



Intellectual Property

SIMPSON GRIERSON 2007

Copyright - What Does It Protect?

Copyright arises automatically in a very wide range of works, from the most mundane types of reports to "high art", films and sculptures. Only works which are original (ie

works which are not just a copy of another work) will be protected by copyright, provided there has been sufficient labour and effort in their creation.

Typical examples of the copyright materials of a business are logo designs, proposals, brochures, manuals, packaging, photographs, diagrams, outlines, plans, compilations, the content of websites as well as the underlying computer software programs, and also the designs of actual products or machinery a business may manufacture.

The main limitation on copyright protection is that there is no copyright in an idea. Instead, copyright subsists in the expression of the work. Copyright provides protection against copying, and

is a property right by virtue of the Copyright Act 1994.

Maximum Protection

Although copyright protection arises automatically in New Zealand (that is, you do not have to apply for registration) there are steps that can be taken to retain maximum protection. Ideally, you should:

- ◆ Ensure copyright in works created by employees, contractors and agents is owned by your business. This can be achieved through standard contracts or covenants with express copyright clauses or statements.
- ◆ Ensure ownership of copyright is contractually dealt with between you and your clients or customers, where this is appropriate.
- ◆ Use a full copyright statement at the start of substantial or valuable documents (including those found on your website).

- ◆ Include on the foot of each page of printed material and electronic works such as web pages in which you claim copyright, a copyright notice such as "© Simpson Grierson 2007".
- ◆ For software, include a copyright statement in the body of the actual code as well as the statement which appears on the screen when the program is run.
- ◆ Document and keep records of all potentially valuable works in which copyright may exist. Each such work should be marked with a © symbol, the names of the authors and owners, and the date of creation.

By following these steps you help put others on notice of ownership claims and avoid a possible defence that an infringer was misled by the absence of notice. It also provides a good starting point if you ever need to take action against a potential infringer.

Period of Protection

The length of copyright protection varies according to the type of copyright work. For literary works, software, musical works and artistic works such as photographs or drawings, the protection is limited to the life of the author plus 50 years. Copyright in an artistic work that has been industrially applied (manufactured industrially) is effectively limited to 16 years from the date of first industrial application.

Ownership

A contract which stipulates ownership of copyright will govern ownership. In other cases:

- ♦ the author is generally the first owner of copyright in a work; but
- ♦ copyright in works created by employees during their employment is (generally) owned by the employer;
- ♦ copyright in commissioned works, other than written works, is usually owned by the party that commissioned and agreed to pay for the work; and
- ♦ copyright in works created for the Crown is generally owned by the Crown.

Overseas

Don't assume the level of protection is the same overseas. Often it isn't. For example, in Australia, once you industrially apply your work (e.g. start manufacturing in commercial quantities), your ability to rely on copyright ceases. Other options like registered designs have to be considered.

Moral rights

The Copyright Act 1994 introduced to New Zealand moral and performers' rights. Authors have moral rights to:

- ♦ have their names associated with their works;
- ♦ not have their works distorted or mutilated;
- ♦ not have works falsely attributed to them.

It will be sensible for your organisation to obtain waivers of moral rights from creators in certain cases.

Defences

There are a number of defences to an alleged breach of copyright including "incidental copying", "fair dealing" for the purpose of reporting current events and fair dealing for the purpose of criticism or review. Most defences are quite specific.

Optimum protection

In order to maximise the advantage of any copyright protection, you should seek help from a skilled legal professional as early as possible.

Contact Information



Earl Gray, Partner

Tel: 09 977 5002 Fax: 09 977 5099
Mobile: 029 977 5002
earl.gray@simpsongrierson.com



Tracey Walker, Partner

Tel: 09 977 5088 Fax: 09 977 5028
Mobile: 021 273 6241
tracey.walker@simpsongrierson.com



John Shackleton, Partner

Tel: 04 924 3540 Fax: 04 472 6986
Mobile: 029 924 3540
john.shackleton@simpsongrierson.com



Richard Watts, Senior Associate

Tel: 09 977 5182 Fax: 09 977 5099
Mobile: 021 895 931
richard.watts@simpsongrierson.com



Sarah Chapman, Senior Associate

Tel: 09 977 5167 Fax: 09 977 5099
sarah.chapman@simpsongrierson.com



Claire Foggo, Senior Associate

Tel: 09 977 5314 Fax: 09 977 5099
claire.foggo@simpsongrierson.com

- ♦ **Fiona McKenzie, Associate**
fiona.mckenzie@simpsongrierson.com
- ♦ **Angela Stafford, Solicitor**
angela.stafford@simpsongrierson.com
- ♦ **Emma Shearing, Solicitor**
emma.shearing@simpsongrierson.com



Simpson Grierson

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E-mail: info@simpsongrierson.com
Website: www.simpsongrierson.com

Auckland Office.

Lumley Centre
88 Shortland Street
Auckland, New Zealand.
Tel +64 9 358 2222 Fax +64 9 307 0331
DX CX 10092.

Wellington Office.

HSBC Tower, 195 Lambton Quay
PO Box 2402, Wellington, New Zealand.
Tel +64 4 499 4599 Fax +64 4 472 6986
DX SX 11174.