



INFORMATION SHEET

Visual artists & copyright

May 2007

The Copyright Council of New Zealand does not provide legal advice. If you require further information or need to know how the law applies in a particular situation, please seek advice from a lawyer.

Introduction

Artistic works are automatically protected by copyright when they are created. There is no need to register copyright or go through any process for your work to be protected by copyright.

A wide range of things are “artistic works”, including:

- paintings, drawings, diagrams, maps, charts or plans;
- engravings, etchings, lithographs, woodcuts, prints;
- photographs;
- sculptures;
- collages;
- models;
- architectural works, being buildings or building models; and
- works of artistic craftsmanship that do not fit into any of the above categories (such as works by silversmiths, potters, woodworkers and hand-embroiders).

Generally, it is not necessary for a work to possess artistic quality or have aesthetic appeal to be protected as an artistic work. It is often said that copyright protects the mundane as well as high art. However, to attract copyright protection, a work must be ‘original’ in the sense that it originates from the creator and is not copied. It must be a product of the author (creator) exercising independent skill and labour.

Copyright does not protect ideas, information, styles or techniques used in creating an artistic work – copyright protects the work itself.

For further information on copyright for photographers, see our information sheet *Photographers & copyright*.



Ownership of copyright in artistic works

The creator of an artistic work is generally the first owner of copyright in the material. However, there are some exceptions:

- *Employees* – If you have created an artwork in the course of your employment, your employer is the first owner of copyright, unless you have agreed otherwise.
- *Commissioned material* – For many artistic works made pursuant to a commissioning agreement, where the commissioner pays or agrees to pay the artist to make the work, the commissioner is the first owner of copyright. This rule applies unless there is agreement to the contrary. Works covered by the commissioning rule are:
 - photographs;
 - graphic works, including paintings, drawings, diagrams, maps, charts, plans and engravings (but not including etchings, lithographs, woodcuts, prints or similar works); and
 - models and sculptures.

Although there is no requirement for a commissioning agreement to be written down, it is sensible to put it in writing to avoid confusion and disputes in the future.

- *Work done for the government* – Where a work is made by a person employed or engaged by the New Zealand government, the government is the first owner of copyright in the work.

Rights as a copyright owner

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

- copy their work, including making a copy in 3 dimensions of a two-dimensional work and making a copy in 2 dimensions of a three-dimensional work;
- publish their work, for example making copies of the work available to the public for the first time; and
- broadcast their work or include it in a cable programme service.

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

The owner of copyright in an artistic work does not have a right to prevent the work being shown to the public, for example by being exhibited in a gallery or displayed on a wall. However, the copyright owner does have the right to prevent the work being put on the internet because this would involve making a copy of the work.

In some circumstances, artists have the right to be identified as the creator of a work. Refer to the section below on “Moral rights”.

How long does copyright last?

In New Zealand, copyright in an artistic work lasts for the life of the creator plus fifty years from the end of the year in which the creator dies. For artistic works



industrially applied, copyright protection lasts sixteen years from the time the work is industrially applied.

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 artist dies.

Copyright in works made by employees or contractors for the New Zealand government (Crown copyright), lasts for 100 years from the end of the year in which the work was made.

When is copyright infringed?

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

Infringement may occur in relation to a whole work or a substantial part of the work. “Substantial” refers to an important or distinctive part of the work. Generally, infringement depends on the quality of what is taken, rather than the quantity.

Certain artistic works that are permanently displayed or open to the public can be photographed, drawn or filmed and commercialised without infringing copyright. These works are: buildings, sculptures, models for buildings and works of “artistic craftsmanship”.

Where an artist does not own copyright in an artistic work they created, they may still copy the work in making another artistic work, without infringing copyright, as long as the main design of the earlier work is not repeated or imitated. However, the artist is not permitted to commercialise the work.

There are special circumstances in the 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:

© Josephine Bloggs, 2002



Protection overseas

As a result of international treaties such as the Berne Convention, New Zealand artworks are protected by copyright in most other countries and material created in most other countries is protected by New Zealand law.

Moral rights

Artists have certain “moral rights” which give them the right to:

- be identified as the author of the work;
- object to derogatory treatment of the work;
- not have a work falsely attributed to them.

When an artwork is exhibited in public (or used in a number of other ways), the creator has a “moral right” to be identified as the creator. The right to be identified as the author of a work must be asserted to be enforced. This means that an artist needs to require a person to identify them as the author.

Moral rights remain with the artist, even if copyright is assigned to another person or if copyright is initially owned by the artist’s employer. Moral rights last until the artist dies and can not be transferred or sold to another person.

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

Further information

For further information about copyright, see our website [http: www.copyright.org.nz](http://www.copyright.org.nz).

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