

## **OWNERSHIP OF COPYRIGHT IN COMPUTER SOFTWARE**

In the absence of an agreement, the general rule under the Copyright Act 1968 is that the creator (author) owns the copyright in a literary, dramatic, musical and artistic work. In the case of films and sound recordings, however, copyright is generally owned by the producer or the maker. A computer program is deemed to be a "literary work" under the Copyright Act in which case the programmer is the owner of copyright in the computer program.

There are exceptions to the above general rule. For example, where the work is made by an employee (not a freelancer) in the course of employment and as part of the employee's normal duties, the employer will be the owner of copyright in the work.

Where the University commissions a freelance software developer to develop new software, the software developer will own the copyright in that software. For copyright to vest in the University it must be assigned to the University by entering into an agreement in writing with the software developer.

If the University wants to improve or modify an existing software it will require the permission of the owner of the copyright (if the University is not the copyright owner) in the existing software. Failure to do so will constitute a breach of copyright. The issue of ownership of copyright in the modified software should also be addressed in an agreement.

If the use of the existing software is governed by a licence agreement, the terms of such agreement must also be checked.

If you have any queries, please contact Gilbert Ducasse, Legal Services for advice on 9479 2495.

This article provides general information only. It is not a complete or definitive statement of the law on the subject matter. Formal legal advice should be sought in relation to particular matters.