

*This document is not institutional policy, rather my interpretation of the 1994 Act and the new reforms that are being looked at.
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Copyright Act 1994 and the education environment

Definition of Copyright (ss.14-16)

Copyright is a property right that enables the copyright holder to do certain specified things (2. 16) in relation to the following original works:

- Literary, dramatic, musical or artistic works
- Sound recordings
- Films
- Broadcasts
- Cable programmes
- Typographical arrangements of published editions

Copyright covers a wide range of material, including books, periodicals, newspapers, personal papers, musical and art works, sound recordings, films, videos, photographs, multi-media works, sound and television broadcasts, cable programmes, computer programmes and software, computer databases, CD-ROMs, maps, charts, sheet music, paintings, works of architecture, and new editions of older works.

Copyright does not protect information or ideas; it protects the expression of information or ideas (patents protect ideas). For example, raw data cannot be copyrighted but rather a particular interpretation or implementation features.

Copyright ownership (s. 21)

Where an employee makes, in the course of his or her employment, a literary, dramatic, musical or artistic work, that person's employer is the first copyright owner in the work. (N.B. Even if the employer owns the copyright, copyright still lasts 50 years after the death of the author). Please refer to Wintec's 'Commercialisation of Intellectual Property' policy document for details.

Ownership of an item (economic rights) is completely separate from author ownership (moral rights). For example, if a museum buys a painting it cannot reproduce this in a calendar; it owns the painting but not the artistic copyright. Permission from the artist or copyright holder must still be sought. However, items, once issued by the owner, can subsequently be on sold – the exceptions are videos and computer programmes.

Copyright is automatically assigned to the author of the work, no registration is required. The © symbol, the mark of the Universal Copyright Convention 1952, is not necessary to place on a work in order to state copyright.

Copyright may be given away or waived – in New Zealand it is possible to give away your right to be identified as the author, in some EU members (France, for example) this is not possible.

Interpretation relating to web-based technology

- **Adaptation** – In relation to a literary work that is a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program
- **Literary work** – includes computer programmes and compilations. (N.B. Computer program is not defined in the 1994 Copyright Act).
- **Reprographic process** – includes, in relation to a work held in electronic form, any copying by electronic means; but does not include the making of a film or sound recording
- **Writing** – includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded; and “written” has a corresponding meaning
- **Author** – In the case of a literary, dramatic, musical or artistic work that is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken
- **Unknown authorship** – the identity of an author shall be regarded as unknown if it is not possible for a person who wishes to ascertain the identity of the author to do so by reasonable inquiry; but if that identity is once known it shall not subsequently be regarded as unknown
- **Publication** – in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system. **Publish** has a corresponding meaning.
- **Duration of copyright** – if the work is computer-generated, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work is made. There is no distinction between published and unpublished works.

Be aware that the 50 year clause relevant to New Zealand is particular to this country. It is likely, if NZ engages in a free-trade agreement with the United States, this will extend to 70 years in keeping with most other signatories to the Bern Convention 1886. Where there are presently discrepancies in the duration of copyright for example, if something has come out of copyright in New Zealand but not yet in the EU, then access to the material is still not permitted within the EU.

Acts permitted – Computer programs

(s.43) fair dealing for research or private study

(s.44) copying for certain educational purposes

(s.49) things done for the purposes of examinations

(s.55) copy by prescribed library (includes educational establishments) to preserve or replace work

(s.79) rental permitted by an educational establishment or prescribed library

(s.80) back-up copy of computer program

Infringement by making adaptation (s34)

1. The making of an adaptation of a work is a restricted act only in relation to a literary, dramatic or musical work
2. For the purposes of subsection (1) ... an adaptation is made when it is recorded, in writing or otherwise

The future

Digital Copyright Reforms: introduced by the Ministry of Economic Development and currently before Parliament.

The increasing use of digital technology in commerce, information technology, communications and the entertainment industry has particular implications for copyright laws. There is concern whether the current Copyright Act, which does not include any reference to the word “digital”, is capable of dealing with the use of works in the digital and on-line environment.

Proposed amendments focus on

- clarifying the application of the Copyright Act 1994 to digital technologies
- amending the definition of copying to include digital formats
- providing a limited exception to the reproduction right for transient copying undertaken by computers or communication networks as a result of an automatic or inevitable transfer process
- amending rights to broadcasts or cable programme services to provide a technology-neutral right of communication to the public
- limiting the potential liability for ISPs, in certain circumstances, for infringement where they merely provide communication facilities, and to allow caching in order to provide efficient Internet services
- allowing the application of fair dealing provisions to the digital environment
- allowing preservation of works held by libraries and archives by digital means
- permitting communication of material received in digital form by libraries to users or other libraries on request (desktop-desktop interlibrary loan)
- caching of websites by educational establishments for teaching purposes for a limited time (up to six months)
- communication (digitally) of material by educational establishments where this is consequential to permitted copying
- decompilation and error correction of software subject to strict conditions that protect the legitimate interests of copyright owners

Copyright and technology for educators Copyright Act 1994

Making recordings for use in instruction

Films or film sound tracks may be copied for the purpose of instruction but only for a course on how to make films or film sound-tracks and provided that no charge is made for the supply of the copy. (s.45)

Use of computer programmes

The Library may lend computer programmes as long as they are legal copies and to do so is not a breach of the contract under which the computer programme was acquired. (s. 79)

CD-ROMs

CD-ROMS can include text, photographs, films, recordings, musical work, dramatic work and literary work. They are often compilations and there may be separate copyright ownership. Viewing the CD-ROM is permitted, but copying it is not, unless the contract used which it was acquired allows copying. In other cases, permission to copy should first be obtained from the copyright owner(s).

Electronic databases

In using commercial electronic databases, copies may be made only in terms of the library's contract with the supplier of the database. Unless there is specific permission to do so, it is illegal to include copyright material in a database which is accessed by third parties, which is provided "by way of rendering a service or providing amenities for others" or which is connected to any telecommunications system.

Copyright and the Internet

Unless it has been specifically stated, assume that anything posted on the Internet is copyright. There may be separate copyright in trade-marks, logos, photographs, illustrations, sound, video and images. The provision of hypertext links from one Web site to another may breach copyright in trade-marks, logos or other material. If in doubt, seek permission from the copyright owner. However, there is no copyright in a URL, so there is nothing illegal in providing an electronic bibliography or reading list that includes URLs.

Assume that what is illegal in the 'real world' is illegal in web space.