

INFORMATION SHEET

Copyright Use in the Education Sector

The Copyright Council of New Zealand does not provide legal advice. The purpose of this information sheet is to give introductory information only. If you need to know how the law applies in a particular situation, please seek legal advice.

This pamphlet is for education administrators and teachers. It outlines **who can do what** legally when it comes to using copyright material in the educational sector and will help you and your institution safeguard the copyright in your teaching resources.

1. What types of work are covered by copyright?

Most educational resources are copyright works. Just because a work is freely available, for instance on the Internet or as promotional material, does not mean it is copyright-free. Many resources, including texts, websites and CD ROMs, contain several different types of copyright.

Literary works	Material that is written, spoken, or sung, provided it is recorded in some way, including words of a book, song (without the music) 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, sculpture, collage, model, work of architecture.
Typographical works	The typographical layout of words and associated elements on a page of books, magazines, journals, newspapers, posters, websites etc.
Musical works	Musical compositions (scores and sheet music) but not including any sound recordings or lyrics.
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	Includes radio and TV broadcasts and Internet transmissions – separate from films, music and other material they contain.

2. 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** (on radio, TV or the Internet).
- **Adapt** (e.g. translate a poem from one language to another, adapt a novel into a film script)



The Copyright Act qualifies copyright owner rights by allowing others to use copyright in certain circumstances (called “permitted uses”). The *Permitted Use Table* on page 4 summarises permitted uses relevant to the education sector.



3. Who owns copyright?

The first owner of copyright in a work is normally the creator. If you create a work in the course of your employment, the employer owns copyright in the work. To enable other staff to photocopy your work without any delay, you should put the name of the institution in the footer of all pages.

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.

Copyright can be transferred from one person to another like any other form of property.

4. 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.

5. 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.

6. 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. Often there will be more than one copyright owner in a single work, so you may need permission from more than one person. It’s a good idea to always get permission in writing.

In some cases, institutions can get licences from copyright collectives which give blanket permission to use copyright works in various ways (see paragraph 9).

7. Contracts

Contracts may permit more (or less) use of copyright than is allowed under the Copyright Act. The terms of any contract you or your institution enters 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 CD ROMs and online databases, will be governed by contract terms. Website material will usually be accompanied by terms and conditions which must be adhered to. If you buy or hire a video or DVD, the terms of use on the article will indicate whether you can show it at your institution.

8. 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, educational purposes will call for use of a substantial or important part.
- *A "permitted use" applies* – See the *Permitted Use Table* on page 4.

9. Blanket licences for educational institutions

Usually the permitted uses under the Copyright Act do not give institutions enough leeway to use copyright for educational purposes. There are a number of licence schemes available to institutions that extend what you can do under copyright law. These are:

- One-stop-shop licensing scheme for schools, available through the New Zealand School Trustees Association (NZSTA): www.nzsta.org.nz/.
- Licence to copy from printed published works: Copyright Licensing Limited <http://www.copyright.co.nz/>.
- Licence to copy from many New Zealand daily, business and community newspapers and magazines: The Print Media Copyright Agency www.pmca.co.nz/.
- Licence to copy television and radio broadcasts: Screenrights www.screenrights.org/.
- Licences to copy, perform and make recordings of musical works: The Australasian Performing Rights Association <http://www.apra.co.nz/>.

You should check whether your institution has any of these licences and be familiar with what the licences allow you to do.

10. Where do I go for more information?

More information on copyright can be found at:

- The copyright licensing organisations referred to in paragraph 9.
- The Copyright Council of New Zealand – www.copyright.org.nz/.
- Te Kete Ipurangi The Online Learning Centre – www.tki.org.nz/.



PERMITTED USE TABLE

This table sets out the copyright permissions under the Copyright Act that may be relevant to the education sector. **The table does not include the extended permissions available under educational licensing schemes.**

Important words and phrases – Commonly used phrases and their meanings:

“Communicate” – Transmit or make available through a communications technology, such as on a website, by e-mail or by broadcasting.

“Educational establishment” – Most educational permitted uses apply in “educational establishments” only. All schools, public tertiary institutions and non-profit PTEs are educational establishments for copyright purposes. If you are in any doubt about the status of your institution, get some advice.

“Fair dealing” – Specific dealings with copyright by individuals are allowed, provided the dealing is “fair” in the circumstances. Fairness depends on: the purpose of the copying, the nature of the work copied, whether the work could have been obtained within a reasonable time at an ordinary commercial price, the effect of the copying on the potential market for or value of the work, and the amount and substantiality of the work copied.

“Prescribed library” – The library provisions in the Copyright Act are available to “prescribed libraries”. All libraries within educational establishments are prescribed libraries. If you are in any doubt about the status of your library, get some advice.

“Sufficient acknowledgement” – Identification of the title and author of the work.

“Whole work” – An article in a newspaper, a single story, poem, illustration or photograph are whole works, even when they are published as part of a collection. In limited cases, copyright allows you to make a copy of a whole work. In others, copyright limits the amount of a work you can copy.

PERMITTED USE	TYPE OF WORK	WHAT YOU ARE ALLOWED TO DO?	IMPORTANT LIMITATIONS	SE C
Fair dealing	Any	“Fair dealing” for own research or private study (not for educational purposes of institution or teacher)	<ul style="list-style-type: none"> One copy only, for own individual use. Does not permit multiple copying, copying for students, or directing students to make their own copy. A small extract, up to 10% may be used as a rough guideline. Sometimes it is “fair” to copy a whole work such as a poem or journal article. It would not be fair to copy a whole book unless it is not available for purchase. Copy from an original work only. Copy can not be further copied. 	43
	Any	“Fair dealing” for criticism or review (not for educational purposes of the institution or teacher)	<ul style="list-style-type: none"> Must be “sufficient acknowledgement”. Generally covers copying or broadcasting a small extract from a work. In some circumstances it may permit copying of a whole work, such as a poem reproduced in an essay critiquing a poet’s work. 	42 (1)
	Any	“Fair dealing” for reporting current events in a sound recording, film or broadcast		42 (2)
	Any, except photos	“Fair dealing” for reporting current events in print media	<ul style="list-style-type: none"> Must be “sufficient acknowledgement”. 	42 (3)



PERMITTED USE	TYPE OF WORK	WHAT YOU ARE ALLOWED TO DO?	IMPORTANT LIMITATIONS	SE C
Education	Literary, dramatic, musical, artistic, typographical work	Single copying for instruction purposes	<ul style="list-style-type: none"> • Copying must be done by or on behalf of a teacher giving a lesson. • No more than one copy on one occasion. Does not permit multiple copying, copying for students, making available for students to copy. • You are <i>not</i> permitted to communicate the copy. This means that you can not place the copy on an intranet or e-mail it to students. 	44 (1)
	Literary, dramatic, musical, artistic, typographical work	Hand-written copying of up to a whole work, by teacher or student for instruction purposes		44 (2)
	Literary, dramatic, musical, artistic, typographical work	Multiple copying (by any means) of small extracts for educational purposes	<ul style="list-style-type: none"> • This covers copying for students. Limited to 3% or 3 pages, whichever greater. Where this would cover a whole work (such as a poem, short story or article), copying is limited to 50% of the work. • The work you copy from must not be copied again at the institution within 14 days and no charges can be made to students for this copying. • You are permitted to communicate copies to students. This means you can put the copy on an intranet for students to download or e-mail a copy to students. 	44 (3) – (6)
	Artistic work	Multiple copying of up to a whole work for educational purposes		44 (5)
	Works on websites	Storing webpages for educational purposes.	<ul style="list-style-type: none"> • The material must: <ul style="list-style-type: none"> ○ be displayed under a separate frame or identifier, ○ identify the author (if known) and the source of the work, ○ state the name of the establishment and the date of storage. • The material must be restricted to use by students and teachers, who can access the stored material only through a verification process (such as a user password). • The establishment must delete the stored webpage within a reasonable time, once it is no longer relevant to the course of instruction for which it was stored. 	44 A
	Sound recording, film, communication work (and works included therein)	Copying for educational purposes of making a film or film soundtrack	<ul style="list-style-type: none"> • Copying to be done by or on behalf of teacher giving or student receiving lesson. • No charge can be made for the supply of copies. • There is no permission to show the film or play the soundtrack in public. 	45 (1) (2)



Education	Sound recording (and works included therein)	Copying where the lesson – relates to the learning of a language or – is conducted by correspondence	<ul style="list-style-type: none"> Copying to be done by or on behalf of teacher giving or student receiving lesson. No charge can be made for the supply of copies. 	45 (3) -(5)
	Published literary, dramatic, or musical work in an anthology	Copying of short extracts from a work in an anthology (intended for use in educational establishments), for educational use	<ul style="list-style-type: none"> Anthology must consist mainly of non-copyright or Crown copyright material or copyright material owned by the anthology publisher. Only allowed if the publisher of the work (from which the extract is being copied) did not intend work to be used in educational establishments. Must be “sufficient acknowledgement”. Can not copy more than 2 extracts from works of same author published by the same publisher over 5 year period. 	46
	Literary, dramatic or musical work	Performance by students or staff for instruction purposes	<ul style="list-style-type: none"> Only before an audience of students or staff at an educational establishment. Parents/guardians excluded. Performance before a paying or public audience not permitted. 	47 (1) (3)
	Sound recording, film, communication work	Playing or showing for the purposes of instruction	<ul style="list-style-type: none"> Only before an audience of students or staff at an educational establishment. Parents/guardians excluded. Performance before a paying or public audience not permitted. 	47 (2) (3)
	Communication work	Copying and communication for educational purposes	<ul style="list-style-type: none"> Not allowed if there is a licensing scheme available and the institution knows this fact. Screenrights administers a licensing scheme for off-air recording and copying for NZ institutions. Educational resource suppliers may supply copies to an institution unless there is a licensing scheme available and the institution or the supplier knew that fact. 	48
	Any	Any use for examination purposes – setting or communicating questions to candidates or answering questions.	<ul style="list-style-type: none"> Unlikely to extend to the storage of exam papers in library databases for future reference and study by students. Examinations include assessments such as NCEA. 	49
	Computer programs, sound recordings, films	Renting	<ul style="list-style-type: none"> Must not be rented for the purposes of making a profit. Not allowed if the terms under which the institution or teacher acquires the item prohibits renting. The work must have been put into circulation with the copyright owner’s permission. 	79



PERMITTED USE	TYPE OF WORK	WHAT YOU ARE ALLOWED TO DO?	IMPORTANT LIMITATIONS	SE C
Librarians	Literary, dramatic, musical work	Copying for individual user's own research or private study (not for educational purposes of institution or teacher)	<ul style="list-style-type: none"> • One copy only, for own individual use. Copying must be at specific request of a library user. Copy can not be further copied. • Copying limited to a "reasonable proportion" of book or one article in a periodical. • Includes artistic work only if included in work copied. Excludes computer programs. • When a digital 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. 	51 -53
	Literary, dramatic, musical work	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. • Includes artistic work only if included in work copied. Excludes computer programs. • 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, or replacement of an item that has been lost, damaged or destroyed in another prescribed library	<ul style="list-style-type: none"> • Only where not reasonably practicable to purchase a copy to fulfil the purpose. • Digital copy can only be made for preservation if (a) the original item is at risk of loss, damage or destruction, (b) the copy replaces the original item, and (c) original item not accessible to the public (except if research requires access to original). 	55
	Unpublished works	Copying for user's research and private study	<ul style="list-style-type: none"> • Not allowed if copyright owner has prohibited copying. • No person can be supplied on the same occasion with more than one copy. • When a digital 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. 	56
	Any item in digital format	Communication to 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. • 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 and can access the material only through a verification process (such as a user password). 	56 A
	Computer programs, sound recordings, films	Renting	<ul style="list-style-type: none"> • Must not be rented for the purposes of making a profit. • Not allowed if the terms under which the library acquires the item prohibits renting. • The work must have been put into circulation with copyright owner's permission. 	79



PERMITTED USE	TYPE OF WORK	WHAT YOU ARE ALLOWED TO DO?	IMPORTANT LIMITATIONS	SE C
Misc.	Any	Incidental copying in an artistic work, sound recording, film or communication work and issuing, playing, showing such copies to public	<ul style="list-style-type: none"> No deliberate copying of music or lyrics is allowed under this provision. 	41
	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 (spoken words)	Recording for the purpose of reporting current events or communicating to the public	<ul style="list-style-type: none"> Must be a direct recording (in writing or in any other way) of words spoken live. Making the recording must not be prohibited by the speaker and where copyright already existed in the work, did not infringe copyright. 	68
	Literary, dramatic works	Copying, communicating or adapting to provide persons who have a print disability with Braille or other modified copies	<ul style="list-style-type: none"> Only prescribed bodies may use this provision and certain conditions apply. 	69
	Literary, dramatic work	Reading or reciting a work and making a sound recording of / communicating to the public	<ul style="list-style-type: none"> The reading or recitation must be by one person only, of a reasonable extract only. There must be a sufficient acknowledgement of the work. A sound recording or communication to the public may be made only if the recording or communication consists mainly of other material. 	70
	Literary work (abstract from scientific technical article)	Copying and issuing such copies to the public		71
	Artistic work (a building)	Copying by painting, drawing, photographing or filming, or communicating a visual image, or issuing copies to the public		73



Misc.	Artistic work (sculpture, building models, craft works)	Copying by painting, drawing, photographing or filming, or communicating a visual image, or issuing copies to the public	<ul style="list-style-type: none"> The work must be permanently situated in a public place or in premises open to the public. 	73
	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. Can not back-up from an infringing copy. Does not apply if contrary to any express direction of the copyright owner. 	80
	Computer programs	Decompilation of computer programs expressed in a low level language	<ul style="list-style-type: none"> Decompilation must be necessary to get necessary information to create an independent program. The information can not be used for any other purpose. Can not decompile if the information is otherwise readily available. Certain conditions apply. A copyright owner can not "contract out" of this provision. 	80 A 80 D
	Computer programs	Copying or adapting if necessary for lawful use	<ul style="list-style-type: none"> Covers, for example, error correction. A properly functioning and error-free copy of the program must not be available within a reasonable time at an ordinary commercial price. A copyright owner can not "contract out" of this provision. 	80 B, 80 D
	Computer programs	Anything done to observe, study or test a program	<ul style="list-style-type: none"> Must be done while performing the acts of loading, displaying, running, transmitting or storing the program, as entitled. 	80 BA
	Sound recordings	Playing as part of the activities or for the benefit of, a non-profit club, society or other organisation	<ul style="list-style-type: none"> Organisation must be charitable or concerned with advancement of religion, education or social welfare. Any admission charge must be for the purposes of the organisation. 	81
	Communication works	Playing or showing in public to a non-paying audience	<ul style="list-style-type: none"> No admission charge may be made. Provision does not apply if a subscription fee is payable to receive the transmission. 	87