

## COPYRIGHT GUIDE FOR THE TERTIARY EDUCATION SECTOR

This Guide is designed to provide comprehensive information about copyright for participants in the tertiary education sector in New Zealand. This sector encompasses a broad and diverse range of tertiary educational institutions (“TEI”s) providing higher education or vocational training opportunities. TEIs range from public institutes such as universities, polytechnics and wānanga to private or industry training providers. Participants in the tertiary sector include TEIs, their teaching staff and students. Students include year 12 and 13 school students who may already be accessing tertiary education through their secondary school. This Guide is provided for information only and does not take the place of specific legal advice.

Section 1 of this Guide provides an introduction to copyright in New Zealand; Section 2 provides general guidance on aspects of copyright having particular relevance to the tertiary education sector; Section 3 provides specific information on copyright for teaching staff at TEIs; and Section 4 provides specific information for researchers and students at TEIs.

First a few words about the provider of this information, Copyright Licensing NZ. We work to make copyright easier for our local content creators and users through collective rights management. We work mainly with text-based material; similar organisations deal with other types of media.

For creators, we collect and distribute international and local revenue. For content users, we provide a range of licences that both expand the possible range, quantity, and types of uses of material and also simplify copyright compliance. Generally, we encourage copyright education and advocate for copyright policy that balances the rights of content creators with the needs of content users.

### 1. INTRODUCTION TO COPYRIGHT

#### (a) What this section is about

This section of the Guide provides an introduction to copyright law in New Zealand. It summarises the general principles of copyright, explains its purpose and highlights key aspects of New Zealand’s copyright framework.

#### (b) What is copyright?

##### (i) Author’s choice

The basic premise of copyright law is that the author has the right to decide how their work will be used. In most cases, the author is the person who creates a work. (In this Guide, the term “author” and “creator” are used interchangeably.) Generally the author is free to choose whether they retain, commercialise or authorise others to exercise one or more of their copyright rights.

##### (ii) A set of rights

Copyright is a form of intellectual property right. It provides authors with a set of exclusive property rights in a wide range of works, including written, artistic, musical and audio-visual creations. Copyright gives the person who creates an original work exclusive rights to copy, publish, publically perform, transmit and adapt their material. The set of rights is not absolute. In some cases copyright also provides for others to use copyright in certain ways without having to get the copyright holder’s permission.

## **(c) Copyright's purpose**

### **(i) Incentive to create**

One of the reasons for copyright is to provide an incentive for the creation and dissemination of creative works that meet our social and economic needs, including the promotion of learning and education. Society places significant value on creative and intellectual resources such as books, journals, newspapers, art works, music and films. So if creators are able to earn just reward for their efforts, this is likely to stimulate more creativity and innovation for the public benefit. In fact, research carried out by the Ministry of Business, Innovation and Employment established that 90% of creators surveyed thought copyright was fairly important or very important and 77% sought to derive revenue from their work.

### **(ii) Balancing rights**

No property right is absolute and there are limits on the exclusive rights granted to authors under the law. Checks and balances are built into the copyright system to ensure that the sharing of knowledge and ideas is not undermined by copyright protection. The law's aim is to balance the protection of author rights with the legitimate interests of the public in having access to socially valuable works.

## **(d) Source of copyright**

### **(i) Copyright law origins**

Modern copyright law originated in England in 1709 with a piece of legislation known as the Statute of Anne, which granted authors the exclusive right to print books for a period of fourteen years. Books covered by copyright needed to be registered and a prescribed number of copies deposited in a library. The aim of the statute was to prevent publishers printing and distributing books without the consent of authors and to encourage the composition of "useful books". Since 1709 copyright laws have been introduced into most countries around the world and along with significant advances in technology, copyright laws have been progressively developed and updated to adapt to modern times.

### **(ii) Copyright Act 1994**

In New Zealand, copyright law is governed by the Copyright Act 1994 and various court decisions which have interpreted it. The full text of the Copyright Act can be accessed at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### **(iii) Copyright internationally**

- a. New Zealand is a party to various international agreements and treaties on copyright. Participation in these means that when an original work is created in New Zealand it is protected here under our laws and also automatically protected under copyright laws of other participating countries, including United Kingdom, Australia or the United States. Similarly, original works created in those countries will be automatically protected here.
- b. Copyright law has many similarities with laws in other countries. The network of international treaties and agreements means that there are minimum standards of protection adopted in participating countries. However there can be significant differences too, for example, in relation to copyright duration, ownership and exceptions from infringement. It is important to remember that the use of any copyright works in New Zealand, including overseas material, is governed by the

laws of this country. Different rules may apply when distributing material in other countries or making material available to an international readership on the internet.

**(e) What material is protected?**

**(i) The types of protected works**

Copyright applies to a broad range of material whether available in hard copy or digital form. The categories of works protected by copyright are: literary, dramatic, musical and artistic works; the typographical layout of published editions; sound recordings; films; and communication works (such as TV/radio broadcasts and internet transmissions).

**(ii) Copyright separate to the physical item**

Copyright exists in a work separately and independently of the tangible object it is contained in. Buying a book means you acquire a property right in the physical item but not in the text (the literary work), images (artistic works) and design layout of the book (typographical arrangement).

**(iii) There can be many works in a single item**

There are usually several types of work in a single item or resource. A book, journal or computer database may contain separate stories, articles and software, illustrations, photographs and typographical arrangement – all of which are capable of copyright protection.

**(f) How does copyright arise?**

**(i) Automatic protection for material expression**

Copyright protection arises automatically once an original work is written down or recorded in some way, such as on paper, on canvas or in digital form. Material published on the internet is protected to the same extent as material recorded or published in other ways. Registration of copyright is not required and there is no formal system for recording copyright in New Zealand. It is not necessary for a copyright notice or symbol to be placed on a work for it to be protected.

**(ii) No protection of ideas or information**

Copyright is not intended to give anyone ownership or rights in ideas or information (although other laws may protect these things). It is the original way ideas or information is expressed or conveyed that is protected.

**(iii) Original works only**

Only original works are capable of copyright protection. The term “original” when used in the copyright context has little to do with literary or artistic merit. It is generally sufficient if the work is original to the author, meaning that it has involved some independent skill, labour or judgement by the author. A simple poem that took five minutes to write is just as eligible for copyright protection as a heavily researched academic article or a prize winning novel. The work cannot be a copy of someone else’s work (even if it’s a public domain work) or infringe another work.

**(g) What are the rights authors have in their work?**

**(i) Economic rights**

The author’s fundamental right is to decide how their work will be used, subject to some limitations. The law recognises that authors are entitled to earn a living from their

creative effort if they so wish. It does this by giving authors a set of exclusive rights to do certain activities in relation to their work. These can be summarised as the right to:

- Copy a work (for example, by photocopying it, copying it by hand, reciting it onto an audio device, digital scanning or any other means);
- Issue copies of the work to the public for the first time (often called the “publishing right”);
- Perform, play or show the work in public;
- Communicate the work to the public (on radio, TV, transmitting electronically or making available online); and
- Adapt the work (including to translate a poem from one language to another or converting a novel into a film script) and do any of the above activities in relation to an adaptation.

Additionally, the author has the exclusive right to authorise another person to do any of the above activities.

#### **(ii) Need for permission**

From a content user’s point of view, the exclusive copyright rights in relation to a work are often referred to as “restricted acts”. Anyone who wants to copy or do any of the restricted acts in relation to someone else’s copyright material generally needs to ask for permission.

#### **(iii) Moral rights**

The Copyright Act recognises moral rights owed to authors. Certain authors (and film directors) have a moral right to be identified as such, to object to derogatory treatment of their work (such as modification of their work) and to object to other works being falsely attributed to them.

#### **(iv) Performers’ rights**

Performers have some limited protections under the Copyright Act, to control the recording of their live performances and live transmission to the public, without consent.

### **(i) Ownership of copyright**

#### **(i) First ownership**

Under the Copyright Act, the author of an original work is usually the first owner of copyright in that work. There is no need to put a copyright symbol or notice on a work for a person to claim copyright ownership. The rights belong to the author automatically as soon as an original work has been put into material form, such as in writing. Of course, authorship and ownership are different concepts. There are some circumstances when the author will not be first owner.

#### **(ii) Who is the author?**

In most cases the author is the person who creates a work. In the case of sound recordings and films, the creator is the person who undertakes the arrangements necessary for the making of the recording or film (traditionally a recording company or a film producer). In the case of a communication work, the creator is the person who makes the communication work (traditionally a broadcaster, pay television provider or

website proprietor). The creator of a typographical arrangement of a published edition is the publisher. In the case of most computer-generated works, the creator is the person by whom the arrangements necessary for the creation of the work are undertaken.

**(iii) When is author not the first owner?**

Although the general rule is that the author is first owner of copyright in a work, there are exceptions:

- a. *Works created in employment.* Where a work is created in the course of employment, the employer will own copyright.
- b. *Certain types of commissioned works.* Where someone commissions a person and agrees to pay them for a photograph, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, sound recording or computer program, the person who commissioned the work will own copyright.
- c. *Crown works.* Where a work is created in the course of employment by the Crown (such as a government department) or created by a Crown contractor, the Crown will own copyright.

**(iv) Rules of ownership can be varied by agreement**

The rules of first ownership set out in the Copyright Act can be varied by agreement. For example, some employment agreements may contain a provision that an employee owns copyright in certain works they create during the term of an employment contract and some commissioning agreements may stipulate that the artist retains copyright in works created.

**(v) There can be more than one owner**

In some cases, there may be more than one copyright owner in a work, for example, where two or more people collaborate on a work or where copyright has passed to several beneficiaries under a will.

**(vi) Ownership can be transferred**

As copyright is a property right, copyright ownership can be bought, sold, transferred and given away like any other form of personal property.

**(j) Duration of copyright**

**(i) Copyright lasts for a limited time**

During the term of copyright, anyone who wishes to copy or do another restricted act in relation to the relevant work must get permission from the copyright owner, unless the use is permitted under the Copyright Act. When the term of copyright expires, a work passes into the “public domain” and it may then be freely used without the need for permission.

**(ii) What is the term of copyright?**

- a. *Life of author plus 50 for most works.* In New Zealand, copyright in literary, dramatic, musical and artistic works lasts for the life of the author plus fifty years from the end of the year in which the author dies. For a work of joint authorship, the fifty years runs from the death of the last surviving author.

- b. *Sound recordings, films and communication works.* Copyright in sound recordings and films expires fifty years from the end of the calendar year in which the sound recording or film was made, or was legitimately made available to the public – whichever is the later. Copyright in a communication work lasts for fifty years from the end of the calendar year in which it is first communicated to the public.
- c. *Typographical works.* Copyright in the typographical arrangement of a published edition lasts for 25 years from the end of the year of publication. This shorter period of copyright protection does not affect the duration of copyright in material contained in the published edition, such as stories, text and images.
- d. *Works covered by Crown copyright.* Copyright protection for most material covered by Crown copyright lasts for 100 years from the end of the year in which the work was made. Crown copyright in typographical arrangements of published editions lasts for 25 years from the end of the year in which the work was made.
- e. *Other countries.* The period of copyright protection is longer in some other countries, including Australia, Europe and the United States. In these countries the copyright term is generally 70 years from the end of the year in which the author dies. This means that even if a work is in the public domain in New Zealand it could still be under copyright protection in another country.

## **(k) Where copyright doesn't apply**

### **(i) Balancing the rights of authors and content users**

Copyright is not only concerned with author rights. It balances the right of authors to choose how their creations are used, with society's interest in allowing people to access intellectual and creative content. The law attempts to achieve this balance in a variety of ways, such as limiting the period of copyright protection, excluding some types of "public" documents from copyright protection, and by allowing exceptions from infringement in certain cases.

### **(ii) Copyright exceptions**

One of the most important ways the Copyright Act balances the various rights and interests of content creators and content users, is by allowing people to use copyright works in some cases without the need to get permission. The Act contains provisions where people are free to copy, perform, play, show or communicate copyright works as long as they do so in accordance with the provisions. Copyright exceptions are referred to as "permitted uses" in the Copyright Act and these terms are used interchangeably in this Guide. There are many different statutory exceptions, which can be summarised into the following categories:

- a. *Fair dealing* – which applies to people engaged in news reporting, criticism or review and research or private study.
- b. *Exceptions applicable to particular kinds of institutions or users* – limited exceptions that apply in the educational context, in libraries and archives and in public administration.
- c. *Exceptions for particular uses in specific circumstances* – a collection of ad hoc exceptions.

### **(iii) Differences in national laws**

There can be significant differences between the copyright exceptions in NZ and those under the law of other countries. For example, NZ does not have a general “fair use” defence as exists in United States copyright law. In addition, some other countries allow the use of third party copyright material for the purposes of parody and satire. There is currently no equivalent copyright exception in NZ.

## **(I) Contracts dealing with copyright**

### **(i) Contract terms can override copyright rules**

The Copyright Act sets out default rules but contract terms are often used to override copyright rules. A contract is essentially an agreement between two or more parties. Contracts dealing with copyright may divide copyright in various ways, for example, by specifying type of use allowed, duration of use, or place of use. Contracts generally impose conditions, for example, requiring payment of a fee or acknowledgement of authorship.

### **(ii) Assignments of copyright**

An assignment of copyright is where rights are transferred or sold to another person. Where copyright is assigned, ownership is permanently transferred. An assignment must be in writing and signed by the person assigning copyright to be legally effective.

### **(iii) Copyright licensing**

Licensing is not a transfer of ownership, but is where an author gives someone else permission to exercise one or more of their copyright rights, for example, allowing a publisher to publish a book. A licence can be for a limited period of time, operate in a specific territory and be exclusive or non-exclusive. An exclusive licence means the person who obtains the licence is the only person with the right to use that material during the agreed term and in the territory. A non-exclusive licence means there may be more than one licensee in respect of the same rights and material. A licence does not need to be in writing, but it is good practice for all contracts dealing with copyright be in writing. The terms “licence” and “permission” are used interchangeably in this Guide.