

Your guide to NZ Copyright



Let's do the right thing

Obtaining Permission to Use Copyright Material

Introduction

Generally, if you want to use someone else's work (such as text, music or a photograph), in a way that copyright exclusively reserves to the copyright owner (such as copying or uploading onto a website) you need permission.

Permission is also known as a "licence" or "clearance". It must be obtained from the copyright owner, or from someone they have authorised to give permission. This may include a publisher, manager or collecting society.

For an introduction to copyright, including a description of copyright works and restricted uses, see our information sheet *An introduction to copyright in New Zealand*.

When is permission not required?

In some situations, you do not need permission to copy or communicate someone else's material.

If you are using an insubstantial part

If you intend to only use part of a copyright work, there is no copyright issue unless you are using an important, distinctive, or essential part. It depends on the circumstances of each case whether a part is so important that permission is needed to reproduce it. However, note that it is the quality of what is taken that matters, rather than the quantity. A very small part of a work can be considered substantial for the purposes of copyright infringement. You may need permission if you want to copy a small part of a poem or story, or a few bars from a song.

If the copyright has expired

You do not need permission to use a work if the copyright has expired. In New Zealand, the term of copyright in literary, dramatic, musical, and artistic works is the life of the creator plus fifty years from the end of the year of their death. Other types of copyright material have slightly different periods of protection. If a copyright exception applies

The Copyright Act 1994 provides for many situations where permission to use copyright works is not required. These include:

Copyright Licensing Limited
L4, 19-21 Como St, PO Box 331488,
Takapuna, Auckland 0740, NZ
T +64 9 486 6250
Freephone: 0800 480 271
E info@copyright.co.nz
www.copyright.co.nz

- Fair dealing for research or private study or for criticism or review. See our information sheet *Fair dealing*;
- Exceptions for educational uses. See our information sheet *Copyright and education*; and
- Exceptions for public administration. See our information sheet *Copyright and public administration*.

There are also many special provisions relating to specific works, uses or purposes. Many of these provisions are limited and subject to conditions.

If a collective licence applies

If your organisation has a copyright licence with a copyright collective, it is possible that your intended use is covered under that licence. This means that you do not need to get permission directly from the copyright owner. The following organisations are copyright collectives:

- Copyright Licensing New Zealand (CLNZ), which represents authors and publishers in providing licences to institutions that reproduce copyright material from books and journals.
- Australasian Performing Right Association (APRA), which represents songwriters and music publishers in providing licences to broadcast and publicly perform music in public, such as in shops, restaurants and other businesses.
- Recorded Music NZ which represents artists and recording labels in providing licences to broadcast and publicly perform sound and video recordings.
- OneMusic which provides efficient blanket licences to music users, providing legal access to use music in all its forms. A joint initiative between APRA and PPNZ.
- Screenrights, which represents copyright owners in film, television and radio in providing licences film, television and radio works for use by educational institutions.
- Playmarket, which which represents copyright owners in plays in providing performance licences.

Check the terms of the licence to ensure it covers your proposed use. You will need permission from the copyright owner if you want to use the work in a way that is outside the scope or purpose of the licence.

Points to note

Acknowledging creators is no substitute for permission

Merely acknowledging the creator or the source of the work is no defence to a claim of copyright infringement. You still must get permission.

Free licences

It is common to come across “free licences”, where copyright works are made available on the internet. This is where the website says that you can use the relevant copyright work without needing to ask. Check the website Terms of Use or Copyright page. It is important to read the terms to see if any conditions apply to the free licence. For example, individuals may have permission to use the work for non-commercial purposes, if the creator is properly credited. If you need a broader licence or if you are in any doubt about what you can do, you should contact the copyright owner.

It should not be assumed that all works on the Internet are available under free licences.

If you cannot identify or find the copyright owner

Generally, the fact that you cannot identify or find a copyright owner is no defence to a claim of copyright infringement.

The Copyright Act provides a defence if it is not possible to ascertain the identity of an author of a literary, dramatic, musical or artistic work after making reasonable inquiry and it is reasonable to assume that the copyright has expired or that the author died 50 years ago or more.

Sometimes when publishers and other copyright users are unable to contact a copyright owner, they make a commercial decision to go ahead and use the copyright material. They may determine that the benefits of using the work are greater than the risk of a copyright owner bringing legal action against them. Often they will include a “good faith” notice stating that they were unable to find the copyright owner but they are willing to pay the copyright owner a reasonable fee. Note, this does not give legal protection against infringement proceedings.

For more information, see our information sheet on *How to find copyright owners*.

Negotiating terms

Obtaining permission to use copyright material is a matter of negotiation with the copyright owner. The copyright owner does not have to give you permission. They may refuse or only grant permission subject to certain limitations and conditions, including the payment of a fee. If you don't have permission, you cannot legally copy or communicate the work.

Moral rights

Creators have certain moral rights under the Copyright Act, which are separate and additional to other copyright rights. This generally obliges you to:

- attribute relevant creators;
- not falsely attribute them (for example by failing to say that someone else has altered the work); and
- respect the integrity of the work (by not using it in a way that may damage the creator's honour or reputation).

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

How to obtain permission

It is recommended that you always obtain permission from the copyright owner in writing. Although a formal legal contract is not always necessary, it is sensible to at least exchange letters or emails. Keep copies of all your communications to and from the copyright owner, to ensure there is a record of the agreement.

Before contacting the copyright owner, you should check that your proposed use is not covered by a collective licence provided by a collecting society. See above under *When is permission not required?*

Your letter to the copyright owner should be reasonably detailed, to avoid any confusion. Matters to cover in the letter include:

- The date.
- The name and contact details of the copyright owner.
- A brief description of yourself and why you want to use the relevant work.
- Detailed information about the work (or specific part of the work) that you want to use. Include ISBN numbers to identify editions of books and URL links for works found on the Internet. Where possible, include page numbers, chapter titles, quotations etc.
- A precise description of how you want to use the work, including which parts of the work. For example: how many copies you want to make; where you wish to perform the work and for which audience; how

you wish to adapt the work; or how you propose to distribute the work (such as uploading it on your website, selling printed copies for profit etc).

- Request confirmation that the person to whom the letter is addressed is the only copyright owner in relation to the work. Request information on any other copyright owner that you may need to contact.
- Request permission to use the work as you have described.
- Ask if there is any preference about how you credit the work.
- Ask the copyright owner to respond to you by a nominated date. Give a reasonable time for your letter to be considered and a reply sent. Remember that the copyright owner is not obliged to reply to your letter or give permission to use the work.
- Your contact details.

These are guidelines only. There may be additional issues that need to be addressed. If you are not sure, you may need to get legal advice.

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](#)