fact need to seek permission. If there isn't, or the statement is unclear, then contact the copyright holder. This may mean contacting the creator directly, however larger companies often have a specific permissions and licensing department to contact.

Allow plenty of time when seeking permission as you may not receive a response for weeks (if ever). Always be very clear about exactly what material you want to use and what your intended use of the material is. Keep a record of permission, preferably in writing from the copyright holder. Finally, indicate the permission and credit the copyright holder in your work.