



15. FACT SHEET ON INTELLECTUAL PROPERTY

This fact sheet covers the three intellectual property statutes operating in New Zealand:

- *The Copyright Act 1994 protects an organisation's literary, dramatic, musical and artistic works, and any films or broadcasts it creates.*
- *The Trade Marks Act 2002 protects the names, signs and marks an organisation uses in connection with its trading activities.*
- *The Patents Act 1953 protects an organisation's inventions.*

COPYRIGHT ACT 1994

The Copyright Act allows for various classes of work in which a person may have copyright. Almost any original form of communication or expression attracts copyright, including:

- literary, dramatic, musical or artistic works (including databases and computer programmes)
- films, broadcasts or cable programmes
- typographical arrangements of published works (such as the arrangement of a newspaper).

The Act gives copyright owners the exclusive right to do certain things in relation to their copyright works. For example, the copyright owner of a publication has the exclusive right to sell or license the sale of that publication.

Copyright is automatic – a copyright owner does not have to register their work to have the benefit of a copyright.

Who owns copyright?

Ownership of copyright vests in the author of the work, unless there is a different agreement. There are two exceptions:

- **Commissioned works:** When a person commissions and pays for a work covered by the Act, or agrees to pay for the commission, that person owns the copyright in the work.
- **Work by employees:** Works generated by employees in the course of their employment become the employer's property. Employment agreements may also explicitly state that the employer will be the exclusive owner of the copyright.

If copyright is assigned permanently or licensed temporarily to another person, the assignment must be in writing and signed by, or on behalf of, the copyright owner.

Specific types of copyright works

Types of copyright works the Act covers include:

- photographs
- computer programmes
- paintings
- charts, drawings, plans, diagrams and maps
- engravings
- models and sculptures
- films and sound recordings.

How long does copyright last for?

The duration of copyright depends on the type of work created:

- Copyright in literary, dramatic, musical or artistic works lasts for 50 years from the end of the year in which the author dies.
- Copyright in sound recordings and films lasts for 50 years from the end of the year in which the work was created.
- Copyright in broadcasts and cable programmes lasts for 50 years from the end of the year in which the broadcast was made.
- Copyright in typographical arrangements of published editions lasts for 25 years from the end of the year in which the edition is first published.

Copyright infringements

It is a breach of copyright to:

- copy a work, or a substantial part of it, without the owner's consent
- perform, show, play or broadcast a work, or a substantial part of it, without the owner's consent
- authorise any other person to do either of those things.

Single copies of copyright works can be made for research or private study, and some copying is allowed for educational purposes.

COPYRIGHT ACT 1994 (CONTINUED)

A copyright owner may sue a person who infringes copyright. The Court can award damages, including punitive (or “exemplary”) damages.

There are also criminal penalties for infringing copyright. A standard fine under the Act is \$5,000 for each infringement. Serious offences involving copyright infringement as part of a commercial operation may attract fines of up to \$150,000 or imprisonment for up to five years.

TRADE MARKS ACT 2002

A trade mark is a distinctive symbol used in trade, which allows consumers to distinguish the goods and services offered by the owner of the mark from those of other traders. It can be a word (including stylisation of a word), a symbol or a combination. The proprietor must register the mark to have any protectable right under the Trade Marks Act.

The owner of a registered trade mark may sue a person who infringes their rights under the Act. The Court may make a number of awards, including damages.

Registration under the Act is for an initial period of 10 years. The registration can then be renewed for further periods of 10 years. These timeframes do not apply to a trade mark registered under the earlier Act, the Trade Marks Act 1953, in which case registration is for an initial seven years, followed by a renewal period of 14 years.

PATENTS ACT 1953

Patent law in New Zealand is governed by the Patents Act 1953. This allows the monopoly grant of a patent for an “invention” and grants an exclusive right to make, use, exercise and sell the invention within New Zealand.

A discovery is not an invention under the Act – there must be an element of “new manufacture”. Inventions include:

- new products
- new processes
- new uses for known products.

Methods for treating human illness or disease cannot be patented.

An organisation’s employment agreements should provide for the rights of the parties in relation to an invention made by the employee.

The Commissioner of Trade Marks or the High Court may intervene to settle disputes over patents.

PASSING OFF

The law of passing off protects traders from unfair competition in the marketplace and also protects the consumer from misleading marketing. Using another trader’s name, product get-up or style is considered to be passing off if it causes confusion in the minds of consumers, with a resulting loss of trade or goodwill to the injured party.

Passing off is a tort (civil wrong). The injured party can sue for damages or an account of profits.

See Fact sheet 16: Torts (civil wrongs) and criminal offences.

RESOURCES

Fact sheets

Fact sheet 16: Torts (civil wrongs) and criminal offences

Websites

www.iponz.govt.nz

More information is available on the Intellectual Property Office website.

