

Australian IP Law

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## Duration of Copyright

Unlike other IP rights, copyright protection lasts for an exceptionally long period. Once a work comes into existence, copyright protection begins automatically. For most types of works, copyright lasts throughout the lifetime of the creator **plus** an additional 70 years.

Type of copyright work	Length of copyright protection
Literary, dramatic, musical or artistic works where the author is known	Life of the author plus 70 years
Literary, dramatic, musical or artistic works where the author is unknown (anonymous or pseudonymous works)	70 years after the work is first published
Literary, dramatic, musical or artistic works where there is more than one author ("joint authors")	Life of the author who dies last plus 70 years
Sound recordings and cinematograph films	70 years after the recording or film is first published (i.e. made publicly available)
TV and radio broadcasts	50 years after the broadcast is first made

### 1. Extension of the copyright term

The topic of duration of copyright is contentious in Australia. Prior to 2005 the duration of protection for literary, dramatic, musical and artistic works was life of the author plus 50 years. In 2005 this term was extended by 20 years due to the *Australia-United States Free Trade Agreement*, (*AUSFTA*) which required Australia to align its copyright law with that of the United States of America. The extension provisions are retrospective, which means that the extended duration applies to all works, not just works that were created after the extension came into force. Similarly, the duration of protection for photographs was previously 50 years, but also extended in line with all other artistic works due to the *AUSFTA*. There were special provisions made to ensure that any persons who exploited photographs prior to 16 August 2004 (the date to which the *US Free Trade Agreement Implementation Act 2004* (Cth) came into existence) under the assumption that the works had entered the public domain were not found in breach of copyright. Since the duration terms were extended, there has been ongoing debate in Australia regarding what the appropriate duration for copyright protection might be.

### 2. Current Provisions

The following video provides a brief overview of the copyright duration, also known as the copyright term, in Australia for works and subject matter other than works.

**Video overview by Kylie Pappalardo on  Copyright Duration. Note this video does not include the updated provisions as of 2019**

Since the requirements of the *AUSFTA* were introduced, the duration of copyright for published literary, dramatic, musical, and artistic works is 70 years after the death of the author. <sup>1)</sup> Works that are classified as sound recordings and cinematograph films are protected by copyright for 70 years from the year of publication. <sup>2)</sup> The remainder of the copyright duration provisions are for terms less than 70 years. For Crown copyright works, the duration is 50 years from the date of creation. Similarly, copyright protection in broadcasts lasts for 50 years from the year the broadcast was first made. <sup>3)</sup> Lastly, the duration of copyright protection in published editions is 25 years from year of first publication. <sup>4)</sup>

#### 2.1. Copyright in Unpublished and Orphan Works

As of January 1, 2019, copyright in unpublished literary, dramatic, and musical works (excluding computer programs), or works where the author is anonymous or using a pseudonym, was amended. Works that have not been made public or works where the identity of the author is not generally known (orphan works), are not protected by perpetual copyright. These works now have a fixed copyright term.<sup>5)</sup>

##### Unpublished Works

Works that have not been made public will be protected by copyright for the same period as works that have been made public. Works that have not been made public will generally be protected for 70 years from the year in which the author dies. However, if a dramatic, musical or literary work (other than a computer program), or an engraving, is first made public before 1 January 2019 and the author died before the work was first made public, it will be protected by copyright for 70 years after the year in which the work was first made public. Similarly, if a dramatic, musical or literary work (other than a computer program), or an engraving, was not made public before 1 January 2019 and the author died before 1 January 1948, copyright will have expired.

The copyright term for films and sound recordings, and copyright material owned by international organisations that have not been made public, was also amended. In addition, the copyright term for works, sound recordings and films owned by a government were standardised. Unpublished material is no longer in perpetual copyright.<sup>6)</sup>

For copyright material first made public before 1 January 2019, the copyright continues to subsist until 70 years after the calendar year in which the copyright material was first made public if the material was first made public before 1 January 2019.

For copyright material never made public, and material first made public on or after 1 January 2019, the new duration provisions are:


- If the subject matter other than works is first made public before the end of 50 years after the calendar year in which the material was made, the copyright continues to subsist until 70 years after the calendar year in which the material was first made public. <sup>7)</sup>
- If the subject matter other than works is not made public before the end of 50 years after the calendar year in which the material was made, copyright subsists for 70 years after the calendar year in which the copyright material was made.<sup>8)</sup>

##### Orphan Works

If the identity of the author of a work is generally unknown and the work is made public on or after 1 January 2019:

- the work will be protected by copyright for 70 years after the year in which the work was first made public provided the work is first made public before the end of 50 years after the year in which the work is made;
- if the work is not first made public before the end of 50 years after the year in which the work was made, the work will be protected by copyright for 70 years after the year in which the work is made.

However, if the work is first made public before 1 January 2019 and the identity of the author is not generally known before the end of 70 years after the year in which the work was first made public, the copyright will expire at the end of that 70-year period. If the work is never made public, the work will be protected by copyright for 70 years after the year in which the work is made.

Content adapted from the information sheet created by staff of the University of Sydney available for use under a CC0 Creative Commons waiver and fallback licence (CC0 1.0). No attribution is required. For more information on the new duration provisions, see  [QUT's Copyright Guide Duration](#).

### 3. Finding the Balance

Governments, academics and advocacy groups both domestically and internationally have explored what the most appropriate balance may be with respect to the duration of copyright.

An economic study of copyright found that a term of approximately 25 years was appropriate to provide rights holders the opportunity to “generate revenue comparable to what they would receive in perpetuity...without imposing onerous costs on consumers”. <sup>9)</sup> The suggested term of 25 years was considered to be “sufficient to incentivise creative effort”. <sup>10)</sup>

Another study was undertaken into copyright protection using data from the US copyright register to measure the costs that is paid by the public when copyright protection is increased. <sup>11)</sup> This study suggested a copyright term of approximately 15 years after the creation of the work was sufficient and factored in the benefits of copyright for rights holders and costs of the system on the public.

Most recently, the Australian Productivity Commission undertook an inquiry into Australia’s Intellectual Property Arrangements. This inquiry provided an overview of the current copyright protection provisions and noted that, “[w]hile a single optimal copyright term is arguably elusive, it is likely to be considerably less than 70 years after death”. <sup>12)</sup>

Whilst the studies are inconclusive, some general concerns have been raised with respect to the effect of overly long duration of copyright protection may have on the copyright system. These concerns include the reduction in community welfare due to access restrictions on works that are under copyright protection and the problem of orphan works. The amendments which came into force in January 2019 begin to address some of these concerns regarding duration, especially with respect to unpublished and orphan works.

### 4. The Future: Limited Scope for Change Under International Law

These studies and inquiries into the duration of copyright indicate that the current provisions in Australia may not be optimal. Despite this, Australia does not have the unilateral ability to alter the duration provisions. As such, the debates regarding the optimal balance of copyright protection in Australia are continuous but in general, are currently a moot point.

<sup>1)</sup> , <sup>5)</sup> CA s 33

<sup>2)</sup> , <sup>6)</sup> CA s 93

<sup>3)</sup> CA s 95

<sup>4)</sup> CA s 96 Cth

<sup>7)</sup> , <sup>8)</sup> CA s 93(3)

<sup>9)</sup> , <sup>10)</sup> Landes, W. and Posner, R. 2002, Indefinitely Renewable Copyright, John M Olin Law & Economics Working Paper No 154, University of Chicago, Chicago

<sup>11)</sup> Pollock, R. 2007, Forever Minus a Day? Some Theory and Empirics of Optimal Copyright, 24 September, MPRA Paper No. 5024, Munich Personal Research Papers in Economics Archive, Munich

<sup>12)</sup> Australian Productivity Commission, Inquiry Report, Intellectual Property Arrangements No. 78, 23 September 2016