

Copyright Licensing Guide

Auckland War Memorial Museum Version 2016



LB4199, *Heteralocha acutirostris*, Photographed by: Andrew Hales, photographer, digital,
06 Apr 2016, © Auckland Museum CC BY

Introduction

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Using this guide

This guide has been created for assessing content within the Auckland War Memorial Museum collection for copyright requirements, for the purpose of providing public access to digital surrogates of objects.

Steps to clearing copyright:

Step 1.

Use the [Public domain and copyright duration guide](#) on page 7 to determine what the copyright term is for the specific content.

Step 2.

Using the [Researching and locating copyright owners guide](#) on page 9 to begin researching copyright owners, making sure to keep a good record of where you have searched.

Step 3.

Once the copyright owner has been identified, send a [copyright licence letter and agreement form](#) to the copyright owner either by mail or as a PDF via email.

Step 4.

File and keep a good record of returned and signed copyright licence agreements in a specified electronic system for future reference.

What is Copyright?

Copyright automatically arises when an original artistic, literary or dramatic work is created. In the New Zealand Copyright Act 1994 the maker is referred to as the “**author**.” Depending on the type of work created most copyright lasts for the duration of the author’s life and 50 years after the death of the author. When the author dies, copyright is usually passed down to an appointed beneficiary or is automatically assigned to the beneficiary/s of the estate. In order to reproduce a work that is in copyright, permission must be sought from the author or the copyright owner.

Please note:

There are different copyright terms for different jurisdictions, in New Zealand copyright lasts for 50 years after the death of the author, and in the UK copyright duration lasts for 70 years after the death of the author. A good rule of thumb is to determine where the work has been created and use that jurisdiction’s copyright duration term.

What is an Out of Copyright or Public Domain work?

An **out of copyright** work is a work where no known copyright restrictions apply, usually through expiration of the copyright term. This is also called a **public domain work**. In this instance of determining if a work is out of copyright, then Principle 6 of the AWWM Copyright Framework applies:

Principle 6: No known copyright restrictions: “Ensure that all images that are out of copyright have the correct assignment of ‘no known copyright restrictions’.”

What is an Orphan work?

An orphan work is a work that is deemed to be in copyright, but there is no known author for the object, or the author cannot be located after a thorough search. In this instance AM will provide a statement of ‘copyright undetermined – untraced rights owner’, after careful consideration of cultural and ethical issues relating to the items.

What about Cultural and Ethical considerations?

Before releasing an image of an out of copyright or orphan work, cultural and ethical considerations must be made for each individual item. This applies to works that would be classed as taonga works or indigenous works – works created by or depicting indigenous peoples including Māori. In this case Iwi permissions and institutional protocols would apply. Refer to principle 3.7 of the Copyright Framework:

Principle 7: Taonga Maori

Make images of taonga Maori as freely available as possible, aligning with the Auckland Museum ‘Guidelines and procedures for use of Māori images’.

Crown Works

A crown work refers to an artistic, literary or musical work created through the course of the work created by a government agency employee. Copyright in a crown work created in New Zealand lasts for 100 years. The newly introduced New Zealand Government Open Access and Licensing framework ([NZGOAL](#)) addresses this copyright duration issue by encouraging government agencies to open up their material through the use of Creative Commons licences.

Auckland War Memorial Museum Rights Statements

As per the [AWWM Copyright Framework](#) all reproductions of collection objects displayed on Collections Online will be accompanied by one of the following rights statement.

© Auckland Museum CC BY

- Applies to images of out of copyright objects and the Museum is the copyright owner
- Allows sharing and reuse provided that the Museum is attributed

Can I download and share this image?	Yes 
Do I need to attribute the copyright owner of this image?	Yes 
Can I change this image?	Yes 
Can I use this image to make money?	Yes 

All Rights Reserved

- Images of objects in copyright where the copyright owner has not assigned a Creative Commons licence but has given the Museum explicit permission to reproduce.
- Serves as a formal version of the plain language explanation: “this image is in copyright”

Can I download and share this image?	No 
Can I change this image?	No 
Can I use this image to make money?	No 

No Known Copyright Restrictions

- Digital images of 2 dimensional works (paintings, photographs, posters) that are out of copyright
 - Out of copyright material e.g. more than 50 years since death of author
- Serves as a formal version of the plain language explanation: “this image is out of copyright”

Can I download and share this image?	Yes 
Can I change this image?	Yes 
Can I use this image to make money?	Yes 

Copyright Undetermined – Untraced Rights Owner

- Orphan works after reasonable and documented effort made to trace the copyright owner

Can I download and share this image?	No 
Can I change this image?	No 
Can I use this image to make money?	No 

For cultural reasons, copying or reproducing this item requires specific permission. Please contact us for more information.

- Applies to images of out of copyright Pacific or Māori (taonga) objects based on iwi advice.

Can I download and share this image?	No 
Can I change this image?	No 
Can I use this image to make money?	No 

Rights and Permissions Information for Visitors on Collections Online

<http://www.aucklandmuseum.com/legal/rights-and-permissions>

Much of the material available on this website is subject to copyright (*all rights reserved*). That copyright is either held by the Museum, or by a third party, which has given permission for the material to be reproduced on this website.

If sole copyright is held by Auckland War Memorial Museum, the content might also be licensed using '© Auckland Museum CC BY' to encourage reuse and sharing. Content released under this licence will be marked with:



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

We explain '© Auckland Museum CC BY' and our other rights categories in more detail on this page. If you have any questions regarding the use of images please contact: webmaster@aucklandmuseum.com.

All rights reserved

This statement means that the work is subject to Copyright. It means that the work may not be copied, reproduced, communicated without the Copyright owner's permission, except for purposes related to fair dealing, as defined by the New Zealand Copyright Act 1994.

Images of Taonga Māori

Some images of Taonga Māori (cultural treasures) are restricted for cultural reasons. Images of taonga are of significant cultural importance to iwi (tribes). The Museum provides images and associated information of taonga for research, study, personal and educational use only.

No known copyright restrictions

This statement means that to the best of our knowledge, the Museum is unaware of any Copyright restrictions on this work. This can be because the Copyright term for this work may have expired. This term predominately applies to reproductions of two-dimensional works, e.g.: paintings, photographs, posters, that are out of Copyright under the New Zealand Copyright Act 1994.

Copyright undetermined – untraced rights owner

This statement applies works that are considered orphan works. This means the Museum has reproduced the work after a reasonable and documented effort to trace the copyright owner. Where the copyright in any material belongs to a third party reasonable effort has been taken to identify the copyright owner.

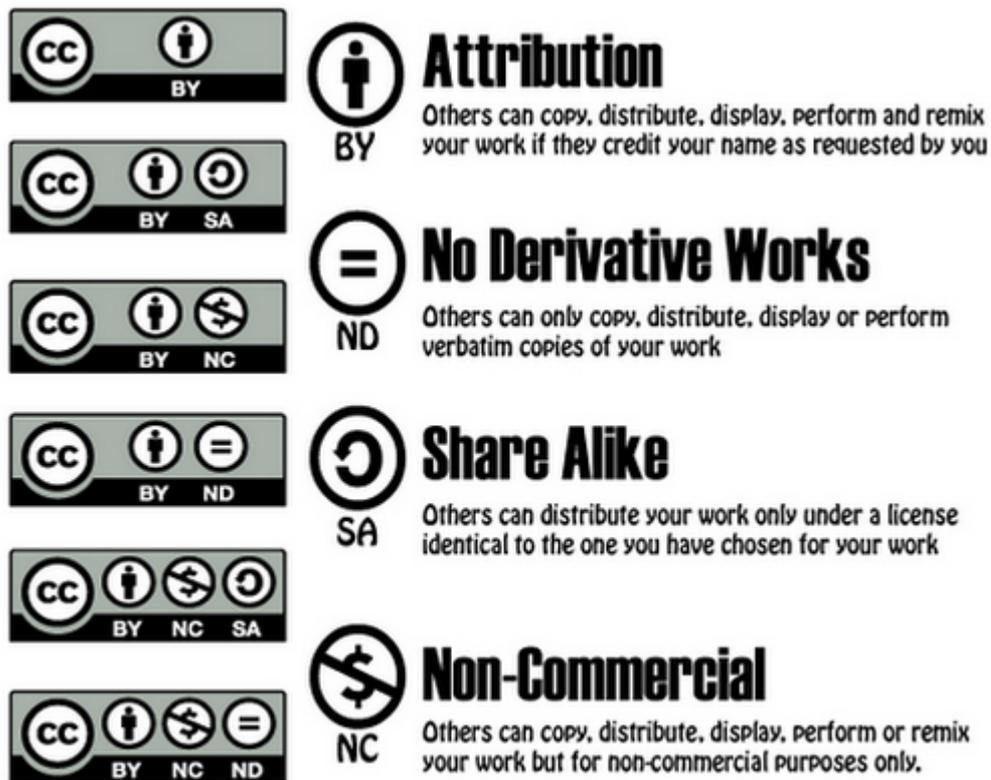
If you are the owner of copyright material which you believe is available on this website in a way that constitutes an infringement of that copyright, or a breach of an agreed licence or contract, please notify the webmaster@aucklandmuseum.com.

© Auckland Museum CC BY

This is a Creative Commons Attribution 4.0 International licence (CC BY 4.0) is used on images of objects in which there is no copyright in the object or where the Museum is the sole copyright owner. This licence is also used on images of works in which copyright has expired. This licence allows reuse, sharing and commercial use for any purpose, provided that the Museum is attributed.

Creative Commons Licences

Creative Commons licences are an easy, free and legally robust way for copyright owners to give users permission to share, adapt and republish digitised copies of material that are in copyright.



How to apply a Creative Commons licence to digital surrogates of collection objects

The copyright letter and form that is sent to the copyright owner explains more about applying a Creative Commons licence to the copyright owner's work. By signing the licence agreement and returning it, they have given permission for AWWM to assign the Creative Commons licence on their behalf. There are a few points to remember when assigning Creative Commons licenses to digital copies:

- The Creative Commons licence that the copyright owner has agreed to in the copyright agreement must be the same one that the work is released under.
- Works that are orphan works or works that are considered cultural works **cannot** be assigned a Creative Commons licence.
- The licence logo and correct licence language must accompany the work that has been licensed with a CC licence, where possible.

Auckland Museum encourages Copyright Owners and Donors to assign either of these two CC licences to their works:

- Attribution-Creative Commons Licence (CC BY)
- Attribution-NonCommercial Creative Commons Licence (CC BY-NC)

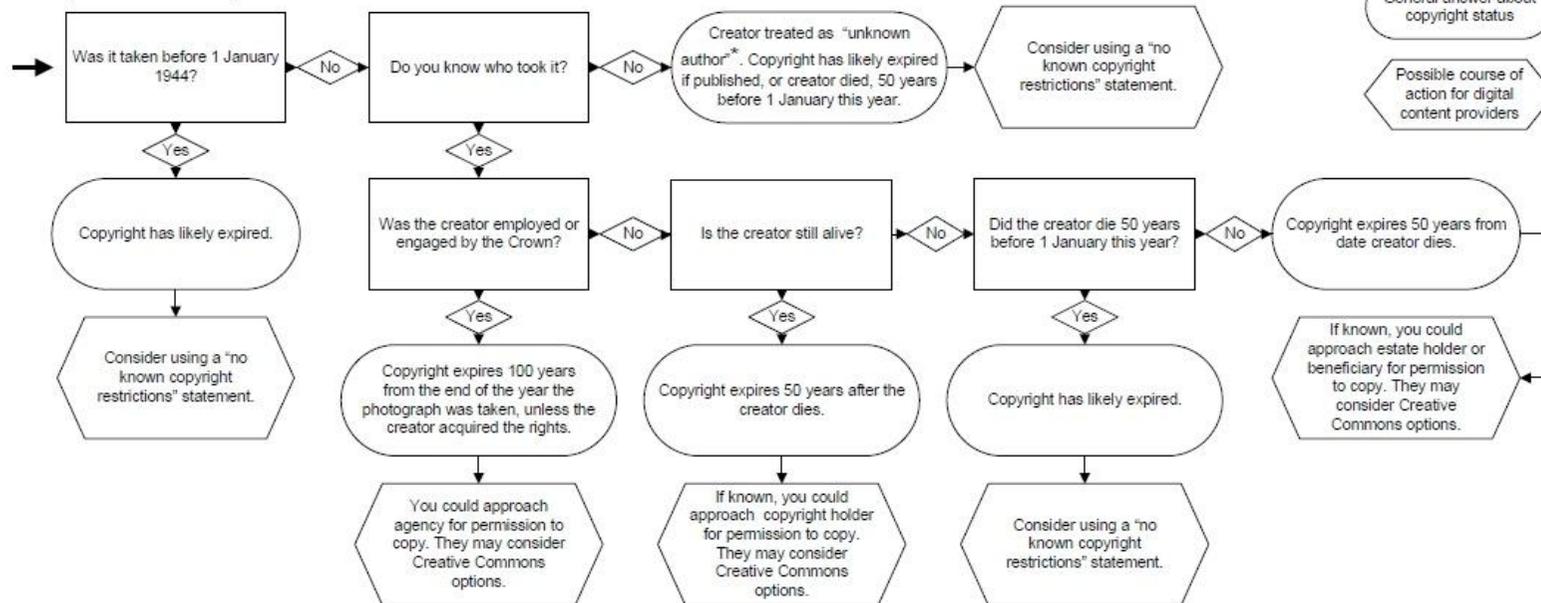
Public Domain and Copyright Duration Guide

Type of item	Copyright Term	What was out of copyright 1/1/2016
<p>Typographical arrangements, of published editions, which are editions of the whole or part of one or more literary, dramatic or musical works [regardless of whether they are in still copyright.]</p>	<p>25 years from publication, including for Crown copyright works [1994 s25, s26(3)a]</p>	<p>Typographical arrangements made in 1989 or earlier, but not including copyright in the works themselves.</p> <p>Typographical arrangements made in 1989 or earlier of out of copyright works.</p>
<p>Photographs, being anything where an image is produced by recording light or other radiation on media [e.g. prints, negatives, scans, photocopies], but excluding film.</p>	<p>Until 1 January 1995, 50 years from when it was taken [1962 s8(2)]</p> <p>As of 1 January 1995, 50 years after the year the author died [1994 s22(1)]</p> <p>As of 1 January 1995, if the author or the publisher is unknown, 50 years from when it was first made available to the public [1994 s22(3), 1994 s126(4)]</p>	<p>All photographs (published and unpublished) taken before 1944</p> <p>Photographs (published and unpublished) taken in or after 1944 where the author died in 1965 or earlier.</p> <p>Photographs first published between 1 January 1944 and 31 December 1965 where the author or the publisher is unknown after reasonable enquiry.</p>
<p>Literary works, being anything written or spoken that are not dramatic or musical works, including tables, compilations [e.g. anthologies, encyclopaedias, newspapers, magazines.]</p> <p>Artistic works, being a graphic work [e.g. a painting, drawing or rendering], photograph [see photographs], sculpture, collage, model, work of architecture or artistic craftsmanship, but excluding layout design, and regardless of artistic merit.</p>	<p>For works published during the life of the author, 50 years after the year the author died [1913 s6, 1962 s8, 1994 s22(1)]</p> <p>If the author or the publisher is unknown, 50 years from when it was first made available to the public [1994 s22(3), 1994 s126(4)]</p> <p>For works by unknown authors published before 1 January 1995, 50 years from a reasonably assumed death of author [1994 s67(1)]</p>	<p>Works published during the life of the author where the author died in 1965 or earlier.</p> <p>Works published in 1965 or earlier where the author or the publisher is unknown after reasonable enquiry.</p> <p>Works by unknown authors published before 1995, where the author is reasonably assumed to have died in 1965 or earlier.</p>
<p>Computer generated works, being works generated by a computer in a way that means there is no human author.</p>	<p>50 years from when it was first made [1994 s22(2)]</p>	<p>Computer-generated works made in 1965 or earlier.</p>
<p>Crown copyright, works made by a person employed or engaged by the Crown, with the Crown being the Monarch, Minister of the Crown, a government department or an Office of Parliament, but excluding a Crown entity or State-owned Enterprise.</p>	<p>Until 1 January 1995, 50 years from when it was made [1962 s52(3)]</p> <p>As of 1 January 1995, 100 years from when it was made [1994 s26]</p>	<p>Crown works made before 1944.</p> <p>Crown works made in 1945 will not come out of copyright until 2046.</p>

Photographs - NZ copyright status flowchart v1.1

DISCLAIMER

This flowchart is of a generalised nature, for information only. Nothing in this flowchart constitutes professional advice and DigitalNZ is not responsible for any loss caused as a result of using this flowchart. Users should seek professional advice from a suitably qualified professional about specific issues.



Take note

Status changes: New information may change the copyright status - you could even use the Web as an opportunity to find out this information, using appropriate disclaimers.

Conditions on use: If a photograph is out of copyright any conditions placed by the copyright owner on its use are no longer binding unless expressly agreed. However, you may decide to observe other conditions such as donor agreements or protocols around images of taonga Maori.

Privacy: Individuals have the right to privacy in photos taken for private and domestic purposes on or after 1 January 1995. Privacy rights last for the duration of the copyright term

Fair dealing & educational use: You can make copies of in-copyright photos for certain things, such as criticism, review, research, private study, and education. See Sections 42-43 of the Copyright Act 1994.

Commissions & contracts: Keep in mind that people who commission photographers to take photos own the copyright in the work unless there is agreement otherwise. Refer to Section 21(3) and (4) of the Act. Contractors can also negotiate to own copyright instead of their employer. The Commissioning Rule is currently being reviewed and may change.

* **Reasonable enquiry:** Unknowns (such as assumptions about when a creator died or that a photographer is unknown) are subject to you making a 'reasonable enquiry', which you may have to defend.

Researching and Locating Copyright Owners

Introduction

This guide has been created to assist with researching and locating contact details for copyright owners of works from the AWWM collection who are still living or for authors (author being the creator of the work, including artworks) who are deceased, but it has been less than 50 years (*depending on what jurisdiction the work was created in*) since their death. If no copyright owner can be located then the work must be treated as an orphan work and extra considerations must be taken into account before publishing the digital copy of the work.

Due diligence

Keeping a well organised research trail for each author is essential and can be helpful for orphan works if an author was to come forward after the work was published. Creating a separate document for each author will help keep any notes and records together.

Using probates to find living relatives of a deceased author

Once an author passes away the copyright is automatically assigned to the beneficiaries of their will for the length of the applicable copyright duration term. By requesting access to the author's probate, if available, from Archives NZ this is a good place to start in tracing living relatives. If the assigned copyright owner passes away within the copyright duration period, the copyright is passed down to their beneficiaries. This process can happen multiple times and finding the true copyright owner/s can become very complicated.

Tracing a copyright owner from a probate

1. Request identified probate from Auckland or Wellington Archives (membership required.)
2. View and photograph probate. Note down any names of beneficiaries, executors or family members (nieces, nephews, grandchildren etc.)
3. Use the copyright owner search worksheet to begin your search for a living descendant.
4. Track progress and research in worksheet.
5. Once a copyright owner or related family member has been found , send a copyright licensing agreement.
6. If a copyright owner cannot be traced, assign the object the "copyright undetermined – untraced rights owner" status on Vernon and Presto.

Starting the Search

Using the places listed below you can start searching for the copyright owners details.

Places to Search	Notes
White Pages	Search for a copyright owners contact number and postal address.
National Library of New Zealand collection database	Search Tapuhi and the NLNZ collections for an author's name and life dates.
Index New Zealand	Search for an author's name and life dates.
New Zealand Biographies	Search for further information on an author.
Google search	Searching e.g "John Doe NZ" can bring up NZ specific results.
Archway	Search for probate files and then physically access the probate files at Archives to locate living relatives, or request a digital copy for a fee.
Births, Deaths and Marriages	Search the author's name to determine birth and possibly death dates.
Ancestry.com	is also a good place for international authors, (NLNZ staff have free access).
Find NZ Artists	Database of NZ artists.
Copyright Council New Zealand, Members list	Approach copyright collectives if a well-known author.
Census records in a library	If you know the location of the author you may have access to census records at the local library.
Online cemetery records	If you know the burial location of the author you can search the cemetery database records through local council websites.
Newspaper obituaries	Obituaries usually name living relatives.
Facebook, LinkedIn or Twitter	Using social media platforms to search for living author's details.
Biographies/Index on Vernon or Presto at AWWM	Search for an author's name for life dates.
Ask a genealogist	Utilise the expertise of a genealogist!

Related Resources for Further Information

Intellectual Property in New Zealand, Frankel, Susy, 2011, LexisNexis
Make it Digital Guide, DigitalNZ
National Library Use and Reuse Policy
National Services Copyright and Museums guide
Creative Commons Policies for Open Culture and Heritage
DigitalNZ Copyright flowchart
Creative Commons Licences Explained

Appendix 2: OPTION 1: AUCKLAND WAR MEMORIAL MUSEUM CREATIVE COMMONS LICENSING AGREEMENT

As the owner of copyright in the works listed in the attached report, I grant to the Auckland War Memorial Museum Tamaki Paenga Hira to assign, on my behalf, the following Creative Commons licence:
(please select one option)

- Attribution Creative Commons (CC BY)** licence. I understand that images of the listed object/s will be licensed on my behalf and reproductions of the work will be made available for any use, including commercial use.
- Attribution Non-Commercial Creative Commons (CC BY-NC)**. I understand that images of the listed object/s will be licensed on my behalf and reproductions of the work will be made available for any use, excluding commercial use.
- Other Creative Commons licence option _____

Further comments:

Signed as copyright owner (or authorised legal representative): _____

Name: _____ Date: _____

Address: _____ Phone: _____

_____ Email: _____

Signed on behalf of the Auckland War Memorial Museum:

Name: _____ Date: _____

OPTION 2: AUCKLAND WAR MEMORIAL MUSEUM COPYRIGHT LICENSING AGREEMENT

As the owner of copyright in the works listed in the attached report, I grant to the Auckland War Memorial Museum Tamaki Paenga Hira the following copyright licence:

(please tick the box):

- A non-exclusive licence to use the works for non-commercial museum related purposes, including, but not limited to:
1. Making copies of the works for use in Museum exhibitions and programs.
 2. Reproducing copies of the works on the Museum website.
 3. Reproducing copies of the work for use in Museum produced digital and print publications.
 4. To release copies of the work to media for any purposes including reviews, promotion, or communication of Museum themes, events, exhibitions, programmes, websites etc.

Please specify your preferred credit line for the work/s:

(e.g *Reproduced with kind permission from the Estate of John Brown; or, ©Jane Brown*)

Further comments:

**Signed as copyright
owner (or authorised
legal representative):** _____

Name: _____ Date: _____

Address: _____ Phone: _____

_____ Email: _____

Signed on behalf of the Auckland War Memorial Museum:

Name: _____ Date: _____