

COPYRIGHT GUIDELINES
FOR ACADEMIC STAFF
AND STUDENTS

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Available at
<http://www.waikato.ac.nz/copyright>

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1. INTRODUCTION

Copyright is a property right that exists in original works. Among other things it gives the exclusive right to the creator of a work to reproduce it. Copyright is not a right to copy – although copying is one of the acts permitted under the Copyright Act 1994, within certain conditions. Copyright is not only about copying: it includes a number of other rights relating to a work as well – to perform, play or show the work in public, to broadcast the work, to communicate the work, or to make an adaptation of the work, for example. And copyright ownership is quite separate from ownership of the work.

The first copyright legislation, known as the Statute of Anne, was introduced in Britain in 1710. The purpose of that Act, which is true of most subsequent legislation, was “to support learning and the sharing of ideas”. This phrase draws attention to the inherent tension that underlies copyright law: the need on the one hand to protect the rights and encourage the creativity of authors and publishers, balanced on the other hand by the need of society to benefit from the ideas and knowledge incorporated within publications, whether these are in printed, audio-visual or electronic form.

University staff and students, most of whom are both creators and users of copyright work, have a particular obligation to respect and comply with copyright law.

Copyright comes into existence automatically on the completion of a work – it does not have to be registered. However, there does have to be a “work” – it is not possible to claim copyright in an idea. As section 15 of the Act puts it, “Copyright does not exist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise”.

The standard symbol for indicating that a work is in copyright is the letter “c” in a circle and the year, e.g. © 2008.

The Copyright Act 1994, and amendments, may be accessed at:
<http://www.legislation.govt.nz/act/browse.aspx> .

2. WHAT IS COVERED BY COPYRIGHT? (section 14)

Copyright exists in a very wide range of materials – books (both in-print and out-of-print), periodicals, newspapers, personal papers, musical and art works, paintings, works of architecture, sound recordings, films, videos, photographs, sheet music, maps and charts, multi-media works, sound and television broadcasts, communication works, cable programmes, computer programmes, computer databases, Web sites, CD-ROMs, and typographical arrangements of published editions – which include new editions of older works.

These works are covered, whether they are published or produced in New Zealand or in a “prescribed foreign country” (section 19).

3. MEANING OF “COPYING” (section 2(1))

Copying “means, in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital form), in any medium and by any means ...”

4. MEANING OF “AUTHOR” (section 5)

The Act defines the meaning of author: “For the purposes of this Act, the author of a work is the person who creates it. ... The person who creates a work shall be taken to be:

- (a) In the case of a literary, dramatic, musical, or artistic work that is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken.
- (b) In the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken.
- (c) In the case of a communication work, the person who makes the communication work.
- (d) In the case of a typographical arrangement of a published edition, the publisher”.

5. COPYRIGHT OWNERSHIP (section 21)

Normally, the author of the work is the copyright owner. However, if a work is made by an employee in the course of his or her employment, that person’s employer owns the copyright. And if someone commissions a work such as a photograph, painting, sound recording, model, map, computer program or Web site to be made, then the person who commissions and pays for the work is the copyright owner.

Copyright ownership can be passed to others by contract or agreement. The University as employer normally passes copyright ownership of works made in the course of a staff member’s employment back to the author. And most authors of books and periodicals in turn pass copyright ownership of their work to their publishers. Hence, for most commercially published work, copyright ownership rests with the publisher.

Copyright in university theses and dissertations is owned by the author of the thesis or dissertation.

6. DURATION OF COPYRIGHT (sections 22-28)

Copyright in a work, whether published or unpublished, expires 50 years after the death of the author, or if there is no author, 50 years after the end of the calendar year when the work was first made, published, performed, exhibited, broadcast or communicated.

Copyright in a typographical arrangement of a published edition (which includes a new edition of an older work) lasts for 25 years from the year of publication.

Copyright in Crown publications lasts for 100 years. However, there is no copyright in certain types of Crown publications such as bills, acts, regulations, bylaws, parliamentary debates, reports of select committees laid before the House of Representatives, judgments of courts and tribunals, reports of Royal commissions, commissions of inquiry, ministerial inquiries and statutory inquiries, etc.

7. RESTRICTED ACTS (section 16)

Copyright is infringed by a person who, without permission, does any restricted act. The acts restricted by copyright law include:

- copying the work, or any part of it
- issuing copies of the work to the public (section 9)
- publishing the work (section 10)
- making works available to the public by means of an electronic retrieval system (section 10(1)(b))

- performing, playing or showing the work in public (section 32)
- broadcasting the work, or communicating the work to the public (section 33)
- making an adaptation of the work, or doing any of these restricted acts in relation to an adaptation (section 34)
- importing an infringing copy (section 35)
- possessing an infringing copy (section 36)
- subsequent dealings (section 93).

8. PERMITTED ACTS

8.1 CRITICISM, REVIEW, AND NEWS REPORTING (section 42)

Fair dealing for the purposes of criticism, review, and news reporting does not infringe copyright, provided that due acknowledgement is made.

8.2 COPYING FOR RESEARCH OR PRIVATE STUDY (section 43)

Fair dealing with a work for the purposes of research or private study does not infringe copyright. The Act provides guidelines as to what is fair dealing. In determining what is fair, users must take into account:

- the purpose of the copying – it must be for research (which may be commercial research), or for private study
- the nature and significance of what is copied, in relation to the work as a whole
- whether the work can be obtained within a reasonable time at an ordinary commercial price
- the effect on the potential for, or value of, the work
- the amount and substantiality or importance of the part copied, taken in relation to the whole work. It is unlikely that there will be fair dealing with a work if a whole chapter from a book, a summary, or the whole or the greater part of the treatment of a particular topic in a work, is copied.

This means that, under section 43 of the Act:

- the copying must be for the sole purpose of the user's own research or private study
- the whole of a work must not be copied (although it is probably permissible to copy the whole of one periodical article)
- more than one copy of the same work, or the same part of a work, on any one occasion must not be made
- but the whole of an abstract which summarises the content of any article on a scientific or technical subject published in a periodical may be copied, or included in an electronic database (section 71).

These provisions refer to all works that are capable of being copied, including artistic works, pictures, maps, charts, diagrams, photographs, microforms, and sheet music.

9. COPYING FOR EDUCATIONAL PURPOSES (sections 44-49)

9.1 COPYING OF A LITERARY, DRAMATIC, MUSICAL OR ARTISTIC WORK (section 44)

There are three separate sets of conditions, which need to be distinguished:

(a) Under section 44(1), you may make one copy of the whole or part of a work by any means, provided that the copying is done for use in the course of instruction (which includes preparation), by or on behalf of the person giving the course, and is for the purpose of assisting the staff member to prepare for or give the course or provide the instruction – it may not be used for any other purpose: for example, the copy may not be placed in the Library’s Course Reserve Collection for subsequent use or copying by students for their own research or private study; or included in print course-packs; or scanned into an electronic database which is accessed by students.

(b) Under section 44(2), you may make one or more copies of the whole or part of a work, provided that the copying is done for use in the course of instruction (which includes preparation), by the person who is giving the course or by a person who is receiving the instruction, and provided that the copying is not done by means of a reprographic process (that is, provided that the copying is done by hand).

(c) Under section 44(3-4), you may make one or more copies of part of a work by any means, provided that the copying is done for an educational purpose, or by or on behalf of an educational establishment (for example, for print course-packs); provided that no charge for supply of the copy is made; and provided that no more than the greater of 3% or 3 pages of the work are copied. And if under this provision the whole work would be copied, then only 50% may be copied.

Note that, if the work being copied under this sub-section is a periodical article, or a chapter from an anthology or compilation, the 3% / 3 pages limit relates to the article or chapter, not to the entire periodical issue or book.

Further, the part copied under this sub-section may not be re-copied by anyone in that educational establishment (not just you) within 14 days; nor may any other part of that work (including any other article or chapter from that periodical issue or book) be copied by anyone in that educational establishment (not just you) within 14 days (section 44(6)).

A copy of a work made in accordance with section 44(3-4) may be communicated to students or other people who are to receive, are receiving, or have received, a lesson that relates to the work (section 44(4A)). Section 2(1) defines “communicate” as “to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system”.

Section 44(3-4) applies also to copying for administrative purposes, for example for University committees or Council.

9.2 STORING COPIES FOR EDUCATIONAL PURPOSES (section 44A)

Educational establishments may store a copy of a page or pages from a work that is made available on a website or other electronic retrieval system, provided that:

- the material is stored for an educational purpose
- the material is displayed under a separate frame or identifier; identifies the author (if known) and source of the work; and states the name of the educational establishment and the date on which the work was stored
- the material is restricted to use by authenticated users, defined as participants in the course of instruction for which the material is stored, who can access the stored material only through a verification process that verifies that they are entitled to access the stored material
- the stored material is deleted within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.

9.3 COPYING FOR AN ANTHOLOGY (section 46)

Section 46 of the Act details the conditions that must be met if copyright materials are to be included in an anthology for educational use. By “anthology” is meant a compilation of articles, parts of books, illustrations or graphics, and other such materials that is given or sold to students.

You may copy a short passage from a published work for an anthology which consists mainly of non-copyright works, or Crown copyright works, or works to which the publisher of the anthology holds the copyright, if the anthology is to be used in an educational establishment, and is so described in its title.

The original publisher of the work included in an anthology must not have intended the work to be used in educational establishments. There must be sufficient acknowledgement of the source.

The copyright work of an author may not be copied more than twice by the same publisher of the anthology within five years. If the copy is made from a collective work by several authors, then this restriction applies to any of the authors in that collection.

Provided that these restrictions are met, the anthology may be used for any educational purpose of the establishment, and multiple copies may be made.

There is no specific reference in the Act as to the amount that may be copied – section 46 refers only to a “short passage”. However, a court may well interpret section 46 in light of the quantities permitted under section 44(3-4) – the 3% / 3 pages rule.

There is no specific reference in the Act regarding charging for anthologies. However, a court might well interpret section 46 in light of section 44(3)(e), which prohibits charging.

There is no specific reference to graphics in section 46. However, a court might well apply section 44(5), which states that multiple copies of an artistic work may be made only if the artistic work is included within the text which is copied for educational purposes. This means that, under the Act, artistic work such as illustrations, photographs, cartoons, graphs, charts etc. should be included in an anthology only if they are part of the work being copied for the anthology. However, the CLL licence (*see section 10.1 below*) allows the copying of the whole of an artistic work, where this is published in

a copyright textual work, does not have a copyright statement attached to it (for example, “reproduced with permission”), and is copied in accordance with the CLL licence provisions.

9.4 COPYING AND COMMUNICATION OF COMMUNICATION WORK **(section 48)**

“Communicate” is defined as “to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system”, and “communication” has a corresponding meaning. “Communication work” means “a transmission of sounds, visual images, or other information, or a combination of any of these, for reception by members of the public, and includes a broadcast or a cable programme” (section 2(1)).

Section 48 permits recordings or copies of recordings of broadcasts or communication works to be made or communicated by or on behalf of an educational establishment for its educational purposes, unless there is a licensing scheme available and the educational establishment knew that fact.

Section 48 also permits recordings or copies of recordings of broadcasts or communication works to be made and supplied by an educational resource supplier (defined in section 2(1)) to an educational establishment for its educational purposes, unless there is a licensing scheme available and the educational establishment or the educational resource supplier knew that fact.

Screenrights administers a licensing scheme for New Zealand educational institutions (see paragraph 10.4 below).

10. COPYRIGHT LICENSING (Part VIII, sections 147-168)

These are very severe restrictions. However, the Act allows (indeed, encourages) institutions to enter into licensing agreements, which in effect extend the provisions of the Act.

10.1 COPYRIGHT LICENSING LTD – PRINT-TO-PRINT COPYING

The New Zealand Universities have all entered into an agreement with Copyright Licensing Ltd (CLL), the purpose of which is to protect the Universities and their staff against any alleged breach of copyright, provided that copies are made in accordance with the licence. CLL undertakes to indemnify the University against any claims or proceedings brought against it for reproduction and distribution of copies made in accordance with the licence.

The licence with CLL allows more generous and reasonable conditions for multiple copying for educational purposes (including for anthologies and course-packs) than is provided under the Act. For an annual fee based on EFTS numbers, University staff may, in the course of instruction (which includes preparation):

- copy the whole or any part of an article from a periodical, or more than one article from the same issue of a periodical where these are on the same subject (that is, articles which are closely related and focus on a particular aspect of a subject)
- copy up to 10% of a work (other than a periodical article), or one chapter of a work, whichever is the greater
- copy up to 15 pages of a single work in a collection of works, even if these works may have been separately published

- copy the whole of an artistic work, such as an illustration or photograph, where it is published in a copyright work and is copied in accordance with these provisions
- copy the whole of an out-of-print work, subject to prior confirmation from CLL that it is satisfied that sufficient copies cannot be obtained within a reasonable time at an ordinary commercial price
- copy again within 14 days part of a work or edition, provided such copying is not made by or on behalf of the same authorised person for the same paper, unit or module of a course of study (the Copyright Act permits repeat copying after 14 days)
- make one copy for each student enrolled in the course, plus spare copies to replace lost copies
- copy copies received on Interloan where the work cannot be purchased or obtained by any other means
- electronically store the copyright material for the purposes only of making print copies
- make a reasonable charge to recover costs and overheads incurred in providing copies of copyright material.

Some types of publication (for example works downloaded from the Internet, printed music including the words, loose maps or charts, unpublished religious orders of service, New Zealand newspapers, house journals and similar publications, photographs or illustrations published separately from a textual work, theses, dissertations and student papers, and works which the copyright owner has prohibited copying) are excluded from the CLL licence agreement; these are, however, still covered by the provisions of the Act, and may be copied to the extent permitted by those provisions.

Course-packs must be accompanied by a copyright warning notice, such as:

Copyright Warning Notice

This course material may be used only for the University's educational purposes. It includes extracts of copyright works copied under copyright licences. You may not copy or distribute any part of this material to any other person, and may print from it only for your own use. You may not make a further copy for any other purpose. Failure to comply with the terms of this warning may expose you to legal action for copyright infringement and/or disciplinary action by the University.

CLL have a mandate from publishers, both within New Zealand and overseas, to offer this licence in return for a fee, and part of the fee is passed on as a royalty payment to the authors and publishers whose work is copied. Surveys of copyright material made available to students in course-packs under the licence are undertaken, with departments being required to supply to CLL the bibliographic details of all copyright material contained in every course-pack issued to students during the course of the survey year, and the number of students receiving the course-packs. This information is used to determine the appropriate distribution of licensing fees to copyright owners.

It is always possible to apply to CLL or the copyright owner for permission to copy more than is allowed under the licence, and in fact the CLL licence makes specific provision for this. An additional fee may be payable.

CLL's contact details are: Copyright Licensing Ltd, PO Box 331 488, Takapuna, North Shore City 0740. Fax (09) 486 6260, phone 0800 480 271, email cll@copyright.co.nz.

10.2 COPYRIGHT LICENSING LTD – PRINT-TO-ELECTRONIC COPYING

The licence with CLL allows University staff to make electronic copies from print in-copyright materials, and place these on a secure University server for access by authenticated students and staff involved in particular courses of instruction. The electronic copies may also be distributed by email or on a CD.

The same limits regarding the extent of copying that may be done under the licence apply, with the exception that the electronic copying of the whole of an out-of-print work is not permitted.

The electronic copies must be accompanied by a copyright warning notice (*see paragraph 10.1 above*).

The licence specifically allows enrolled students and staff involved in a particular course of instruction to print copies from their electronic course-packs for their own use without breaching the terms of the licence, but no further copies may be made or distributed under the licence.

In copying material under the CLL licence, staff must ensure:

- that the number of pages made available do not exceed the limits set out above, unless prior written approval has first been obtained from CLL
- that the material copied is an accurate copy of the original
- that all material includes source data (that is, full bibliographic description of the original)
- that all material made available has associated with it an appropriate copyright notice, and that all users receiving the material agree to comply with the terms of the copyright notice
- that if they become aware of a possible breach of the licence, appropriate action is taken to investigate the alleged breach and, if necessary, ensure compliance with the licence
- that all copies made available electronically are provided on a secure server.

The CLL licence agreement operates only within New Zealand, but a copy of copyright material made available by electronic means via a secure intranet may be made outside New Zealand by an enrolled student, provided that the copy is for study, research or educational instruction.

10.3 ELECTRONIC DATABASES SUBSCRIBED TO BY THE LIBRARY

Electronic full-text databases subscribed to by the Library are subject to separate licence agreements. Each agreement is different, with some allowing printing of articles from the databases for inclusion in print course-packs, and/or making electronic copies of articles for inclusion in electronic course-packs, and/or linking from electronic reading lists to the electronic full-text articles in the databases; other licence agreements do not allow any or all of these. University staff wishing to copy electronic full-text articles for print course-packs, or to provide access for students to articles included in full-text databases, should consult the Library as to whether the specific database licence agreements permit this.

The licence agreement with CLL covers print-to-print and print-to-electronic copying only – it does not cover copying from electronic databases.

10.4 SCREENRIGHTS – OFF-AIR RECORDING AND COPYING

Section 48 of the Act allows an educational establishment to record or copy broadcasts or cable programmes without infringing copyright, provided that there is no licensing scheme in place. The New Zealand Universities have signed a licence agreement with Screenrights, the Audio-Visual Copyright Society Ltd, which permits staff and students to make recordings of radio or television broadcasts and cable programmes, and to make copies of such recordings, for the educational purposes of the University. While the Screenrights licence covers only some broadcasts, all other broadcasts, including broadcasts emanating from overseas, are already covered under section 48 of the Act, since there is no licence scheme in place in New Zealand for these.

The Screenrights licence allows the recordings and copies of broadcasts to be used for the educational purposes of the University. There are no restrictions on the number or types of copies made, nor on the manner in which they may be used, provided only that the recordings and copies must be made and used for the educational purposes of the University. The licence therefore includes such uses as incorporation of broadcasts in a CD-ROM distributed to students, or conversion of broadcasts into electronic form and making these available to students via an intranet.

Provided that the recordings and copies are made for the educational purposes of the University, they may be made at any time by anyone – they do not have to be made on University premises.

The licence also covers recordings of broadcasts made by staff and students of the University on behalf of another institution that holds a licence from Screenrights.

While the University's copy of a broadcast may not be lent outside the University, a copy may be made for another University which has the Screenrights licence, and another University may be asked to supply a copy to this University.

The licence agreement requires that all recordings of broadcasts or copies of such recordings made under the licence be marked as follows:

Made only for the University of Waikato's educational purposes:
Title of broadcast:
Date of broadcast:
Date this copy made:

Where any recording or copy of such a recording is digitised, this information is, if practicable, to be embedded within the digital recording or copy.

A sampling system is used to enable Screenrights to determine payments to rights owners. This requires substantial record-keeping during the sampling period.

In a side letter to the licence agreement, Screenrights undertakes that any right to commence legal proceedings with regard to past off-air recording or copying activities of the University done in accordance with section 48 of the Copyright Act will be waived by Screenrights members. This means that no action will be taken regarding any off-air copying for educational purposes undertaken since 1 January 1995 (the date on which the Copyright Act 1994 came into force) and 1 May 2002 (the start date of the Screenrights licence).

The University has agreed that it will take action through its existing disciplinary procedures against any staff member or student who intentionally infringes the terms of the licence agreement.

The Screenrights licence applies only to programmes copied from broadcasts. It does not apply to commercially-purchased videos, DVDs or audio-tapes.

Screenrights' contact details are: Screenrights, PO Box 1248, Neutral Bay, NSW 2089, Australia.
Fax 0800 447 006, phone 0800 44 2348, email info@screenrights.org.

10.5 PRINT MEDIA COPYRIGHT AGENCY – NEW ZEALAND NEWSPAPERS

The New Zealand Universities have all entered into a licence agreement with Print Media Copyright Agency (PMCA) to allow academic and general staff to copy articles from print newspapers for educational purposes such as study, teaching and research. The licence covers 27 daily, 3 weekly and 91 community newspapers published in New Zealand.

The licence permits the copying of no more than 5 articles from any single edition of a newspaper for a particular course of instruction or for a particular group of users. Copying includes photocopying or scanning of articles, the electronic or digital storage of the copied articles, and the distribution or communication of the articles to students via a secure network, by email, on CD or DVD, or by facsimile. Copies of articles received in print or electronic format from third parties, including on Interloan, are also covered by the licence.

A reasonable charge may be made to recover costs and overheads incurred in copying and distributing or communicating the articles.

The copying by electronic or other means of an entire edition of any newspaper is expressly prohibited, as is the conversion of articles to searchable text by any means.

Artistic work such as photographs that accompany or form part of the articles copied are covered by the licence. However, advertisements are specifically excluded and may not be copied under the terms of the licence.

Material copied under the licence must carry a notice stating that it has been reproduced under a copyright licence agreement.

Access to any articles copied under the licence and stored electronically must be removed if the licence is terminated.

The indemnity provided under the licence to the University and its staff is extended retrospectively to apply to any copying by University staff prior to 1 January 2009 of articles from the New Zealand newspapers covered by the licence.

11. COPYING FOR PURPOSES OF EXAMINATIONS (section 49)

Copyright is not infringed by anything done for the purposes of an examination.

12. COPYING FOR THE LIBRARY'S COURSE RESERVE COLLECTION

Photocopying for the Library's Course Reserve Collection may be undertaken by academic and general staff (including librarians) under the limited provisions (no more than the greater of 3% or 3 pages of the work) of section 44(3-4) of the Copyright Act, and under the more generous terms of the licence agreement with Copyright Licensing Ltd. However, since the CLL licence agreement is primarily concerned with the making of multiple copies for course-packs, it is more appropriate for copying done under the CLL licence agreement to be issued directly to students through workbooks, course-packs and the like, rather than being placed in the Library.

A copy of a work received on Interloan from another library may not be placed in the Library's Course Reserve Collection, because it was supplied for the research or private study of the requester, not for the requester's students. However, it is permissible for a copy received on Interloan to be copied and included in print course-packs for students, provided that this copying is recorded in any sampling survey required under copyright licensing agreements.

A photocopy of a book (but not of a periodical article) that has been copied by the librarian of another prescribed library under section 54 of the Act ("Copying by librarians for collections of other libraries") may be placed in the Library's Course Reserve Collection.

A photocopy of a periodical article or section of a book may be copied by a librarian under section 55 of the Act ("Copying by librarians or archivists to replace copies of works"), and placed in the Library's Course Reserve Collection, if the purpose of the copying is to preserve the original periodical or book.

Original books and issues of periodicals may be placed in the Library's Course Reserve Collection.

Original books and issues of periodicals loaned from the Library's Course Reserve Collection may be copied by library users under section 43 of the Act (copying for research or private study), provided that the copying is within the fair dealing provisions of that section. However, photocopies may not be copied: if students are required to read photocopied materials, these should be issued or made available to them in print or electronic course-packs, in accordance with the licensing scheme with Copyright Licensing Ltd or licence agreements with electronic database providers.

The CLL licence agreement permits libraries to create electronic Course Reserve Collections, provided that the terms of the licence agreement are complied with. Some licence agreements which the Library has with electronic database vendors also allow full-text articles to be included in print and/or electronic Course Reserve Collections.

Since copies received from an overseas document supply company will have been made in accordance with the copyright legislation of the source country, and a royalty fee included in the cost, the copies may be included in the Library's Course Reserve Collection, provided that no further copies are made by the Library, and provided that any contractual stipulations received with the copies from the supplier are complied with.

Librarians may also, under the provisions of section 56A, communicate digital copies to authenticated users. In this context “communicate” means “to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system” (section 2(1)); and “authenticated user” means a person who has a legitimate right to use the services of the Library, and who can access the digital copy only through a verification process that verifies that the person is entitled to access the digital copy (section 56A(2)). The provisions of section 56A are that:

- the librarian has obtained the digital copy lawfully
- the librarian ensures that each user is informed in writing about the limits of copying and communication allowed by the Act, including that a digital copy of the work may only be copied or communicated by the user in accordance with the provisions of the Act
- the digital copy is communicated to the user in a form that cannot be altered or modified
- the number of users who access the digital copy at any one time is not more than the aggregate number of digital copies of the work that the Library has purchased, or for which it is licensed.

13. COPYING OF FILMS OR FILM SOUND-TRACKS (section 45(2))

A film or film sound-track may be copied for use in the course of instruction (which includes both preparation, and use after the course of instruction), if the copying is done by or on behalf of a person giving or taking the course, no charge is made for the copy, and provided that the course is on how to make films or film sound-tracks.

This does not apply to recording or copying off-air, which is covered by the University’s licence with Screenrights (*see paragraph 10.4 above*).

14. COPYING OF SOUND RECORDINGS (section 45(3-4))

A sound recording may be copied for use in the course of instruction (which includes both preparation, and use after the course of instruction), if the copying is done by or on behalf of a person giving or taking the course, no charge is made for the supply of the copy, and provided that the course relates to the learning of a language, or is conducted by correspondence.

This does not apply to recording or copying off-air, which is covered by the University’s licence with Screenrights (*see paragraph 10.4 above*).

15. PERFORMING, PLAYING OR SHOWING WORK (section 47)

Performing, playing or showing work, if carried out at an educational establishment for the purposes of instruction, are not restricted acts.

This means that sound recordings, films or videos, broadcasts and communication works may be shown at an educational establishment for the purposes of instruction, provided that the showing is not prohibited by the contract under which the institution hired or purchased the sound recording, film or video. They may be shown to students and staff of the educational establishment, or to those who are directly connected with the activities of the establishment, but not to parents or caregivers of students.

16. RENTAL OF FILMS AND SOUND RECORDINGS (section 79)

Educational institutions may rent sound recordings and films or videos to any person as long as no profit is intended; the work has been put into circulation with the licence of the copyright owner (that is, it is not an illegal copy in the first place); and to do so is not a breach of the contract under which the sound recording or film or video was acquired.

17. RENTAL OF COMPUTER PROGRAMS (section 79)

Educational institutions may rent computer programs to any person as long as no profit is intended; the program has been put into circulation with the licence of the copyright owner (that is, it is not an illegal copy in the first place); and to do so is not a breach of the contract under which the computer program was acquired.

18. BACK-UP COPIES (section 80)

A back-up copy of a computer program may be made by or on behalf of the lawful user of the program in order to preserve the original in case it should be lost, destroyed or rendered unusable.

There are no provisions in the Act for making back-up copies of other easily-damaged media such as films, videos or sound recordings.

19. CD-ROMs

CD-ROMs can include text, photographs, films, recordings, musical work, dramatic work and literary work. They are often compilations, and there may be separate copyright, owned by different people, in each of the components. Viewing the CD-ROM is permitted, but copying from it is not, unless the contract under which it was acquired allows copying (which is sometimes the case). In other cases, permission to copy should first be obtained from the copyright owner(s).

Any licence restrictions must be observed, particularly those relating to networking – the making of the CD-ROM program available to more than one user at the same time. An additional charge is often payable for networking.

20. DECOMPIlation AND COPYING, ADAPTING, STUDYING OR TESTING OF COMPUTER PROGRAMS (sections 80A-80C)

Sections 80A-80C set out provisions relating to decompilation, copying or adapting, and observing, studying or testing, of computer programs.

21. INTERNET SERVICE PROVIDER LIABILITY (sections 92A-92D)

Sections 92A-92D set out provisions relating to Internet service providers.

Section 92D states that Internet service providers do not infringe copyright by caching material.

22. SUBSEQUENT DEALINGS (section 93)

Where the Act allows a copy from a copyright work to be made, subsequent use of that copy is not permitted. Further, the selling or letting for hire of any copy, even a permitted copy, unless otherwise allowed, makes that copy an infringing copy. And any possession or use of an infringing copy is itself an infringement.

23. PENALTIES (sections 120-123, 131-133, 226C(2), 226J(2))

The penalties for breach of copyright are steep. If civil action is taken by the copyright owner or an exclusive licensee, the plaintiff has remedies similar to those available in respect of infringement of any other property right, such as damages, injunctions, and delivery up of infringing copies. And an infringement of a moral right is actionable by the person entitled to the right, by bringing civil proceedings for damages or an injunction, or both.

If criminal liability is applicable and is established, there is provision for a maximum fine of \$150,000 or imprisonment of up to 5 years.

And section 133 states that “every director and every person concerned in the management of the body corporate shall be guilty of the offence”, if it is proved that the infringement took place with their authority, permission or consent, and that they “knew, or could reasonably be expected to have known” than the infringement was being committed, and failed to take all reasonable steps to stop or prevent it.

24. THE INTERNET

It is a fallacy that everything on the Internet is in the public domain – in fact, the reverse is true. There is copyright in material on the Net – email messages; postings to bulletin boards and listserves; newsgroups; articles and other publications; artistic works and photographs; text, music, film and video databases; computer programs; MP3 or MPEG files; etc. In theory, nothing is in the public domain unless the author specifically puts it in the public domain – or has been dead for over 50 years!

It could be argued that, by making material freely available on the Internet with unrestricted access, the owner of the copyright in the material is granting an implied licence to all other Internet users to access and use the material, provided that there is no restriction included with the material (and provided that the person putting the material on the Internet is the copyright owner in the first place, or has the owner’s permission). On the other hand, it can be argued that viewing, and subsequently printing or making other use of a work on the Internet breaches the copyright owner’s exclusive right to reproduce the work and determine how it should be used.

It seems likely that a court would take into account the use made of the material – whether for your own research or private study, for educational purposes, or commercial use for financial gain.

Under New Zealand law, databases are compilations (a form of “literary work”), and are protected, even if they contain only non-copyright or out-of-copyright materials.

In sum, it is a breach of copyright law to copy, share, distribute or download any copyright material, whether for private use or for educational purposes, except to the extent that these are permitted either by the Copyright Act or licence agreements signed by the University, unless permission from the copyright owner has first been obtained.

25. BROWSING THE INTERNET, AND TRANSIENT COPYING (section 43A)

Section 2(1) of the Copyright Act 1994 defines copying as meaning, “in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital form), in any medium and by any means ...”

When you browse the Internet an electronic copy is temporarily created in your computer’s memory. Such “transient copying” is specifically permitted under section 43A: “A reproduction of a work does not infringe copyright in the work if the reproduction is transient or incidental; and is an integral and essential part of a technological process for making or receiving a communication that does not infringe copyright, or enabling the lawful use of, or lawful dealing in, the work; and has no independent economic significance”.

26. CACHING (section 92D)

The storing locally of frequently-used material taken from the Internet, usually from overseas sources, to avoid the need to re-obtain the material over and over again, is very common. Section 92D sets out the provisions relating to caching by Internet service providers. In other instances, even if the material is stored for only a limited time, caching is probably not permitted unless there is a licence agreement permitting it, or unless it can be justified under the principles of either implied licence or fair dealing.

27. ACCESSING COMMERCIALY PUBLISHED DATABASES

Commercially published databases made available via the Internet are protected by permitting access only by IP address range or by username and password (although failure to protect a database this way does not abandon the author’s or publisher’s right to copyright protection). Subscribers to a database are usually required to sign a licence agreement, which spells out what use may be made of records from the database. Each licence agreement is different, and some are very restrictive. Institutions signing such agreements must ensure that their users understand the terms and that these are complied with.

28. MAKING COPYRIGHT MATERIAL AVAILABLE VIA THE INTERNET

Copyright material may be copied only within the specific provisions of the Copyright Act (copying for educational purposes, for example) or as specified in a licence agreement.

Section 44(4A) allows copies of work made in accordance with section 44(3-4) to be communicated to students (see paragraph 9.1 above).

Section 44A allows copies of pages from works that are made available on a website or other electronic retrieval system to be stored for educational purposes and accessed by authenticated users (see paragraph 9.2 above).

Librarians may also, under the provisions of section 56A, communicate digital copies to authenticated users (see paragraph 12 above).

Unless specifically permitted by provisions of the Copyright Act, a licence agreement, or the permission of the copyright owner, copies of copyright material on the Internet may not be made.

It is always open to you to obtain permission. Permission will need to cover a number of different actions:

- Copying the work in the first place. Scanning or re-keying onto a computer database are forms of copying for which permission is required, unless this comes within the specific exceptions allowed for in the Act.
- Making the work available to the public by means of an electronic retrieval system. Section 10(1)(b) specifically includes this in the definition of “publication”, which is a restricted act.
- Playing, showing or performing the work in public (section 32).
- Communicating the work (section 16(1)(f)).

As noted above (*see paragraph 10.2*), the licence agreement with CLL allows University staff to make electronic copies from print in-copyright materials, and place these on a secure University server for access by authenticated students and staff involved in particular courses of instruction.

Some licence agreements with vendors of electronic databases subscribed to by the Library permit full-text articles to be made available via electronic course-packs or to be linked to from electronic reading lists (*see paragraph 10.3 above*).

Neither the Copyright Act, nor the CLL licence, allow sound-recordings, films or videos to be copied and made available to students via a University server over the Internet or an intranet. However, the Screenrights licence does allow this for off-air recordings, both audio and video (*see paragraph 10.4 above*).

29. PROVIDING HYPERTEXT LINKS FROM ONE WEB PAGE TO ANOTHER

Issues here relate to copyright, trade marks, and possibly the Fair Trading Act!

There is no copyright in a URL, so there is nothing illegal in providing an electronic bibliography or reading list that includes URLs.

Internationally there are proposals to establish a new copyright right – the right of the copyright owner to control the ways in which copyright material is made available. Since linking is done to make a work accessible, it is likely to breach this proposed new right – or at the very least, dilute the control which the author has over making the work available.

30. MORAL RIGHTS (Part IV, sections 94-110)

Moral rights attach to authors rather than to copyright owners in general. They include:

- the right to be identified as the author or director (which must be asserted in writing)
- the right to have works treated in a way which is not derogatory
- the right not to have works falsely attributed
- the right to privacy in relation to photographs or films commissioned for private or domestic purposes.

31. IMPORTATION (section 35)

Copyright in a work is infringed by importing into New Zealand, other than for a person's private or domestic use, an infringing copy of the work. An infringing copy (section 12(3)) is a copy the making of which constituted an infringement of copyright in the country in which the copy was made; or a copy which if imported into New Zealand would have infringed the copyright in the work in New Zealand had the copy been made in this country.

It is permissible to import publications other than through the copyright owner's licensee in New Zealand, since this restriction was amended by the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998.

The Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003 prohibits the importation of a film "produced principally for cinematic release", other than for a person's private or domestic use, within 9 months of it first being made available to the public. This provision is repealed on 31 October 2013.

32. TECHNOLOGICAL PROTECTION MEASURES (sections 226-226E)

Sections 226 and 226A-E deal with technological protection measures. A **technological protection measure (TPM)** is defined as "any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright in a TPM work; but, for the avoidance of doubt, does not include a process, treatment, mechanism, device, or system to the extent that, in the normal course of operation, it only controls any access to a work for non-infringing purposes (for example, it does not include a process, treatment, mechanism, device, or system to the extent that it controls geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work)". A **TPM work** "means a copyright work that is protected by a technological protection measure". A **TPM circumvention device** "means a device or means that is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of a technological protection measure, and has only limited commercially significant application except for its use in circumventing a technological protection measure".

The making, importation, sale, or letting for hire of a TPM circumvention device likely to be used to infringe copyright in a TPM work is prohibited, as is the provision of a service, or publication of information, to enable or assist circumvention of a technological protection measure or which is likely to be used to infringe copyright in a TPM work.

However, where a TPM work is issued to the public by, or under licence from, the copyright owner, the rights of the issuer of the TPM work do not prevent or restrict the exercise of a permitted act.

Further, the rights of the issuer of a TPM work do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable a "qualified person" to exercise an act permitted under the Copyright Act, using a TPM circumvention device on behalf of the user of a TPM work.

In this context a "qualified person" includes the librarian of a prescribed library, the archivist of an archive (or a person acting on behalf of the librarian or archivist), an educational establishment, or any other person specified by the Governor-General by Order in Council.

A qualified person must not be supplied with a TPM circumvention device on behalf of a user unless the qualified person has first made a declaration to the supplier in the prescribed form.

The user of a TPM work who wishes to exercise a permitted act but cannot practically do so because of a TPM may do either or both of the following:

- apply to the copyright owner or the exclusive licensee for assistance enabling the user to exercise the permitted act; and/or
- engage a qualified person to exercise the permitted act on the user's behalf using a TPM circumvention device, but only if the copyright owner or the exclusive licensee has refused the user's request for assistance or has failed to respond to it within a reasonable time.

Before using a TPM circumvention device on behalf of a user of a TPM work, the qualified person would need to be sure that the TPM work is to be used to exercise a permitted act; and that the user has requested assistance from the copyright owner or exclusive licensee and has either been refused assistance or has not received a response within a reasonable time.

A qualified person who exercises a permitted act on behalf of the user of a TPM work may make a charge for this service, but any charge made must not be more than a sum consisting of the total of the cost of the provision of the service and a reasonable contribution to the qualified person's general expenses.

33. COPYRIGHT MANAGEMENT INFORMATION (sections 226F-226J)

Section 226F defines the meaning of copyright management information as "information attached to, or embodied in, a copy of a work that identifies the work, and its author or copyright owner, or identifies or indicates some or all of the terms and conditions for using the work, or indicates that the use of the work is subject to terms and conditions".

Copyright management information must not be removed or modified without the authority of the copyright owner or exclusive licensee, unless the person who removes or modifies the CMI does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work.

A person must not, in the course of business, make, import, sell, or let for hire a copy of a work if any copyright management information attached to, or embodied in, the copy has been removed or modified without the authority of the copyright owner or exclusive licensee, unless the person does not know, and has no reason to believe, that the CMI has been removed or modified without the authority of the copyright owner or exclusive licensee.

34. CONCLUSION

Copyright law attempts to achieve a balance between the rights of authors, publishers and copyright owners, and society's interest in the free exchange of ideas. While the Copyright Act 1994 (as amended) is in many areas very restrictive, it does make provision for users of copyright materials to enter into licence agreements with copyright owners to achieve a more liberal regime, while still recompensing copyright owners for use of their work. In addition, most copyright owners are reasonable, and willing to co-operate with educational endeavours, provided that prior authorisation is sought.

35. FURTHER INFORMATION

Further information and assistance may be sought from the University's Copyright Officer, Sally Sleigh, telephone (07) 838 4890, email sleigh@waikato.ac.nz .

The Copyright Act 1994, and amendments, may be accessed at <http://www.legislation.govt.nz/act/browse.aspx> .

Tony Millett's *Questions and Answers on Copyright for Academic Staff and Students* is available at <http://www.waikato.ac.nz/copyright> .

Tony Millett's *Copyright Guidelines for Research Students* is available at <http://www.waikato.ac.nz/copyright> or at <http://www.lconz.ac.nz/documents/Copyright%20Guidelines%20LCoNZ.pdf> .

LIANZA's *The Copyright Act 1994 and Amendments: Guidelines for Librarians* is available at <http://www.lianza.org.nz/publications/copyright.html> .

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