

Your guide to NZ Copyright



Let's do the right thing

Infringement of Copyright: What Can I Do?

When is copyright infringed?

The rights of the copyright owner

In New Zealand, the Copyright Act 1994 gives copyright owners the exclusive right to deal with their material in certain ways, including the right to copy it, to communicate it to the public (for example, by making it available on a website or emailing it), to perform, play or show certain types of copyright material “in public” and to adapt certain types of material.

Infringement

Copyright is infringed when a person uses all, or a “substantial part”, of copyright material in one of the ways exclusively reserved to the copyright owner, without the permission of the copyright owner, where no defence or exception to infringement applies.

What is a substantial part?

A substantial part is any important or distinctive part of the original material. There are no guidelines about the quantity of material or percentage of a work which may be used without permission - it is a matter of fact and degree in each case.

However, it is often said that it is the quality of what is taken, rather than the quantity that matters. It may be enough to infringe copyright by reproducing a very small part of another person’s work, for example by reproducing a few bars of music from a musical work.

Coincidental similarity does not infringe

If someone creates a copyright work that is very similar to yours, but the similarity is coincidence and they have not copied your work, then there is no copyright infringement. For copyright infringement to occur, there must not only be a similarity between the two works but also some evidence that the similarity results from copying, either directly or indirectly.

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Authorising an infringement

A person who “authorises” someone else to infringe copyright will also infringe copyright. Courts have said that to authorise means to “sanction, approve or countenance” the infringing conduct. A person may authorise infringement by telling someone else to do something that amounts to infringement, or by permitting the use of equipment (such as a photocopier or CD burner) to infringe.

Exceptions to infringement

In some situations, people can use copyright material without permission. The Copyright Act contains some exceptions to infringement which allow certain uses of copyright works, for example, fair dealing for the purpose of research or private study, criticism, review, or news reporting. There are also special provisions for libraries, educational institutions, public bodies and for other uses.

For more information, see our information sheets *Fair dealing*, *Copyright use in the education sector*, *Copyright & libraries*, *Copyright in public administration* and *Copying for Personal use*.

Other types of infringement

Other types of copyright infringement include:

- Selling, hiring, exhibiting in public or distributing infringing copies;
- Importing infringing copies of copyright material into New Zealand; and
- Importing a copy of a film into New Zealand within 9 months of it first being legitimately made available to the public anywhere in the world, other than for the importer’s private and domestic use.

What can a copyright owner do?

Get advice

It is generally a good idea to get legal advice if you think your copyright has been infringed. You may need advice about whether a “substantial” part of your work has been used and if the person who used your work may have been able to use the work under a special exception.

If your copyright is being administered by a collecting society, you should notify the organisation of the infringement as it may be able to help with the matter. Copyright collecting societies in New Zealand include:

- Australasian Performing Right Association (APRA, www.apra.co.nz) controls the public performance and communication of music
- Copyright Licensing New Zealand (CLNZ, www.copyright.co.nz) represents authors and publishers

Decide what you want

Decide how you would like the matter resolved and what you want from the infringing party. Possible remedies you may be entitled to demand include:

- that the infringement stop;
- that infringing copies of your material be delivered to you, or disposed of as you direct;
- that either you are paid for the use of your work or you are given the profits the infringer has made from it.

In deciding how much money you are going to require the infringer to pay for use of the material, you could consider what you would have charged if your permission had been obtained (a licence fee). However, it would generally be

reasonable to ask for more than you would have charged, because your permission was not sought and you have had to chase the infringer and may have spent money on, for example, legal advice.

Contact the infringer

You may be able to resolve the matter informally by contacting the person and explaining what you want them to do to resolve the matter. Often people infringe copyright through ignorance or carelessness. In such cases, people may be willing to settle the matter in a friendly way.

If the informal approach is unsuccessful or unsuitable, the next step is usually to send a formal “letter of demand” which should include:

- a statement that you are the copyright owner (or the basis on which you can make a claim);
- how you believe that the person has infringed your copyright;
- a statement of what you require;
- a time frame in which the demand must be met (for example 14 days after the date of the letter); and
- a statement that further action may be taken if your demand is not met within the stated time frame.

Make sure you have all your facts straight. In some circumstances, making unjustified claims of copyright infringement may cause you problems under other areas of the law.

It is sensible to get legal advice on the issue before sending a letter of demand. You should also consider getting a lawyer to draft the letter for you. A letter on lawyer’s letterhead may be taken more seriously than a letter from you, even if your letter has been drafted by a lawyer.

Court action

If the matter is not settled after a letter of demand has been sent, you will need to decide whether you want to take the matter to court. Only a copyright owner or an exclusive licensee of copyright rights may take legal action for copyright infringement.

Generally, it is a good idea to get a lawyer to act for you, or to advise you on how to go about legal action and the likely result. Court action can be expensive and may not be worthwhile when considering the monetary sum you are likely to recover. You should discuss with your lawyer the costs of legal proceedings and the likely award of either:

- “damages”, i.e. a sum of money intended to compensate the copyright owner for money lost, or spent, in respect of the infringement; or
- an “account of profits”, i.e. the profit made by the infringer from continuing to infringe copyright.

Criminal penalties

In some circumstances, infringement of copyright is a criminal offence to which fines and jail terms may apply. The criminal provisions generally apply to commercial piracy.

Reporting copyright infringements

Generally, it is up to the copyright owner to take steps to deal with infringements.

However, some industry organisations, are interested in being notified of infringements of copyright in their members’ material.

Copyright Licensing New Zealand does not provide legal advice, only general information on copyright issues. If you require expert or legal advice on copyright, you should seek the services of a legal professional. For more information please [contact us](#)