

FACT SHEET

US FREE TRADE AGREEMENT IMPLEMENTATION ACT 2004

EXTENSION OF COPYRIGHT TERM FROM 1 JANUARY 2005

What has changed?

Amendments to the Copyright Act made by the *US Free Trade Agreement Implementation Act 2004* (USFTAI Act) and the *Copyright Legislation Amendment Act 2004* (CLA Act) extended the copyright term of works, films and sound recordings from 1 January 2005. The term is now 20 years longer for works, other than photographs, and for films and sound recordings. The term for photographs has been made the same as that for other artistic works.

What materials are affected?

The term extension applies to all materials still in copyright at 1 January 2005 and made after then. **Materials in which the copyright expired before 1 January 2005 under the law before it changed are not affected, and stay in the public domain.**

*What has **not** changed?*

There has been no change to the copyright term for broadcasts or published editions. The term for works, films and sound recordings made by or commissioned by governments has not changed.

What is the new term of copyright protection?

Category of material	Term of protection	
1. Literary works (excluding computer programs), musical and dramatic works and engravings	If published or made public in author's lifetime – life of the author plus 70 years	If not published or made public at the death of the author – 70 years after publication or being made public
2. Computer programs and artistic works (including photographs, but excluding engravings – see 1 above)	Life of the author plus 70 years	
3. Anonymously and pseudonymously published works	70 years from publication, if author's identity not generally known or reasonably ascertainable before then	
4. Sound recordings	70 years from first publication	
5. Films made after 1 May 1969	70 years from first publication	
6. Broadcasts (television and sound) made after 1 May 1969	50 years from making of the broadcast (unchanged)	
7. Published editions of works	25 years from first publication (unchanged)	

The information in the above table is general. Advice should be sought in a particular case if there is doubt, eg, whether a work has been made public (see category 1 above), whether the identity of the author of an anonymously or pseudonymously published work has become known (category 3) or what the term is for a pre-1969 film (see category 5) or a joint work of two or more authors.

What if before 1 January 2005 somebody had arranged to use a work and now can't as a result of the change?

Where an agreement was made before 16 August 2004 to use material at a future time when the copyright was then expected to have expired, the intending user may now find that the change in the term has prevented the use without the copyright owner's permission. The law that extended the copyright term included a transitional scheme under which that intending user may be able to obtain relief. Advice should be sought on the applicability of the scheme to any particular case.

More information

For copies of the USFTAI Act and the CLA Act (and Explanatory Memoranda) visit: www.comlaw.gov.au

If you would like more information on copyright generally visit <http://www.ag.gov.au/copyright>, or subscribe to the Attorney-General's Department's Copyright E-news at <http://www.ag.gov.au/www/enewscopyrightHome.nsf>