

Copyright Protection In New Zealand

What Is Copyright?

The term "copyright" refers to a bundle of exclusive rights conferred by the Copyright Act 1994 ("the Act") in relation to original works. These rights allow copyright owners to control certain activities relating to the use and dissemination of copyright works.

Copyright protection attaches to original expression. It protects the particular manner of expressing an idea or conveying information. It cannot protect mere information, ideas, schemes or methods that are capable of being expressed in other ways.

International Copyright Law

New Zealand is party to various international agreements, including:

- The Agreement on the Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) (Annex 1C to the Agreement Establishing the World Trade Organisation (WTO) 1994);
- The [Berne Convention for the Protection of Literary and Artistic Works 1928](#) (Rome Act revision);
- The [Universal Copyright Convention 1952](#).

Whilst New Zealand is not a member of the [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961](#), we are a *de facto* member of the [Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms 1971](#) which went a little further than the Rome Convention to address the issue of "record piracy". Article 9 of the TRIPS Agreement (now the leading international convention in relation to performers, phonograms and broadcasters), incorporates Articles 1-21 of the 1971 revision.

What Qualifies for Copyright Protection?

For a "work" or type of material to qualify for copyright protection, four conditions must generally be satisfied:

- It must fall within one of the categories or subject matter in which copyright can exist;
- It must be sufficiently "original";
- The "author" must be a "qualified person"; and
- Certain works must be fixed either in writing or some other material form.

Copyright is capable of existing in original works of the following descriptions or categories:

- **Literary works:** Written works, such as novels, poems, articles, notes and song lyrics; computer programs; tables; and compilations, including compilations of works and compilations of data.
- **Dramatic works:** Includes works of dance or mime and scenarios or scripts for films and plays.
- **Artistic works:** Graphical works such as paintings, drawings, plans and maps, irrespective of artistic "quality" or merit; photographs, sculptures and models; buildings and models of buildings; and works of artistic craftsmanship which must have some artistic quality or level of skill.
- **Musical works:** Musical scores or arrangements, but not accompanying lyrics or dances (which could be separately protected as a literary or dramatic work).
- **Sound recordings:** Recordings or fixation of sounds or literary, dramatic or musical works from which sounds can be reproduced. A recording is protected separately from any copyright that may exist in the work recorded.
- **Films:** Recordings in any media from which moving images can be produced by any means, which includes video cassette (such VHS or BETA recordings), celluloid prints, digital versatile disk (DVDs) recordings, video compact disk (VCD) recordings and films stored on other types of computer disks. The images in a film are protected separately from any copyright there may be in the script or accompanying sound recording.
- **Broadcasts:** A broadcast is a transmission, that may or may not be encrypted, of a radio or television programme by wireless communication means to, or which is capable of being lawfully received by, a public audience. Copyright arises in respect of broadcasts independently of any copyright in the content.
- **Cable programmes:** A cable programme is an item (such as a television programme or film) that is included in a cable programme service. A cable programme service is a transmission service by means of a telecommunication system (other than by wireless communication means) to a public or subscription audience. Copyright arises in respect of cable programmes independently of any copyright in the content carried.
- **Typographical arrangements of published editions:** The typeset or image of the published edition of the whole or part of a literary, dramatic or published work (that may or may not itself be protected by copyright). Copyright in a typographical arrangement exists independently of copyright in the published work.

What Does Not Qualify for Copyright Protection?

Copyright protection does not apply to certain government works such as:

- Parliamentary Bills;
- Acts of Parliament;
- Regulations;
- Bylaws;
- Parliamentary debates;

- Select Committee reports;
- Court and tribunal judgements; or
- Reports of Royal Commissions, Commissions of Inquiry, Ministerial Inquiries or Statutory Inquiries.

It is possible that reprints or publications of this material by non-governmental parties could give rise to copyright in terms of any new typographical arrangements employed in reprinted works.

Rights Conferred by Copyright

Under the Act, the owner of copyright in a work has the "exclusive right" to do certain "restricted acts" in relation to the work. These include:

- Copying the work;
- Publishing, issuing or selling copies of the work to the public;
- The right to perform the work in public;
- Playing the work in public;
- Showing the work in public;
- Broadcasting the work or including the work in a cable programme service;
- Making an adaptation of the work or doing any of the above activities in relation to an adaptation; and
- Authorising any other person to do any of the restricted activities listed above.

How Long Does Protection Last?

Copyright protection applies to a work only for a limited period of time. This varies depending on the category of the copyright work. Generally speaking, the relevant periods of protection for the categories of works protected under the Act are:

- **Literary, dramatic, musical or artistic works:** Copyright protection lasts fifty years from the end of the calendar year in which the author dies.
- **Artistic works industrially applied:** Copyright protection lasts sixteen years from the time the work is industrially applied.
- **Works of artistic craftsmanship industrially applied:** Copyright protection lasts twenty-five years from the time the work is industrially applied
- **Sound recordings and films:** Copyright protection lasts fifty years from the end of the calendar year in which the sound recording or film was made or made available to the public, whichever is the latter.
- **Broadcasts and cable programmes:** Copyright protection lasts fifty years from the end of the calendar year in which the broadcast is made, or the cable programme is included in a cable programme service.
- **Typographical arrangement of published editions:** Copyright protection lasts until twenty-five years from the end of the calendar year in which the edition was first published.

Once copyright in a work expires, the work falls into the "public domain" and can be freely used.

Exceptions to Copyright

There are a number of exceptions to the rights outlined in the Act. These are called "permitted acts". These reflect instances where Parliament has determined that the wider public interest, or the interests of particular groups, makes it necessary to restrict or limit the rights granted to copyright owners.

Permitted acts include:

- "fair dealing" - for the purposes of criticism, review, news reporting, research or private study;
- limited copying or dealing in the work for particular educational purposes;
- limited copying or dealing in the work by librarians or archivists in specific circumstances;
- exceptions in respect of certain activities by the Crown;
- copying for the purposes of making copies that are in Braille;
- subject to certain conditions, the making of a back-up copy of a computer program; and
- recording a television programme for the purpose of making a complaint or for "time shifting" purposes so that a programme can be watched at a more convenient time.

There is no general exception to copyright infringement for private or domestic copying, including "format shifting", of legitimately purchased recordings from one medium to another to allow playing or viewing via other devices.

How Do You Protect Your Copyright?

Under the Act, copyright protection comes into existence automatically upon the creation of any original work.

Registration of copyright is not required and no formal system for the registration of copyright exists in New Zealand.

Although not required by law, it is a good idea to include a copyright statement or notice on a work. This will inform others that the work is subject to copyright protection and that consent is not granted for others to copy the work or deal with it in any other way restricted by copyright.

A common form of copyright notice consists of the © symbol, the name of the copyright owner and the year the copyright work was first published. For example: © Ministry of Economic Development, 2002.

Copyright Protection Overseas

The Act gives effect to the various international agreements to which New Zealand is a signatory.

Participation in these Agreements means that when an original work is created in New Zealand, it is not only protected by copyright in New Zealand, but also automatically protected under the copyright laws in other countries that are members of the World Trade Organisation. As in New Zealand, it is not necessary to register for copyright protection in these countries - copyright protection arises automatically upon the creation of any original work. This means that when original works are created in other countries, they are also protected in New Zealand.

Copyright Licensing

If a person wants to use a copyright work in a way that may infringe copyright of that work, he or she can ask the copyright owner for a licence to use that work. If granted, the licence will usually specify the ways in which the work can be used. Usually the licence holder will have to pay the copyright owner for the use of the copyright work. A copyright owner is under no obligation to grant a licence to use the work.

In New Zealand, there are a number of organisations representing copyright owners. These organisations are authorised to grant copyright licences for particular purposes and collect licence fees (or "royalties") on behalf of copyright owners.

For more information, please contact:

Address: Copyright Council of New Zealand
PO Box 36 477
Auckland 1309
Northcote

Phone: 09-480 2711

Fax: 09-480 1130

Website: www.copyright.org.nz

A list of organisations that are members of the Copyright Council is available on our Useful Intellectual Property-Related Websites page.

Copyright Tribunal

The Copyright Tribunal is a statutory body pursuant to section 205 of the Act. The Tribunal hears disputes relating to the provision of licences allowing the copying, performing and broadcasting of works. In addition, some proposed or operative schemes for licensing can be referred by interested parties.

Any person who believes that a copyright owner has unreasonably refused to grant a licence for the copying, performing or broadcasting of a copyright work may apply to the Tribunal. The Tribunal decides whether the applicant is entitled to a licence and on what terms. This only applies where the copyright owner has set up a scheme for licensing the use of copyright works.

For further information, please contact:

Address: Copyright Tribunal
Department for Courts
PO Box 5027
43-49 Balance Street
Wellington

Phone: 04-918 8330

Fax: 04-918 8303

Email: library@courts.govt.nz

Website: www.courts.govt.nz/tribunals/index.html

Performers' Rights

Performers' rights are a type of intellectual property right known as a "neighbouring" or "related" right as they neighbour or are related to copyright (but arise independently from any copyright that may exist in the work itself that is the subject of a performance).

Performers' rights are provided for in Part IX of the Act. The Act provides performers with certain limited rights to control the exploitation of their performances where they have not given consent to that exploitation. Protected performances are defined in the Act by reference to the traditional categories of works protected by copyright, including dramatic performances, musical performances, readings and recitations of literary works and performances of a variety act.

Performances by students or staff of an educational establishment; news reading or other information delivery; sporting activities; and participation in a performance by members of an audience are excluded.

Performers' rights are infringed if a performance, or a substantial part of a performance, is exploited without the performer's consent. The Act distinguishes between the exploitation of "live performances" and performances that have been embodied in audio-visual media such as sound recording and films. A number of acts constitute infringement of a performer's rights in live performances including the recording, broadcast or inclusion in a cable programme of a live performance. A performer's rights are also infringed when a recording of a performance that has been made without the performer's consent is broadcast, shown, played, copied, imported or sold.

Performers' rights arise in respect of each performance. The first owner of a performance is always the individual performer. There is no concept of group ownership in the Act and members of a group do not have collective rights in a group's performance.

There is no provision for the assignment of performers' rights. In practice, producers require performers to consent to the exploitation of their performances. Where consent is obtained, a producer will be in much the same position as he or she would have been if a performer had transferred those rights by assignment.

The term of protection provided to performers is fifty years from the end of the calendar year in which the performance takes place.

Moral Rights

Authors and directors have certain "moral rights" in addition to the economic rights provided under the Act. These rights include:

- The right to be identified as the author of a work (the right of attribution);
- The right to object to derogatory treatment of the work (the right of integrity); and
- The right not to have a work falsely attributed to them.

Moral rights cannot be assigned to another person except upon the death of the author.

Further Information

Contact Details

Address: Intellectual Property Policy Group
Regulatory and Competition Policy Branch
Ministry of Economic Development
33 Bowen Street
PO Box 1473
Wellington

Phone: 04-472 0030

Fax: 04-473 4638

Email: info@med.govt.nz