**Who owns copyright?**

**Works – the general rule of copyright ownership**

The owner of the copyright in [works](https://smartcopying.edu.au/glossary/works/) will generally be the [author or creator](https://smartcopying.edu.au/glossary/author/) (eg the writer, artist, composer, etc). There are certain important exceptions to this rule, as set out below.

**Other subject matter – the general rule of copyright ownership**

The owner of the copyright in [sound recordings](https://smartcopying.edu.au/glossary/sound-recordings/) , [films](https://smartcopying.edu.au/glossary/film/) and [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) will generally be the maker or producer.

This means that:

* the owner of copyright in a [sound recording](https://smartcopying.edu.au/glossary/sound-recordings/) is generally the record company
* the owner of copyright in [films](https://smartcopying.edu.au/glossary/streaming/) is generally the producer and
* the owner of copyright in a [broadcast](https://smartcopying.edu.au/glossary/broadcast/) is the broadcaster.

**Some exceptions to the general rule of copyright ownership**

* **Contract** – the rights given under the Copyright Act may be varied by agreement (eg the copyright owner may [assign](https://smartcopying.edu.au/glossary/assign/) the copyright to someone else).
* **Employment**– copyright in [works](https://smartcopying.edu.au/glossary/works/) made by an employee in the course of employment under a contract of service is usually owned by the employer (eg course materials produced by a teacher for use in the classroom will generally be owned by their employer, such as a Department of Education, the Catholic Education Commission or an Independent School).
* **Commissions**– copyright in photographs, portraits and engravings commissioned for a private or domestic purpose will generally be owned by the person who commissioned the photograph, portrait or engraving. For all other commissions, the general rule is that the [author](https://smartcopying.edu.au/glossary/author/) or maker is the copyright owner unless the contract for the commission provides otherwise.
  + **Note**: prior to July 1998, where a photograph was commissioned, the person commissioning the photograph was the copyright owner of the photograph. This means the commissioning client will usually be the copyright owner of photographs for photographs taken after 1968 until 1 July 1998, unless the contract for the commission provides otherwise.
* **Co-authorship** – copyright may be owned by several [authors](https://smartcopying.edu.au/glossary/author/) jointly. Joint owners cannot deal with their copyright without the consent of the other [authors](https://smartcopying.edu.au/glossary/author/). In order to qualify as a joint [author](https://smartcopying.edu.au/glossary/author/), a person must have done more than merely supplied ideas or suggestions.
* **Crown copyright** – where copyright material is created under the direction or control of the Crown, or where it is first [published](https://smartcopying.edu.au/glossary/published/) by the Crown, the copyright will be owned by the Crown. The Crown includes a wide range of government bodies, including government libraries and departments, but does not usually include independent statutory bodies such as the Australian Broadcasting Corporation.
* [**Performers’ rights**](https://smartcopying.edu.au/glossary/performers-rights/)**in**[**sound recordings**](https://smartcopying.edu.au/glossary/sound-recordings/) – unless otherwise agreed, the copyright in a [sound recording](https://smartcopying.edu.au/glossary/sound-recordings/) made of a [performance](https://smartcopying.edu.au/glossary/performance/) will be owned equally between the performer and the record company.

**Special copyright ownership issues for schools/TAFE institutes**

**a. Staff copyright**

***i. Government schools***  
Government school staff are generally employed by the relevant State or Territory Department of Education. As the relevant Department of Education is a direct instrument of the Crown (government), the [Crown copyright](https://smartcopying.edu.au/glossary/crown-copyright/) ownership provisions apply to [works](https://smartcopying.edu.au/glossary/works/) created by the relevant Department’s permanent employed staff and casual teachers.

The [Crown copyright](https://smartcopying.edu.au/glossary/crown-copyright/) provisions provide that the Crown owns copyright in all [works](https://smartcopying.edu.au/glossary/works/), [films](https://smartcopying.edu.au/glossary/film/), [sound recordings](https://smartcopying.edu.au/glossary/sound-recordings/) and [broadcasts](https://smartcopying.edu.au/glossary/broadcast/) for [works](https://smartcopying.edu.au/glossary/works/):

* + created or made under the direction or control of the Crown or
  + first [published](https://smartcopying.edu.au/glossary/published/) in Australia by the Crown.

All [works](https://smartcopying.edu.au/glossary/works/) created under a consultancy or commission agreement will generally be considered to be created ‘under the direction or control of the Crown’ and therefore the Crown will own copyright in such [works](https://smartcopying.edu.au/glossary/works/), unless it is agreed otherwise (eg in a written consultancy agreement).

***ii. Independent schools***  
Where a teacher is employed directly by an independent school, then the employer ownership provisions under the Copyright Act apply. This means that the independent school, as the teacher’s employer, owns copyright materials produced by the teacher in the course of their employment, unless there is an agreement to the contrary.

Course notes, syllabuses and other teaching materials are likely to be owned by employers. On the other hand, if a teacher wrote a textbook or article on the subject they teach, copyright ownership of the textbook will belong to the teacher unless the school had required the teacher to write the book.

***iii. TAFE institutes***  
Employment of TAFE teachers varies across Australia. Some are employed directly by the institute, others are employed by the State or Territory administering body or Department of Education or Training. Where TAFE teachers are employed by the State or Territory, the Crown copyright provisions will apply. Where TAFE teachers are employed by TAFE institutes that are independent statutory bodies, the institute will own copyright.

**b. Student copyright**

Generally, the student, as an [author](https://smartcopying.edu.au/glossary/author/) of a [work](https://smartcopying.edu.au/glossary/works/), will own copyright in [works](https://smartcopying.edu.au/glossary/works/) they make while enrolled in a school or TAFE. If the school or TAFE wants to [copy](https://smartcopying.edu.au/glossary/copy/) or [communicate](https://smartcopying.edu.au/glossary/communicate/) the student’s [work](https://smartcopying.edu.au/glossary/works/), they will need to obtain the student’s consent. For a sample consent see [Consent](https://smartcopying.edu.au/guidelines/permissions-and-consents/consent/).

**c. Copyright in school photographs**

In general, copyright in photographs taken by an external photographer of individual students and classes will be owned by the photographer, unless there is an agreement to the contrary.

[Educational institutions](https://smartcopying.edu.au/glossary/educational-institutions/) should enter into a licence agreement with the photographer to:

* allow the schools to [reproduce](https://smartcopying.edu.au/glossary/reproduction/) the photographs in school publications
* allow the school to upload photographs to the school intranet and
* limit the photographer’s use of the images to the sale of photographs to parents and students.

Alternatively you should [contact](https://smartcopying.edu.au/contact-us/) your relevant copyright officer for advice or assistance in preparing a written [licence](https://smartcopying.edu.au/glossary/licence/).