



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# New Zealand

Duncan Cotterill, Scott Moran



## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

The main source of copyright legislation in New Zealand is the Copyright Act 1994 (Copyright Act).

The Copyright Act replaced and repealed the Copyright Act 1962, which in turn replaced and repealed the Copyright Act 1913. The previous Acts still apply where a work was created at a time when those Acts were in force and transitional provisions between the Acts can be relevant when considering older works.

As a common law legal system, New Zealand also relies on case law to interpret and set precedents in law. As a result, there are a number of judicial decisions that contribute to the sources of copyright law in New Zealand.

## 2. Subsistence of copyright

### 2.1 What type of works can be protected by copyright?

The categories of work that can be covered by copyright are: literary, dramatic, musical and artistic works, sound recordings, films, communication works and typographical arrangements of published editions. These are broad categories, and can be summarised as follows:

#### Literary works

These are any works, other than a dramatic or musical work, which are written, spoken or sung and include tables, compilations and computer programs.

#### Dramatic works

Dramatic works include works of dance or mime, as well as scenarios or scripts for films.

#### Musical works

These are works consisting of music, without any words or actions that are intended to be performed with the music. Words intended to be spoken or sung with the music would be categorised as either literary or dramatic works.

There is copyright in the sound recording of a musical work but that is a separate and distinct right (see below).

### Artistic works

A graphic work, photograph, sculpture, collage or model (irrespective of quality), a work of architecture (be it a building or a model for a building) or a work of artistic craftsmanship.

A graphic work is broad in scope and includes paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts and prints.

A work of artistic craftsmanship must have some level of skill or craftsmanship.

### Sound recordings, films and communication works

A sound recording includes any recording of sounds capable of being reproduced. It does not matter what is on the recording as it is the recording itself that attracts copyright.

A film is a recording on any medium from which a moving image may by any means be produced and is itself separate from other copyright works that may underlie it, such as the soundtrack and script.

A communication work is a transmission of sounds, visual images or other information, or a combination of any of those, for reception by members of the public, and includes a broadcast or a cable programme.

### Typographical arrangements of published editions

This category covers the typographical layout of a book or other publication. A published edition includes the whole or any part of one or more literary, dramatic or musical works.

## 2.2 What is required for works to qualify for copyright protection?

If a work falls within one of the categories above, it may be protected by copyright if it is original. A work is original if the author (see 3.1 for how to decide on who is the author) has independently created the work through his/her own skill, judgement and individual effort and has not copied from other works. Save for works of artistic craftsmanship, it is not requisite that work is of artistic merit. It is also not necessary for the whole of a work to be original.

Copyright does not protect information or ideas as such – in order to qualify for copyright protection, a work must be ‘expressed in material form’.

As a general rule, New Zealand provides copyright protection if the author is a national or resident of, or the work was first published in, New Zealand. However, due to international treaties, copyright for works created in New

Zealand also automatically arises in most other countries in the world and vice versa.

## 2.3 What rights does copyright grant to the rights holder?

The Copyright Act sets out the rights subsisting in copyright works which are the exclusive preserve of the rights holder (before any licences are granted or copyright is transferred to someone else). They include the rights to:

- copy the work
- issue copies of the work in public (whether by sale or otherwise)
- perform, show, play or communicate the work in public
- make an adaptation of the work or do any of the above in relation to the adaptation
- authorise another person to do any of the acts referred to above.

The author also has the moral rights described in question 2.4 (see 3.5 re succession).

## 2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In New Zealand, the following moral rights are provided for by the Copyright Act:

- the right, once it has been asserted, to be identified as the author or director of a copyright work
- the right to object to derogatory treatment of your copyright work
- the right not to suffer false attribution to a copyright work
- the right to privacy in respect of certain films and photographs.

Moral rights are applicable to literary, dramatic, musical or artistic works and films, with some exceptions detailed in the Copyright Act.

## 2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works varies according to the type of work and the date of creation. In general, for works created on or after 1 January 1995, the duration of copyright protection is as follows:

<b>Category of work</b>
Literary, dramatic, musical or artistic works
<b>Duration</b>
Copyright expires 50 years from the end of the calendar year in which the author dies.
Where a work has a joint author/co-author, copyright expires 50 years from the end of the calendar year in which the last known author dies.
Where the author's identity is unknown, copyright expires 50 years from the end of the calendar year in which the work was first made available to the public by an authorised act.
Note, however, that for artistic works which have been industrially applied the infringement term is shorter than the duration of copyright.
<b>Category of work</b>
Computer-generated literary, dramatic, musical or artistic works
<b>Duration</b>
Copyright expires 50 years from the end of the calendar year in which the work was made.
<b>Category of work</b>
Sound recordings and films
<b>Duration</b>
Copyright expires 50 years from the end of the calendar year in which the recording or film is made or, if the recording or film is published by an authorised act, 50 years from the end of the calendar year in which it was so made available (whichever is later).
<b>Category of work</b>
Communication works
<b>Duration</b>
Copyright in a communication work expires 50 years from the end of the calendar year in which the communication work was first made available to the public.
Copyright in a repeated communication work expires at the same time as copyright in the initial communication work expires.

<b>Category of work</b>
Typographical arrangement of published editions
<b>Duration</b>
Copyright expires 25 years from the end of the calendar year in which the edition was first published.

## 2.6 For how long do moral rights subsist in copyright works?

An author's moral right to be identified as the author, to object to derogatory treatment of the work and to privacy lasts for the duration of the copyright protection of the work.

The right not to suffer false attribution lasts for the life of the author plus 20 years.

## 3. Ownership

### 3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the author. The main exceptions to this rule are where (unless there is an agreement to the contrary):

- a literary, dramatic, musical or artistic work is made by a person in the course of his/her employment, in which case the employer is the first owner
- a photograph, computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film or sound recording is made pursuant to commission, in which case the commissioner is the first owner.

The author is defined as the person who creates the work. The Copyright Act provides guidance as to who is deemed to have created specific categories of work as follows:

- for 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
- for sound recordings or films, the person who undertakes the necessary arrangements for the making of the work
- for communication works, the person who makes the communication work
- for typographical arrangement of a published edition, the publisher of the arrangement.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons where a work is produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author(s).

If the contributions of each author are distinct then each distinct work will have separate copyright.

Joint owners generally hold copyright as tenants in common, as opposed to joint tenants. The Copyright Act holds that joint owners have their own independent rights with respect to their own aspect of copyright in the work. This is, of course, subject to any agreement between the parties.

A joint owner cannot grant a licence which is binding on its co-owners, and a co-owner can sue each of the co-owner(s) for infringement of copyright in circumstances where the co-owner(s) have done an act restricted by copyright without its licence.

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in New Zealand; it arises automatically upon creation of the work. There is no registration system.

A copyright notice is not required for the purposes of enforcement; however, use of a notice is recommended as it creates a presumption of ownership and of knowledge on the part of the defendant. In the absence of knowledge, a plaintiff is not entitled to damages but remains entitled to an account of profits.

### 3.4 What steps should you take to validly transfer, assign or license copyright?

Copyright is transmissible by assignment, testamentary disposition or other operation of law, and can be done wholly or partially.

An assignment of copyright must be in writing, signed by or on behalf of the copyright owner.

A licence can be granted in writing or orally, except that an exclusive licence must be agreed to in writing.

### 3.5 Can moral rights be transferred, assigned or licensed?

Moral rights cannot be transferred, assigned or licensed, except that on the death of an author, moral rights will:

- pass on to the person to whom the moral rights have been specifically directed by testamentary disposition
- pass on to the person to whom copyright has passed as part of the estate; or
- be exercisable by the author's personal representative(s).

## 4. Infringement

Owners of copyright can take legal action if any of their exclusive rights (as set out in above) have been infringed. There are two classes of infringement: primary infringement and secondary infringement.

### 4.1 What acts constitute primary infringement of copyright?

Primary infringement occurs where a person performs any of the following acts without the consent of the rights holder.

- copying
- issuing copies of the work to the public
- performing, showing, playing or communicating a copyright work in public
- making an adaptation of a copyright work or doing any of the acts listed above in relation to an adaptation
- authorising another person to do any of the acts listed above.

There is no need to show that the alleged infringer had knowledge of another's subsisting right, or intention to infringe that right.

### 4.2 What acts constitute secondary infringement of copyright?

Secondary infringement occurs where a person, other than pursuant to a copyright licence, with knowledge or reasonable grounds for such knowledge of infringement:

- imports an infringing copy of the copyright work other than for private and domestic use (though note that, in the case of sound recordings, films and computer programs, knowledge is assessed objectively, and infringement will be made out where the person ought reasonably to have known that the object in question was an infringing copy)
- possesses an infringing copy of a work in the course of business
- sells or lets an infringing copy of a work for hire
- offers or exposes an infringing copy of a work for sale or hire in the course of business
- exhibits in public or distributes an infringing copy of a work in the course of business
- distributes an infringing copy of a work to such an extent as to prejudicially affect the copyright owner
- provides means for making infringing copies by dealing in an object specifically designed or adapted for making copies of copyright work

- gives permission for use of premises for a performance that infringes the copyright
- provides an apparatus for playing or showing a performance of a copyright work in public.

### 4.3 What acts are permitted with respect to copyright works (ie what exceptions apply)?

The Copyright Act lists a number of acts that can be carried out in relation to copyright works despite the fact that they might be protected by copyright. These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

<b>Act</b>
Transient reproduction of work
<b>Description</b>
A copy that is transient or incidental which: <ul style="list-style-type: none"> <li>• is an integral and essential part of a technological process for making or receiving a communication that does not infringe copyright, or enabling the use of, or lawful dealing in, the work, and</li> <li>• has no independent economic significance.</li> </ul>
<b>Act</b>
Research or private study
<b>Description</b>
Fair dealing for the purpose of research or private study. <p>Whether use amounts to 'fair dealing' depends on the purpose of the copying, the nature of the work, the nature of the copying, whether the work could have been obtained within a reasonable time for an ordinary commercial price, and the effect of the copying on the potential market for the work.</p>
<b>Act</b>
Criticism, review and news reporting
<b>Description</b>
Fair dealing with a copyright work for the purpose of: <ul style="list-style-type: none"> <li>• criticism or review, whether of that copyright work or another work, or of a performance of a work, accompanied by sufficient acknowledgement</li> <li>• reporting current events by means of a sound recording, film or communication work</li> <li>• reporting current events by any means (unless the work is a photograph), accompanied by sufficient acknowledgement.</li> </ul>

Act
Incidental copying of copyright work
Description
The incidental copying of a work in an artistic work, a sound recording, a film or a communication work or the issue to the public of copies of an artistic work, the playing of a sound recording, the showing of a film, or the communication of a work to the public, in which a copyright work has been incidentally copied.
Literary works cannot be incidentally copied, and musical works, words spoken or sung with music, sound recordings or communication works are not incidentally copied if deliberately done.

#### 4.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The New Zealand courts have not considered hyperlinking or framing.

It is likely New Zealand will follow the line of reasoning in the CJEU decision of *Nils Svensson v Retriever Sverige* (C-466/12), in that hyperlinking does not typically constitute fresh publication of a work, and linking to a work freely available on the internet would be permissible as it does not communicate that work to a 'new' public.

However, where a work is not freely available on the internet, such as where the work sits behind a paywall, the copyright owner cannot be said to have communicated with the internet as a whole, and so linking to that work in a way that circumvents the paywall would, as it appears from recent case law elsewhere, constitute a communication to the public and infringe the rights of the rights holder.

That said, in cases where hyperlinking causes users to be misled or deceived into thinking that the copyrighted material is owned by the person who published the hyperlink, action could be brought by the rights holder under the Fair Trading Act 1986 or the tort of passing off.

#### 4.5 Is a licensee of copyright able to bring an infringement action?

Under the Copyright Act, an infringement of copyright is actionable by the copyright owner or exclusive licensee.

The exclusive licensee must be the exclusive licensee of the copyright allegedly infringed, and need not be the exclusive licensee of all rights in the relevant copyright work.

## 5. Remedies

### 5.1 What remedies are available against a copyright infringer?

The Copyright Act provides the following remedies for infringement:

- interlocutory or final injunctions (including search orders and freezing orders)
- delivery up of infringing articles
- seizure of infringing articles
- forfeiture of infringing articles
- either compensatory damages or an account of profits arising from the infringement (though, where a defendant is an innocent infringer, an account of profits will be available to the plaintiff, but damages will not)
- nominal damages
- additional damages in light of the flagrancy of the breach or benefit accruing to the defendant by reason of the infringement.

### 5.2 Are there any specific remedies for online copyright infringement?

Sections 122A to 122U of the Copyright Act provide rights holders with a special regime for taking enforcement action against people who infringe copyright through file sharing.

At the instigation of rights holders, internet protocol address providers (IPAPs) must issue infringement notices to alleged copyright infringers.

There are three types of infringement notices that can be issued, given in the order of:

- detection notice
- warning notice
- enforcement notice.

Once an enforcement notice is issued, the rights holder may take enforcement action by seeking an order from:

- the Copyright Tribunal for up to NZ\$15,000, or
- the District Court, requiring the IPAP to suspend the account holder for up to six months.

The Copyright Act excludes liability for internet service providers (ISPs) for copyright infringement:

- by users merely because the user has infringed, without more, or
- for storage of infringing material.

However, an ISP can be liable for storing infringing material if the ISP has knowledge or reason to believe the material infringes copyright in a work and has failed to delete the

material or prevent access to it as soon as possible after becoming aware of it. Rights holders can seek an injunction from the court ordering the ISP to remove the material.

### 5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

There are a number of criminal acts under the Copyright Act in relation to copyright. These, and their penalties, are set out in the table below.

If an offence is committed by a company and it is proven that an individual officer of the company permitted the offence, had knowledge or could reasonably be expected to have knowledge of the offence and failed to take all reasonable steps to prevent it, then that officer can also be liable for the criminal act.

Criminal act
Making a copy of a copyright work for sale or hire
Relevant intention, knowledge or belief
The knowledge that the object is an infringing copy of copyrighted work.
If the object is an illicit recording; knowledge that the recording is an illicit recording.
Penalty
If the object is an infringing object: A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or Five years in prison.
If the object is an illicit recording: A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or Three months in prison.
Criminal act
Importing a copy of a copyright work into New Zealand other than for the person's private or domestic use
Relevant intention, knowledge or belief
The knowledge that the object is an infringing copy of copyrighted work.
If the object is an illicit recording; knowledge that the recording is an illicit recording.

Penalty
If the object is an infringing object: A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or Five years in prison.
If the object is an illicit recording: A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or Three months in prison.
Criminal act
Possessing a copy of a copyright work with a view to committing an infringing act in the course of business
Relevant intention, knowledge or belief
The knowledge that the object is an infringing copy of copyrighted work.
If the object is an illicit recording; knowledge that the recording is an illicit recording.
Penalty
If the object is an infringing object: A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or Five years in prison.
If the object is an illicit recording: A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or Three months in prison.
Criminal act
Selling or letting for hire or offering or exposing for sale or hire a copy of a copyright work in the course of business
Relevant intention, knowledge or belief
The knowledge that the object is an infringing copy of copyrighted work.
If the object is an illicit recording; knowledge that the recording is an illicit recording.



<b>Penalty</b>
<p>If the object is an infringing object:</p> <p>A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or</p> <p>Five years in prison.</p> <p>If the object is an illicit recording:</p> <p>A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or</p> <p>Three months in prison.</p>
<b>Criminal act</b>
Exhibiting in public a copy of a copyright work in the course of business
<b>Relevant intention, knowledge or belief</b>
<p>The knowledge that the object is an infringing copy of copyrighted work.</p> <p>If the object is an illicit recording; knowledge that the recording is an illicit recording.</p>
<b>Penalty</b>
<p>If the object is an infringing object:</p> <p>A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or</p> <p>Five years in prison.</p> <p>If the object is an illicit recording:</p> <p>A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or</p> <p>Three months in prison.</p>
<b>Criminal act</b>
Distributing a copy of a copyright work in the course of business or otherwise that prejudices the rights holder
<b>Relevant intention, knowledge or belief</b>
<p>The knowledge that the object is an infringing copy of copyrighted work.</p> <p>If the object is an illicit recording; knowledge that the recording is an illicit recording.</p>

<b>Penalty</b>
<p>If the object is an infringing object:</p> <p>A fine not exceeding NZ\$10,000 for every infringing copy to which the offence relates (but not exceeding NZ\$150,000 in respect of the same transaction), or</p> <p>Five years in prison.</p> <p>If the object is an illicit recording:</p> <p>A fine not exceeding NZ\$5,000 for every illicit recording to which the offence relates (but not exceeding NZ\$50,000 in respect of the same transaction), or</p> <p>Three months in prison.</p>
<b>Criminal act</b>
Making or possessing an object specifically designed or adapted for making copies of a copyright work
<b>Relevant intention, knowledge or belief</b>
The knowledge that the object is to be used to make infringing copies for sale or hire or for use in the course of business.
<b>Penalty</b>
<p>A fine not exceeding NZ\$150,000, or</p> <p>Five years in prison.</p>
<b>Criminal act</b>
Causing a work protected by copyright to be performed, played or shown in public
<b>Relevant intention, knowledge or belief</b>
The knowledge that copyright in the work would be infringed by the performance, playing or showing.
<b>Penalty</b>
<p>A fine not exceeding NZ\$150,000, or</p> <p>Five years in prison.</p>
<b>Criminal act</b>
Communicating, playing or showing an illicit recording to the public
<b>Relevant intention, knowledge or belief</b>
Knowledge the recording is an illicit recording.
<b>Penalty</b>
<p>A fine not exceeding NZ\$150,000, or</p> <p>Three months in prison.</p>

<b>Criminal act</b>
Copying a recording without the consent of the performer (otherwise than for that person's private use)
<b>Relevant intention, knowledge or belief</b>
Knowledge that the copy was made without the performer's consent.
<b>Penalty</b>
A fine not exceeding NZ\$150,000, or Three months in prison.
<b>Criminal act</b>
Copying a recording for purposes different to which the performer gave their consent (otherwise than for that person's private use)
Knowledge that the performer has not consented to the copying of the recording for different purposes.
<b>Penalty</b>
A fine not exceeding NZ\$150,000, or Three months in prison.
<b>Criminal act</b>
Commercial dealing in devices, services or information designed to circumvent technological protection measures (TPMs)
<b>Relevant intention, knowledge or belief</b>
Knowledge that the TPM circumvention device will, or is likely to, be used to infringe copyright in a TPM work.
<b>Penalty</b>
A fine not exceeding NZ\$150,000; and/or Five years in prison.
<b>Criminal act</b>
Commercial dealing in works where the copyright management information (CMI) has been removed or altered
<b>Relevant intention, knowledge or belief</b>
Knowledge that the CMI has been removed or modified without the authority of the owner and knowledge that dealing in the work will facilitate an infringement of the copyright.
<b>Penalty</b>
A fine not exceeding NZ\$150,000, and/or Five years in prison.

#### 5.4 Is there a time limit for bringing a copyright infringement claim?

The time limit is six years to bring a claim for breach of copyright.

Time begins to run from the date damage is suffered.

#### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In New Zealand, the successful party will typically recover 70-80% of their costs.

## 6. Enforcement

### 6.1 What courts can you bring a copyright infringement action in, and, what monetary thresholds, if any, apply?

In deciding which court to bring a copyright claim in, the financial value of the claim and the complexity of the facts are the two key considerations.

The value of any claim filed in the District Court must be lower than NZ\$350,000. Any claim that exceeds this amount must be filed in the High Court.

### 6.2 Are there any other ways in which you can enforce copyright?

#### Seizure

A copyright owner may lodge a notice in writing with the Chief Executive Officer of Customs, who then authorises a Customs officer to seize copies of allegedly infringing copyright material (similar to in other countries).

A copyright holder may request seizure by the New Zealand Customs Service of infringing copies being imported into New Zealand on the basis of that Customs Notice.

#### Criminal proceedings

Criminal proceedings, although rare, can be brought on the grounds described in 5.3 above, and pursued through the courts.

#### Copyright Tribunal

An alternative method of bringing proceedings is the Copyright Tribunal. This is an independent tribunal which was originally established by the Copyright Act 1962. Its main role is to adjudicate in commercial licensing disputes between collecting societies and users of copyright material in their business, but it also hears applications about illegal uploading and downloading of copyrighted work (see remedies relating to online infringement at 5.2).

### 6.3 What agency bodies are responsible for promoting and/or enforcing copyright? What do they do?

#### IPONZ

The New Zealand Intellectual Property Office (IPONZ) is the official government body responsible for intellectual property rights including patents, designs, trade marks and plant variety rights in New Zealand. It is an executive agency of the Department for Business, Innovation and Skills.

In relation to copyright, IPONZ is responsible for:

- implementing international IP agreements

- conducting dispute hearings about intellectual property registrations
- IP policy development
- educating businesses and consumers about IP rights and responsibilities
- supporting IP enforcement.

IPONZ is also empowered, through the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) to prosecute offences related to manufacturing, importing and selling counterfeited goods and pirated works.

#### New Zealand Copyright Council

The New Zealand Copyright Council is an independent, non-profit society that represents the interests of many copyright owners and advocates for the importance of copyright. It provides an online copyright advisory service, lobbies for law reform, publishes educational material on specific copyright matters, and maintains close affiliations with international and national copyright organisations around the world.

#### New Zealand Police

The New Zealand Police will also target criminal activity (see 5.3) but it is generally up to the rights holders or the rights management agencies to identify infringement of their rights and seek civil remedies under the Copyright Act, with the additional option of bringing criminal infringements to the attention of the authorities.

#### New Zealand Customs

New Zealand Customs also have enforcement powers under the Copyright Act (see 6.2).

### 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing the rights of another, you usually need to gain permission of the rights holder.

However, as a result of the practical difficulties and administrative burden for copyright owners in granting licences individually to all those seeking them, copyright holders participate in collection schemes by signing up as members of the collecting societies. Once members, they either transfer rights to the collecting society, which then administers the rights for them, or appoint the society as their agent.

The key collecting societies in each sector are as follows:

<b>Agency</b>
Australasian Performing Rights Association (APRA)
<b>Who it represents</b>
Musicians
<b>Agency</b>
Australasian Mechanical Copyright Owners Society Ltd (AMCOS)
<b>Who it represents</b>
Musicians
<b>Agency</b>
Copyright Licensing New Zealand
<b>Who it represents</b>
Publishers and authors
<b>Agency</b>
Phonographic Performances New Zealand Ltd (PPNZ)
<b>Who it represents</b>
Musicians
<b>Agency</b>
Screenrights
<b>Who it represents</b>
Broadcasting
<b>Agency</b>
Recorded Music NZ
<b>Who it represents</b>
Recording labels and recording artists
<b>Agency</b>
Print Media Copyright Agency
<b>Who it represents</b>
Print media publishers
<b>Agency</b>
OneMusic
<b>Who it represents</b>
Record companies and musicians
<b>Agency</b>
Viscopy

<b>Who it represents</b>
Visual artists
<b>Agency</b>
Playmarket
<b>Who it represents</b>
Playwrights
<b>Agency</b>
Christian Copyright Licensing International
<b>Who it represents</b>
Musicians

### 6.5 Are copyright levies payable? By whom, and in what circumstances?

Copyright levies are not payable in New Zealand.

## 7. Copyright reform

### 7.1 What do you consider to be the top two recent copyright developments?

#### Copyright (Infringing File Sharing) Amendment Act 2011

The NZ Government introduced new enforcement measures against the unauthorised sharing of copyright material via the internet under the Copyright (Infringing File Sharing) Amendment Act 2011 (Amendment Act) (see 5.2).

The purpose of the amendment was to:

- deter file sharing that infringes copyright
- educate the public about the problem
- compensate copyright owners for damage sustained from copyright infringement by file sharing
- provide sanctions for serious copyright infringers
- limit ISP liability that may result from account holders' infringing file sharing.

#### *Karum Group LLC v Fisher & Paykel Financial Services Ltd* [2014] NZCA 389

A recent case law development of note is the Court of Appeal's decision in *Karum Group LLC v Fisher & Paykel Financial Services Ltd*, which confirmed that copyright protection in computer programs can extend to a program's underlying rules and structure, to at least a limited extent.

That said, the Court held that the scope of protection in such elements will be constrained, because plaintiffs will likely find it difficult to establish that the structural elements in computer programs are:

- expressions (not ideas)
- original
- substantively copied by the alleged infringer; and
- not merely for function, business rules, or 'matters of external necessity'.

So, while it's possible a New Zealand court may find copyright to exist in computer program elements that are considered functional or ideas rather than expression, the likelihood of successfully being able to enforce those rights appears limited.

### 7.2 What do you consider will be the top two copyright developments in the next year?

#### Copyright and the TPP

New Zealand is a party to the Trans-Pacific Partnership (TPP), which has resulted in the instigation of the Trans-Pacific Partnership Agreement Amendment Act 2016 (TPPAA Act), which will come into force when/if the

Trans-Pacific Partnership Agreement enters into force in New Zealand.

At this stage, it is uncertain whether the TPP will come into force.

Both New Zealand and Japan have ratified the TPP, but it won't come into force until it is ratified by four other signatories. The United States pulled out of the agreement in January 2017, which has stalled implementation, though the remaining members have said they remain committed to the deal.

However, if the TPP does come into force as it currently stands, the TPPAA Act will effect changes to our copyright laws. Most notably, the TPPAA Act would extend copyright by a further 20 years than under the current Act.

#### Copyright Review

In June 2017, the Minister of Commerce and Consumer Affairs released terms of reference for a review of the Copyright Act 1994.

The objectives of the review are to:

- assess how well the Copyright Act 1994 is meeting our objectives for copyright
- identify any barriers to achieving the objectives and how these affect creators, publishers, distributors, users and consumers
- put together a plan to address any issues that are identified.

An issues paper is due to be released for public consultation in early 2018.

© RPC, or the relevant contributors, 2018

*The information contained in this publication is a general guide and is not a substitute for specific legal advice.  
No responsibility is accepted for any errors or omissions.*