

Copyright in electronic works



Multimedia

Multimedia productions are interactive digital works including text, photographs, graphics, animation, sound and film, video clips and a computer program which controls interaction. Individually all of these components may attract copyright. Frequently, pre-existing copyright works are incorporated and in some productions the producer may own copyright in only a small percentage or none of the component works. However, if the finished production (for example, a CD ROM) is copied, the producer needs the power to take legal action to restrain the copier. It is not feasible to gather together the individual owners of copyright in each component work for this purpose.

Under the Copyright Act 1994 (the Act), copyright for producers of multimedia productions has been provided by making such works 'compilations'. This comes about because the definition of 'compilation' extends to works consisting 'wholly of works or parts of works' or 'partly of works or parts of works'. The producer as compiler will own this copyright. 'Compilations' are a species of 'literary works' in which copyright has always subsisted.

To the extent that a multimedia production results in 'moving images', some auxiliary protection will also be available to it as a 'film' (see below).

Copyright clearances for multimedia productions

As many multimedia productions make use of pre-existing material (such as video clips, photographs, music), it is important that the producer obtains a licence (clearance) to use this material from the copyright owners, their licensees or agents. Even the use of fragmentary footage or samples is likely to infringe copyright. It is not easy to obtain the necessary clearances since, apart from music, there are no universal copyright clearing houses in New Zealand. Ample time and budget should therefore be allocated for this activity. It is also important to ensure that the correct rights are licensed, that is, the electronic or digital reproduction rights, and that the licensor actually has the power to grant these rights.

Electronic works

Photographs

Under the Act, photographs are not simply images captured on a light sensitive film. Any recording of light (or other radiation) from which an image may be produced is a photograph. Digitised images stored on a disk from which the image may be reproduced electronically are photographs and receive protection under photographic copyright. This copyright is infringed by reproducing the photograph in any material form, by storing it in any medium or broadcasting or transmitting it over a cable programme service. Among other actions, the unauthorised digital scanning of a photograph will infringe.

Films

Any recording from which a moving image can be produced will constitute a film and receive copyright as such.

Thus, magnetic tapes and optical disks (including CD ROMs) which store video are all protected as films. Film copyright is infringed in the same way as photographic copyright with the addition that unauthorised showing in public also constitutes infringement.

Sound recordings

While a sound recording may be viewed as a mechanical means for delivering a musical, dramatic or spoken work to a consumer for subsequent electronic reproduction, it is also a copyright work in its own right. This copyright exists separately from any copyright in the stored sounds and is owned by the producer of the recording. Sound recording copyright is infringed by reproducing the recording, broadcasting or cable casting or playing it in public.

If copyright subsists in the recorded sound, for example, music in which copyright has not expired, then any of these infringing acts will also infringe the composer's copyright.

Fonts

An original type face will attract copyright as an artistic work. Similarly, an original set of typefaces (a font) will also attract copyright as an artistic work. Apart from professional printers, every personal computer user makes use of fonts which are supplied as software on disk or as ROM cartridges for laser printers. Under the Act, artistic works are infringed by unauthorized reproduction or recording in any material form or storage in any medium.

However, copyright in a font will not normally be infringed by an end user (whether a printer or a computer user) because the font is sold with an implied licence to use it in producing visible text. Copyright in fonts will normally only be infringed by suppliers of fonts whether in hard form or as software. In relation to the latter, an additional copyright in the bit maps will also arise as a literary work.

Electronic delivery systems

Copyright in signals

Electromagnetic or optical signals are commonly used to convey copyright works to the end consumer. However, the signals themselves may be entitled to copyright. The Act confers copyright in two 'signal' works, namely 'broadcasts' and 'cable programmes'. 'Broadcast' means a transmission of a program by wireless communication from any source for reception in New Zealand or elsewhere. This includes foreign broadcasts and satellite broadcasts.

Signal copyright is infringed by making a recording of the signal, 'playing' the signal in public, rebroadcasting or re-cablecasting, and, in the case of a video signal, making a photo of any part of it.

Where recorded music is being broadcast, an act which infringes copyright in the broadcast may also infringe the separate copyrights in the sound recording and the music.

'Cable programme' is any item in a cable programme service and 'cable programme service' means a service where information is conveyed by means of a telecommunications system otherwise than by wireless communication. The signals transmitted over two-way public networks, including data networks such as the Internet, are excluded from protection!

The items sent over such networks may well of course be the subject of copyright. The exclusion is however framed to ensure copyright will still subsist in interactive multimedia network services on the 'infobahn', such as 'video on demand', where the users return signals are only 'sent for operation or control of the service'.

Transmission rights

The copyright in literary, dramatic, musical and artistic works, sound recordings, films, broadcast signals and cable programmes is infringed by broadcasting such works or including these works in a cable programme service. However, the Act does not give copyright owners a technology-neutral broad-based right to authorise transmissions of their works to the public. Transmitting a copyright work over the internet (for example, a graphical work taken without authority to enhance a web page) does not infringe the owner's transmission rights because a 'cable programme service' does not include the internet. However, such transmission will infringe if the sender knows or has reason to believe that copies will be made by the recipient of the transmission.

Computer databases

A separate database copyright is available because of the broad definition the Act gives to 'compilation'. In addition to the passage referred to under 'Multimedia' above, 'compilation' also includes 'a compilation of data other than works or parts of works'.

This literary copyright will exist independently of any copyright in the component data making up the database provided there is sufficient originality in the database compilation. Originality must lie in the structure, arrangement and selection of the works or data.

Computer programs

Under express provisions in the Act, computer programs attract copyright and this copyright will be infringed by copying, conversion into another language or code, storage in any medium and decompilation for any purpose. The Act provides no right to decompile for the purposes of producing an interoperable program. In this respect, the Act differs from the law in Europe where decompilation for such a purpose is permitted.

The Act contains no definition of 'computer programs' or 'computer software', but it is clear that copyright subsists in both source code and object code in whatever form those codes may be stored.

Computer programs will be what software experts say they are at the time. Unfortunately the question of whether copyright exists in the 'look and feel' of a computer program, or alternatively, whether the copyright in a program extends to cover 'look and feel' is still an open question which can only be resolved by the courts. There is also no certainty as to whether program copyright extends to program structure and software database definition.

A significant change has been made in the area of ownership of copyright in commissioned computer programs. Under the 1962 Act, in the absence of an agreement to the contrary, the program writer owned copyright. Under the new Act, in the absence of an agreement to the contrary, the commissioner will own the copyright subsisting in a commissioned program.