

## Third Party Copyright (Copyright Material Other Than Your Own)

While you are permitted under the Copyright Act 1994 to copy another person's copyright work (third party copyright) and include this copy in a live, printed or digital format with your thesis for the purposes of examination, this exception does not apply if you "publish" or "communicate" your thesis to the public by way of the internet or live exhibition/performance.

If your thesis is to be deposited as a digital copy into ResearchSpace it becomes a "commercial publication"<sup>1</sup> under section 11 of the Copyright Act because it has been posted on the internet and made "available to the public".

Prior written permission to allow your thesis to be made publicly available must be obtained from the copyright owners (this will include the publisher of your own work if you have assigned copyright to them or granted them an exclusive licence to publish) where:

- a "whole work" is copied - a poem, diagram, chart, graphic or image is considered to be a "whole work" and is not just a part of the publication from which it has been taken; or
- a substantial part of a work has been copied – a copy of a part of a work is considered substantial if it represents the essence or an important or significant part of that work<sup>2</sup>; or
- you have collaborated with another person to create a copyright work which is jointly owned; or
- where you have permission to use a work for one purpose (for example, a performance) and you now wish to include a recording of that work in your thesis i.e. the permission does not cover the use of the work for another purpose.

Note that works on the internet are likewise protected by copyright.

You do **not** need the permission of the third party copyright owner if:

1. copyright has expired – 50 years from the death of the author (section 22);
2. the third party work copied or used is not protected by copyright – see the paragraph headed "No Copyright" below for further details;
3. copying is permitted under the Act – e.g. abstracts of scientific and technical articles (section 71); buildings and sculptures on public display (section 73); literary or artistic works relating to medicines imported by the Crown (section 76);
4. use clearly falls under one of the fair dealing exceptions in the Act such as fair dealing for the purpose of criticism and review (section 42);

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<sup>1</sup> "Commercial publication" in relation to a literary, dramatic, musical or artistic work, means the publication of the work consisting of... (b) Making the work available to the public by means of an electronic retrieval system;...(section 11)

<sup>2</sup> A substantial part does not necessarily relate to the amount copied but rather the quality: Vanilla Ice sampled less than 3 seconds of the most identifiable riffs from David Bowie and Queen's song *Under Pressure* without consent or licence which apparently resulted in an out of court financial settlement, see: <http://www.benedict.com/Audio/Vanilla/Vanilla.aspx>.

5. the author has made the work available under a licence which permits the use you intend to make of the work.

Before you rely on any of these exceptions to copy a work without permission of the copyright owner, you must read a fuller explanation of permitted uses of the above which is set out below.

Note that where you are copying or using another person's work you must fully attribute those copyright works or you will be in breach of the original author's "moral rights" which are protected under the Copyright Act and the University's policies on plagiarism.

## **a Copyright has expired**

Material in which copyright has expired may be copied in full and dealt with freely by the public.

Under current New Zealand law, the duration of copyright varies depending on the type of work protected. Note that if you intend publishing articles or a book overseas based on your thesis you may need to get permission to use work which is in the public domain in New Zealand, as in many other countries including Australia, the United States and Europe, copyright expires 70 years following the death of the author.

The duration of the term of copyright is as follows:

- Literary<sup>3</sup>, dramatic<sup>4</sup>, musical<sup>5</sup> or artistic works<sup>6</sup> remain copyright protected until the end of the period of 50 years from the end of the calendar year in which the author dies (section 22).
- Sound recordings and films remain protected for 50 years from the end of the calendar year in which the film is made or made available to the public whichever is later (section 23).
- Communication works<sup>7</sup> remain protected for 50 years from the end of the calendar year in which the work is first communicated to the public (section 24).
- Typographical arrangement or copyright in the layout, typically a published book or journal, remains protected for 25 years from the end of the calendar year in which the work was first published. Thus, new copyright protection attaches to each new typographical arrangement of a work; so that material contained within a new typographical arrangement of a book is subject to the copyright protection the book enjoys. That work may not be copied or dealt with unless it is done so under a licence or with the express permission of the rights holder, normally the publisher (section 25).
- Works of unknown authorship - if it is not possible to ascertain the identity of the author by reasonable enquiry and it is reasonable to assume that the author has been dead for 50 years and copyright has expired, you may freely use the work.

DigitalNZ has created an easy reference guide "Copyright terms and the public domain in New Zealand", for anyone wanting to know what was out of copyright in New Zealand as of 1 January 2011. The guide is available on the DigitalNZ website at:

<http://makeit.digitalnz.org/guidelines/enabling-use-reuse/public-domain-guide/>

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<sup>3</sup> "Literary work" means any work, other than a dramatic or musical work, that is written, spoken, or sung; and includes (a) a table or compilation; and (b) a computer programme.

<sup>4</sup> "Dramatic work" includes (a) a work of dance or mime; and (b) a scenario or script for a film.

<sup>5</sup> "Musical work" means a work consisting of music, exclusive of any words intended to be sung or spoken with the music or any actions intended to be performed with the music.

<sup>6</sup> "Artistic work" means (a) (i) graphic work, photograph, painting, sculpture, collage, or model, irrespective of artistic quality; or (ii) a work of architecture, being a building or model for a building; or (iii) a work of artistic craftsmanship...

<sup>7</sup> "Communication work" means 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.

## **b Copying under licence**

Works posted on the internet are protected by copyright. Unless the author has clearly stated that you are permitted to copy the work and post it on the internet then you may only copy that work to the extent permitted under the Copyright Act 1994.

The author may also make a work available under a licence such as a Creative Commons licence. Creative Commons licences allow creators (licensors) to retain copyright while allowing others to copy, distribute, and make some uses of their work providing they give the licensor credit for their work.

Creative Commons offers 6 main licence types. Providing the licence permits you to copy the original work and distribute it online you may include that work in your thesis. More information about creative commons licences can be found at:

[http://www.creativecommons.org.nz/licences\\_explained\\_1](http://www.creativecommons.org.nz/licences_explained_1)

## **c Fair dealing for criticism and review**

Fair dealing means a use which is reasonable. There is no clear formula for the amount which can be copied for the purpose of criticism and review. This will depend on the particular circumstances of the use. The courts have held that the following factors will determine whether or not a use is fair:

- the number and extent of quotations and extracts from the work copied – too many quotes, and quotes which are too long, are unlikely to be considered fair;
- whether the proportion of the work quoted or the number of images copied is more than is necessary to criticise or review the work – long extracts and short comments will not be considered fair;
- the degree to which the use competes with the work copied, so, for example, if the use would reduce demand for and affect sales of the work copied;
- in some instances whole works may be copied – for example if a work of art or a short poem was being criticised or reviewed;
- a court would be less likely to consider that copying for criticism or review is “fair” if a work is unpublished and not in the public domain or widely distributed;
- the copying must be for criticism, but need not be of the work criticised or reviewed. It may be permissible to copy a work for the purpose of illustrating certain points in relation to the work being criticised;
- criticism may extend to the ideas underlying the work.

Any works copied under this provision of the Act must be accompanied by sufficient acknowledgment. This means the work must be identified by its title or other description and by its author unless the work has been published anonymously or it is not possible by reasonable enquiry to ascertain who the author is.

#### **d No copyright**

Under section 27 of the Copyright Act no copyright exists in any of the following New Zealand works which may be copied freely:

- Bills and Acts of Parliament
- Regulations and Bylaws
- Reports of Select Committees
- New Zealand Parliamentary Debates
- Judgements of any New Zealand court or tribunal. Note: Head notes are protected by copyright and may not be copied without permission
- Reports of New Zealand Royal Commissions, Commissions of Inquiry, Ministerial Inquiries or Statutory Inquiries.

Note: This does not extend to legislation, judgements or reports from outside New Zealand.

#### **e Copying permitted**

Under the Copyright Act the following works may be copied without infringing copyright:

- abstracts of scientific or technical articles accompanying an article in a periodical indicating the contents of the article (section 71);
- buildings and sculptures permanently on public display may be drawn, photographed or filmed (section 73) – this does not extend to copying someone else's graphic image, photograph or film of a sculpture or building on public display, as a separate copyright will exist in the graphic image, the photograph or film itself, which will belong to the artist, photographer or filmmaker;
- text or images relating to a medicine imported by the Crown and published overseas by the copyright owner (section 76). For example copying a photograph published overseas of a medicine imported by PHARMAC or a DHB would not breach copyright in the photograph.