

# Copyright

The national executive of Creative Fibre recently requested, from AJ Park a specialist intellectual property lawyer, information on how copyright impacts on the work that members of the Society produce.

This advice has a range of valuable information for members and has been written in way that makes it easy for members to use.

## Copyright advice

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In New Zealand, copyright arises when an 'author' creates an original work. Original creative works like knitting patterns, weaving drafts and the final products like a knitted item could all potentially qualify for copyright protection. Written instructions and materials containing illustrations for making items could also qualify.

As a rule of thumb, the duration of copyright in a qualifying work is 50 years from the end of the calendar year in which the author dies.

In some cases, the author of a work, like a knitting pattern, cannot be identified. These are known as 'orphan works'. For such works, if the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public by an authorised act – for a knitting pattern this could include publication in a magazine, book or online.

As copyright is a territorial right, its duration can vary from country to country, for example, copyright lasts for 70 years in Australia and 95 years in the United States.

It's important to note that there is a distinction between the rights of an 'author' and those of an 'owner':

- An 'author', who creates the knitting pattern or weaving draft, has various moral rights including the right to be identified as the author.
- An 'owner' of copyright (which can be the author or potentially another third party) has the exclusive right to copy or reproduce the work, or licence/authorise others to do so. The owner also has the right to prevent third parties from copying/reproducing (**the Restricted Activities**) their work without their authorisation or licence.

For example, in the case of knitting patterns, the owner of copyright is entitled by law to stop third parties who, without authority or a licence, copy and/or reproduce their patterns and then make clothes in accordance with the pattern.

## Guidelines when using third party works

When you are considering using knitting patterns, weaving drafts and other materials found online or in printed patterns (books, magazine etc) you should exercise caution. We recommend adopting the following process:

- Check to see whether there are any terms of use for the material found on a website. It may be that the copyright owner is happy for their patterns and weaving drafts to be copied and the end products sold and they may put wording to that effect on the website. Some websites also operate a 'creative commons' licence, that permits copying and reproduction of materials provided that the users don't try to assert copyright against any third parties or use for a commercial/business purpose.
- If the copyright owner expressly states that the copyright work should not be used for Restricted Activities, for example, by stating 'for home use only' or 'not for commercial or manufacturing purposes', you should only use the copyrighted work for the permitted uses. Any other use will give rise to an infringement claim.
- If the website is silent around the issue of use, see if you can contact the website operator to confirm if they own the copyright and will grant you permission (ideally in writing) to use the pattern or draft for your required purpose. Ideally, you would seek a written irrevocable, perpetual, non-exclusive, and (potentially) global licence to copy and reproduce the pattern or draft.
- If you can't reach the website operator, you could try identifying the copyright owner (if that's someone different) and contacting them directly.

## Copyright myths

- **If it's on the internet, I can use it.**  
False. Material placed on the internet does not mean that copyright is waived or that you can copy or reproduce what's out there. In most cases you will need permission. This can be given through terms of use set out on the website or by seeking permission from the owner.
- **I can avoid copyright infringement by changing someone else's work by 10% or copying less than 10% of it.**  
False. Copyright infringement is assessed based on whether there has been copying of the whole or a substantial part of the original work. Whether something is a substantial part is assessed by the quality, not quantity, of what has been allegedly taken and copied.
- **Copyright needs to be registered.**  
False. Copyright arises automatically when an author creates an original work. The author does not need to register their work for copyright to subsist.
- **Copyright protects 'ideas'.**  
False. Copyright only protects the way ideas are expressed. It does not protect the idea itself. You can use ideas from other people's work, provided the way you express the idea is different.

## High level answers to some potential scenarios

### Scenario

The tutor provided notes at the course and copyrighted the notes. The person copies the notes and distributes them to their group.

### AJ Park comment

If the tutor prepared the notes, and they were original works, then copying and distributing those notes would potentially give rise to a copyright infringement claim.

### Scenario

A person goes to a course and learns to make a specific item. They then use the knowledge they have learnt at the course to teach their group how to make the same item.

### AJ Park comment

There is no copyright in ideas. Therefore sharing knowledge gained should be fine. However, if the specific item/garment design is protected by copyright, then there could be an infringement risk.

### Scenario

A person buys a pattern and copies it or distributes the PDF version to their group.

### AJ Park comment

Sharing the purchased pattern will not infringe copyright. However, making and distributing copies of the purchased pattern may infringe copyright depending on the age of the pattern (when it was created).

Copying includes converting a physical copy to digital. Emailing a converted digital copy could be an infringement. Forwarding a purchased electronic copy of a pattern could also be 'communicating' it without authority or a licence.

### Scenario

A product is made using the shape of a commercial pattern but using a different surface design or different elements within the pattern. Is the product able to be sold?

### AJ Park comment

Whether the product can be sold is likely to be dictated by any terms accompanying the sale/purchase of the commercial pattern. Further, whether there is an infringement will depend on the extent of changes made by the person using the 'commercial pattern'. Making small adjustments is unlikely to remove the risk of infringement. Making extensive changes may reduce or eliminate the risk. However, there is a doctrine, which recognises that in some cases no matter how many changes you make, the new garment still reproduces a substantial part of the original 'commercial pattern' and therefore the reproduction of that part remains an infringing copy.

### Scenario

A product is made using the pattern when the pattern says things along the lines of 'reproduction of this pattern is protected by copyright' or if the pattern references the name of the designer or business but gives no information about use. Is the product able to be sold?

### AJ Park comment

There is no infringement by making products using a pattern you have purchased for personal use. Commercial use is another issue and could be prohibited under the terms of purchase. The product packaging may contain terms or statements about the extent of permitted use.

### Scenario

A garment is made from hand felted fabric or handwoven fabric (the weaving draft for the fabric is designed by the weaver). The garment made from the fabric is made using a commercial sewing pattern and the pattern says, 'for home use only' or 'sold for individual home use only and not for commercial or manufacturing purposes'. Is the product able to be sold?

### AJ Park comment

Sale of a single garment once you've made and used it is unlikely to be a problem. However, sale of multiple garments made using the pattern on a commercial scale would breach the terms you have mentioned.

### Scenario

A person uses a photograph or image they have found on the internet for their design and does not know who owns the image or its copyright status.

### AJ Park comment

There is a potential technical copyright infringement. If the product they make is for personal use, then there is likely a technical infringement claim, but risk of a claim being brought would probably be low. However, if commercial quantities were made and the owner of the design finds out, there could be a higher risk of an infringement claim being made.

### Scenario

A person sees a garment online and uses it as the basis to create their own design. It is similar but not the same as the original garment.

### AJ Park comment

Whether there is an infringement will depend on the extent of changes made. Making small adjustments is unlikely to remove the risk of infringement. Making extensive changes may reduce or eliminate the risk. However, there is a doctrine, which recognises that in some cases no matter how many changes you make, the new garment still reproduces a substantial part of the original, that part remains an infringing copy.