

What copyright protects and how it works.

White paper written by [Tom Hill](#), Copyright Licensing New Zealand, March 2022.

What is copyright?

The basic idea of copyright law is to give creators the right to decide how their work will be used. The creator can choose whether they retain, commercialise, or permit others to exercise the rights the law gives them.

Copyright gives creators rights to copy, publish, publicly perform, transmit and adapt their material. These rights are not absolute though: in some cases it provides for others to use copyright works without having to get the copyright owner's permission.

Copyright encourages creation

One of the main reasons for copyright is to incentivise creation and dissemination of works. Society places significant value on creative and intellectual resources such as books, journals, newspapers, art works, music and films. If creators can earn rewards for their efforts, this may stimulate more creativity and innovation for the public benefit. Research carried out by the Ministry of Business, Innovation and Employment established that 90% of creators surveyed thought copyright was important and 77% sought to derive revenue from their work.

Copyright balances the rights of creators and users

No property right is absolute and there are limits on the rights given to creators. Balances are built into the law so that sharing of knowledge and ideas is not undermined by copyright. It provides exceptions from copyright infringement in special cases like certain educational or research uses. It also permits licensing schemes by organisations like Copyright Licensing New Zealand to facilitate use of copyright material by heavy users including businesses and education organisations.

The origins of copyright

Modern copyright law originated in England in 1709 with the Statute of Anne. Its aim was to prevent publishers printing and distributing books without the consent of authors. Since then laws have been introduced globally. Keeping track with advances in technology, copyright laws have been progressively developed and updated.

In New Zealand, copyright law is governed by the [Copyright Act 1994](#). New Zealand is a party to various international agreements and treaties on copyright. Participation in these means that when an original work is created in New Zealand it is protected under our laws and also under laws of other participating countries, including United Kingdom, Australia or the United States.

What types of works are protected?

Copyright applies to a broad range of material made available in hard copy or digital form. In New Zealand works protected include literary, dramatic, musical, and artistic works; the typographical arrangement of published editions; sound recordings; films; and communication works (such as TV/radio broadcasts and internet transmissions).

A “work” is the intangible result of an author’s creative or intellectual effort, expressed in a material form. Copyright exists in a work separately and independently of the tangible object it is contained in. Buying a book means you acquire a property right in the physical item but not in the text (the literary work), images (artistic works) and design layout of the book (typographical arrangement).

There are usually several copyright works in a single item or resource. A book, journal or computer database may contain separate stories, articles and software, illustrations, photographs and typographical arrangement – all are capable of copyright protection.

Copyright is not intended to give anyone ownership or rights in ideas or information, although other laws may protect these things. It is the original way ideas or information is expressed or conveyed that is protected.

How does copyright protection arise?

Copyright protection arises automatically under the Copyright Act once an original work is written down or recorded in some way; material published on the internet is protected to the same extent as material recorded or published in other ways. The work does not need to be published to be protected and registration is neither required nor formally possible here. It is not necessary for a copyright notice or symbol to be placed on a work for it to be protected, although it is common practice to include them to signify copyright terms.

Only original works are capable of copyright protection. The work must be original to the author, meaning that it has involved some independent skill, labour or judgement by the author. A simple poem that took five minutes to write is just as eligible for copyright protection as a heavily researched academic article or a prize-winning novel. To qualify for protection, a work cannot infringe another work.

Economic rights arising from copyright protection

The creator’s fundamental right is to decide how their work will be used. The law provides a set of exclusive rights to do certain activities in relation to their work or to authorise another person to do them. These rights can be described as economic rights because they provide creators with an option to earn a living from their creative effort. These can be summarised as the right to:

- Copy a work, for example by photocopying it, copying it by hand, reciting it onto an audio device, digital scanning or any other means.
- Issue copies of the work to the public for the first time, often called the “publishing right”.
- Perform, play or show the work in public.
- Communicate the work to the public, on radio, TV, transmitting electronically or making available online.
- Adapt the work, including to translate a poem from one language to another or converting a novel into a film script, and do any of the above activities in relation to an adaptation.

From a content user’s point of view, these rights are referred to as “restricted acts”. Users who want to copy or do any of the restricted acts generally needs to ask for permission, unless a copyright exception applies.

Other rights arising from copyright

Certain creators have a moral right to be identified as such, to object to derogatory treatment of their work, such as modification, and to object to other works being falsely attributed to them. There is a requirement that the right to be identified be “asserted” to be enforced, and where this has happened the creator must be identified reasonably prominently in relation to all copies of the work. In a book, for example, the assertion may be included on one of the first pages.

Performers have some limited protections to control the recording of their live performances and live transmission to the public, without consent.

Ownership of copyright

Under the law the creator of an original work is usually the first owner of copyright in it. The rights belong to the creator automatically as soon as an original work has been put into material form, such as in writing.

Although the general rule under the Copyright Act is that the creator is first owner of copyright in a work, there are exceptions listed in the Act:

- Where a work is created in the course of employment, the employer will own copyright. The phrase “in the course of employment” involves consideration of the totality of the employee’s role and the scope of their employment responsibilities, but if a person creates a work as part of his or her job, then copyright is generally owned by the employer.
- Where someone commissions a person and agrees to pay them for a photograph, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, sound recording or computer program, the person who commissioned the work will own copyright.
- Where a work is created in the course of employment by the Crown (such as a government department) or created by a Crown contractor, the Crown will own copyright.

These rules can be varied by agreement: some employment agreements may contain a provision that an employee owns copyright in certain works they create during the term of an employment contract and some commissioning agreements may stipulate that the artist retains copyright in works created.

There may be more than one copyright owner in a work, for example, where two or more people collaborate on a work or where copyright has passed to several beneficiaries under a will. In a published edition, there can be several separate categories of copyright work in:

- the literary work or works.
- the typographical arrangement of the published edition.
- artistic works, such as each illustration, photograph or diagram.

Each work incorporated in a published edition may have a different copyright owner and a different copyright duration.

As copyright is a property right, copyright ownership can be bought, sold, transferred and given away like any other form of personal property. Moral rights are personal to the creator, so they cannot be sold or transferred to another person.

How long does copyright last?

During the term of copyright, anyone who wishes to copy or do another restricted act in relation to the relevant work must get permission from the copyright owner, unless the use is permitted under the Copyright Act. When the term of copyright expires, a work passes into the “public domain” and it may then be freely used without the need for permission.

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. For a work of joint authorship, the fifty years runs from the death of the last surviving author.

Copyright in sound recordings and films expires fifty years from the end of the calendar year in which the sound recording or film was made, or was legitimately made available to the public – whichever is the later. Copyright in a communication work lasts for fifty years from the end of the calendar year in which it is first communicated to the public.

Copyright in the typographical arrangement of a published edition lasts for 25 years from the end of the year of publication. This shorter period of copyright protection does not affect the duration of copyright in material contained in the published edition, such as stories, text and images.

Copyright protection for most material covered by Crown copyright lasts for 100 years from the end of the year in which the work was made. Crown copyright in typographical arrangements of published editions lasts for 25 years from the end of the year in which the work was made.

The period of copyright protection is longer in some other countries, including Australia, Europe and the United States. In these countries the copyright term is generally 70 years from the end of the year in which the author dies. This means that even if a work is in the public domain in New Zealand it could still be under copyright protection in another country.

Exceptions to copyright

Copyright is also concerned with users’ rights. It balances the right of authors to choose how their creations are used with society’s interest in allowing users to access intellectual and creative content. The law attempts to achieve this balance in a variety of ways, such as limiting the period of copyright protection, excluding some types of documents from copyright protection, and by allowing exceptions from infringement in certain cases.

The law permits use of copyright works in some cases without the need to get permission. There are many different statutory exceptions, which can be summarised into the following categories:

- Fair dealing which applies to people engaged in news reporting, criticism or review and research or private study.
- Exceptions applicable to particular kinds of institutions or users: limited exceptions that apply in the educational context, in libraries and archives and in public administration.
- Exceptions for particular uses in specific circumstances: a collection of ad hoc exceptions.

Arguably the most important exceptions are the fair dealing exceptions. Fair dealing allows people to deal with copyright material for specific purposes where it is fair to do so, without the need to get permission from copyright owners. Fair dealing is intended to balance a copyright owner’s right to protect their works (so as to provide incentives to create), with the public interest in permitting others to use those works in certain cases.

A “fair dealing” with a work does not infringe copyright if it is for the purpose of research or private study, criticism or review, or news reporting.

There can be significant differences between the copyright limitations in NZ and those under the law of other countries. NZ does not have a general “fair use” defence as exists in United States copyright law, nor does our law permit use of copyright material for the purposes of parody and satire.

New Zealand law determines the rules that apply to use of copyright material in this country. Use of material outside NZ is governed by the copyright rules in the relevant country. If copyright in a NZ work is infringed in the US for example, the NZ copyright owner will be able to take action under the relevant US law and will be entitled to the same protection as a US copyright owner.

Contract terms can change copyright rules

The Copyright Act sets out default rules establishing exclusive rights and limitations on copyright, but contracts can be used to modify these, for example by permitting more use of copyright works than is allowed under the Copyright Act. Someone may gift copyright to another person by merely signing a deed of transfer to this effect.

Contracts dealing with copyright may divide copyright in various ways, for example, by specifying type of use allowed, duration of use, or place of use. Contracts generally impose conditions, for example, requiring payment of a fee or acknowledgement of authorship.

Contracts may also assign—transfer or sell—copyright rights to another person. An assignment must be in writing and signed by the person assigning copyright to be legally effective.

How can copyright material be protected?

Copyright protection is automatic in New Zealand and most other countries including the United States. In the US, there is also a copyright registration system. If you plan to distribute your material in the US, there can be advantages in registering the copyright at the US Copyright Office if ever legal proceedings for copyright infringement need to be filed there.

It is good practice to ensure that a copyright notice is placed on or nearby all physical or digital copies of copyright material. As a minimum, the notice may be the universal copyright symbol, followed by the name of the copyright owner and the year, e.g.: © Pearl White Limited 2016. This alerts the reader to the fact that the work is protected and that the person named claims to be the copyright owner. It also helps people who want to contact you to seek permission to use your work.

Infringement of copyright

In general, copyright is infringed if a person does any of the restricted acts listed in the Copyright Act in regard to someone else’s copyright. The most common form is copying, meaning reproducing or recording that work in any material form, such as by hand, photocopying, scanning, downloading or storing on a computer.

Copying occurs when all, or a substantial part, of the copyright material is copied. “Substantial” refers to any important, distinctive or essential part. What constitutes “substantial” is a matter of fact and degree in each case, although it is often said that it is the quality of what is taken that matters, rather than the quantity. It may be enough to infringe copyright by reproducing a very small part of another person’s work if it is important or significant in some way.

A person may be vicariously liable for copyright infringement committed by others if they authorised the infringing act, so an employer may be liable for an employee's infringement. To authorise generally means to "sanction, approve or countenance" the infringing conduct. However, there are many factors at play in considering what will amount to authorisation and "turning a blind eye" may in some cases amount to authorisation.

There are prohibitions on importation of infringing copies of copyright material, although this is limited to people importing illegally produced copies of copyright material. There is no restriction on the parallel importation of material, i.e. goods that are legitimately produced in the country of manufacture, even if it would have infringed copyright had they been made in NZ.

What if your copyright is infringed?

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.

Contact [Copyright Licensing New Zealand](#) to discuss your organisation's print licensing needs.

This white paper is intended only as general information and not as legal advice. If you require expert or legal advice on copyright, you should seek the services of a legal professional.