

**COPY
RIGHT**
LICENSING
NEW ZEALAND



Let's do the right thing

Your copyright guide



**FOR VISUAL
ARTS IN
AOTEAROA
NEW ZEALAND**

copyright.co.nz/art

What is Copyright?

Copyright is a property right that exists in certain original creative works, including visual artworks such as fine art and photography. Copyright gives artists exclusive rights to do certain things in relation to their artwork.

It means that only the artist/copyright owner can copy, publish, perform, adapt and communicate their artwork to the public, whether physically or digitally. No one else can exercise the exclusive rights unless they have the copyright owner's consent, or if the use of the artwork is covered by one of the specific exceptions contained in the Copyright Act.

Copyright comes into existence automatically as soon as the work is created, so there is no need to register it, and it lasts for the life of the creator plus 50 years after their death.



For more resources on copyright in New Zealand, visit www.copyright.co.nz/understanding-copyright

Will an artist always own copyright in their art?

There are three instances where the artist will not be the owner of the copyright in their artwork:

- 1.** The artist was in employment and the artwork was created during and within the scope of the employment (in this instance the employer owns the copyright in that artwork); or
- 2.** The artist is commissioned and paid (or there is an agreement to pay) to make a specific work (e.g. take a portrait photograph) then generally the person or organisation who “commissioned” the artwork owns the copyright in the artwork. This is referred to in the Copyright Act as ‘the commissioning rule’; or
- 3.** If the artist enters into a written agreement whereby they agree to assign the copyright to someone else – any assignment of copyright needs to be in writing.

Do artists have any other *creative* rights?

Yes! 'Moral rights' are personal rights that an artist has in their artwork. Moral rights arise automatically and last as long as copyright, but unlike copyright, they cannot be assigned or transferred, and even after the artist's death they remain a part of the artist's estate.

The Copyright Act identifies four moral rights namely:

- 1.** The right of attribution, i.e. the right of the artist to be identified and named as the creator of a work;
- 2.** The right against false attribution, i.e. the right to prevent others from being identified and named as the creator of an artists' work, or an artist being credited as the creator of someone else's work;
- 3.** The right of integrity which is the right to protect your artwork from derogatory treatment; and
- 4.** A limited right of privacy for the subjects of some photographs

FAQ's

What happens to the creative rights when an artist sells their work?

The short answer to this is that nothing changes. The copyright and the moral rights in the artwork both stay with the artist. The person buying the artwork gains the physical object, but the exclusive rights (as covered earlier) remain with the artist.

I found an image of an artwork on the internet, can I use it for free?

Any artwork that is protected by copyright in the physical world is equally protected in the digital world. Therefore, unless one of the exceptions to copyright infringement contained in the Copyright Act apply, you cannot use artworks or other materials from the internet without the permission of the copyright owner.

Does 'Fair Use' exist in New Zealand?

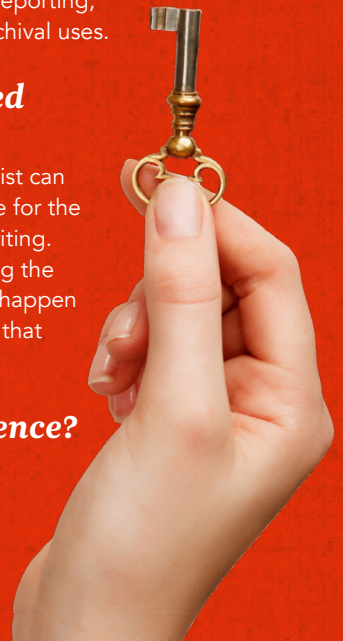
No, New Zealand does not have a "fair use" defence to copyright infringements as is available in the United States. However, some uses are permissible, even without the artist's permission. Part 3 of the Copyright Act contains certain limited acts which are permitted without the artist or copyright owners' permission. These "permitted acts" include incidental copying, criticism, review and news reporting, research or private study, and some educational and archival uses.

What can I do if my work is being used without my permission?

If the use does not fall within the permitted acts, an artist can first attempt to contact the person or entity responsible for the infringement. It is recommended that this is done in writing. Best practice is to clearly set out the concerns regarding the use of the work and include options for what needs to happen next. It may be that a licence can be agreed, or simply that the use of the work must stop.

Need help obtaining a visual arts licence?

It couldn't be simpler! Provide us the details online at copyright.co.nz/art and we'll take care of everything.



Understanding copyright in artwork

Licensing the copying (reproduction) of artwork

Anyone other than the artist, who wishes to copy or reproduce an artwork, unless in reliance on an exception in the Copyright Act, needs permission to do so. Copyright permissions (known as a licence) can be obtained either from the artist, their estate, or from a licensing agency the artist works with. The terms of a licence will include the approved use/s of the copy or reproduction that has been agreed, the duration/term of the licence and the fee.

Licensing in the secondary art market

When artworks are sold on the secondary market, copies of the artwork are often used in catalogues, social media, websites etc as marketing material for the sale. As copying is taking place, the artist's permission is needed, which may involve the payment of a licence fee. Copyright Licensing New Zealand offers a licensing scheme that simplifies this process and ensures that any copying done to promote a secondary sale is legal.

Licensing vs Resale Royalty

Resale Royalty is a mechanism for artists to continue to benefit from the increasing value of their work, after it first sells. When an artwork sells, the artist is paid a percentage of the sale price. New Zealand does not currently operate a Resale Royalty Scheme.



Who are we?

Copyright Licensing New Zealand (CLNZ) provides licences to help make the copying of visual artworks easy and legal and plays a key role in making creative rights valuable assets for all New Zealanders.

We enable New Zealand's creative people to record and manage their copyright, as well as package the copyright in such a way that content users can access the work through a simple licence.

We see ourselves as an empowering organisation, making sure everyone enjoys their rights and gets full value from them. We issue the licences, and collect the revenues to distribute back to the rightsholders.

We are a not-for-profit organisation, jointly owned by the Publishers Association of New Zealand (PANZ) and the New Zealand Society of Authors (NZSA).

To support understanding of copyright we provide online learning and information resources, and we advocate for legislation that will support the endeavours of New Zealand's talented creative people.

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FOR ALL NEW ZEALANDERS.



copyright.co.nz/art
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