

Cessnock City Council Copyright Policy

Date Adopted **07/11/2018** Revision: **1**

1. POLICY OBJECTIVES

- 1.1. The objectives of this policy are to:
 - 1.1.1. Ensure Council complies with the requirements of the Act,
 - 1.1.2. Protect the copyrights of others with respect to copyright-protected material held by Council;
 - 1.1.3. Protect Council's copyright in accordance with the Act;
 - 1.1.4. Establish a framework in relation to copyright compliance when using copyright protected materials both internal and external to Council.

2. POLICY SCOPE

- 2.1. This policy applies to all Council Officials which include Councillors, employees, consultants, volunteers and contractors of Council.
- 2.2. All copying of copyright material undertaken by Council Officials shall be in accordance with the provisions of the Act and any relevant copyright agreement(s) or licences currently in force.

3. POLICY STATEMENT

- 3.1. Council respects the copyrights of others and has made it a priority to ensure all Council Officials comply with copyright law and adhere to Council's Copyright Policy and Protocol.

4. WHAT IS COPYRIGHT?

- 4.1. Copyright is the exclusive right and assignable legal right given to copyright holders for a fixed number of years to print, publish, perform, film, or record literary, artistic, or musical material. The purpose of copyright law is to provide authors and other creators (and those who obtain rights through such persons) with an incentive to create and share creative works by granting them exclusive rights to control how their works may be used.
- 4.2. Works are automatically protected by copyright under Australian law. Among the exclusive rights granted to those authors / creators are the rights to reproduce, distribute, publicly perform and publicly display a work. These rights provide copyright holders' control over the use of their creations, and an ability to benefit, monetarily and otherwise, from the exploitation of their works.
- 4.3. Copyright also protects the right to 'make a derivative work', such as a movie from a book; the right to include a piece in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for 'authors' of certain works of visual art.

- 4.4. If you are not the copyright holder, you must ordinarily obtain permission prior to re-using or reproducing someone else's work or purchase a copyright licence to use the said work. Acknowledging the source of a work is not a substitute for obtaining permission. However, permission generally is not necessary for actions that do not implicate the exclusive rights of the copyright holder, such as reviewing, reading or borrowing a book or a photograph.

5. WHAT IS PROTECTED BY COPYRIGHT?

- 5.1. The rights granted under the Act are intended to benefit 'authors' of 'original works of authorship', including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audio-visual creations.
- 5.2. This means that virtually any creative work that you may come across in readable or viewable format, including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials; unpublished materials, such as analysts' reports and consultants advice; and non-print materials, including websites, computer programs and other software, databases, sound recordings, motion pictures, video files, sculptures and other artistic works are almost certainly protected by copyright.

6. WHAT IS NOT PROTECTED BY COPYRIGHT?

- 6.1. Not everything is protected by copyright. Works that are not fixed i.e.: titles, names, slogans; ideas, facts and data; listings of ingredients or contents; natural or self-evident facts; and public domain works do not have copyright protection.
- 6.2. Some of these works may, however, be protected under other areas of law, such as patent or trademark law, or by contract. It is important to be sure that no other form of protection restricts the use of such materials before using them.

7. OBTAINING COPYRIGHT PROTECTION

- 7.1. Copyright protection is automatic under Australian law from the moment a piece of work is placed in a material form. This includes writing down, recording or filming. A piece of work does not have to be published to be protected by copyright. Copyright also protects unpublished works.

8. PERFORMER'S RIGHTS

- 8.1. The Act provides certain rights to performers. These rights are in addition to the rights of the copyright owners and creators of the material performed. Under the Act, people generally are required to obtain consent from a performer to record or broadcast a live performance. The performer's consent may also be required to use an unauthorised recording of a performance, or to use an authorised sound recording of a performance on a film soundtrack. Performers on audio recordings have additional rights, including moral rights.

9. EXPIRY OF COPYRIGHT

- 9.1. Copyright lasts for different periods depending on a number of factors, including the type of material, when it was created, when the creator died and when it was published. Copyright periods can also vary from country to country.
- 9.2. The duration of copyright was extended from 50 years to 70 years in 2005 for content which still had copyright on 1 January 2005. For works in which copyright remained in force as at 1 January 2005, their copyright generally lasts for 70 years

after the year of the death of its author/creator even if copyright has subsequently been transferred to another owner.

- 9.3.** Works in which copyright has expired on 1 January 2005 (usually 50 years after the year of the creator's/author's death), are referred to as being "in the public domain" or "out of copyright".

Works type	Copyright expired in Australia if
Text Print music	Published before 1955 AND <ul style="list-style-type: none"> ▪ Creator died before 1955 OR ▪ Published anonymously or under pseudonym, and author cannot be identified
Image	<ul style="list-style-type: none"> ▪ Photograph taken before 1955 ▪ Engraving, such as etching lithograph, woodblock or print, published before 1955 AND artist died before 1955 ▪ Other image: artist died before 1955
Government works [(Commonwealth, State, Territory) owns copyright OR work made for, or first published by, government]	<ul style="list-style-type: none"> ▪ text, print music, photo, engraving published 50+ years before current year ▪ other image made 50+ years before current year

- 9.4.** For further advice in relation to Copyright contact the Governance and Council Support Team.

10. COPYRIGHT EXEMPTION

- 10.1.** The Act includes provisions for the fair use of copyright protected works for the purpose of research or study, criticism or review, reporting news, parody or satire, judicial proceedings or professional advice.
- 10.2.** Exceptions to copyright protection include newspapers using copyrighted materials without permission for reporting, libraries reproducing copyright materials for users and teachers who make multiple copies of copyrighted materials for classroom distribution.

11. ROLES AND RESPONSIBILITIES

11.1. Council's Public Officer

- 11.1.1. Council's Public Officer will address copyright risks and or alleged breaches in the first instance.
- 11.1.2. Council's Public Officer may seek the authority to audit whether Council Officials are compliant with copyright law. Such an audit may be conducted without notice after providing the Council Official with a copy of an authority to conduct the audit.

11.2. Council Officials

- 11.2.1. Council expects Council Officials to be responsible consumers of copyright protected materials. Council Officials must not reproduce any work protected by copyright without either a copyright licence or express authority to Council from the copyright owner regardless of it being in print, video or digital form.
- 11.2.2. As there is no registration of copyright in Australia and no formal procedures to go through, Council Officials must assume that the work of others are protected by copyright until proven otherwise.
- 11.2.3. Council Officials are encouraged to educate their peers on copyright compliance. If any Council Official witnesses a potential copyright infringement they must bring the matter to the attention of the individual, and Council's Governance and Council Support Team.
- 11.2.4. Council Officials must seek out and receive through a copyright licence or the express written permission of the copyright holder, the right to reuse copyright protected work in order to avoid an infringement of copyright.
- 11.2.5. When work is not covered by copyright, Council Officials are to confirm that the material is not protected by any other area of law, such as trademark or trade secret law.
- 11.2.6. Where copyright audits are concerned, Council Officials must provide all reasonable assistance and cooperation in complying with the audit.
- 11.2.7. The Council Official being audited will be provided with an opportunity to have their comments (if any) included in the audit report.
- 11.2.8. If the Council Official fails to satisfactorily implement the recommendations contained within the copyright audit report, the matter will be dealt in accordance with clause 12.
- 11.2.9. For further advice in relation to Copyright contact the Governance and Council Support Team.

11.3. Use of council created materials

- 11.3.1. Copyright in works created by Council Officials in the course of their employment or engagement is owned by Council. As such, Council Officials may use the works for Council related business only.
- 11.3.2. When Council owned copyright protected materials are used, a copyright notice is to be included on the works when being distributed or published outside of Council, otherwise such distribution or publication is deemed as unauthorised. If there is any doubt as to whether the work is covered by copyright it is best to be cautious and contact the Governance and Council Support Team seeking advice.
- 11.3.3. If Council Officials become aware of any unauthorised use or distribution of Council created materials they should promptly notify the Governance and Council Support Team.

11.4. Copyright ownership for third party produced materials

- 11.4.1. Council Officials, when entering into an agreement or contract with third parties to produce materials, are to take care and adequately address the ownership of copyright before any work commences. This should be by

way of a written agreement that clearly states who owns the copyrights to any material created by the third party.

11.4.2. The agreement is to identify:

- i. who has the ownership of the third party produced materials,
- ii. who has the right to exploit the ownership,
- iii. who is to pay for the ownership, and
- iv. whether and in what circumstances improvements or modifications to the third party produced materials are allowed.

11.4.3. Council Officials should seek assistance from the Governance and Council Support Team in the first instance.

11.5. Confidentiality

11.5.1. Council Officials, prior to distributing any information externally to Council must ensure that any confidentiality restrictions applicable to that information are adhered to.

11.6. Records management

11.6.1. Staff must maintain all records relevant to administering this policy in accordance with Council's [Records Management Policy](#).

12. POLICY BREACHES

12.1. Use of Council equipment, facilities and/or premises for a purpose which infringes copyright is expressly forbidden and will constitute a breach of this policy. Council Officials who commit such an infringement shall be personally liable under the Act. Council may also be found liable.

12.2. Council Officials who fail to comply with this policy or the Act will be subject to Council's disciplinary procedures and Council's Code of Conduct.

13. POLICY DEFINITIONS

Act	means the <i>Copyright Act 1968</i> (Cth).
Council	means Cessnock City Council.
Copyright	means a bundle of exclusive rights of the owner to publish, copy, adapt, broadcast and perform material contained in literary, dramatic, musical, and artistic works, and in computer software, sound recordings, films, and broadcasts.
Copyright Licence	means a licence assigned to an individual, business or organisation by the copyright owner for the rights to their work. Assignment of copyright and licences can include a number of limitations and conditions. These can include limitations on the type of use that can be made of the work, the period of time for which a licence applies and requirements for payment.
Owner	means the author or maker of the copyright material, but may be another person, or legal entity, in accordance with the Act.

14. POLICY ADMINISTRATION

Business Group:	Corporate and Community Services
Responsible Officer:	Governance and Council Support Coordinator
Policy Review Date:	Three years from date of adoption unless legislated otherwise
File Number / Document Number:	DOC2018/040492
Relevant Legislation: (reference specific sections)	<ul style="list-style-type: none"> ss10. 13 – 30A, 31 – 36, 39A – 44, 44D – 44F, 74 – 84, 101 – 112E, Part V and Part IX of the <i>Copyright Act 1968</i> (Cth) s 6(6) of the <i>Government Information (Public Access) Act 2009</i> (NSW) s 10.14 of the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW) Part 2 of the <i>State Records Act 1998</i> (NSW)
Related Policies / Protocols / Procedures	<ul style="list-style-type: none"> Records Management Policy Public Information Access Policy Code of Conduct Copyright Protocol

15. POLICY AUTHORISATIONS

Code	Authorisation	Role(s)
	Investigation of Copyright policy breaches	Public Officer
	Conduct compliance audits in accordance with the Copyright Policy	Public Officer

16. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	7 November 2018 / CC81/2018	New policy adopted
2		Periodic review