

Your guide to NZ Copyright



Let's do the right thing

Copyright and Libraries

This information sheet is for librarians and information managers. It provides introductory information about copyright and briefly outlines the provisions of the Copyright Act relating to libraries.

Introduction

- Libraries have evolved with the pace of technological development. They have transformed from physical repositories for published works – to information brokers.
- Libraries can provide users with digital and online access – as well as hard copy access – to a vast, worldwide repertoire of works.
- Librarians and information managers have a professional responsibility to provide services within a legal and ethical framework, which includes intellectual property rules.
- Copyright is a part of intellectual property law and provides incentives for creators to create, publish and distribute works. It gives a set of exclusive property rights to owners in relation to their creations, encouraging innovation and dissemination of new material – for the benefit of the community.
- Copyright creators and owners want their works to be accessed and used by the widest possible audience. However, they also want the ability to control the right to receive fair remuneration for the use of their work.
- 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.

What types of work are covered by copyright?

Copyright protects certain works, whether in hard copy or electronic form. These are:

Literary works: Material that is written, spoken, or sung, including words of a book, song poem, magazine, article, speech. Includes computer programs.

Dramatic works: Includes a play, dance, mime, film scenario or script.

Artistic works: Includes a painting, drawing, diagram, map, photograph.

Typographical works: The typographical layout of words and associated elements on a page of books, magazines, journals, newspapers, posters, websites etc.

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Musical works: Musical compositions (scores and sheet music).

Sound recordings: A recording from which sounds may be reproduced, such as audio tapes, CDs.

Films: Moving images such as 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.

Rights of copyright owners

Copyright owners have exclusive rights in relation to their work, to:

- **Copy** (photocopy, scan, record, download and store);
- **Issue copies to the public** (publish or distribute copies);
- **Perform, play or show** in public;
- **Communicate** to the public their work to the public (e.g. on radio, TV or the Internet);
- **Adapt** (e.g. translate a work from one language to another)

The Copyright Act qualifies copyright owner rights by allowing others, including libraries and archives, to use copyright works in certain circumstances (called “permitted uses”). The *Library Permitted Use Table* on page 5 of this information sheet summarises permitted uses relevant to the library and information sector.

Who owns copyright?

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

- where a work is created in the course of employment, the employer will be the 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.
- where works are made by Crown employees and contractors, the NZ government owns copyright (referred to as “Crown copyright”).

These positions can be varied by agreement.

Often there is more than one copyright owner in a single work. For example, while the author of a book may own copyright in the literary work, the book publisher has rights in the typographical layout of the work which exist independently from the written work.

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. A publisher’s copyright (the copyright in the typographical layout of a published edition) lasts for 25 years. Other types of copyright material have different periods of protection.

Material not protected by copyright

A few specific types of “public” documents such as statutes, court judgments and official reports do not have copyright protection.

Getting permission to use copyright works

Generally, if you want to copy someone else’s copyright work (or use it in any of the other restricted ways), you need permission from the copyright owner. This means you need to contact that person or company directly to negotiate

permission. If there is more than one copyright owner in a single work, you may need permission from more than one person. It's a good idea to always get permission in writing.

In some cases, organisations can get licences from copyright collectives which give blanket permission to use copyright works in various ways (see paragraph 10).

Contracts

Contracts may permit more (or less) use of copyright than is allowed under the Copyright Act. The terms of any contract you enter into covering the use of a work will have an impact on how you can use it. Contracts generally override the provisions of the Copyright Act.

Use of subscription materials, such as online databases, will be governed by contract terms. Website material will usually be accompanied by terms and conditions which must be adhered to.

When can you copy without permission?

You don't need permission to use a copyright work if:

- *The work is no longer protected by copyright.* If the period of protection has expired, usual copyright rules no longer apply. Take care in determining whether copyright in a work has expired. If in doubt, assume that every work is covered by copyright.
- *Only an insubstantial part of the work is used.* "Insubstantial" covers a small and unimportant part of a work. Use caution when assessing substantiality. In most cases, research, study and other uses will call for use of a substantial or important part.
- *A copyright exception applies* – There are special circumstances in the Copyright Act where a person may deal with a copyright work without permission. These include:
 - Fair dealing for criticism, review and news reporting;
 - Fair dealing for research or private study;
 - Certain educational uses; and
 - Certain public administration uses.

There are also special privileges for libraries and archives which allow them to copy certain types and amounts of copyright material for their clients, for their own collections and for other libraries. See the *Library Permitted Use Table* below.

Blanket licences

Often the permitted uses in the Copyright Act do not give organisations the access they require to use copyright works for education or business purposes. There are a number of licensing schemes available that extend what can be done under copyright law. These include:

- Licence to copy from printed published works: Copyright Licensing Limited <http://www.copyright.co.nz/>.
- Licence to copy television and radio broadcasts: Screenrights www.screenrights.org/.
- Licence to copy, perform and make recordings of musical works: The Australasian Performing Rights Association <http://www.apra.co.nz/>.

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Library Permitted Use Table

This table sets out the provisions under the Copyright Act relevant to the library sector. The library provisions are available to “prescribed libraries”, including the National Library, Parliamentary Library, certain educational and government libraries and other non-profit libraries prescribed under regulations. If you are in any doubt about the status of your library it is advisable to check before you copy.

Type of work	What you can do	Important limitations	Section
Literary, dramatic, musical work: published book	Copying for library user's research or private study purposes	<ul style="list-style-type: none"> No person can be supplied on the same occasion with more than one copy. Copying must be at specific request of the individual user (or another prescribed library user) for their own purposes. The copy cannot be further copied. Copying limited to a “reasonable proportion” of book or one article in a periodical. More than one article may be copied from the same issue if they relate to the same subject matter. Includes artistic work only if included in work copied (not as a standalone image). Library may charge no more than copying cost and a reasonable contribution to expenses. Excludes computer programs. 	51 -53

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		<ul style="list-style-type: none"> When a <i>digital</i> copy is supplied, the librarian must give the user a written notice setting out terms of use of the copy. Any additional copy made in the digital copying process must be destroyed as soon as practicable. 	
Literary, dramatic, musical work: published book	Copying for collections of other prescribed libraries, where work unavailable for purchase	<ul style="list-style-type: none"> Librarian of other library must have been unable to obtain the work at an ordinary commercial price within preceding 6 months. Record of copying to be kept. Copyright owner may inspect record and may request payment of equitable remuneration. Includes artistic work only if included in work copied (not as a standalone image). Excludes computer programs. When a <i>digital</i> copy is supplied, any additional copy made in the digital copying process must be destroyed as soon as practicable. 	54
Any item in library collection	Copying for preservation or replacement in own library	<ul style="list-style-type: none"> A copy (other than digital copy), may be made and placed in the library collection in addition to or in place of the item, but can only be made where not reasonably practicable to purchase a copy of the item to fulfil the purpose. <i>Digital</i> copy can only be made for preservation in your own library if (a) the original item is at risk of loss, damage or destruction, (b) the copy replaces the original item (c) the original item is not accessible to the public (except if research requires access to original), and (d) it is not reasonably practicable to purchase a copy of the original item to fulfil the purpose. 	55
Any item in library collection	Copying for replacement of an item that has been lost, destroyed, or damaged in another prescribed library	<ul style="list-style-type: none"> A copy (other than digital copy), may be made only be made where not reasonably practicable to purchase a copy of the item to fulfil the purpose. <i>Digital</i> copy can only be made for this purpose if it is not reasonably practicable to purchase a copy of the original item to fulfil the purpose. 	55
Unpublished works	Copying for library user's research or private study purposes	<ul style="list-style-type: none"> Limitations as per ss 51 – 53. Not allowed if copyright owner has prohibited copying. Library may charge no more than copying cost and a reasonable contribution to expenses. 	56
Digital work	Communication of a digital copy (e.g. via e-mail, onsite access, remote access) to authenticated library users	<ul style="list-style-type: none"> The librarian must have obtained the digital copy lawfully. The librarian must ensure that that each user is given written information about copying and communication limits under the Copyright Act. 	56A

		<ul style="list-style-type: none"> • The digital copy must be communicated in a form that cannot be altered/modified. • The number of users able to access the digital copy at any one time is limited to the number of copies purchased or licensed by the library. • Can only be communicated to users who have a legitimate right to use the library services and can access the material only through a verification process (such as a user password). 	
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There are several miscellaneous copyright exceptions in the Copyright Act, some of which are relevant to libraries. These include:

Type of work	What you can do	Important limitations	Section
Anonymous literary, dramatic, musical, artistic work	Any use where identity of author unknown after reasonable inquiry	<ul style="list-style-type: none"> • Must be reasonable to assume that copyright has expired or that the author died at least 50 years ago. • Excludes Crown copyright. 	67
Literary work: abstract from scientific or technical article	Copying and issuing such copies to the public		71
Computer programs, sound recordings, films	Renting	<ul style="list-style-type: none"> • Must not be rented for the purposes of making a profit. • The work must have been put into circulation with the copyright owner's permission. 	79
Computer programs	Copying to make a back-up copy	<ul style="list-style-type: none"> • Copy must be made by or on behalf of the lawful owner of the original, for their sole use. Cannot back-up from an infringing copy. • Does not apply if contrary to any express direction of the copyright owner. 	80

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