

Introduction to copyright law in electronic works

Original literary, dramatic, musical and artistic works and expressions in the form of computer programs, software, compilations, audio/visual recordings, multimedia and digital works generally are all entitled to copyright protection in New Zealand. Because the threshold for originality is quite low, the range of electronic, digital, web or computer based expressions and works protected by copyright is potentially very wide. It is important not to assume that you are allowed to use online material simply because it is publicly available. That material may be protected by copyright.

What is Copyright in Software and Computer Programs?

Copyright only protects the particular expression or embodiment of an original work rather than the underlying concept or idea. This means e-commerce processes, business methods and software concepts will not attract copyright, unless they are sufficiently expressed in a form accepted under the Copyright Act 1994.

Only the original "expression" of any software or computer program is protected by copyright law. This includes the source code, instruction manuals associated with the computer program, the visual "get-up" of the software on screen while in use, and any multimedia presentation that may form part of the software itself.

Many software licences have a "click-wrap" licence which users must accept prior to downloading/accessing the program that includes acknowledgement by the user of the developer's copyright.

With the increasing use of open source software ("OSS") in software development, it is also worth noting that while the use and modification of OSS is free and unencumbered, copyright in any such OSS still rests with the original developer, and the user, developer and supplier of any software containing any part of an OSS code will be bound by the terms of the applicable OSS licence, which may affect how such software may be commercially distributed downstream, if at all.

What About Website Content and Hyperlinking?

Even when materials can be downloaded or accessed easily from the internet, they may still be protected by copyright. Generally, all graphic, multimedia, or audio content on websites are likely to be considered literary or artistic works, and site visitors will typically only be entitled to incidental access, caching and copying of materials on a website for the purpose of visiting or referring to that website. It is important to check the terms of use of any website. An implied licence of this nature is unlikely to extend to the copying, downloading and subsequent use of any information on a website for commercial purposes.

As information is constantly shared and exchanged online, many websites will frequently hyperlink third party websites to their own. This is generally accepted as long as such hyperlink does not include information or representations other than the address of such third party websites or create some form of unwanted or unauthorised association between one website and the other. It is worth noting though, that "deep linking" or "framing" a third party websites by displaying/reproducing third party's copyrighted material within its own site without redirection constitutes copyright infringement.

Given the ambiguous nature of how consents are granted or implied for website material, website developers should include clear copyright notices on their sites detailing the nature and scope works protected, as well as giving users instructions or restrictions on how and where any website material may be referred to or reproduced elsewhere.

Does Publication of Material Online Infringe Copyright?

Publication of copyright material online, such as electronic versions of printed magazines, can potentially constitute copyright infringement, if the publisher did not obtain consent from the author of the original printed work (even if consents were granted for print publications already).

Internet Service Providers ("ISPs") and website owners can be liable for copyright infringement, if copyright-infringing materials were made available through networks or operations where the ISP and website owner exercises editorial control and oversight.

How are Digital Music, Video and Multimedia Works Protected?

Multimedia works, CD-Roms, and digital recordings of music, film and the like are protected under the Copyright Act 1994. Entities like Napster Limewire, and Mega Upload have demonstrated the legal risks involved in providing a platform where infringement of copyright can occur where users can freely copy, reproduce and/or provide an alternative source for protected songs, movies and recordings. The revision of the Copyright Act by the Copyright (Infringing File Sharing) Amendment Act 2011 gives the Copyright Tribunal (on behalf of copyright owners) power to order reparation from persons caught illegally downloading copyright material. Under the Infringing File Sharing scheme, ISPs are obliged to implement a "three-strikes" system for warning internet account holders that copyright material has been illegally downloaded. ISPs and internet account holders should familiarise themselves with this scheme.

It is also an offence under the Copyright Act to make, import, sell, hire or offer for sale or hire any device or means specifically designed or adapted to circumvent copy-protection, such as decryption devices to circumvent some content scrambling systems on DVDs, for example. With the signing of the TPPA, protection for Technological Protection Measures may be enhanced.

It is a breach of the Copyright Act to parallel import DVD's into New Zealand for a period of nine months after the film is first released, unless the DVD is for your private and personal use.

Please contact us if you would like our advice about how we can help your business.