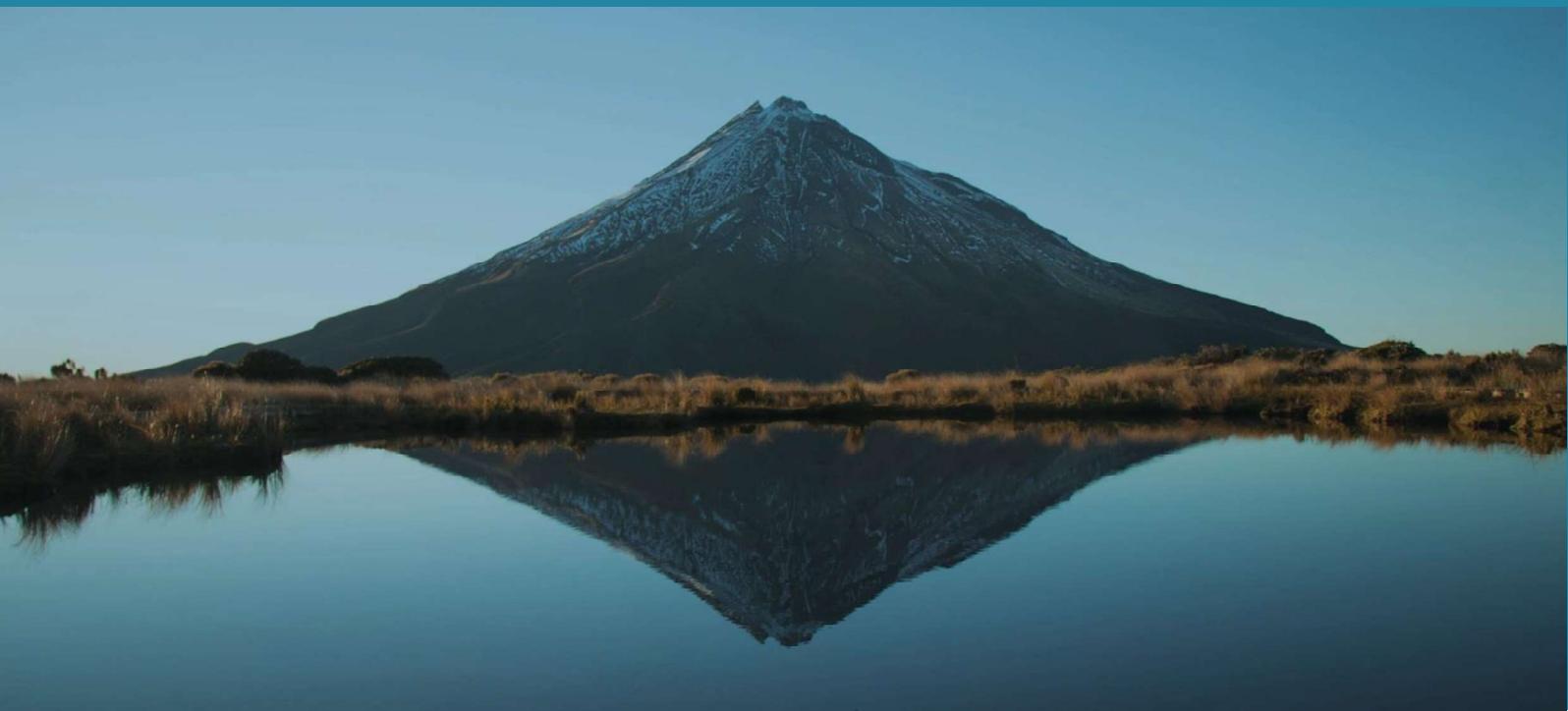




**Te Tari Ture
o te Karauna**
Crown Law

Understanding Copyright

A practical guide for those working
in and for the New Zealand government





Disclaimer: this legal advice is provided to those working in and for the New Zealand government to assist them in using works in which copyright subsists. This legal advice describes the current position of the law at a general level but cannot and should not replace legal advice that is required in specific circumstances. It is not binding on those working in and for the New Zealand government and is not intended to be enforceable against them in any way.

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Contact Details

system.advice@crownlaw.govt.nz

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Introduction

Copyright is a legal right usually given to the original creator of a work. It is a type of intellectual property right, or “IP”. It gives the creator the right to decide how their work will be used by others for a period of time. This means that other people can only use the creator’s work in accordance with the rules of copyright.

Copyright may be relevant to you in two ways. First, you (or your agency) may be the original creator (or owner) of a work and want to know how others can use that work. Second, government agencies deal with a wide variety of materials that may be protected by copyright. You may want, or need, to provide this material to different people and in different forms.

This guide is designed to help you comply with your obligations under the Copyright Act 1994. It is important that government agencies, their employees and their contractors follow the law, including in relation to copyright.

When should I think about copyright?

You should consider copyright whenever you plan to use content taken from any third-party source including social media, news articles (including internet articles), journal articles, diagrams, models, opinion pieces, video clips or photographs, in a work capacity. You can only use the works of others if you are licensed to do so or if an exception in the Copyright Act applies.

If you want to use content from the internet you should start by reviewing the website Terms of Use. A link to these Terms of Use is usually located at the bottom of the landing page and will often contain a clear position on rights of use. Alternatively, you can search for content that is covered by a Creative Commons licence or obtain content from sites that sell licences permitting use of such content (for example, Getty Images).

You may be surprised how many of your everyday activities involve copyright considerations. For example, it’s a common misconception that copyright will not be infringed if an acknowledgment of the copyright holder is included together with the section that has been copied. That assumption is incorrect, other than where there are statutory exceptions (which are described in this Guide): including an acknowledgement will not exempt you from the requirement to have a licence to use a copyright work.

You can use the flow chart on the next page to guide your decision-making. Each step of the flow chart corresponds with a section in this guidance – refer to those sections for more information.

We encourage you to consider using open-source materials where appropriate – refer to page 22 for more information about works which are made available under the terms of a creative commons licence.

Contacting your agency’s legal team

This guide provides general advice only and cannot replace specific legal advice. You may need to speak to your agency’s legal team if:

- you are intending to use copyright works outside of New Zealand;
- you are still unsure about whether your use of the material is permitted;
- you are considering using works containing an element of Māori culture (including Māori words, images or designs); or
- you think that you may have breached copyright.

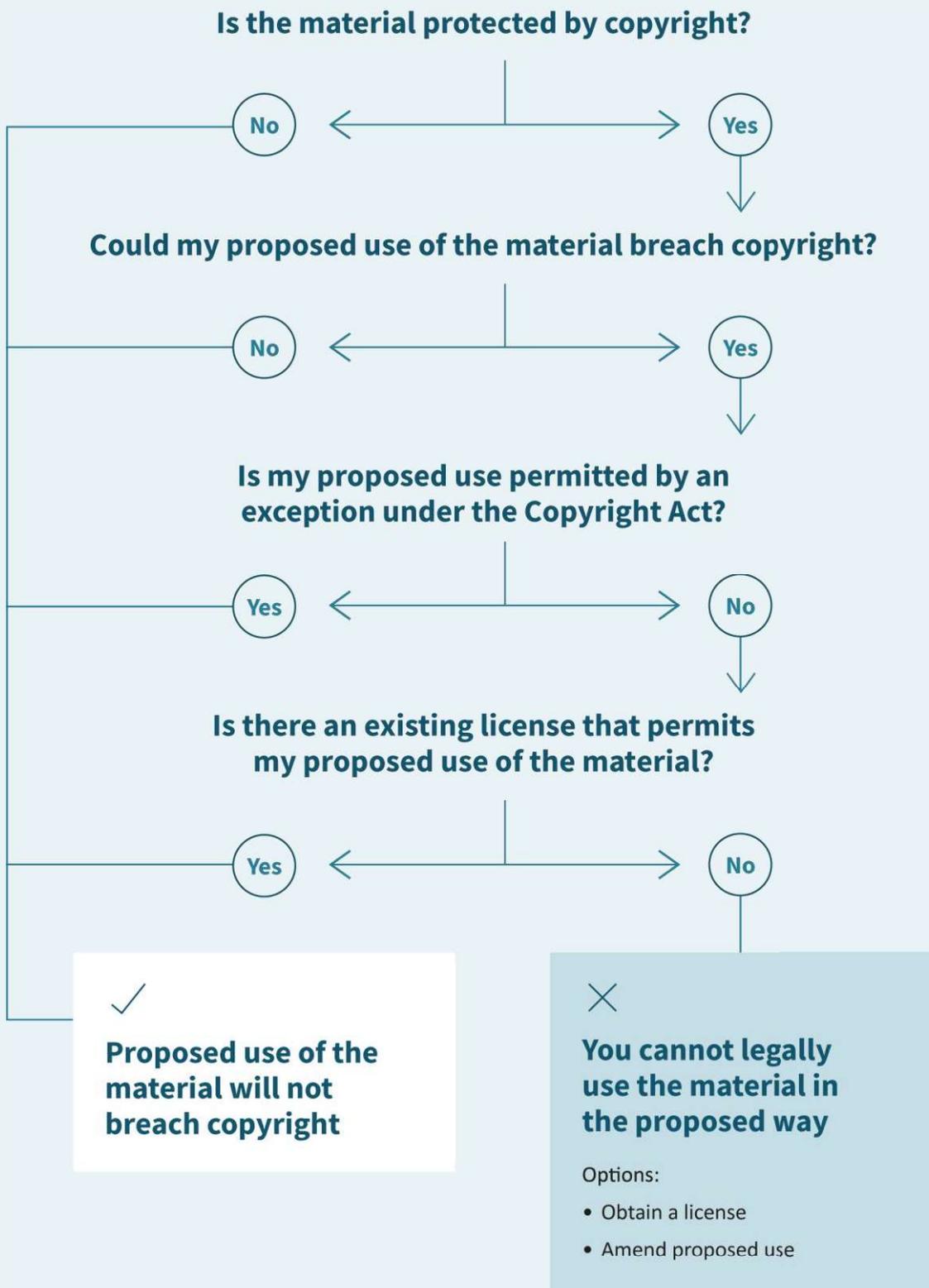


Further resources

For a detailed guide when using works containing an element of Māori culture (including a Māori word, image or design) see: [Protecting intellectual property with a Māori cultural element: User Guide](#) (New Zealand Intellectual Property Office, June 2016). See also: [Mātauranga and Taonga Māori and the Intellectual Property System](#) (Ministry of Business, Innovation and Employment). You may also want to speak to your agency’s legal team.

For updates on a review of the Copyright Act 1994, see: [Review of the Copyright Act](#) (Ministry of Business, Innovation and Employment).

“I want to use material created by someone else in the course of my work...”



QUESTION 1

Is the material I want to use protected by copyright?

You should consider copyright if you want to use any original literary, dramatic, musical, artistic, image, sound, film or communication work in New Zealand.



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You should consider copyright if you want to use any original literary, dramatic, musical, artistic, image, sound, film or communication work in New Zealand.

Is the material a “work”?

Examples of a “work” include:

- social media content (ie tweets, Instagram posts, Facebook posts);
- content from websites;
- news articles and opinion pieces (paper and online);
- legal, business and political commentary (paper and online);
- books, textbooks and journals;
- video and audio clips;
- photographs; and
- graphics, images and logos.

New Zealand copyright law applies to works created in New Zealand. It also applies to works created overseas and used in New Zealand.

What may seem like one document or piece can contain multiple copyright works. For example, a news article may contain the text (a literary work) and a photograph (an artistic work). Sometime different rules will apply to those different works, for example some of the exceptions discussed below only apply to particular types of work.

Copyright protection is an automatic right that exists upon the creation of a work. A work does not have to have the © symbol on it to be protected by copyright.

Is the work “original”?

Copyright protects all original works. There is a low threshold for what counts as “original” work. Works as short as a news headline or tweet, or as non-creative as an instruction manual, are protected by copyright.

Copyright protects the resulting expression of ideas, but not the ideas themselves. For example, while a painting of a sunflower will be protected by copyright, copyright will not prevent another person from doing their own original painting of the same sunflower.

When is there no copyright?

Copyright does not exist in legislative instruments (including Bills, statutes and regulations), judgments of any court or tribunal (excluding headnotes), reports of Royal Commissions, Commissions of Inquiry, Ministerial Inquiries or Statutory Inquiries, or New Zealand parliamentary debates and reports of select committees laid before the House of Representatives.

When was the original work created?

In most cases, copyright lasts from the creation of the work until the date 50 years from the end of the year in which the author dies. **Once copyright expires the works can be used freely without breaching copyright.**

Other periods apply for some kinds of work and to Crown copyright.

Copyright protects works created by persons employed or engaged by the New Zealand government which is referred to as “Crown copyright”. With limited exception, Crown copyright lasts for 100 years from the end of the calendar year in which the work was made.

Who owns copyright?

The person who creates a work is usually the first owner of any copyright in the work.

But:

- a person’s employer will own copyright in most types of works created by that person in the course of employment; and
- a person who commissions and agrees to pay for the creation of some types of work will own the copyright in those works. Note, this rule does not apply to literary works: the copyright in literary works will remain owned by their creator even if that work has been commissioned.

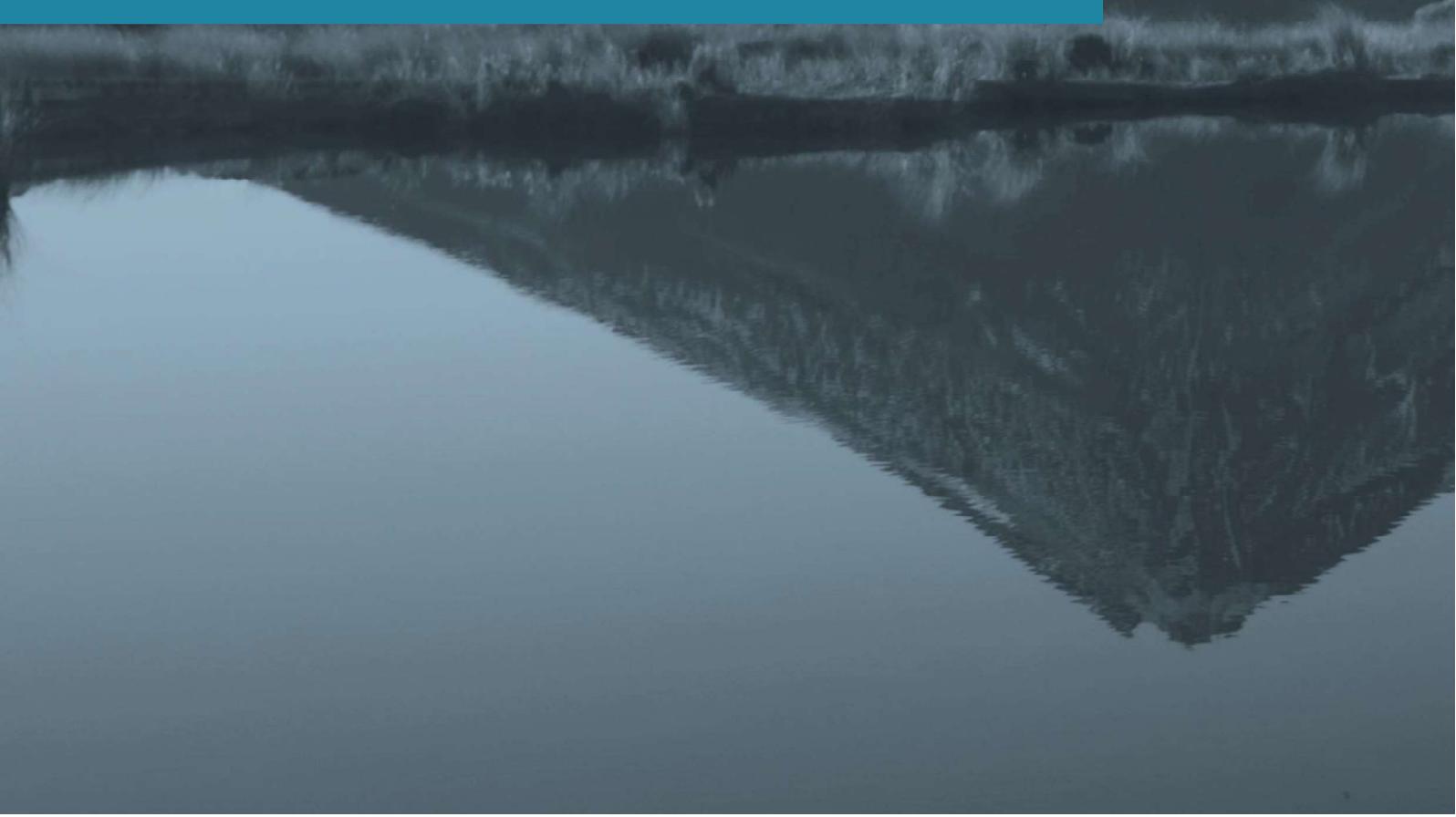
These rules can be overridden by contract. So, if you are paying someone to create material for your agency (including in the course of employment or otherwise), it is always best to have a written agreement that says who will own copyright in that material.

QUESTION 2

Could my proposed use of the material breach copyright?

Next, consider how you are proposing to use the material. Are you proposing to:

- copy the material, for example copying and pasting an image found through Google or photocopying a physical document;
- issue copies of, or communicate, the material to the public, for example including the material in an email that is sent out to members of the public;
- perform, play or show a literary, dramatic, or musical work in public; or
- make an adaptation of the work (e.g. taking some text and modifying it), including copying or sharing that adaptation?



Am I “copying” the work?

“Copying” means:

- taking a copy of a substantial part of the work (including by photocopying, scanning, saving to a document management system, or copying and pasting into a document or onto a website);
- reproducing a substantial part of the work in a “new” work, provided:
 - there is objective similarity between the new work and the copied original; and
 - the copyright work was the source for the new work (rather than something else that is not protected by copyright).

Example

Sarah has received a marketing email. It includes a whole section relevant to her upcoming presentation. She decides to reproduce it in her powerpoint presentation. This is a breach of copyright.

Example

Moana saves a copy of an NBR article into her agency’s document management system. Unless one of the exceptions applies or the agency has a licence (see below), this is a breach of copyright.

Example

Dipesh forwards a Fuseworks report to another member of his team. Forwarding the report creates a copy. Unless the forwarding is covered by one of the exceptions or a licence (see below), this is a breach of copyright.

Am I copying a “substantial part” of the work?

A “substantial part” means an important or distinctive part of a work, or the “essence” of a work that gives it its unique character.

There are no rules in the Copyright Act about the amount of a work that can be used without breaching copyright. It is about the quality of what is used that is taken into account, not the quantity.

Example

Langi is creating external marketing materials for a new policy initiative, and includes a quote from an online opinion piece. The quote sums up the main argument and conclusion from the opinion piece and so is likely to amount to a substantial part of the work that it was copied from. Unless an exception applies or the agency has a licence (see below), this is a breach of copyright.

If you’re not sure whether you’re proposing to use a substantial part of a copyright work, and you don’t think that any of the exceptions or licences described below apply to you, seek advice from your agency’s legal team.

How does copyright apply to content from the internet?

Material published on the internet, including on social media, is no different to material published in traditional ways. Social media content is protected by copyright, and use of that content will breach copyright unless an exception applies or your agency has a licence. Just because something is freely available on the internet does not mean you can use it without breaching copyright.

Example

Judy copies and pastes two paragraphs from an online newsletter and circulates it to her work mates. Unless an exception applies or the agency has a licence (see below), this is a breach of copyright.

Example

Mei includes a photograph sourced from social media in a power point she uses for a conference presentation. Unless an exception applies or the agency has a licence, this is a breach of copyright.

Example

Anahira copies and pastes a paragraph from a news article into an internal newsletter. Unless an exception applies or the agency has a licence (see below), this is a breach of copyright. Anahira could have avoided breaching copyright by instead circulating a link to the article.

Circulating or publishing hyperlinks to content on the internet does not breach copyright. However, you need to be careful that you are not copying any of the content itself (for example by displaying a snippet from the linked website), as that could be a breach of copyright (if it were considered a substantial part). You should also never share a hyperlink to get around a paywall (for example to an NBR article or a paywalled NZ Herald article).

Example

Omar copies and pastes content from a media article into a LinkedIn post on behalf of his agency. Unless an exception applies or the agency has a licence, this is a breach of copyright. A safer approach is to include a link to the media article in the LinkedIn post, instead of copying and pasting the content.

QUESTION 3

Is my proposed use permitted under the Copyright Act?

You can only copy, communicate, perform or adapt an original work if permitted by the Copyright Act or under a licence.

Under the Copyright Act, you can:

- incidentally copy a work. Whether copying is incidental depends on an objective assessment of the circumstances, rather than any subjective intent. An example of incidental copying is the copy that your computer automatically makes when you visit a webpage. This exception does not apply to literary (ie written) works;
- “fair deal” with the work for the very limited purposes of:
 - criticism, review or news reporting where this is accompanied by a sufficient acknowledgement; or
 - research or private study;
- use the work for educational purposes at an educational establishment and comply with the copying requirements set out in the Copyright Act;
- use the work for certain parliamentary or Crown purposes; or
- use the work for certain limited purposes if you are a prescribed archive or library service.

Exceptions for “fair dealing”

You are allowed to “fair deal” with a work, or part of it, for certain specified purposes.

The Copyright Act does not spell out what fair dealing means. It permits fair “use” as opposed to specific acts (eg, copying, issuing copies to the public).

Whether your use is “fair” will depend on all the circumstances of the use. There are no hard rules as to what counts as fair dealing.

Criticism, review and news reporting

You may “fair deal” with a copyright work, or part of it, for the purposes of:

- criticism or review, provided your use of the work is accompanied by a sufficient acknowledgement of the author and the title of the work; or
- reporting current events, provided that, in the case of written reporting, you acknowledge the author and title of the work (unless the work is a photograph in which case the exception does not apply and you will need a licence from the copyright owner).

The Copyright Act does not define “criticism”, “review”, or “news reporting”. The courts are sceptical of attempts to justify breach of copyright as criticism, review, or news reporting where the purpose of the use is actually something different, for example, for entertainment purposes.

Using a work for the purposes of criticism, review and news reporting is not an automatic defence to breach of copyright. The use must also constitute “fair dealing”, which will depend on:

- whether your use is in competition with the original work;
- whether the original work has been published; and
- the amount and importance of the work that you have used.

Example

Chang comes across an article inaccurately describing one of his agency’s policies. He circulates parts of the article, with his commentary, internally for the purpose of criticising the picture that the article paints. As long as the author of the work is appropriately attributed, this would be unlikely to breach copyright, as it would likely fall within the exception for fair dealing for the purpose of criticism.

Research or private study

You may “fair deal” with a copyright work, or part of it, by copying that work for the purposes of research or private study.

Research includes research for the purpose of your job.

You may only make one copy of a work, or the same part of it, for each piece of research or private study.

If you are using a copyright work for research or private study, your usage must also be “fair dealing”, which will depend on:

- the purpose of the copying;
- the type of the work;
- whether you could have obtained the work within a reasonable time at an ordinary commercial price;
- the effect of the copying on the potential market for, or value of, the work; and
- where part of a work is copied, the amount and substantiality of the part copied in relation to the whole work.

Example

Hinewai prints copies of a number of academic articles and sections of text books for the purpose of policy research and development. As long as she only prints one copy of each of the articles and sections, the amount of copying was reasonable, and the use was directly related to the research Hinewai was conducting, this falls within the exception of fair dealing for research and not breach copyright.

Exceptions for parliamentary or Crown purposes

If what you are doing falls within the following exceptions, you won't be breaching copyright.

Material communicated to the Crown in the course of public business

The Crown¹ may use (by copying or issuing copies to the public) a copyright work that has been communicated to it by, or with the permission of, the copyright owner, as long as:

- the Crown uses that work only for the purpose for which the work was communicated to it, or any related purpose that could have reasonably been anticipated by the copyright owner; and
- the work has not been published before, other than under this exception.

Example

Greg is preparing a report that summarises submissions received from members of the public. He copies parts of the submissions and includes them in the report, which will be released publicly. The submissions are original works, with copyright owned by the submitter. However, this is not a breach of copyright as the use of the material in this way falls within the purpose for which the submissions were received, and the content of the submissions has not been published before.

Parliamentary and judicial proceedings, Royal Commissions and statutory inquiries

You can table documents in Parliament or include documents in submissions to select committees without infringing copyright.

You can also use any materials in a judicial proceeding or an inquiry without breaching copyright. This includes proceedings before any court, tribunal, or person having authority to decide any matter affecting a person's legal rights or liabilities.

¹ "Crown" in the Copyright Act means His Majesty the King in right of New Zealand and includes a Minister of the Crown, a government department, an Office of Parliament, and the Parliamentary Counsel Office; but does not include (i) a Crown entity; or (ii) a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

This exception covers the use of materials in binding arbitration proceedings, but not mediation as mediation does not lead to a decision which binds the parties.

This exception does not include the use of material in internal department reviews, such as Inland Revenue's Disputes Resolution Unit or the Ministry of Social Development's Benefits Review Committee.

Example

Mikaere copies extracts from a textbook to include in an affidavit to be used in court proceedings. This is not a breach of copyright as it falls within the exception for judicial proceedings.

Other parliamentary or Crown purposes

Other related exceptions include:

- where legislation authorises the use of copyright works – for example, copyright does not prevent you providing material if requested under the Official Information Act 1982 or storing as required by the Public Records Act 2005;
- anything done in relation to copyright works for the purpose of national security, during a period of emergency or in the interests of the health or safety of the public or any members of the public (although agreed remuneration will be payable to the copyright owner after the fact); and
- material open to public inspection or an official register.

If you think one of these exceptions might apply, please seek further advice from your legal team.

Exceptions for librarians and archivists

Some librarians and archivists have their own special rights under the Copyright Act.

For librarians, these rights only apply to librarians and their staff at specified libraries (which include the National Library, Parliamentary Library, law libraries, and libraries of educational establishments, government departments or local authorities). There is also a specific exception for copying by the Parliamentary Library for members of Parliament.

For archivists, these rights only apply to archivists and their staff at specified archives (which include Archives New Zealand | Te Rua Mahara o te Kāwanatanga, the National Library, the sound archive maintained by Radio New Zealand, the film archive maintained by Television New Zealand, and the film archive maintained by the New Zealand Film Archive).

QUESTION 4

Is there an existing licence that permits my proposed use of the material?

A licence is essentially the authorisation required to use another person's copyright work. A licence may vary in both form and formality; it may involve a 30-page contract, an exchange of emails or be included within a website's terms of use

Depending on the type of material that you want to use, and the source of that material, you may be permitted under existing licences to do certain things with that material.

Is there a website licence that applies?

Sometimes the terms of use for a website will grant you a licence to use material from that website. Some examples of are below:²

Example

“You may browse the Site for your own personal use, information, research, study and educational purposes only. Stuff grants to you a limited non-exclusive license to view, copy and print the Content for your non-commercial or personal use. If you would like to use the Content in any other way you will need to request permission from us. All requests for permission for further use of the Content must be in writing and should be sent to syndication@stuff.co.nz.”

Mehera prints an article from Stuff to read later because it may be useful for her work as a public servant. This is permitted under the website licence (and would also likely fall within the exception for fair use for research purposes). This is not a breach of copyright.

Example

“All content of this website is copyright NBR and cannot be reproduced, in any form, without permission. Subscribers and others are encouraged to post a headline and a link to an NBR article. If you are sharing an article with a group that includes people without paywall access, we encourage you to let them know that they can register for a premium account to read the article.”³

Hone copies and pastes part of an NBR article into an email to circulate to his team, as he thinks they will find it interesting. This is a breach of copyright. Hone could avoid breaching copyright by circulating a link to the article instead.

² Correct at the date of publication; please check websites for the most up-to-date information.

³ The NZ Herald website takes a similarly restrictive approach.

Is there a collective copyright licence that applies?

There are various organisations that work with copyright owners to help them license their materials for particular purposes. If you obtain a collective licence then you will generally pay a fee for members of your organisation to use materials from different copyright owners.

Obtaining a collective licence can also remedy past copyright breaches. Collective licensing is generally more efficient than trying to obtain a licence for each specific use from each copyright owner.

The most relevant collective licences to the public sector are from the Media Copyright Agency (MCA) and Copyright Licensing New Zealand (CLNZ).

CLNZ and MCA licences are largely limited to internal use and, if you want to share materials externally, including to other agencies, then you will need to carefully check the licence terms or check directly with MCA or CLNZ.

Media Copyright Agency (MCA)

The MCA licences print and electronic material on behalf of New Zealand media and newspaper organisations.



A full list of publications covered by MCA is here: mediacopyrightagency.co.nz

An MCA licence gives you the right to copy and share content from news articles within your agency in a way that would otherwise breach copyright. The right to share this content externally is also available for a higher fee.

The MCA offers both Corporate and Government licences. The standard offering consists of:

- A basic licence allowing you to print, photocopy and fax articles from newspapers included on the 'Basic Licence' list and distribute them within your agency for internal communication purposes. This licence has optional extensions for titles on the 'Magazine and Business' and 'Community Newspapers' lists.

- A digital copying licence allowing you to digitally copy, store and distribute (via email or intranet) to people within your agency for internal communication purposes articles from any of the publications that you are entitled to copy from under a Basic Licence (including optional extensions). This licence has an optional web extension allowing you to publish licensed news articles on your agency's website.
- An external supply extension enabling you to provide copies of print or digital content sourced from a press clipping agency or media monitoring agency (which has a licence with the MCA) to your clients, members, advisors or persons listed in your application form.



Costs are charged on a per-employee basis and the current government price list is here: mediacopyrightagency.co.nz/government-price-list.

If your agency already receives third party media monitoring services, you should check any crossover between the terms of your MCA licence and that of the media monitoring service. Under media monitoring service terms you will generally be able to receive an electronic copy of a licensed article, view the press clip on-screen and then delete immediately, without saving the file or circulating it, without needing an additional licence. If you intend to share, reproduce, record, or store the clipping in any material form (including any digital format), in any medium and by any means, then you will need a licence from the MCA or the copyright owner.

Copyright Licensing New Zealand (CLNZ)

CLNZ offers commercial licences and government licences for a range of written and artistic copyright works. The terms of these licences (including the purposes for which licensed material can be used) are not published but, broadly, they permit a licence-holder to:

- copy material that originates from a printed book, journal or magazine, or a scanned or digital copy of an original printed version, provided that:
 - they copy no more than 10 per cent or one chapter of a book (whichever is greater, including pictures and graphs); and
 - they may copy complete magazine and journal articles (one per issue, more if on the same subject);
- copy overseas newspaper articles (five per issue, from online or hard copy); and
- share materials with staff via password protected intranet sites (eg. staff portals), email, handouts, briefing notes and staff compiled worksheets (printed and digital), and interactive whiteboards and screens.

Costs are charged on a per employee basis, depending on the size of the agency seeking the licence.



For more information about government licences and how to obtain them: copyright.co.nz.

Other

Other collective copyright licences are available for other types of copyright works such as music, plays, and art. For example, APRA and Recorded Music NZ offer music licences through their initiative OneMusic. There may also be licences available through overseas organisations that cover the use of works outside New Zealand.

Is there a creative commons licence that applies?

Many copyright works, including images, video clips, books, or text, audio or video files, are available for free public use under a Creative Commons licence.



Visit creativecommons.org for more information and a searchable database of content.

You may also wish to make works owned by your agency available to the public under a Creative Commons licence.

There are a number of different types of Creative Commons licence, as summarised below.

If you are using material provided under a Creative Commons licence, you still need to carefully check which kind of licence it is, and ensure that you comply with its terms. We also recommend keeping a record of what licence the work was obtained under, and from where.

If you are making material available under a Creative Commons licence, make sure that your agency owns the copyright in the relevant copyright works or is otherwise entitled to grant the licence, and that you choose the correct Creative Commons licence for that purpose.

Creative Commons Licence Types



CC BY:

Allows re-users to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. Allows for commercial use.



CC BY-SA

Allows re-users to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. Allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.



CC BY-NC:

Allows re-users to distribute, remix, adapt, and build upon the material in any medium or format for non-commercial purposes only, and only so long as attribution is given to the creator.



CC BY-NC-SA:

Allows re-users to distribute, remix, adapt, and build upon the material in any medium or format for non-commercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.



CC BY-ND:

Allows re-users to copy and distribute the material in any medium or format in un-adapted form only, and only so long as attribution is given to the creator. Allows for commercial use.



CC BY-NC-ND:

Allows re-users to copy and distribute the material in any medium or format in un-adapted form only, for non-commercial purposes only, and only so long as attribution is given to the creator.

Do we have a licence directly from the copyright owner?

In some circumstances your agency might have a licence directly from the copyright owner, for example if the work was provided to your agency under a contract that included such a licence. If you are relying on a direct licence, you should make sure to comply with the terms of that licence (for example as to permitted uses and attribution of the copyright owner).

Your agency may engage a supplier to produce a product or deliverable (eg assessment reports, learning materials, new branding and guidelines, an ICT system etc). Decisions will need to be made as to whether your agency should own the copyright in those products or deliverables or whether a licence is sufficient.

A lot of the time it may be that your agency only requires a licence and is happy for the supplier to retain ownership of the copyright (so that the supplier can continue to commercialise that copyright in its own right). Although there will be times when it is appropriate for your agency to own the copyright itself.

It is preferable to record the ownership and licensing structure in the contract (rather than relying on the commissioning rule under the Act). In agreeing the structure, you should look to address the following as a minimum:

- determining the extent of any licence is key ie whether it's perpetual, unconditional, royalty free, irrevocable, worldwide, transferable, sublicensable; and
- determining the scope of the licence is also key ie does it need to be broad and allow the agency to use it for any purpose or only for a particular defined purpose.

Your agency will need to be careful that it only uses the copyright work within the agreed parameters of the licence.

There may be times when a joint ownership model of copyright is proposed. It is important to note that how joint ownership will work is a contractual construct rather than a statutory one. Your agency will need to clearly set out in the contract the agreed terms for the operation of any joint ownership arrangement. For example:

- Can each party use the copyright at its sole discretion without requiring the consent of the other party?
- Is there any royalty payable to the other party?
- Is there an unrestricted right for either party to sublicense or transfer their joint copyright?

Your legal team can support you in answering these questions.



**Te Tari Ture
o te Karauna**
Crown Law