An Introduction to Copyright and How to Use It

By Caroline Morgan

ACCU Asia/Pacific Cultural Centre for UNESCO
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The Asia/Pacific Cultural Centre for UNESCO (ACCU) is a non-profit organisation for Asia and the Pacific regional activities in line with the principles of UNESCO, working for the promotion of mutual understanding and cultural cooperation among peoples in the region. ACCU, since its inception in 1971, has been implementing programmes on book development, the safeguarding of tangible and intangible cultural heritage and literacy education jointly with Asian and Pacific UNESCO Member States.

Cultural works realised through the mind, creativity and culture of people living everywhere contribute to the enrichment of culture itself. Copyright was envisaged to provide a legal framework to protect the rights of those who create cultural works so that their further creation is encouraged.

However, due to the rapid development of digital technologies and rampant piracy today, universal understanding of copyright is high on the list of international political priorities.

This booklet, An Introduction to Copyright and How to Use It, was planned by ACCU based on feedback gained from readers and participants of copyright seminars and workshops since the publication of the Asian Copyright Handbook in 2004. It provides readers with the key aspects of copyright and how it works in society. ACCU hopes that this will be shared by as many people as possible and contribute to better understanding and utilisation of copyright for both the creators and the users.

ACCU is grateful to Ms. Caroline Morgan, who has been supporting ACCU in its copyright activities for the past four years, for her valuable contribution as the author of this booklet.
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CONTENTS

1 About Intellectual Property ____________________ 5
2 The Copyright Balance__________________________ 8
3 How Does the Copyright System Work? _________ 10
4 Works Protected by Copyright _________________ 12
5 The Rights of the Copyright Owner_______________ 20
6 Ownership of Copyright _______________________ 24
7 Scope of Copyright Protection _________________ 28
8 Exceptions to Copyright Rights _________________ 31
9 Examples of Common Exceptions to Copyright ___ 34
10 Use of Copyright Works _______________________ 37
11 Infringements of Copyright ____________________ 39
12 The International Copyright Framework _________ 41
13 Copyright and the Digital World _______________ 44
14 Open Access Movements _______________________ 46
15 Conclusion__________________________________ 47
Our society protects a number of different kinds of property rights. The ones you would be most familiar with are real property—the ownership rights over land and personal property—and the ownership of items such as cars, handbags or watches. A property owner controls the uses of their property. For example, the owner of a car can decide who is allowed to drive it and where.

Intellectual property gives rise to another kind of property ownership. It provides property or ownership rights over creative works. There are a number of different kinds of intellectual property, depending on the sort of rights being protected. Some common examples include:

**Trademarks:** To protect logos and other symbols that identify a particular product or business.

**Patents:** To protect inventions, such as medicines.
Intellectual property

- Trademarks
- Industrial designs
- Copyrights
- Geographical indications
- Patents
The subject of this booklet is copyright. Copyright is a form of intellectual property giving creators of original works ownership rights over the products of their creativity. By encouraging and fostering cultural and scientific activity, it enriches society and serves the public good. However, copyright is limited in particular ways so that others in society can access works and benefit from them.

Copyright has two important dimensions. The first of these is economic. Copyright provides creators or authors of works with a set of exclusive rights over the works that they create. These rights enable copyright owners to control the use of their works and to negotiate payment for their use. The economic benefit encourages them to create more works, and this benefits society as a whole.

The other important dimension of copyright is its protection of moral rights—the rights of the author. These rights are very different from the economic rights of copyright but are equally important. They promote the status of the author in our society and increase our respect and appreciation for cultural works by giving rights to the author to be attributed or to object to the derogatory treatment of their work.
Because of its importance to culture and society, copyright is recognised as a human right in the Universal Declaration of Human Rights. Copyright protects cultural works, the creative expression of thoughts and feelings. These works are in a variety of forms—art works, music, novels and poetry. They are the expression of a culture—its heritage, which is built on by each generation adding their own perspective to the existing culture, and this enriches the lives of generations to come.

In our increasingly globalised world, individual cultural expression allows people from other cultures to experience and learn about the thoughts and feelings of other people.

This means that our society has an interest in promoting access to copyright works—to enable new generations of artists, authors and musicians to experience the thoughts and emotions of others and to be inspired to create new works that in turn will enrich our society.

Access to copyright works may encourage us to create new works, thereby enriching our culture, or we may learn from those works, thus increasing our skills and education levels. The works may also entertain us and provide enjoyment.

This access, of course, must be on terms that do not prejudice the legitimate interests of the copyright owner.
Achieving the right balance between protecting the rights of creators over their works and the access to those works by others is one of the key objectives of copyright law. Through the careful balancing of these sometimes competing interests and through the copyright system, our society, and culture as a whole, is enriched.

It is for this reason that creators, copyright owners and users and governments need to understand the key aspects of the copyright system, including its strengths and limitations.

Striking a balance between protecting the rights of creators over their works and enabling access to those works by others
At first individual countries developed their own different copyright laws. However, concerns developed about the interaction of the separate national copyright systems, because the differences affected the trade in copyright goods between countries.

An example of this issue occurred in the United States. When it was developing its copyright system it decided to protect only the rights of American citizens. This was because it was felt that only the creativity of American citizens and American culture should be encouraged and protected. People asked, why should America protect the copyright of citizens from other countries?

The result was that the American market was flooded with low cost copies of English works. These books could be sold more cheaply than American works because the publisher did not have to negotiate copyright contracts for the works or go to the expense of readying them for publication. The outcome was that the US government (lobbied by US creators) was required to extend copyright protection to works from all countries. The objective was to ensure that the rules applying to all copyright works were the same—to create a level playing field.

To harmonise copyright protection amongst countries, an inter-
national treaty about copyright protection, the Berne Convention, was developed. The Berne Convention’s objective is to protect every production in the literary, scientific and artistic domain.

The way it works is that any country that implements the Berne standard of copyright protection in its national legislation is eligible to become a member of the convention.

By becoming a member you agree to give copyright owners from other Berne member countries the same protection you give to your own copyright owners. This is called **national treatment** and it means that wherever you go in the world, copyright protection is broadly the same, with some adjustments for national circumstances. In 2008 there were 168 signatory countries to the Berne Convention, the vast majority of countries in the world.
There are a number of rules defining which works are eligible for copyright protection.

Firstly, the work must be **fixed in material form**—this means that the work must be permanent and perceptible. When computers were first invented there was some debate about whether works stored in computer memory were in a material form as they could not be seen or heard without the computer being used. This question was eventually settled and material form is now understood to mean any form of storage from which the work can be reproduced.
Another requirement for protection is that the work must be created by a human author who is a citizen of one of the countries that is a signatory to the Berne Convention.
The works created must be **original**. This does not mean that they must be unique or valuable. What it means is that the work must be the product of the skill and labour of the creator and not copied from another work.

These are not particularly high standards, and copyright protection does not depend on any aesthetic requirement or value judgement. Rather it depends on the skill and effort that goes into the creation of a work. This means that a simple sketch or plan for a house can be protected as can a private letter or e-mail.
Another requirement is that copyright protects expressions of ideas, not the ideas themselves. What does this mean? Think about a love story—a couple meet, they fall in love, they are separated, then reunited and live happily ever after. This storyline is an idea and its expressions would be in any number of books, movies, poems—each of which is protected by copyright. Copyright protects the expression, but it does not protect the ideas.
Some common examples of copyright works are:

<table>
<thead>
<tr>
<th>Category of Work</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary works</td>
<td>Novels, poems, scientific articles, film scripts</td>
</tr>
<tr>
<td>Choreographic works</td>
<td>For ballet or dance</td>
</tr>
<tr>
<td>Artistic works</td>
<td>Paintings, drawings, sculpture, cartoons, maps, designs, photographs</td>
</tr>
<tr>
<td>Musical works</td>
<td>Musical pieces with or without words</td>
</tr>
<tr>
<td>Cinematographic works</td>
<td>Films, television shows, video games</td>
</tr>
</tbody>
</table>

What links each of the examples in the table above is that these works are:

- Fixed in material form
- Created by a human author
- Original
- The expression of an idea.

In addition, the Berne Convention gives governments the scope to make special rules for certain categories of material, as follows.
(a) Translations

Translations, adaptations and arrangements of works will be protected as original works. This means that if you translate a work that is in or out of copyright you will have a copyright in your translation. You can control the use to which your translation is put but you cannot stop another person from translating the original work into their own words into the same or a different language.

If the original work that you want to translate is in copyright you will need to obtain the permission of the copyright owner in the original work for the translation to be made. This is because translation is a copyright right.

(b) Collections of Works

Collections of works, such as encyclopaedias, can also be protected by copyright. This copyright is independent of the copyright in the individual works or information making up the compilation. In order to be protected, however, the selection and arrangement of the works have to be sufficiently original to create a copyright in the collection itself.

The threshold of originality required for this protection varies amongst countries. For example, in Australia the telephone book and television listings are considered to be sufficiently original to attract copyright protection, but in some other countries this is not the case.

(c) Legislation and Other Government Publications

Governments can also decide whether to provide copyright protec-
tion for certain categories of works. These include legislation and official texts of an administrative nature. The approach taken depends on the philosophy of the government concerned. For example, in the United States all government publications are copyright-free. However, the Australian government has retained copyrights in its publications and licences these copyrights to publishers.

Each of these decisions is motivated by a desire to make access to government publications as easy as possible. In the United States it is felt that removing copyright protection means that participants in the free-market economy will take up the opportunity to republish the works, which will then allow them to become more widely available.

In Australia the government licences the copyright and controls the production of government materials. This ensures that the access is to the correct and authorised version of legislation or legal cases.

Governments can also choose the extent to which political speeches, lectures and addresses can be reproduced by the press for informational purposes.

(d) Neighbouring Rights

There is a specific type of copyright protection given to those involved in the production or transmission of works. The thinking is that these activities *add value* to the copyright works and should be protected independently. These works are called **neighbouring rights**.

The most common examples of neighbouring rights are:

- Record companies’ copyright in their sound recordings
- Broadcasters’ copyright in their broadcasts, and
Performers’ copyright in their performance.

Neighbouring rights are akin to copyright in that they grant exclusive economic interests to those who have been involved in the production of copyright works.

However, neighbouring rights are often distinguished from copyright in original works in various ways—usually they apply in more limited circumstances or they have a more limited set of rights.

It is important to remember that neighbouring rights exist independently of the copyright in the copyright work being transmitted or produced. This means that separate copyrights can exist in a single item—for example, in a CD of musical works there might be a copyright in the original composition, a copyright in the performance and a copyright in the sound recording itself—each owned by a different copyright owner.
Copyright is often referred to as a bundle of rights. What this means is that copyright is a set of rights to manage and control particular uses of works. If the use of the work is not one that is specified as a copyright use, the copyright owner does not control that particular use of their works.

Although there is a core set of copyright rights (as set out in the Berne Convention), these rights can be described differently in different countries.

Sometimes the rights differ between countries, as some countries might give copyright owners greater rights than the minimum specified in the Berne Convention. For example, Japan has a display or exhibition right for artistic works, but that right does not exist in Australia.

This is also the situation with moral rights. In some countries, mainly those with a European tradition, authors have very high standards of protection of their moral rights. In others, those with an English or common law tradition, the rights can be much more limited, or non-existent.

It is also important to note that sometimes not all copyright works have the same rights attached to them; for example, in Australia liter-
ary works have a different set of rights from artistic works. This is because different copyright works are used in different ways. For example, a right of display or exhibition is more important to owners of artistic works than it is to owners of literary works.

(a) Economic Rights

Listed below are some examples of typical copyright rights and how they are used:

<table>
<thead>
<tr>
<th>Right</th>
<th>Explanation</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reproduction</td>
<td>To copy or reproduce. It can be in a different form, including sound or visual recording.</td>
<td>Photocopying, photography, printing, recording.</td>
</tr>
<tr>
<td>Performance</td>
<td>To publicly perform. It includes individual performances as well as playing CDs in public or using speakers to broadcast.</td>
<td>Playing CDs in a shop, performing a play in a theatre.</td>
</tr>
<tr>
<td>Communication to the public</td>
<td>Broadcasting by wire or wireless, including one-to-one communication on the Internet.</td>
<td>Radio, television, Internet use, e-mail.</td>
</tr>
<tr>
<td>Publication or distribution</td>
<td>Make the work available to the public for the first time.</td>
<td>Publishing a book.</td>
</tr>
<tr>
<td>Adaptation or translation</td>
<td>Making a translation or dramatised version of a literary work.</td>
<td>Screenplay of a book, translation of an English work into another language.</td>
</tr>
</tbody>
</table>
In addition to the most common rights mentioned above, other rights exist in some countries or for specific categories of copyright material. Some examples are:

- The right of display or exhibition that can apply to artistic works
- The right of rental that usually only applies to films or CDs

The Berne Convention requires a minimum term of protection of copyright of the life of the author plus 50 years. However, increasingly the duration of copyright is being extended to the life of the author plus 70 years, particularly in Europe and in the United States.

Just as with other forms of property, copyright can be left to your heirs as part of your estate after death. In most legal systems the same rules apply to intellectual property, including copyright, as to other types of property.

(b) Moral Rights

Moral rights protect the honour and reputation of creators. The rationale for moral rights is that creative works are an emanation or extension of the creator’s personality and that what is done with their copyright works may affect their standing and reputation.

Moral rights provide an ongoing connection between the individual creator and their audience. They ensure cultural and educational best practice by requiring correct attribution and faithful reproduction of works.

There are three basic types of moral rights:
• An author’s right to be attributed as the creator of a work (including the right not to be falsely attributed as the author of a work);

• An author’s right to object to derogatory treatment of their work which prejudicially affects his or her honour or reputation (the right of integrity of authorship of a work); and

• The right of disclosure—the right to determine if and when material is made public.

The Berne Convention only mentions the rights of attribution and integrity of the author of a work (the first two points above) and not the right of disclosure. This means that in some countries, such as Australia, creators only have the first two of these moral rights. In other countries, such as Japan, creators have all three moral rights.

Moral rights generally last for the same period as copyright in a work but not always, as in some countries they only last for the life of the author. In countries in which they have the same term of protection as economic rights, heirs control the moral rights after the author’s death.

Different countries have different rules about the extent to which a positive act by the author is required for the rights to come into effect. In some countries, such as the UK and New Zealand, authors must assert their moral rights if they want to benefit from them. In other countries, such as Australia, the entitlement is automatic. In some countries, moral rights can be waived by written agreement by the author.
One of the most important things to note about copyright is that it is a set of rights given to the creator or author of a work. We have already discussed the different categories of copyright works and the different rights given to copyright owners.

We need now to consider the rules that apply to ownership—who is the copyright owner and therefore entitled to control the uses being made of the work.

Ownership of copyright and ownership of physical item are different.
The first and most important thing to note is that ownership of copyright exists independently of the ownership of the physical item containing the work. If, for example, an artist creates a painting and then sells it, the copyright in the painting does not automatically pass to the new owner of the painting; it stays with the artist. Similarly when you buy a book, you are merely buying a copy of the work, not the rights to translate or reproduce the work contained in the book.

The general rule is that the first owner of copyright is the creator, the author or artist whose creative ideas are expressed in the work. Someone who acts as a simple scribe, taking down dictation, does not qualify as an author.

If there is a single author this is reasonably straightforward. However, if there is more than one author the rules that apply to joint authors need to be applied.

A work of joint authorship means that two or more authors have collaborated in such a way that their contributions are not separate.

The test is whether each author has made a distinct contribution. If two authors work together, and each writes separate chapters of a book, they are not joint authors, because their contributions are distinct. This contrasts with the situation where each author contributes to the same work—in which case they are joint authors.

In the case of joint authors no one author can exercise copyright rights without the consent of the other.

There are also several important exceptions to the general rule about copyright ownership.
(a) Employment

If the creator of a work is employed and the creation of the work is included in their duties at work, then the copyright in works created as part of their employment will generally be owned by their employer.

For example, when an employed journalist writes an article, their employer—the newspaper publisher—is the copyright owner of the article. This means that the newspaper publisher, not the journalist, can publish or syndicate the work. Similarly if someone is employed as a website designer, then the copyright in websites they create in the course of their employment will be owned by their employer.

If an employee creates a work that is not related to their actual job, the employment rule does not apply. For example, a schoolteacher on weekends and evenings writes a textbook for use in schools. The teacher’s employer is not the copyright owner of the work as writing the textbook was not part of their employment. The scope of their employment was teaching. The teacher therefore is the copyright owner and can enter into a contract with a publisher to publish the textbook.

(b) Commissioned Works

If you are commissioned by someone to create a work, different ownership rules can apply. In some countries the person that commissioned the work is the copyright owner for some or all uses of the work. In other countries the creator is the copyright owner. In other countries the situation depends on the type of copyright work it is and the use it is intended for.
(c) Government Works

In some countries there are different rules if you are employed or commissioned by the government to write or create a work.

For example, in Australia, where a work is created under the direction or control of the government, the government retains the copyright in the work. This is beyond the general provision relating to employment, which was referred to earlier, and covers works created by third parties who are consultants or contractors, not employees.
The monopoly that the Berne Convention grants copyright owners over the use of their works is limited in a number of ways. Limitations on copyright rights balance the public interest in promoting copyright protection against a number of other public interests. This is important—it means that you do not need the copyright owner’s permission to use copyright works in ways that are not protected by copyright.

Key limitations on the scope of copyright owners’ rights include the following:

(a) Expression of Ideas

Copyright only protects the expression of ideas, not the underlying ideas themselves. A requirement for copyright protection is that the work be fixed in material form. This is to encourage the reuse, criticism or discussion of the ideas contained in copyright works.

Consequently, reading a copyright work and using the ideas it contains is not an act restricted or limited by copyright.
(b) Certain Rights

Copyright owners are only entitled to control some uses of their works. That is, the copyright owner is given the right to exploit some—not all—uses of their work. These rights vary from country to country and are often described differently in different countries.

Uses of copyright material that are not specified to be copyright rights are not controlled by copyright owners. An example would be that copyright owners of books and journals do not generally control the rental or lending of their works, and consequently libraries can lend books for reading purposes.

(c) Certain Works

The Berne Convention also allows national governments to decide whether or not to provide copyright protection for a number of categories of works.

These include official texts of a legislative, administrative and legal nature and official translations of texts.

Works that governments are not required to provide copyright protection for also include political or legal speeches and lectures and addresses that are delivered in public.

(d) Term of Protection

Copyright protection is limited in time. The Berne Convention requires protection of economic rights for the life of the author plus 50 years, although some countries have longer terms. Once the copyright term
expires the copyright material becomes part of the public domain and available to all to use without needing to seek the author’s permission or to rely on an exception.

(e) Substantial Part

In order for a copyright infringement to occur the proportion of the work used must be “substantial”. Whether a proportion of a work is substantial or not depends on a number of factors, such as the significance of the part used and the circumstances of the use. This means that it is not possible to provide a general guideline as to the size or amount that would be appropriate to be used without requiring the permission of the copyright owner in all circumstances.

If none of the above limitations apply, there are some permitted exceptions to the copyright owner’s rights in specific circumstances.
Copyright exceptions allow copyright material to be used for certain purposes without the permission of the copyright owner if the use of that material meets particular public policy objectives.

Exceptions to copyright recognise that in certain circumstances the value of the community having access to copyright material outweighs the public interest in protecting the interests of the individual copyright owner.

These exceptions to copyright apply in different circumstances depending on the national context in the country concerned. However, exceptions to copyright contained in national laws are required to be consistent with the standards of protection set down in the Berne Convention.

The Berne Convention also provides the test against which any proposed exceptions to copyright owners’ rights are to be assessed. This test is contained in Article 9 (2) of the Berne Convention, which reads:

*It shall be a matter for legislation in the countries of the union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation*
of the work and does not unreasonably prejudice the legitimate interests of the author.

This test, which has become known as the **three step test**, was extended to apply to all uses of copyright material (rather than only to the reproduction right) by the TRIPS Agreement\(^1\) and its application to works in digital form was confirmed by the WIPO Copyright Treaty\(^2\).

The three step test provides that exceptions to copyright can be justified in national law if they:

- **Apply only in certain special cases**: This implies that the exceptions to copyright must be clearly defined;
- **Do not conflict with the normal exploitation of the work**: The uses permitted by the exceptions to copyright must not economically compete with the author’s interests; and
- **Do not unreasonably prejudice the legitimate interests of the author**: The legitimate interests of the author include both moral and economic rights. It may be that if the exception to copyright provides for a payment to the copyright owner, then permitting a use in legislation will not unreasonably prejudice the interests of the copyright owner.

Governments use the three step test in deciding how to frame the exceptions that they will adopt in their national copyright laws. Even though many of these are specific to individual national circum-

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2 WIPO Copyright Treaty, 1996.
stances, there are a number of exceptions to copyright that appear in the copyright law of most countries.
There are several exceptions to copyright that in many countries are considered to be consistent with the three step test. However, it is important to note that these are limited exceptions, not broad use rights. The scope of these exceptions must be construed narrowly so as to comply with the three step test.

It is also important to note that many of the commonly accepted exceptions were developed in the time before the digital use of copyright works. As such they may not be appropriate for the digital environment. In fact one of the questions many national governments are struggling with is how to best shape their copyright laws to take account of the digital environment.

Here are some examples of common exceptions to copyright:
<table>
<thead>
<tr>
<th>Exception</th>
<th>Explanation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use by disabled readers</td>
<td>Provides access to works by the visually impaired, as the works may not be in the format they require.</td>
<td>Digital networks provide great opportunities for the visually impaired, but care must be taken to ensure that copies made for this purpose do not enter the general market for copyright goods.</td>
</tr>
<tr>
<td>Fair dealing for research and study</td>
<td>Use by students for a course of study they are undertaking.</td>
<td>The fairness requirement means that the scope of these exceptions cannot involve copying the whole of the book.</td>
</tr>
<tr>
<td>News reporting</td>
<td>Only as much as is required to report the news.</td>
<td>This is an important exception, but the scope of the term “news” is subject to debate—it generally means the news of the day.</td>
</tr>
<tr>
<td>Criticism and review</td>
<td>For the purposes of reviewing or analysing another work.</td>
<td>Requires acknowledgment of the original source. The amount used cannot be so much as to substitute for the original.</td>
</tr>
<tr>
<td>Legal proceedings</td>
<td>For individuals to inform themselves of the law when they are involved in legal matters.</td>
<td>Again, the scope is limited, and does not include all copying by lawyers, for example.</td>
</tr>
<tr>
<td>Copying by libraries</td>
<td>To assist patrons exercising fair dealing exceptions and for preservation and archiving purposes.</td>
<td>The scope is limited to the equivalent of fair dealing uses, and does not extend to commercial document supply, or libraries in commercial undertakings.</td>
</tr>
</tbody>
</table>
A common feature of each of these exceptions is that the uses of copyright permitted by them are limited. Such limited uses are considered not to prejudice the interests of the copyright owner and consequently to be consistent with the three step test.

A variation on the “exception” system of specifying particular uses that can be made of copyright works without infringement is the “fair use” system developed in the United States.

In the fair use system, instead of a list like the one above, a general provision enabling the “fair use” of copyright material is included in the Copyright Act. It is then left to the courts to decide if a particular use of a copyright work is fair in the particular circumstances. In order to do this the courts use a test similar to the three step test.

The key benefit of the fair use system is considered to be its flexibility—as it can apply to new uses of copyright works without requiring a change to legislation. However, it also means that there is uncertainty whether a particular use is fair unless it has been litigated.

The key benefit of the fair dealing system is its certainty. Because the exceptions are specified in law the users of copyright material know what uses will be considered fair.

In either system the uses that are considered to be fair and therefore permissible are very similar.
As discussed earlier, copyright is a property right, and similar protections for copyright owners exist as exist for the owners of other property rights, such as property in land and physical items.

This means that it is an offence, sometimes a criminal offence, to use a copyright work in any of the ways protected by copyright unless you have either:

• The copyright owner’s permission or
• The use is permitted by an exception to copyright, or a statutory licence.

However, if the use being made of a work is not a copyright use or the copyright has expired, the work can be used freely. Therefore it is important to be aware of the scope of copyright protection and its limits.

There are a number of steps to consider in deciding whether the use of a copyright work is permitted. The first step is to consider if the use is a copyright use at all. An example would be if the copyright in the work has expired, then the work is no longer protected by copyright. It is in the public domain.
If, however, the work is a copyright work and has copyright protection, the next step is to identify whether the use is permitted by an exception to copyright or by a statutory or compulsory licence. If the use is not permitted by an exception or statutory licence the next step is to obtain the copyright owner’s consent.

This series of steps can be illustrated as follows:
If you use someone else’s copyright work without permission and an exception does not apply to its use, then you will have infringed another person’s copyright.

Infringement of copyright can be a civil infringement or a criminal infringement. The distinction is drawn as a result of the seriousness of the illegal use of the copyright work that has occurred.

If it is of a more minor nature—say a small number of copies made for personal use—it is usually defined as a civil infringement.

If the offending use of another person’s copyright work is on a broader, perhaps commercial scale, then it is usually considered a criminal offence. One reason for this distinction is the effect that the different infringements will have on the copyright owner’s legitimate interests in their work. If one or two offending copies are made the effect on the author’s market will be small, and the loss they will have suffered will be small. If many copies of a work are made and sold, the detrimental impact on the copyright owner’s market will be greater.

Naturally, where a criminal infringement is proved, the punishment will be greater than for a civil infringement.

Many countries have established specialist courts or tribunals to hear infringement cases. They have expertise in copyright, to assess if
copyright infringement has occurred, and the sort of infringement. Additionally, they have expertise in quantifying damages suffered as a result of infringement and therefore in setting appropriate remedies to the copyright owner and other punishments for the offender.
In this review of copyright we have referred to the Berne Convention, which is the main treaty governing copyright works, although not the only one. Major treaties include:

(a) The Berne Convention

http://www.wipo.int/treaties/en/ip/berne

The minimum standards of copyright protection are set out in the Berne Convention for the Protection of Literary and Artistic Works, which was developed in 1886. The Berne Convention provides standards for the term of protection of copyright and guidelines on exceptions to copyright owners’ exclusive rights in a work.

The standards for protection of rights contained in the Berne Convention are incorporated into later treaties, such as the 1994 World Trade Organisation’s Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) and the World Intellectual Property Organisation’s Copyright and Performers and Phonograms Treaties of 1996. The 1996 treaties were drafted to take into account recent digital developments and their effects on copyright interests.
(b) **The Rome Convention**

http://www.wipo.int/treaties/en/ip/rome

The full name of the Rome Convention is the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. The convention sets out the system of protection for the holders of neighbouring rights.

(c) **The TRIPS Agreement**

http://www.wto.org/english/tratop_e/trips_e/trips_e.htm

This agreement regarding Trade-Related Aspects of Intellectual Property Rights (TRIPS) ties copyright protection into the wider economic environment. TRIPS was developed to tackle problems of inconsistent intellectual property rights between different countries. This has become increasingly important as the value of the trade in intellectual property goods has risen. Therefore, TRIPS contains minimum agreed standards of protection for the various intellectual property rights, such as copyright, trademarks and patents, that member nations have to afford other World Trade Organisation members. It also sets a framework for the resolution of trade disputes in relation to the TRIPS Agreement.

(d) **WIPO Copyright Treaty / WIPO Performers and Phonograms Treaty**

http://www.wipo.int/treaties/en/ip/wct

http://www.wipo.int/treaties/en/ip/wppt

The purpose of these treaties, which are known as the WIPO Internet
Treaties, is to strengthen and supplement the Berne and Rome Conventions’ standards of protection in response to the new challenges of the digital environment. They were introduced in 1996. They clarified that the reproduction right covered digital as well as analogue copying of works and introduced the new right of communication, which was discussed earlier in this booklet.

A key feature of these two treaties is their protection of digital rights management tools and electronic rights management information.

(e) The Universal Copyright Convention


The Universal Copyright Convention was developed by UNESCO as an alternative to the Berne Convention for countries that felt they were unable to comply with all aspects of the Berne Convention but still wanted to participate in a multilateral copyright system. The key difference between the two treaties is that the Berne Convention does not require any formalities for copyright protection.

It is through these conventions that the various national governments around the world have worked together to build the international system of copyright protection.
The digital environment poses many challenges for copyright owners and disrupts the equilibrium between copyright owners and users. This disruption occurs in a number of ways:

• Ease of copying and reproduction is greatly enhanced by digital technology;
• The copies made more easily are the same quality as the original; and
• The potential scale and organisation of the re-use of material is facilitated by the Internet and the networked environment.

Digital technology means people can now distribute copyright content easily and cheaply when they have no right to do so. Further, that content, because of the quality of the reproduction, competes directly with legitimate content.

This lack of security in the digital environment diminishes copyright owners’ confidence in providing materials and indeed the incentive to create them in the first place. Lack of incentive to create means a reduction in the quantity of new material available to the whole community, which is contrary to the public interest.
The question here is, does the increased ease with which copyright works can be accessed and copied through digital networks change the existing balance between the rights of creators and owners on the one hand and users or consumers of copyright material on the other? If so, does the copyright system also need to change?
There are also a number of initiatives in which copyright owners either choose not to assert their copyright at all or waive their copyright for certain purposes or uses. The motivating idea is the view that the current balance between ownership and access in copyright needs to shift towards greater access to copyright works.

Creative Commons is an example of one such initiative. Creative Commons works by developing a set of easily identified licences to use content. The copyright owners then attach this licence to their works indicating the circumstances in which a copyright work can be used without requiring payment.

The most important thing to note about these systems is that the copyright owner is still making decisions about the extent to which a particular work can be used for free or under which circumstances use can take place. This is why these systems are often considered to be variations on copyright licencing, except on standard terms and conditions.
Copyright is a key tool through which our society balances the public interest in protecting and promoting the interests of creators and investors in cultural works with the public interest in access to those creative works. Understanding the key aspects of the copyright system and how they work together to achieve that balance is important to creators, copyright owners and users and governments.
Ms. Morgan is company secretary and general manager of the Corporate Services Division, Copyright Agency Limited (CAL), in Australia. She plays an active part in developing CAL’s submissions to government on various copyright-related proposals and also represents CAL at various government enquiries. She is a well-known local and international speaker on copyright and is involved with the World Intellectual Property Organisation and the International Federation of Reproduction Rights Organisation. She has a BA and LLB from Sydney University and an MBA from the Australian Graduate School of Management.