

Copyright for Film & Television Producers

Overview

Moving images – including feature films, documentaries, short films, home videos, animated films, television programmes and commercials – are protected as “films” under the Copyright Act 1994. Copyright protection applies automatically and there is no need to register copyright for the film to be protected.

Films generally incorporate a set of separate copyrights, including copyright in the screenplay, visual images and soundtrack. Film producers need to ensure they have clearance to use any third-party copyright works included in their film.

What does copyright protect?

Copyright protects the following types of “works”:

- **literary works**, including novels, screen plays, poems and song lyrics;
- **dramatic works**, including dance, mime and scenarios or scripts for films;
- **musical works**, being the music itself, separate from lyrics or sound recording;
- **artistic works**, including paintings, drawings, diagrams, maps, photographs, sculptures and architectural works;
- **sound recordings**, being the recording of sounds itself, separate to the actual music or story;
- **films**, being the moving images on a video or DVD, separate from the underlying works such as scripts and music;
- **broadcasts and cable programs**, separate from the films, music and other material which they contain;
- **typographical arrangements of published editions**, being the layout of a published edition of the whole or part of a literary, dramatic, or musical work.

Copyright ownership exists independently of the ownership of physical property containing a copyright work. Just because you own a physical item, such as a DVD of *What We Do in the Shadows*, does not mean you own the copyright in the film itself.

One physical item may contain more than one copyright. For example, a DVD may include the film itself, as well as literary, dramatic, musical works and pre-existing sound recordings included in the film.

Copyright protects a film regardless of the format it is recorded in. For example, a film may be recorded onto 16mm film, video, DVD, or other digital formats.

Ownership of copyright in films

The first owner of copyright in a film is generally the person who makes all the arrangements necessary for the making of the film – usually the film producer. However, the producer will not necessarily own copyright in all of the material incorporated in the film.

In some cases, someone else may be the first owner of copyright in the film:

- **Employees** – If you have produced a film in the course of your employment, your employer is the first owner of copyright, unless there is agreement to the contrary.
- **Commissioned material** – If another person has commissioned and pays or agrees to pay you to make a film, the commissioner is the first owner of copyright unless there is agreement to the contrary.
- **Films made for the government** – Where a film is made by a person employed or engaged by the New Zealand government, the government is the first owner of copyright in the work (also known as “Crown copyright”).

Privacy rights in certain films

Where a person commissions you to make a film for private or domestic purposes (for example, a wedding video), but does not own the copyright, that person has certain privacy protection in relation to the film. The protection consists of the right not to have the film:

- published;
- exhibited or shown in public; or
- included in a broadcast or cable programme.

Rights as a copyright owner

The Copyright Act 1994 gives copyright owners in films the exclusive right to:

- copy the film, including taking a photograph of any image in the film;
- issue copies of the film to the public for the first time (by sale or otherwise)
- rent copies of the film to the public (although non-profit educational establishments and some libraries are allowed to rent copies);
- show the film in public; and
- broadcast the film or include it in a cable programme service.

The owner of copyright in the film script also has the right (depending on the circumstances), to translate the script into another language or create a literary version, such as a novel.

The copyright owner can authorise another person to do any of the above activities.

How long does copyright last?

Copyright in a film lasts for the longer of:

- 50 years from the end of the year in which the film is made; or
- 50 years from the end of the year in which the film is legitimately made available to the public.

The period of copyright protection is longer in Australia, Europe and the United States – generally 70 years from the end of the year in which the creator dies.

When is copyright infringed?

Copyright is infringed when another person does something in relation to the film in a way that is reserved to the copyright owner, without permission.

Infringement may occur in relation to a whole film or a substantial part of the film. “Substantial” refers to an important or distinctive part of the film. Generally, infringement depends on the quality of what is taken, rather than the quantity. A person who takes a photograph of a single image forming part of the film could infringe copyright in the film.

There are special circumstances in the Copyright Act where a person may copy your work without your permission.

These are:

- for criticism, review and news reporting;
- for research or private study;
- for educational purposes; and
- for public administration purposes.

These exceptions from infringement should be interpreted carefully because they apply in narrow circumstances only. For further information see our information sheets Fair dealing, Copyright & education and Copyright & public administration.

Copyright symbols and notices

Although not legally required for copyright protection, it is sensible to include a copyright notice on your work. A common form of copyright notice consists of the © symbol, the name of the copyright owner and the year the work was first published, for example:

© Jane Doe, 2002

Protection overseas

New Zealand films are protected by copyright in most other countries and material created in most other countries is protected by New Zealand law.

Moral rights

Although film producers do not have moral rights under the Copyright Act, film directors and creators of literary, dramatic, musical and artistic works that may be included in films, have certain moral rights.

Moral rights include the right to be identified as the director of a film or author of a work in certain circumstances. For example, when a film is exhibited in public, the film director has a right to be identified as the director. Similarly, scriptwriters have the right to be identified as author of the screenplay.

The right to be identified as the author of a work must be asserted to be enforced. This means that a creator needs to require a person to identify them as the creator. In practice, the form and manner of film credits is usually dealt with by agreement.

The other moral rights are:

- the right to object to derogatory treatment of the work; and
- the right not to have a work falsely attributed to them.

Moral rights remain with the creator, even if copyright is owned by another person.

For further information see our information sheet *Moral rights*.

When to get clearance in film making

Film producers must have permission to use any copyright material included in their film.

Copyright may not be infringed if a copyright work is “incidentally” copied in a film. For example, if a scene shows a painting on a wall that is not a focal point, it is likely to be incidental copying. However, permission will be needed if music is incidentally and deliberately captured on the film soundtrack. It is prudent for film producers to obtain written clearance in relation to all copyright works incorporated in the film.

Tāwhia Copyright Aotearoa 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.