

# Your guide to NZ Copyright



*Let's do the right thing*

## An Introduction to Copyright in New Zealand

### Introduction

Copyright is a set of exclusive property rights given to owners in relation to their creations.

To attract copyright protection, a work must be 'original' in the sense that it originates from the creator and is not copied from another person's work. It must result from the author exercising independent skill and labour.

Copyright law is found in the Copyright Act 1994 and in decisions of courts. The text of the Copyright Act can be found at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### Copyright protection is automatic

Copyright protection applies automatically to original works.

There is no formal system for copyright registration. You don't need to put a copyright notice on your work, publish it, or do anything else for your work to be protected.

A work is protected from the time it is first recorded, either in writing or in some other way.

### What does copyright protect?

Copyright protects the following types of "works":

- **literary works**, including
  - **written works**, such as letters, e-mails, journal articles, novels, screen plays, poems and song lyrics;
  - **tables and compilations**, including compilations of data and multimedia works;
  - **computer programs**;
- **dramatic works**, including dance, mime and film scenarios or scripts;
- **musical works**, being the music itself, separate from lyrics or sound recording;
- **artistic works**, including paintings, drawings, diagrams, maps, engravings, etchings, photographs, sculptures and architectural works;
- **sound recordings**, being the recording of sounds itself, separate to the actual music or story;
- **films**, being the moving images on a video or DVD, separate from underlying works such as scripts and music;
- **communication works**, including radio and TV broadcasts and Internet transmissions, separate from the films, music and other material which they contain;

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- **typographical arrangements of published editions**, being the layout of a published edition of the whole or part of a literary, dramatic or musical work.

Copyright protects original works, whether in hard copy or electronic form.

### Independent existence

Copyright exists independently of the physical article containing a copyright work. One physical article may contain more than one copyright. For example:

- a book may contain several literary works, each separately protected by copyright. The typographical arrangement of the edition may also be protected;
- a CD may contain a sound recording as well as several musical works and song lyrics, each separately protected; and
- a DVD or video may contain moving images, music and a screenplay, each separately protected.

### What is *not* protected by copyright?

Copyright protects the *expression* of ideas or information – not the ideas or information itself. For example, if you write a novel, the text will be protected, but not the ideas or plot. Someone could write their own novel using the same ideas, without necessarily infringing copyright. Similarly, if two authors independently create a similar work based on the same idea, without copying from each other or from someone else, there is no copyright infringement.

Some works do not attract copyright protection. For instance, names, titles, single words and headlines are usually too small or unoriginal to be protected by copyright.

Under the Copyright Act, a few types of “public” documents, such as statutes, court judgements and reports of official inquiries, do not have copyright protection.

It is important to remember that even if something doesn’t infringe copyright, it could breach other laws.

### What are copyright owners’ rights?

Copyright owners have certain exclusive rights over their material. Anyone who wants to use someone else’s copyright in any of these ways (often called “restricted acts”), generally needs permission.

Owners of copyright in *literary, dramatic* and *musical* works have the exclusive right to:

- copy their work (for example, by photocopying it, copying it by hand, reciting it onto an audio device or digital scanning);
- publish their work;
- in the case of computer programs, rent copies to the public in certain circumstances;
- communicate their work to the public (for example, on radio, TV or the Internet);
- perform their work in public; and
- make an adaptation of their work (for example by making a translation or a dramatised or pictorial version), or do any of the above activities in relation to an adaptation.

Owners of copyright in *artistic* works have the exclusive right in relation to the first three activities listed above.

Owners of copyright in *films, sound recordings*, and *communication works* have the exclusive right to:

- copy their material;
- issue copies to the public for the first time, by sale or otherwise;
- in the case of sound recordings and films, rent copies to the public;

- play or show their material in public; and
- communicate their material to the public.

Owners of copyright in **published editions** have the exclusive right to copy their material.

### **Who owns copyright?**

Usually, the creator of an original work will be the first owner of any copyright in it. There are two main exceptions:

- where a work is created in the course of employment, the employer will be the copyright owner;
- where someone commissions, and pays or agrees to pay for – a photograph, a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording – the commissioner will be the owner. In September 2008, the Government introduced a bill to remove this exception, which is often referred to as the “commissioning rule”. However, note that the bill has not yet become law.

The New Zealand government owns copyright in works made by its employees and contractors (referred to as “Crown copyright”).

These aspects of copyright law can be varied by agreement.

### **The “copyright notice” and “©”**

Although not legally required, it is sensible to include a copyright notice on copyright works. A common form of notice consists of the symbol ©, the name of the copyright owner and the year of first publication. For example:

© Josephine Bloggs, 2002

The copyright notice reminds people that the work may be protected and lets them know who is claiming copyright.

### **How long does copyright last?**

In New Zealand, copyright in literary, dramatic, musical and artistic works lasts for the life of the author plus fifty years from the end of the year in which the author dies.

Other types of copyright material have different periods of protection.

The period of copyright protection is longer in Australia, Europe and the United States – generally 70 years from the end of the year in which the author dies.

### **Assigning or licensing copyright rights**

As copyright owner, you can assign or license your copyright rights to another person.

By assigning copyright in a work, you are selling or transferring it to someone else and that other person becomes the copyright owner. An assignment of copyright should be in writing and signed by the person assigning copyright.

Copyright may also be transmitted to others on the death of the copyright owner.

Licensing means that you remain the copyright owner but permit someone else to exercise one or more of your copyright rights. For example, allowing a publisher to publish a book or allowing a script writer to adapt a novel for the screen. You can limit the rights granted (for example, by type of use, by period of time, or place of use), and impose conditions (for example, that a person cannot use the work until you receive an agreed payment, or that you must receive an acknowledgement of authorship).

Although not a legal requirement, it is sensible to record any licence agreement in writing.

### **When is copyright infringed?**

Copyright is infringed when a person uses a work in a way that is reserved to the copyright owner, without permission.

Infringement may occur in relation to a whole work or a substantial part of it. “Substantial” refers to an important or distinctive part of the work. Generally, infringement depends on the *quality* of what is taken, rather than the quantity. For instance, it may be sufficient that only a small part of a poem, story or musical composition is copied.

### **Activities which don’t infringe copyright**

There are special circumstances in the Copyright Act where a person may deal with your work without your permission. These “permitted acts” include:

- for criticism, review and news reporting;
- for research or private study;
- for educational purposes; and
- for public administration purposes.

These exceptions from infringement should be interpreted carefully because they apply in narrow circumstances only.

There are no general exemptions from copyright laws for non-profit organisations or for private or domestic use.

For further information see our information sheets *Fair dealing, Copyright & education* and *Copyright & public administration*.

### **Moral rights**

Individual creators have certain “moral rights” which give them:

- the right to be identified as the author of the work, or director in the case of a film;
- the right to object to derogatory treatment of the work; and
- the right to not have a work falsely attributed to them.

Moral rights remain with the creator, even if copyright is owned by another person.

For more information, see our information sheet *Moral rights*.

### **Performers’ rights**

Under the Copyright Act, performers have some limited rights to control the recording and live transmission of their performances.

### **International copyright protection**

New Zealand is a party to various international agreements on copyright. This means that most works created by people in other countries are also protected in New Zealand under the Copyright Act. Similarly, copyright material created in New Zealand or by New Zealand citizens will be automatically protected in other countries.

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