

NATIONAL SERVICES

TE PAERANGI

*Hono ki
Te Papa*

*Working together
with Te Papa*

Copyright and Museums

Issue No. 9

Governance, Management and Planning

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PO Box 467, Wellington, New Zealand

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Te Papa Tongarewa

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ISSN: 1175-6462 (Print)
ISSN: 2253-1610 (Online)

Cover Image: Photography by Michael Hall, 2013

Copyright and museums

What is protected by copyright? When do you need permission to use copyright material? How do you find the copyright owner? This guide introduces you to some things to bear in mind when working in a complex field.

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How does copyright affect museums?

Museums face issues of copyright in areas as diverse as collection management, exhibitions, publications, social media, blogs and websites, employment policy, and marketing. Museums use copyright material belonging to others. They commission copyright material such as artworks. They also create new copyright material such as texts, illustrations, and photographs.

Copyright materials in museums

Here are some examples of materials that are used by museums and are protected by copyright.

- Texts – works in books, newspaper articles, pamphlets, private letters, reports, government documents
- Visual and graphic works – drawings, diagrams, maps, charts, plans, paintings, original prints, sculptures, photographs, ceramics, woodcarvings, and tapestries
- Music – recorded and in published form
- Films, videos, and footage
- Archival sound recordings – interviews and oral histories

Guidance on copyright

Te Papa has compiled a manual, *The Copyright Act 1994: A Manual for New Zealand Museums*, which outlines how the act applies to the work of museums. The manual is available from National Services Te Paerangi. This guide and the manual cover areas of common museum practice. They are not comprehensive statements of the law applicable to every situation.

When in doubt, refer to the Act or seek legal advice.



Owaka Museum & Catlins Information Centre. Image courtesy of Owaka Museum

An overview of copyright

What is copyright?

Copyright is an intellectual property right. Intellectual property is anything produced by people's thought, and intellectual property rights determine its ownership and control. Other examples of intellectual property are patents, registered designs, trademarks, and moral rights.

Who owns copyright?

Ownership of the copyright in a work exists separately from the ownership of the work itself. Like any other property, copyright is something that can be owned, sold, or bequeathed. Copyright can be commercially valuable.

The ownership of copyright generally remains with the author (the person who first created the work), or the person who commissioned the work (except literary works), or the employer of the author, unless the copyright is specifically transferred when the work is sold or ownership transferred.

Be aware of ownership

Museums often do not own the copyright for most copyright works in their collections. Therefore, permission must be obtained from the copyright owner before these works are copied. Museums also have a custodial responsibility to protect the copyright owner's interest in the works they hold.



The Donald Woolshed (1858) at Cobblestones Museum, Greytown. Image courtesy of Cobblestones Museum

Mātauranga Māori

While the Copyright Act 1994 encompasses works produced by Māori that remain in copyright, it has no express provisions for the protection of Māori knowledge and understanding – mātauranga Māori.

The Act's implications for these issues are noted in the copyright manual.

Some non-Western traditions assert group ownership of intellectual property rights in knowledge or the expression of thought that is passed down from one generation to another. Mātauranga Māori is one of these. Mātauranga Māori means the knowledge and understanding founded on tikanga Māori (custom, culture, and protocol), whether in document form or other forms, whether in or out of copyright.

A claim has been lodged with the Waitangi Tribunal concerning indigenous flora and fauna and cultural and intellectual property (WAI262). In July 2012, the Waitangi Tribunal released its report regarding claim WAI262 and recommended the reform of New Zealand laws and government policy and practice to recognise the place of mātauranga Māori¹ in contemporary New Zealand. At the time of publication, the Crown is considering the report and will respond in due course.

What does copyright do?

Copyright protects an original work from being copied without the permission of the copyright owner. Copying is defined as reproducing or recording a work in any material form. That includes broadcasts, data stored in a computer memory, digital recordings, digitised images, facsimiles, photocopies, photographs, prints, publications, and sound recordings. Copyright is breached if a 'substantial part' of an original work is copied, as described in the manual.

¹ See <http://www.waitangitribunal.govt.nz/doclibrary/public/reports/generic/Waio262/Wai262Factsheet1KeyThemes.pdf> accessed 22.11.2013

What does copyright apply to?

Any work or object created by people is automatically granted copyright as long as it is an original work. An original work is automatically protected as soon as it is recorded, written down, or takes some physical form. A work may be protected by copyright even if:

- it does not have the symbol © or a copyright notice on it
- it has not been published
- it is not ostensibly ‘artistic’ or ‘cultural’.

Copyright does not apply to an idea, but it does apply to the material expression of that idea.



An idea may be used repeatedly, so long as the original expression of it is not repeated. In this example, the idea of drawing a kiwi was the same but because the idea has been expressed in a different way by each of the artists, each physical expression of the idea – each artwork – has its own copyright status.

Moral rights

Authors – including film directors, photographers, and artists – have the following moral rights:

- to be identified as the author or director of a work, and
- to object to false attribution or the derogatory treatment of their work.

The author of a copyright work retains their moral rights even if they relinquish copyright or ownership of the work. Moral rights can be waived. Moral rights expire when copyright expires².

A creator who has asserted moral rights must be identified reasonably prominently in relation to all copies of the work. In a book, for example, an assertion can often be found on one of the first pages.

Moral rights affect various museum activities. The terms and conditions applying to each moral right are specified in the copyright manual.

How long does copyright last?

Copyright exists for different periods of time for different categories of things, depending on the copyright law through time, and depending on the legal jurisdiction of the country the copying occurs in. The following table is a summary giving general guidance for terms under New Zealand law, provided by DigitalNZ.

Copyright terms and the public domain in New Zealand 1 January 2013³

Disclaimer: The contents of this guide do not constitute legal advice and DigitalNZ is not responsible for any loss or damage caused as a result of following it. For simplicity this guide may contain generalisations and you should seek advice from a suitably qualified professional about specific issues.

Literary, dramatic, musical, or artistic works

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
Photographs , being anything where an image is produced by recording light or other radiation on media (eg, prints, negatives, scans, photocopies), but excluding film (see film)	<p>Until 1 January 1995, 50 years from when it was taken [1962 s8(2)]</p> <p>As of 1 January 1995, 50 years after the year the author died [1994 s22(1)]</p> <p>As of 1 January 1995, if the author or the publisher is unknown, 50 years from when it was first made available to the public [1994 s22(3), 1994 s126(4)]</p>	<p>All photographs (published and unpublished) taken before 1944</p> <p>Photographs (published and unpublished) taken in or after 1944 where the author died in 1962 or earlier</p> <p>Photographs first published between 1 January 1944 and 31 December 1962 where the author or the publisher is unknown after reasonable enquiry</p>

² See Section 106 of the New Zealand Copyright Act 1994

³ Adapted under a Creative Commons BY-NC licence from the US version 2004-8 by Peter B Hirtle, Cornell Copyright Information Center

Literary, dramatic, musical, or artistic works

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
<p>Literary works, being anything written or spoken that are not dramatic or musical works, including tables, compilations (eg, anthologies, encyclopaedias, newspapers, magazines) and computer programs</p> <p>Dramatic works, which include works of dance or mime and film scenarios or scripts</p> <p>Musical works (eg, musical scores and arrangements), but excluding lyrics and actions to be performed with the music</p> <p>Artistic works, being a graphic work (eg, a painting, drawing or rendering), photograph (see photographs), sculpture, collage, model, work of architecture or artistic craftsmanship, but excluding layout design, and regardless of artistic merit</p> <p>Computer-generated works, being works generated by a computer in a way that means there is no human author</p>	<p>Published works</p> <p>For works published during the life of the author, 50 years after the year the author died [1913 s6, 1962 s8, 1994 s22(1)]</p> <p>If the author or the publisher is unknown, 50 years from when it was first made available to the public [1994 s22(3), 1994 s126(4)]</p> <p>For works by unknown authors published before 1 January 1995, 50 years from a reasonably assumed death of author [1994 s67(1)]</p> <p>For artistic works applied industrially, 25 years for works of artistic craftsmanship and 16 years for cast sculptures and patterns [1994 s75]</p> <p><i>Applied industrially means making, for sale or hire, over 50 copies of a work in 3 dimensions, or copying a work in 3 dimensions in objects manufactured in lengths</i></p> <p>Posthumously published works</p> <p>For works published posthumously before 1 April 1963, including engravings but not other artistic works, 50 years from first publication [1994 Sch 1, s19]</p> <p>For works published posthumously from 1 January 1995, 50 years after the year the author died [1994 s22(1)]</p> <p>For works made and published posthumously between 1 April 1963 and 31 December 1994, the shorter of 50 years from publication or 75 years after the year the author died [1994 Sch 1 s18(2)]</p> <p>Unpublished works</p> <p>For unpublished works made between 1 April 1963 and 31 December 1994 where the author died in that period, 75 years after the year the author died [1994 Sch 1, s18(1)]</p> <p>For unpublished works by unknown authors made before 1 January 1995, the longer of 50 years from 1 January 1995, 50 years from first publication, or 50 years from a reasonably assumed death of the author [1994 Sch 1, s17(2)(d)(ii), 1994 Sch 1, s26]</p> <p>For unpublished works, other than photographs, transferred or bequeathed to institutions by the copyright owner with conditions placed on publication, the conditions remain enforceable after the copyright expires [1994, s117]</p> <p>For all other unpublished works, 50 years after the year the author died [1994 s22(1)]</p> <p>These copyright terms for published, posthumously published and unpublished works do not apply to copyright held by the Crown or international organisations</p> <p>Computer-generated works 50 years from when it was first made [1994 s22(2)]</p>	<p>Works published during the life of the author where the author died in 1962 or earlier</p> <p>Works published in 1962 or earlier where the author or the publisher is unknown after reasonable enquiry</p> <p>Works by unknown authors published before 1995, where the author is reasonably assumed to have died in 1962 or earlier</p> <p>Works of artistic craftsmanship applied industrially in 1987 or earlier</p> <p>Utilitarian casts and patterns applied industrially in 1996 or earlier</p> <p>Works including engravings but not other artistic works, first published posthumously in 1962 or earlier</p> <p>Artistic works excluding engravings first published posthumously before 1 April 1963 where the author died in 1962 or earlier</p> <p>Works first published since 1 January 1995 where the author died in 1962 or earlier</p> <p>Unpublished works where the author died in 1962 or earlier, except that conditions placed on publication by the copyright owner remain in place for works, other than photographs, transferred or bequeathed to institutions</p> <p>Unpublished works by unknown authors will not come out of copyright until at least 2046</p> <p>Computer-generated works made in 1962 or earlier</p>

Sound recordings and film

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
<p>Sound recordings where the sound can be reproduced, including the recording of a literary, dramatic, or musical works</p> <p>Film, being any recording on a medium from which a moving image can be produced, including video tape, optical or hard disk, flash media etc</p>	<p>Until 1 January 1995, 50 years from when it was completed [1962 s13(3), s14(3)]</p> <p>As of 1 January 1995, 50 years from when it was made or, if within the period it was first made available to the public, 50 years from that date, whichever is later [1994 s23(1)]</p>	<p>All films and sound recordings (published and unpublished) completed before 1944</p> <p>Unpublished films or sound recordings made between 1 January 1944 and 31 December 1962</p> <p>Films or sound recordings first made available to the public in New Zealand between 1 January 1944 and 31 December 1962</p>

Communication works including broadcasts

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
<p>Communication works, including any wireless broadcast, cable transmission or internet streaming of sounds and visual images for reception by the public</p>	<p>50 years from first communication to the public after 1 April 1963 [1994 s24]</p>	<p>Broadcasts from before 1 April 1963, although the recording itself may be in copyright for 50 years from when it was made (see sound)</p>

Typographical arrangements

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
<p>Typographical arrangements of published editions, which are editions of the whole or part of one or more literary, dramatic, or musical works (regardless of whether they are in still copyright)</p>	<p>25 years from publication, including for Crown copyright works [1994 s25, s26(3)a]</p>	<p>Typographical arrangements made in 1987 or earlier, but not including copyright in the works themselves</p> <p>Typographical arrangements made in 1987 or earlier of out of copyright works</p>

Crown copyright

Type of work	Copyright term(s)	What was out of copyright in New Zealand as of 1 January 2013
<p>Crown copyright works made by a person employed or engaged by the Crown, with the Crown being the Monarch, Minister of the Crown, a government department or an Office of Parliament, but excluding a Crown entity or State-owned enterprise</p> <p>Parliamentary works and court judgements, meaning bills, acts, regulations, by-laws, Hansard debates, select committee reports, reports of commissions and inquiries, and tribunal judgements</p>	<p>Until 1 January 1995, 50 years from when it was made [1962 s52(3)]</p> <p>As of 1 January 1995, 100 years from when it was made [1994 s26]</p> <p>No copyright [1994 s27]</p>	<p>Crown works made before 1944</p> <p>Crown works made in 1945 will not come out of copyright until 2046</p> <p>All works unrestricted by copyright</p>

Notes:

1. Unless otherwise stated, copyright expires at the end of the calendar year of the last year of the copyright term.
2. Where a work has more than one author, death of the author relates to the last author to die.
3. Published includes making available to the public and assumes the publication was an authorised act.
4. Reasonable enquiry and reasonable assumptions of death need to be defensible in a court of law.
5. Different terms may apply for international organisations that have one or more states as members.
6. Copyright terms only apply within New Zealand. Works may still be in copyright in countries with different terms.

Copyright terms and the public domain in New Zealand 1 January 2013 by Digital NZ Ā-Tihi o Aotearoa

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Inside the Paua Shell House exhibition. Image courtesy of Canterbury Museum.

Some ways copyright affects museums

Collection development and acquisition

Museums should consider copyright as part of their collection acquisition process. If the works remain in copyright, and the owner of the work is also the copyright owner, the museum could either:

- propose the transfer of legal title of the full copyright ownership in the work (assignment) when the legal title to the work itself is also transferred, whether by purchase, donation, or bequest. If an assignment is agreed, this must be agreed in writing and include a statement from the assignor to attest they own the copyright and the right to transfer the copyright to the museum. Or
- propose the copyright owner grant a copyright licence to the museum that permits some uses but reserves some rights in the work. This licence could be one the museum uses or a Creative Commons licence.

Collection image supply and reuse



The Milkmaid, Johannes Vermeer, c. 1660, The Rijksmuseum, Object number SK-A-2344.

Most museums do not own the copyright in the collection items they own. However, museums can choose to control photographic access to collection items and control use of images of collection items via contract. If a contract is in place, those wishing to use images of a collection item can be required to obtain the image from the museum and pay a fee to use images of collection items, whether or not the image is in copyright or copyright is owned by other parties.

Any copyright negotiations and copyright fees occur in addition to the museum's image supply and use contract terms. Copyright permission should be sought by and granted to those wishing to use images prior to the supply of images by the museum. Most museums require a copy of the copyright permission to be supplied to them for their records prior to image supply being actioned.

An example of this approach to controlling photographic access is the Indianapolis Museum of Art's practice <http://www.imamuseum.org/research/image-resources>

Some galleries, libraries, archives, and museums (GLAMs) have chosen to change their business model. Where there are no third party rights constraints, they have released high resolution images of collection items for open reuse including commercial reuse. This includes images with no copyright and also those images where the institution is the sole copyright owner. Examples of institutions taking this approach include:

Rijksmuseum
<https://www.rijksmuseum.nl/en/rijksstudio>

The Getty Trust
<http://www.getty.edu/about/opencontentfaq.html>

National Gallery of Art, Washington
<https://images.nga.gov/en/page/openaccess.html>

The Walters Art Museum
<http://art.thewalters.org/> and <http://art.thewalters.org/license/>

Los Angeles County Museum of Art
<http://collections.lacma.org/>

The Library of Congress
<http://www.loc.gov/library/libarch-digital.html>

British Museum
<http://www.flickr.com/photos/britishlibrary/>

A list of institutions can be found here:
<http://openglam.org/documentation/>

Other GLAMs have chosen to release images of collection items under a mix of 'open reuse' or 'non-commercial only reuse', depending on the rights status of the images. Open reuse is applied to those images that are out of copyright. Creative Commons copyright licences are applied to those images where the GLAM institution is the sole copyright holder. 'All Rights Reserved' is maintained for those images where third parties have rights. This allows those institutions to continue to charge for commercial use of some of their collection images while allowing those out of copyright images to be freely reused. These institutions include:

Museum of New Zealand Te Papa Tongarewa
<http://collections.tepapa.govt.nz/>

National Portrait Gallery, United Kingdom
<http://www.npg.org.uk/collections/search/use-this-image.php?mkey=mwo2079>

Brooklyn Museum
<http://www.brooklynmuseum.org/opencollection/collections/>

A list of institutions that have chosen this business model are featured here:

<http://wiki.creativecommons.org/GLAM>

Museum exhibitions and loans

Exhibiting an original work does not infringe copyright, but displaying an unauthorised copy does. You may copy images once for exhibition development purposes without infringing copyright if this can be considered research.

Showing a broadcast (and any sound recording or film included in it) or a cable programme as part of an exhibition does not infringe copyright if no admission fee is charged. Some public performances are protected by copyright. You need to be satisfied that copyright approval has been obtained before performances are given or recorded.



The To Be Pacific exhibition. Image courtesy of Tairāwhiti Museum.

When works are lent or borrowed for exhibition, both the lending and receiving museums must obtain approval from copyright owners before the works are copied for any purpose, such as inclusion in catalogues or promotional material.

Educational and public relations activities

As museums are not considered to be educational establishments in the New Zealand Copyright Act 1994, no education exemptions apply. You should establish the copyright ownership of all works copied for teaching and educational programmes run by your institution and obtain clearance to copy those works.

Any work that is derived from published sources, such as an educational handout for schools, must be an original expression of those sources. Invest time in creating your own educational handout and reference your sources. You should not make copies of substantial parts⁴ of published works unless copyright permission has been granted.

When using copyright material for marketing and public relations purposes, you must obtain copyright clearance. You also need to keep moral rights issues in mind. Common marketing uses include promotional products such as posters and flyers, advertisements, and public corporate documents.

You will own the copyright in the public relations products you create (for example, posters, diaries, and calendars), as well as in any compilations you produce, such as promotional videos. However, copyright ownership of the individual components will remain with the owners unless otherwise negotiated.

Public photography, film, and video

Various copyright issues are raised if the public is permitted to make copies of works on display by photograph, film, or video (these issues are described in the copyright manual). Placing a blanket ban on such copying overcomes the legal and commercial risks involved. If you prominently display the ban as a condition of entry to the museum, the public will be contractually bound to observe it.

Photographs and videos of general scenes within the museum may be permitted, if copyright works appear only incidentally.

Commercial film and video products are well protected by copyright. The manual outlines suitable approaches to this complex area.

⁴ There is no guide in the Act as to what is a 'substantial part' of a work is. It has been said that if a part of a work is worth copying then it's a substantial part of a work worth clearing

Museum publications

'Publication' means issuing a work to the public by sale or otherwise, including electronic retrieval systems. Establish the copyright ownership of all work included in a publication and obtain clearance for its use. Copyright ownership terms and agreements must be included when you draw up commissioning contracts for publishing.

All published material should be marked copyright to the museum, with the date of publication. You should consider including a line about reuse. 'All Rights Reserved' indicates that the work should not be copied without permission and that anyone wishing to reuse the publication should approach the museum. Using a Creative Commons licence will indicate that the museum reserves some rights and that those wishing to reuse the publication can do so if they meet the requirements of the licence.

Other copyright images supplied to the public, such as photographs, should be accompanied by an assertion of the museum's copyright.



Te Papa Press, New Zealand's unique museum publisher.

The conservation of works

Photographing a work to record conservation treatment may breach copyright, but the risk of action is low where the photographs are used only within the museum. Conservators and other museum staff should, however, gain copyright approval before giving public talks or publishing articles illustrating the treatment or use of copyright works. (See also the copyright manual's chapter on moral rights.)

Museum employment contracts and commissions

Museums automatically own the copyright in work produced by their employees, including field and personal notes related to their employment. Museums do not have rights over the ideas that employees form in the course of their employment, so long as the expression of those ideas elsewhere is different. To avoid later disputes, employment contracts should make explicit reference to the rights of all those involved.

Museums do not automatically own copyright in those works created by non-staff such as volunteers, interns, or crowdsourcing participants.

To avoid confusion or later disputes in all cases, volunteer, intern, and crowdsource participation agreements should make explicit reference to copyright ownership of works and moral rights of all those involved. In volunteer agreements, participation agreements, or commissions, museums should consider requiring copyright assignment and the waiving of moral rights for works created. In order to protect the right to use the work as the museum wishes in future.

Databases, multimedia productions, and the internet

Copyright exists in databases, sets of descriptive metadata, and multimedia productions such as 'compilations'. The copyright ownership and protection of the individual components of compilations may be complex. These issues are discussed in the manual.

Once images and text are published on the Internet they become more accessible and findable. Greater accessibility often leads to increased interest in reuse and sharing by the public. Consider how your institution can make reuse and sharing easier. How will your institution manage the custodial responsibility to protect copyright owners' interests? Consider negotiating a licence with copyright holders that permits sharing. Consider when you will approach a copyright infringer to request takedown or destruction of the unauthorised copy. At what point will you consider legal action? See the section on Museums Online on page 14, as well as the copyright manual, for further guidance in this area.



A spider preserved in Kauri gum. Image courtesy of the Kauri Museum

Some frequently asked questions

When is permission needed from a copyright owner?

You need permission from a copyright owner to make a copy of a work protected by copyright if you want to:

- photograph it
- photocopy it
- copy it by hand
- film it
- create a digital image or copy of it (for example by scanning)
- duplicate a computer file containing the work.

You also need specific permission covering every adaptation of an original, public showing of a copy you have made, or issuing of copies (whether or not by sale) of a copyright work. This permission is often referred to as a 'licence'.

Caution – multiple ownership

In some cases, there can be more than one owner of copyright – for example, where copyrights are passed to a number of beneficiaries in a will, or where two people have collaborated to create a work.

Are there any exceptions to the rule?

You do not need the copyright owner's permission if:

- the copyright has expired, or
- you make a single copy for your own research or private study purposes, and the use is 'fair'. Fairness is a question of degree, and depends on the number and extent of extracts and the use made of them. The copyright manual offers guidance in this.

Some archives and 'prescribed libraries' may make electronic and other copies of documents with the objective of preserving or replacing items in their collections, without risk of infringing copyright. For guidance on this see: <http://www.lianza.org.nz/resources/copyright/guidelines/copyright-act-1994-and-amendments-guidelines-librarians>

Do we need permission to scan and alter an image to create a new work?

You do need permission to produce a new image by altering or adding to an original image if an important part of the original is still recognisable.

Do we need permission to reproduce a painting we own?

You need permission unless you own the copyright, or unless it's one of the exceptions to the copyright rule. You do not automatically become the owner of copyright when you become the owner of the painting.

To transfer ownership of copyright, there must be a document signed by the copyright owner. The position is the same for any other item protected by copyright.

Do we have to pay a fee to another museum or gallery to reproduce a work in its collection?

In some cases, a museum or gallery may charge an access fee to reproduce works from its collection, even if it does not own copyright or the copyright has expired.

When a museum or gallery owns the copyright in a work in its collection, you will need permission from the museum or gallery to reproduce the work – and you may be charged a fee. Sometimes, if the copyright is owned solely by that museum or gallery or copyright has expired, the museum may offer a free download.

See the Collection image supply and reuse section on page 8.

Do we need to consult our community when we use images relating to them?

Every museum wants to build strong relationships with its community. If a community group has a vested interest in a particular image or text, it makes sense to discuss with them how you plan to use it.

Say, for example, you want to use a photograph of a local marae⁵ or a photograph of a group of miners whose grandchildren are still living in the community. Such groups may have no legal rights to these images, but they may feel a sense of ownership that the museum needs to respect.

⁵ Resources to find Marae
<http://www.tkm.govt.nz/>
<http://www.naumaiplace.com/home/marae/search/>

Obtaining the right to copy a work

Owning the copyright

One of three main ways to obtain the right to copy a work is to own the copyright by, for example:

- creating or commissioning the work
- buying, or being given or bequeathed, the copyright by the owner (assignment of copyright).

Creative Commons licences



Colin Wheeler (1919-2012), *From the artist's window*, 1961. Creative Commons BY-NC-ND . Image © Te Papa.

The second way to obtain the right to copy a work is when the copyright owner has granted a copyright licence in advance. Creative Commons licensing is one way copyright owners do this.

Creative Commons is a non-profit organisation from the United States. It provides free and standardised copyright licenses to support legal sharing and use of creative works and knowledge by the public. Creative Commons licences do not replace copyright law but work alongside it. A work that has a Creative Commons licence attached to it has been pre-approved for copying and use by anyone – but under certain circumstances. The copyright holder has reserved 'Some Rights'. The rights they have reserved will depend on the Creative Commons licence applied to the work.

When copying any Creative Commons licensed work you must credit/attribute the original creator (BY) and the Creative Commons licence must travel with the work. In addition:

- If the Creative Commons licence includes a Non-Commercial use restriction (NC), then you must not use the work for commercial purposes.
- If the Creative Commons licence includes a Share Alike restriction (SA), then, if you are creating a derivative work, you must license your new creation under the identical terms; that is, you have to add the same Creative Commons licence to the new work.
- If the Creative Commons licence includes a No Derivatives restriction (ND), then you may not create derivative works. The work must be copied unchanged and in its entirety.

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<http://creativecommons.org.nz/licences/using-a-cc-licensed-work/>

<http://creativecommons.org.au/content/attributingccmaterials.pdf>

Obtaining a licence

The third way to obtain the right to copy a work is to obtain a licence from the owner for the use of a work; in other words, gaining permission from the owner to reproduce a work for a particular purpose. If a work does not have a Creative Commons licence, then the copyright owner has reserved 'All Rights' in the work.

When acquiring new works, museums may seek to buy ownership of the copyright or to obtain a licence or get permission to copy the work for specific purposes. Arranging assignment of copyright or arranging licensing in advance of anticipated uses can have significant advantages, such as using works for commercial purposes.

Correspondence with a copyright owner seeking the right to reproduce a work forms a contract between the two parties. The correspondence must state clearly the conditions and intended use of the work.

The copyright manual includes model letters, procedural guidelines for dealing with copyright works and moral rights issues, and information required for copyright search and recording.

Finding the owner of copyright

Copyright is administered by copyright owners themselves or by collecting societies that provide centralised copyright licensing services to copyright users.

Some of the copyright collecting societies that operate in New Zealand are:

- One Music Ltd (this includes the Australasian Performing Right Association [APRA], the Australasian Mechanical Copyright Owners Society [AMCOS], and Public Performance NZ Music Licensing [PPNZ])
- Copyright Licensing Limited
- Viscopy

Contact details are listed on page 16. Below are some suggestions to help you find an owner of copyright.

Artworks

For works by New Zealand artists, ask other museums and art galleries that have reproduced works by the same artist. The best place to find those organisations is by searching Digital NZ (<http://www.digitalnz.org/>).

For international artists, asking museums and art galleries that collect that artist's work is also valuable. Try to contact the staff member in charge of image reproductions and copyright.

There are also visual art collecting agencies that may help (for example, Viscopy).



Dunedin Public Art Gallery foyer. Image courtesy of Dunedin Public Art Gallery.

Photographs

Copyright owners of photographs can be hard to trace. For more recent photographs, start by searching for the photographer or organisation mentioned in any credit of the photograph. For older photographs, see if other museums and art galleries have reproduced works by the same photographer. If the image is uncredited and you found it on a website, try Google Search by image.⁷ This will show many sites using the same image, and one may credit it correctly. If the credit includes the image source, you can contact the source to see whether they know of a copyright holder. If a photo has a source in advertising, try the Advertising and Illustrative Photographers Association. Other places to try are the Photo Library Association and the New Zealand Institute of Professional Photography.

Written works

Approach Copyright Licensing Limited (CLL) in the first instance. CLL is a collective licensing organisation that provides centralised copyright clearance for the copying of extracts from books, periodicals, and journals for internal use within New Zealand institutions.

CLL negotiates licences and appropriate fees with prospective users, and collects and distributes fees to owners of the works used. For permission for other types of copying from written material, you should communicate directly with the copyright owner. CLL will help you in this.

Music

Approach One Music in the first instance if you wish to copy or reformat music, reproduce recorded music, synchronise music with footage, or publicly perform music. One Music represents songwriters and most major international and New Zealand-based recording companies and their artists.

Film

Approach the Motion Picture Distributors Association if you wish to copy from an international movie. Approach the Screen Producers and Directors Association if you wish to copy from a New Zealand film.

Television

Approach the television broadcaster or the Screen Producers and Directors Association (for New Zealand programmes) in the first instance.

Ask other people who have reproduced the work

If you know that the work has been reproduced by someone else – for example, in a museum website or in a book – it may be worth contacting that person, organisation, or publisher for information about where they obtained permission.

⁷ <http://www.google.co.nz/insidesearch/features/images/searchbyimage.html>

Museums online

You want to digitise?

Museums, like other organisations worldwide, are taking advantage of digital technology to reach out in new ways to their communities and audiences. Many museums are developing their own websites and online facilities.

Digital technology has had a big impact on the availability of copyright works for these purposes. Copyright law will inevitably be revised to take the changing digital environment into account and you will need to keep up to date with any changes. In this section, we offer some guidelines for operating in this increasingly important area.

A good resource to use when preparing to digitise is the Digital NZ 'Make It Digital' website (<http://www.digitalnz.org/make-it-digital>).



Macintosh Plus, 1986.

Go for the easy options

When choosing collection items to digitise, if you want to avoid copyright complications:

- use the Copyright Terms and the Public Domain in New Zealand table on page 4-6 to pick collection items where copyright has expired (for example, photographs taken by a New Zealander prior to 1944)
- pick works where your institution owns the copyright
- pick works which are licensed by the copyright owner.

Cautions

- There may be more than one copyright work in a physical object – for example, a book may contain text, illustrations, and photographs, all of which are separate 'works' and may have different owners and different periods of protection.
- A person who sells or donates an item to you may not be the copyright owner.
- You do not own copyright unless the previous copyright owner has signed a written document assigning the copyright to you, or the work was created by an employee, or the work was commissioned by your institution.

What to ask the copyright owner for

For an image to be available online, the permission you request from the copyright owner should cover:

- creating a digitised image of the work
- making the image available for viewing online.

Also consider adding into the request:

- other common uses your institution may intend to make of the digital work
- supplying and sharing the digital image to other third parties, such as Digital NZ.

What the copyright owner is likely to ask for

Attribution

The creator of any copyright work made after 1 January 1995 has a moral right to be identified as the creator of the work.

Copyright notice

You could use a copyright notice near an image as a hypertext link to more detailed information about the copyright owner and the circumstances (if any) under which a viewer may copy and reuse an image.

Measures to prevent or limit unauthorised copying

Some copyright owners are worried about the potential for unauthorised reproduction of their work if they allow their work to be digitised – particularly if it is published on the internet.

You cannot prevent unauthorised copying of a digitised image, in the same way that you cannot prevent unauthorised photocopying or scanning of an image published in a book. There are some technological means (such as preventing right click copying or digital watermarking) that can be used to inform viewers of the

image about the copyright restrictions, but these will not stop a determined infringer.

Copyright owners sometimes require publishers of digitised material to publish artworks at low resolution, which allows viewing on screen but does not produce very good printed copy. This is one way of discouraging unauthorised reproduction of a digitised work.

Higher resolution images make for a more successful user-experience on tablet computers and larger computer screens, but can encourage copying. You should make sure that the copyright owner clearly understands what steps you are going to take in relation to your online project and copyright, and what the effect of those steps will be during the negotiations for permission.

You can publish information about the copyright in the image, and the viewer's copyright obligations on the website where the image appears.

Faithful reproduction of the work

You should check that the copyright owner understands how you plan to publish the work and perhaps get their written consent in the agreement.

If you plan to make alterations – such as cropping, overprinting, or watermarking – your agreement with the copyright owner should specifically authorise these.

If the copyright owner is not the creator, you should also get the creator's written consent. This is because the Copyright Act gives creators a right to take legal action if their work is treated in a derogatory way (under moral rights). Publishing a work in low resolution is unlikely to be derogatory, as its purpose is to discourage unauthorised reproduction. However, other alterations may infringe the creator's rights, if done without their consent.

Payment

There are no standard rates of payment for a licence to create and publish a digitised image of a work. In some cases, a copyright owner may ask for something other than money (for example, a link to their web page) or may be prepared to give the permission for free.

Before you digitise

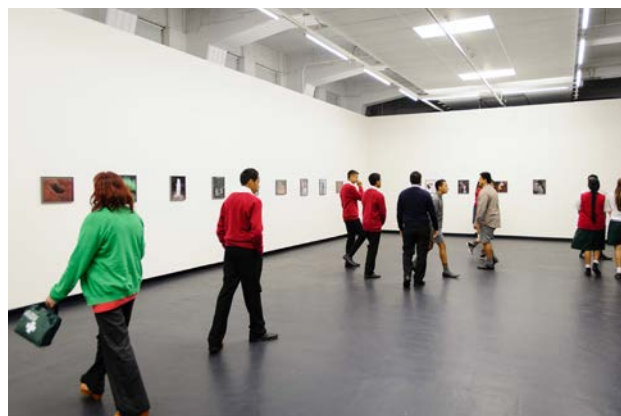
Check

- Has the copyright expired?
- Do you have the copyright owner's permission?
- Does the permission cover everything you intend to do with the copy? Think ahead, and you won't have to go back to the owner for further consents.

Before you publish digitised images

Check

- Have you prepared an accompanying notice giving copyright information on the digitised images?
- Do you display, at the very least, a clear notice about what people viewing the images are permitted and not permitted to do with them?
- On your website, do you have a prominent notice on each page that says something like 'Copyright information', and which is linked to a page with more detailed information on what viewers may and may not do with material on the site? You may also want to have the copyright notice and/or creator's name and link to further copyright information near each image.
- Have you complied with any conditions in the licences from the copyright owners? For example, have you agreed only to make the image available in low resolution so people are less likely to copy it?
- Have you attributed each creator? The creators may require you to do this as a condition of the licence, or may otherwise have asserted moral rights.
- If you have altered or modified an image, do you have consent? The creator(s) may require you to get their consent to make any alterations as a condition of the licence. In any event, you also have an obligation not to prejudice the reputation of the creator(s) by distorting or manipulating the work.



Students from Bishop Viard College in Viviane Sassen: Lexicon, City Gallery Wellington. Image courtesy of Mark Tantrum and the City Gallery Wellington.

Contacts for copyright permissions

Below are contact details for organisations referred to in this publication, and related organisations:

Advertising and Illustrative Photographers Association (AIPA)

<http://www.aipa.org.nz/>
PO Box 9218, Newmarket, Auckland 1149
Phone: 64-9-410 5734; Email: admin@aipa.org.nz

Book Publishers Association of NZ (BPA NZ)

<http://www.bpanz.org.nz/>
PO Box 102 006, North Shore City 0745
Phone: 64-9-280 3212;
Email: admin@publishers.org.nz

Copyright Council of New Zealand Inc (CCNZ)

<http://www.copyright.org.nz/>
Online Enquiry form: <http://www.copyright.org.nz/contact.php>

Copyright Licensing Limited (CLL)

<http://www.copyright.co.nz>
PO Box 331488, Takapuna, North Shore City 0740
Freephone: 0800 480 271
Phone: 64-9-486 6260; Email: info@copyright.co.nz

Motion Picture Distributors Association of New Zealand (MPDA)

<http://www.mpda.org.nz/>
PO Box 2627, Shortland Street, Auckland 1140
Phone: 64-9-361 4941
Online Enquiry form: <http://www.mpda.org.nz/contact>

New Zealand Institute of Professional Photography Inc (NZIPP)

<http://www.nzipp.org.nz/NzippWeb/>
PO Box 76176, Northwood, Christchurch 8548
Phone: 64-27-522 5570; Email: info@nzipp.org.nz

New Zealand Society of Authors (NZSA)

<http://www.authors.org.nz>
PO Box 7701, Wellesley Street, Auckland 1141
Phone: 64-9-379 4801; Email: office@nzauthors.org.nz

New Zealand Television Archive

<http://tvnz.co.nz/footage/index-group-3362563>
Phone: 64-9-916 7946
Online Enquiry form: <http://tvnz.co.nz/footage/contact-us-3377564>

One Music Ltd

<https://www.onemusicnz.com/>
Phone: 800 800 663

Recorded Music NZ Ltd

<http://recordedmusic.co.nz/>
Private Bag 78850, Grey Lynn, Auckland 1245
Phone: 64-9-360 5085;
Email: info@recordedmusic.co.nz

Screen Producers and Directors Association (SPADA)

<http://www.spada.co.nz>
PO Box 9567, Wellington 6141
Phone: 64-4-939 6934; Email: info@spada.co.nz

Viscopy

<http://www.viscopy.org.au/>
Level 15, 233 Castlereagh Street, Sydney, NSW 2000, Australia
Phone: +61 (0)2 9394 7600;
Email: info@copyright.com.au

Further reading and useful resources

The Copyright Act 1994, A Manual for New Zealand Museums. Wellington: Museum of New Zealand Te Papa Tongarewa. Available from National Services Te Paerangi

The New Zealand Copyright Act, 1994
<http://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html>

DigitalNZ - Make It Digital – providing advice on digitising collections

<http://www.digitalnz.org/make-it-digital>
Has an excellent section on use or reuse <http://www.digitalnz.org/make-it-digital/enabling-use-re-use>

Creative Commons <http://creativecommons.org.nz/>
<http://creativecommons.org.nz/licences/using-a-cc-licensed-work/>
<http://creativecommons.org.au/content/attributingccmaterials.pdf>

NZGOAL – New Zealand Government Open Access Licensing Framework
<http://nzgoal.info/>

Library and Information Association of New Zealand Aotearoa – guidelines and useful links on copyright
<http://www.lianza.org.nz/resources/copyright>

The Copyright Council of New Zealand represents copyright creators and owners and provides a number of information sheets to help people seeking to use copyright material. These are available via the organisation's website <http://www.copyright.org.nz/infosheets.php>

Directory of Iwi and Māori Organisations <http://www.tkm.govt.nz/>

Marae Search <http://www.naumaiplace.com/home/marae/search/>

If you need to know about how the law applies in a particular situation, seek advice from a lawyer specialising in copyright.

Acknowledgements

This *He Rauemi Resource Guide* was revised by National Services Te Paerangi (Te Papa) in conjunction with Victoria Leachman, Te Papa Rights Advisor, and incorporates material first published in the 2001 edition of the Guide. Thanks to Mark Crookston, Eva Garbutt and Chloe Searle for reviewing the Guide. Unless otherwise stated, all images are owned by Museum of New Zealand Te Papa Tongarewa.

Notes

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National Services Te Paerangi

Museum of New Zealand Te Papa Tongarewa

Cable Street, PO Box 467, Wellington, New Zealand

Freephone helpline: 0508 NSTP HELP (0508 678 743)

Email: natserv@tepapa.govt.nz

Website: www.nationalservices.tepapa.govt.nz