

FACTSHEET

WHO OWNS THE COPYRIGHT IN A PHOTOGRAPH?

For photos taken on or after 30 July 1998, the general rule on ownership depends on the purpose for which the photographs were taken:

- **if the photos were taken for "private or domestic purposes" (such as family portraits, or wedding photos), the first owner of copyright in them is the client, unless the photographer and client agree otherwise; however**
- **if they were taken for any other purpose (e.g. commercial shots or photographs of artworks), the photographer will be the first owner of copyright, unless the photographer and client agree otherwise.**

(Photographers & Copyright, Australian Copyright Council)

So, if a photographer takes a photograph of artwork and owns the copyright in that photograph, what does this mean for the artist/copyright owner of the underlying work?

When an artist/copyright owner of an artwork commissions a photographer to document their work, the photographer owns the copyright in those photographs and the artist owns the copyright in the underlying work. Because the photographer owns the copyright in the photographs the artist must seek permission from the photographer to use those photographs. This permission can be sought at the time of commissioning the photographer, for example, an agreement that the photographs would be used in the promotion of the artwork and the artist's practice, and the photographer's portfolio. This would be a photographer giving the artist an exclusive licence to use the photographs. The photographer would also need permission from the artist/copyright owner of the underlying work to use the images for a purpose other than agreed. For example, the photographer could not sell prints of the photographs without the artist's/copyright holders permission.

If a photographer was to take a photograph of an artist's work without the permission of the artists (for example in an art gallery) they would not be able to use the image for any purpose other than private and domestic without the permission of the artist/copyright holder.

If a third party wishes to licence an image of an artist's work taken by a commissioned photographer then they would need permission from the artist/copyright holder. If the use of the image fits within those agreed to by the photographer and the artist/copyright holder for the photograph then the photographer's permission does not need to be sought. If the use falls outside the agreed uses then the artist would need to seek the permission of the photographer and possibly make arrangements for further payment to be made to the photographer. The licensing fee paid by the third party may be paid to the artist or the photographer or split, depending on the agreement between the two parties.

If an artist has had their work documented by an organisation employee or a photographer commissioned by an organisation then they would need permission from the organisation (who may seek permission from the photographer) to use the photographs for any purpose.

Whether a photographer is the copyright holder in a photograph or not, they still maintain the moral right to be acknowledged as the photographer. For example, they should be acknowledged as Artist Name, Title of Work, Year. Photo: Photographer Name.

Photographing Public Sculptures

Section 65 of the Copyright Act 1968 (Cth) allows for the taking and use of, photographs of permanent public sculptures without the artist's permission. A work is on permanent public display where it is in premises open to the public or permanently in a public space. Anyone is able to take a photograph of a permanent public sculpture and reproduce this image for commercial and non-commercial purposes without seeking permission from the artist/copyright holder and without remuneration to the artist/copyright holder. This exception in the Copyright Act does not extend to other two-dimensional artistic works in the public space such as murals or mosaics which may be on permanent public display. Similarly, if an artwork is temporarily on public display (for example a sculpture walk exhibition) then this exception does not apply.

Further Information

Arts Law: [Photo Reproduction of Artworks](#)

Arts Law: [Without my Permission](#)

[Australian Copyright Council](#)