

INFORMATION SHEET

Photographers & 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

Photographs are automatically protected by copyright when the photos are taken. There is no need to register copyright or go through any process for your work to be protected by copyright.

In New Zealand, photos are protected as “artistic works” under the Copyright Act 1994. For further information, see our information sheet *Visual artists & copyright*.

It is not usually necessary for a photograph to possess artistic quality or have aesthetic value to be protected as an artistic work. To attract copyright protection, a work must be ‘original’ in the sense that it originates from the author (creator) and is not copied. It must be a product of the author 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.

Ownership of copyright in photographs

The person who takes a photo is generally the first owner of copyright in the material. However, there are some exceptions under the Copyright Act:

- *Employees* – If you have taken a photograph in the course of your employment, your employer is the first owner of copyright, unless there is agreement to the contrary.
- *Commissioned material* – If another person has commissioned and pays or agrees to pay you to take a photograph, that person is the first owner of copyright unless there is agreement to the contrary.

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



Rights as a copyright owner

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

- copy their 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, photographers have the right to be identified as the creator of a work. Refer to the section below on “*Moral rights*”.

Privacy rights in certain photographs

Where a person commissions you to take a photograph for private or domestic purposes (for example, wedding photos or a family portrait) but does not own the copyright, that person has certain privacy protection in relation to the photos. The protection consists of the right not to have the photos:

- published;
- exhibited or shown in public; or
- included in a broadcast or cable programme.

Review of the commissioning rule

As a result of concerns by photographers about the application of the commissioning rule as it applies to photographs, the New Zealand government considered the adequacy of the rule in a March 2006 Discussion Paper *The Commissioning Rule, Contracts and the Copyright Act 1994*. The Discussion Paper can be found on the Ministry of Economic Development website at: www.med.govt.nz.

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.

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 creator dies.

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.

There are special circumstances in the Act where a person may copy your work without your permission. These are:

- for criticism and review and news reporting;
- for research or private study;
- for educational purposes; and
- for public administration purposes.

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

New Zealand photographs 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 belongs to another person. 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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