

Copyright for Visual Artists

Tāwhia Copyright Aotearoa provides services for New Zealand visual artists. We provide an efficient way for visual artists like you to licence your works to organisations who wish to use it, giving you more control over how your work is used and helping you to derive income from uses. By taking care of licensing for you we let you get on with what is most important to you.

If you are an artist, you will be paid when your work is reproduced. As your licensing agency, we can ensure that if someone wants to use your art, they obtain permission and pay you for it. We take care of negotiating terms of use, sending quotes and invoices to the organisation using your work, and we will arrange payment to you.

There is no cost to sign up and you maintain 100% ownership of your work. What are you waiting for? We have been working with New Zealand authors and creatives in the publishing industry for over 25 years and we are excited to be able to offer the same licensing management services to visual artists.

Frequently Asked Questions

What is copyright?

Copyright is a property right that exists in certain original works and which gives its owner the exclusive right to do certain things in relation to that work. It means that only the copyright owner has the right to copy, publish, perform, adapt and communicate their work to the public, whether physically or digitally. These rights can be retained by the creator or given to another person. No one else can exercise those rights unless they have the copyright owner's consent, or they are covered by an exception under the Copyright Act.

In New Zealand, copyright in most creative material comes into existence automatically as soon as the work is created and lasts for the life of the author plus 50 years after the author's death. It is not possible, or required, to register copyright in New Zealand.

Are copyright laws in NZ the same as copyright laws overseas?

Not necessarily. In New Zealand, copyright law is made up by the Copyright Act 1994 and various court decisions. Although our copyright law has many similarities with the laws in other countries, there can be significant differences too, for example, in relation to copyright duration, ownership and exceptions from infringement. Generally, the law of the relevant country determines the rules that apply to the use of the material in that country.

Does copyright protect everything I create?

Copyright protects original literary, dramatic, musical, or artistic works, sound recordings, films, communication works (such as broadcasts and internet transmissions) and typographical arrangements of published editions.

Under some circumstances copyright will not apply, for example if it is not original and therefore infringes someone else's copyright.

How do I get copyright?

If the work is capable of copyright protection, then it is automatically copyright protected; registration is not necessary nor possible in New Zealand. The moment you express your idea or concept in some fixed form so that it is an original work, copyright arises, and your work will be protected.

While the symbol © is a helpful way to notify people that the work is protected by copyright, it is not necessary to get copyright protection.

Do I always own copyright in my creations?

Usually yes, but not always. If what you have created is capable of copyright protection, you will usually own copyright in it unless:

- You create the copyright material as an employee during and within the scope of your employment (in this instance your employer owns the copyright in that material); or
- If you are commissioned and paid (or there is an agreement to pay you) to make a specific work (e.g. take a portrait photograph, or make a computer programme) then generally the person or organisation who commissioned it owns the copyright in the work.

This is known as 'the commissioning rule' and applies unless there is an agreement in writing stating otherwise. The rule only applies to specific types of artistic works including photographs, computer programmes, films, and sound recordings.

What is the purpose of the copyright symbol ©?

Because copyright automatically applies the presence or absence of the © symbol does not affect the existence of copyright over a work. However, it is a good idea to place the © symbol on a work along with your name and date of creation, to let people know that the work is copyright, and who the copyright owner is.

I have a great idea; how do I protect it?

Copyright protects the tangible expression of ideas but not ideas themselves. If your idea is expressed in some tangible way, then it is that tangible expression that receives copyright protection. If you have a great idea but have not yet expressed it in some material form, then copyright law will not be relevant.

If you keep your idea in your head then it is unlikely anyone can copy it, and if you want to talk about it or share it with others then it may be a good idea to get them to sign a confidentiality or non-disclosure agreement before you tell them your idea.

What can I do if someone is using my work without my permission?

The first thing is to determine whether the use is permissible, even without your permission. The Copyright Act contains certain exceptions to copyright based on uses of creative works that parliament decided were desirable when the Act was written. In addition to those exceptions, any unauthorised use must be “substantial” to count as infringement. Part 3 of the Copyright Act deals with permitted acts in relation to copyright works and includes incidental copying, criticism, review and news reporting, research or private study, educational and archival uses.

Once you have determined that none of the exceptions apply to someone else’s use of your work, you should contact the person or entity responsible for the infringement. We recommend that you do so in writing. Best practice would be to write the infringer a letter or email clearly stating your concerns and outlining your copyright claim. You should demand they immediately stop the infringing use as well as claim any damages that you have suffered and specify a reasonable period for them to comply with your demands.

Can I use images or other materials from the internet?

It is best not to: you can’t assume that all material found on the internet is free for everyone to use as they wish. Any work that is protected by copyright in the physical world is equally protected in the digital world. Therefore, unless one of the exceptions to copyright infringement contained in the Copyright Act apply - for example you have copied the work for the purpose of criticism or review, or for research or private study, or for certain educational purposes - you cannot use images or other materials from the internet without the permission of the copyright owner.

There are two important exceptions to the above:

1. If the copyright in the work has expired—i.e. the work has entered the 'public domain' as the copyright owner died more than 50 years ago—then it would be ok to use works found on the internet; and
2. Sometimes copyright owners give a licence to the world at large to use their work, most commonly under a Creative Commons licence. Please note though that most Creative Commons licences are subject to terms and conditions, including the requirement that the work be attributed to the copyright owner.

If you have any doubts about your intended use and whether it is permissible, you should contact the copyright owner before using the work.

Is it OK to copy 10% (or even 1%) of someone's work without their permission?

As a general rule it is not ok to copy any part of someone else's work without their permission as this could be a breach of their copyright. Although the Copyright Act states infringement can only occur if the whole or a 'substantial' part has been copied, there is no specific number that is the cut off between insubstantial and substantial.

'Substantial' refers to an important or distinctive part of the work and generally, infringement depends on the quality of what is taken, rather than the quantity. A part has been deemed substantial if it is an important or essential part of the material and could arguably apply to a title or short phrase if important enough.

What do 'fair use' and 'fair dealing' mean?

'Fair use' does not apply in New Zealand but is a concept from the United States that provides a defence for certain uses of copyright works without authorisation from the copyright owner. It is a more flexible, open-ended concept than the defined 'fair dealing' exceptions that are contained in the NZ Copyright Act (these are limited to specific uses for the purposes of review, criticism, news reporting, education, libraries and archiving.)

What are 'moral rights' and do I have any?

'Moral rights' are personal rights that an author or creator of a work has in their work. Moral rights arise automatically and last as long as copyright, but unlike copyright, they cannot be assigned or transferred, and even after your death they remain a part of your estate.

The Copyright Act identifies four moral rights namely:

1. The right of attribution, i.e. to be identified and named as the author of your work;
2. The right against false attribution, i.e. the right to prevent others from being identified and named as the author of your work or being credited as the author of someone else's work;
3. The right of integrity which is the right to protect your work from derogatory treatment;
and
4. A limited right of privacy for the subjects of some photographs and films.

What can I do if a magazine has not credited me as the author of a photograph they have published?

Under the Copyright Act you have a moral right of attribution in relation to your photograph. Unless there is some good reason in the circumstances for the lack of credit, or if you have clearly consented to the photograph being published without a credit, then the magazine has infringed this right.

You should send the magazine a letter or email of demand asking them to remedy the situation by republishing it with a credit to you, and/or whatever other remedy makes the most sense in the situation.

What is a Creative Commons licence?

Creative Commons is an organisation that provides a non-exclusive licensing system that allows creators or copyright owners to grant others a licence to use their work as long as certain conditions are met. There are various types of Creative Commons licences for different needs. It is important to consider the terms and conditions carefully if you are thinking about applying a Creative Commons licence to your work. Remember there are also alternatives to Creative Commons licences.

Will the subject of my photograph acquire rights in the photograph?

In New Zealand, the 'commissioning rule' contained in the Copyright Act may mean that the person 'commissioning' the taking of a photograph is also the first copyright owner of that photograph. Even if the subject does not own the copyright, they may still have certain privacy rights in the photographs under the Copyright Act, such as the right not to have copies of the photograph issued to the public.

Both circumstances are best provided for in a contract or release agreement to ensure both photographer and subject are clear on who owns which rights. See AIPA or NZIPP for sample release agreements.

Can I take photographs or film in public places?

The Copyright Act specifically provides that there is no breach of copyright by representing buildings, sculptures or other works of artistic craftsmanship that are permanently displayed in public spaces. This implies that while sculptures and works of artistic craftsmanship that are displayed in public spaces are not copyright protected, other original artistic works are protected.

There are potentially other legal issues such as moral rights which you may need to consider before reproducing someone else's copyright material, even if it is a sculpture or work of artistic craftsmanship permanently displayed in a public space, and so you should consult with the copyright owner.

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.