

New Zealand copyright in works created by AI



The New Zealand Copyright Act and computer generated work

The New Zealand Copyright Act 1994 provides that in the case of a literary, dramatic, musical, or artistic work which is “computer generated” copyright may subsist and designates that the author of such a work will be “the person by whom the arrangements necessary for the creation of the work are undertaken”.

The Act also specifies that a “computer generated work” is a work generated by a computer in circumstances such that there is no human author of the work. This is of course contrary to US copyright law and the 16 March 2023 guide issued by the US Copyright Office which states that an AI (artificial intelligence) generated work will only attract copyright if there is sufficient human authorship of the work. An example given in the guide that meets this requirement is ‘re-elaborating’ a work initially generated by AI.

New Zealand copyright protection

The term of New Zealand copyright in computer generated works is 50 years from the year in which the works are created.

These provisions in the New Zealand Act mean that original works produced by a computer will be protected by copyright and the person who arranges for the computer to create them will be considered the author and the owner of the copyright in them. However, if the author has initiated a computer generated work as an employee in the course of their employment then the owner of the copyright in such a work will be the employer.

The New Zealand provisions were derived from those incorporated in the UK Copyright Designs and Patents Act (CDPA) 1988. Similar copyright law was adopted for computer generated works in countries such as Ireland, India and Hong Kong. However, copyright law in countries such as Australia, the United States and most of the European Union countries do not provide for copyright to subsist in purely computer generated works. As in the US, the European Union Software Directive requires that an author of a copyright work must be a human.

Computer generated work v work created by a human using the computer as a tool

Despite AI, as it is known today, not existing in 1988-1994, computers were used to generate new works. For example, a computer running a compiler program would convert (or translate) a new program written in source code by a human into machine code which was the only code a computer could execute to provide any function or solve any problem.

Computer generated works under the New Zealand Copyright Act must be differentiated from those works produced by a human using the computer as a “tool” to produce something. The simplest example in this category would be someone using Microsoft Word to type and revise a document. A technical drawing produced by a computer added design (CAD) system would also fall into this category. The computer users would in these cases be the author of the literary or artistic works generated.

As with all works that may potentially receive copyright protection a computer generated work must be “original” to attract copyright. It is considered that this criterion should be assessed objectively in the same manner as a work created by a human author. The question should be “if this work was created by a human would it be considered original?”