

QUESTIONS AND ANSWERS
ON
COPYRIGHT
FOR ACADEMIC STAFF AND
STUDENTS

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Available at

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

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DISCLAIMER

These answers represent my own personal opinion, in response to questions asked of me by University staff and students. Where appropriate you should seek advice from your legal adviser.

1. Q: Is it permissible to import publications other than through the copyright owner's licensee in New Zealand?

A: Yes it is. The Copyright Act's restrictions in section 35 on importing an infringing copy (which in any case did not apply to importation for a person's private and domestic use) were amended by the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998. However, it should be noted that, until 31 October 2013, it is an infringement of copyright to import a copy 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.

2. Q: Can articles be copied from newspapers for inclusion in print course-packs?

A: Copyright in articles printed in newspapers is complex. The copyright may be owned by the individual newspaper; by the news service (NZPA or Reuters); or by the writer of the article. There is likely to be separate copyright in any photograph or other illustration.

New Zealand newspapers are specifically excluded from the CLL licence (Schedule 3 para 5). The licence does not, however, exclude overseas newspapers, which may be copied within the limits of the licence – i.e. "the whole or any part of an article from a periodical publication", or "up to 10 per cent of a work (other than an article in a periodical publication)" (Schedule 2 paras 1.1 and 1.2). The CLL licence does not define whether or not an overseas newspaper is a "periodical publication".

New Zealand newspapers are covered by the Universities' licence agreement with Print Media Copyright Agency (PMCA), which 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. 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. Material copied under the licence must carry a notice stating that it has been reproduced under a copyright licence agreement. The licence also applies 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.

Section 44(3-4) of the Copyright Act allows copying for educational purposes of up to the greater of 3% or 3 pages of a work, which includes newspapers. It seems to be generally accepted that the 3% / 3 pages limitation refers (in regard to periodical articles) to the individual periodical article, not to the entire issue of the periodical. By analogy, therefore, the 3% / 3 pages limitation applies to the individual newspaper article (which does not often exceed more than one page), not to the entire issue or section of the newspaper.

3. Q: Can I copy more than 10% of a book for inclusion in print course-packs?

A: The CLL licence (Schedule 2 para 1.2) limits copying from a book to 10% or one chapter. However, the licence (clause 2.3) specifically allows for an application to be made to CLL for copying beyond these limits. A charge may be made.

4. Q: Can I include in course-packs sections from a book which is out-of-print?

A: The fact that a book is out-of-print does not affect the copyright in that book, although “whether the work could have been obtained within a reasonable time at an ordinary commercial price” (Copyright Act section 43(3)(c)) is one of the factors to be taken into account in determining whether copying is fair dealing for the purposes of research or private study.

Under the licence (Schedule 2 para 1.5) CLL are able to give written permission to copy up to and including the whole of an out-of-print book, provided that they are satisfied that sufficient copies cannot be obtained within a reasonable time at an ordinary commercial price. A charge may be made. Electronic copying of a whole work is specifically excluded under this clause of the CLL licence.

5. Q: Can copies of a student’s work be copied and made available to other students?

A: Yes, provided that the student author’s permission has first been obtained. Student work is not covered by the CLL licence (Schedule 3 para 10).

6. Q: Can I make a print copy from a work obtained on Interloan on microfilm or microfiche?

A: Only within the limits of fair dealing for research or private study, set out in section 43 of the Copyright Act.

7. Q: Can material copied from a video or sound recording be included in a student presentation being made to a class?

A: Section 45 of the Copyright Act restricts copying of videos for educational purposes to a lesson on how to make films or film sound-tracks; and copying of sound recordings for educational purposes to a lesson relating to the learning of a language, or a lesson which is conducted by correspondence. Other than this, it may be possible for a student to claim that the copying is being done under the fair dealing provisions of section 43, copying for research. Copies of off-air recordings may, however, be included in a student presentation, under the terms of the Screenrights licence.

8. Q: Can I include illustrations, maps, photographs or cartoons in print course-packs?

A: Section 44(5) of the Copyright Act allows copying of the whole of an artistic work for educational purposes only if the artistic work is included within the part of a work being copied under the terms of section 44(3-4). However, the CLL licence agreement (Schedule 2 para 1.4) allows the copying of an artistic work, diagram or illustration published in a copyright work, unless there is a copyright statement attached to the artistic work, for example “reproduced with permission”. For any other copying, including the copying of loose maps, photographs, cartoons or other artistic works, it is necessary to obtain permission from the copyright owner. A fee may be charged.

9. Q: Can multiple copies of music be made?

A: Printed music (including the words) is excluded from the CLL licence (Schedule 3 para 2). Up to the greater of 3% or 3 pages may be copied for educational purposes under section 44(3-4) of the Copyright Act; for more than this, permission from the copyright owner must be sought.

10. Q: Can copies of articles from full-text databases subscribed to by the Library be included in print course-packs?

A: Some, but only some, of the Library’s licence agreements with electronic database vendors permit inclusion of copies of articles in print course-packs issued to students. Consult the Library as to which these are.

11. Q: Can links be made to specific full-text articles in electronic databases subscribed to by the Library?

A: This is permitted for some but not all of the databases subscribed to. Consult the Library as to which these are.

12. Q: How do I claim copyright?

A: Under New Zealand law you do not need to “claim” or register copyright. Section 14(1) of the Copyright Act states that “Copyright is a property right that exists, in accordance with this Act, in original works ...” The standard symbol for indicating that a work is in copyright is the letter “c” in a circle and the year (e.g. © 2008).

13. Q: Does it breach copyright to read books on TV as a story time slot, and show some of the pictures in the book?

A: Yes, without the prior permission of the copyright owner. In listing acts restricted by copyright, section 16(1) of the Copyright Act states:

“The owner of the copyright in a work has the exclusive right to do, in accordance with sections 30 to 34 of this Act, the following acts in New Zealand: ...

(c) To perform the work in public;

(d) To play the work in public;

(e) To show the work in public;

(f) To communicate the work to the public”. And section 33 states: “Communicating a work to the public is a restricted act in relation to every description of copyright work”.

14. Q: Could you suggest some wording that I would be able to insert onto a video copied off-air.

A: You could add a statement such as the following: “This video includes recordings of broadcasts made for the educational purposes of the University of Waikato, in accordance with the terms of section 48 of the Copyright Act 1994, and/or the University’s licence agreement with Screenrights”.

In addition, the Screenrights licence requires that all off-air recordings or copies of such recordings be labelled as follows:

Made only for the University of Waikato’s educational purposes:

Title of broadcast:

Date of broadcast:

Date this copy made:

Where any off-air recording or copy is made by digitisation, this information is required where possible to be embedded within the digital recording or copy.

15. Q: Does the Screenrights licence allow the inclusion of excerpts of broadcasts on CD-ROMs issued to students? Or in course materials made available to students via an Intranet? And does it cover film as well as audio?

A: Yes, to all three questions.

16. Q: What is the position regarding off-air recordings made prior to 1 May 2002 when the Screenrights licence came into effect?

A: The Screenrights licence is accompanied by a side-letter, in which the Screenrights members undertake not to commence legal proceedings against the Universities with regard to any past off-air recordings. Such recordings were, in any case, permitted under section 48 of the Copyright Act, because there was then no licence agreement in place.

17. Q: How should the words “on the same subject matter” be interpreted, in relation to copying of periodical articles?

A: I interpret this phrase liberally and literally, as meaning “on the same subject”. Thus, all articles in a subject-specific journal (e.g. *Journal of Family Violence*) are likely to be on the same subject (family violence). However, the articles in a general journal (e.g. the *New Zealand Listener*) will not be. This leaves a grey area in the middle – for example, articles in *Scientific American*, *Nature*, *Science* etc will all be on science, but each will be on a more specific area of science, and I would consider these more specific areas, rather than the broad general subject, to be “the same subject matter”.

Others would argue that no more than 10%-20% of the articles from a journal should be copied at the same time under this provision.

The CLL licence agreement (Schedule 2 para 1.1) states: “The term ‘the same subject matter’ will be interpreted on a case-by-case basis. For the avoidance of doubt, it is not intended to allow copying of multiple articles from the same issue of a periodical publication unless the content of each of the articles copied is closely related and focusing on a particular aspect of a subject”.

18. Q: Can copyright material be made available for the educational use of students over the Internet?

A: Yes. Section 44(4A) of the Copyright Act states that “a copy of a work made in accordance with subsections (3) and (4) may be communicated to a person who is a student or other person who is to receive, is receiving, or has received, a lesson that relates to that work”. “Communicate” is defined in section 2(1) as meaning “to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system”, and includes a computer network.

Further, section 44A allows an educational establishment to store pages from a work that is made available on a website or other electronic retrieval system, and make these pages available, provided that the material is stored for an educational purpose; 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; restricts use of the material to 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); and deletes the stored material within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.

The CLL licence agreement 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 a particular course of instruction. In addition, some of the licence agreements signed by the Library for providing access to electronic full-text journals permit articles from those publishers to be included in “electronic course-packs”, normally by linking to the specific full-text articles.

19. Q: Can audio and video material be included in the University’s Learning Management System?

A: It is important to distinguish between copying for educational purposes (sections 44-49 of the Copyright Act), off-air recording, and making material available via the Internet or a closed Intranet.

ClassForum operates over the Internet, and therefore appears to fall within the Copyright Act's definition of "communicate" (section 2(1)). And section 16(1)(f) states that communicating a work to the public is a restricted act. Section 44(4A) applies only to literary, dramatic or musical work, not to films and sound recordings. Section 45 limits copying for educational purposes of films and sound recordings to courses on how to make films or film sound-tracks or which relate to the learning of a language. It would seem, therefore, that it is not permissible for audio and video material to be included in ClassForum unless prior permission has been obtained from the copyright owner.

The exception to this is off-air recordings (both audio and video), or copies of such recordings, which under the terms of the University's licence agreement with Screenrights may be made available to students via the Internet or an Intranet.

The CLL licence agreement does not apply to audio-visual materials.

20. Q: Is listening to a master copy by a number of language laboratory users permissible?

A: This falls within the definition of "communicate" in section 2(1): "communicate means to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system", and section 16(f) lists "to communicate the work to the public" as one of the acts restricted by copyright. It would seem, therefore, that communicating a master copy to a number of language laboratory users is not permitted, unless prior permission has been obtained from the copyright owner.

21. Q: Is it legal to make a back-up copy of a sound recording or video?

A: While section 80 of the Copyright Act allows a back-up copy of a computer program to be made for use "if the original copy is lost, destroyed, or rendered unusable", there is no provision for other media such as audio or video recordings. By strict definition of the law, therefore, the making of back-up copies is not permitted. However, should a court case ensue, I would hope that the judge would be sympathetic to the application of the principles expressed in section 80 to other forms of media. I would stress that for this to happen, the judge would require assurance that the copy from the master was made for this purpose only, and not as a cheap way of having access to two copies of the work – in other words, the master copy should be held in an archival store, with no access to it other than to make another copy if the original copy is "lost, destroyed, or rendered unusable".

22. Q: Who owns copyright in photographs?

A: Under section 21(2) of the Copyright Act, copyright in photographs taken by an employee in the course of her/his employment is owned by the employer. If the employer wishes to scan and make the photographs available, that is the employer's right, and may impose whatever conditions it thinks best for the re-use of those scanned images.

Under section 21(3), copyright in photographs commissioned and paid for by a person is owned by that person, unless a contract has been signed which passes copyright ownership over to the photographer.

23. Q: Is it permissible to copy for educational purposes a photograph or illustration that is included in a book?

A: Section 44(5) of the Copyright Act allows an artistic work (e.g. illustration or photograph) to be copied only if it forms part of the literary work being copied. However, the CLL licence (Schedule 2 para 1.4) allows copying of an artistic work where it is published in a copyright work. You cannot copy a separate artistic work, without first obtaining permission from the copyright owner.

24. Q: Is it legal to use hyperlinks within a distance study package available to students?

A: There is no copyright in a URL, so there is nothing illegal in providing an electronic bibliography or reading list that includes URL links. The individual student who clicks on those URL links will, if access is permitted, then display the articles on her/his computer screen (“transient copying”, which is permitted under section 43A) and then perhaps either print or download the articles. Such copying is permissible under section 43 of the Copyright Act (copying for research or private study), provided that the provisions detailed in subsections (3) and (4) are observed. Internationally there are proposals to introduce a new copyright “right” – the right of the copyright owner to control the ways in which copyright material is made available; however, there is no such provision in New Zealand copyright law at present.

Most hypertext links included in distance learning bibliographies or reading lists will be to full-text periodical articles included in electronic information services subscribed to by the Library, with access controlled by IP address range or username/password. Where this is the case, access will be able to be provided, and use made, only within the terms of the licence agreements signed by the Library with the publisher, aggregator or vendor.

It is also permissible to include hypertext links to electronic copies of articles copied from print originals under the terms of the CLL licence agreement and made available on a secure University server for access by authenticated students and staff involved in particular courses of instruction.

25. Q: Does copyright law permit real-audio streaming – that is, making up a compilation from a number of compact disks that are required listening for a Music course, and letting students enrolled in that course have access to the compilation through the iMac Laboratory streaming server?

A: This may be done only with the prior permission of the copyright owner. You should apply through APRA, the Australasian Performing Rights Association (PO Box 6315 Wellesley Street, Auckland, phone 0800 692 772, fax (09) 623 2174, email licencenz@apra.com.au).

26. Q: Can a PowerPoint presentation include copyright material?

A: A student may copy copyright material into a PowerPoint presentation under the Copyright Act section 43, copying for research or private study. Giving a presentation would not be covered by “private study”, but it might be covered by “research”, which does not have to be “private”.

A staff member or student giving a class may copy copyright material into a PowerPoint presentation under section 44(1), which allows copying into either print or electronic format “by means of a reprographic process or by any other means”, provided that

“(b) The copying is done –

- (i) In the course of preparation for instruction; or
- (ii) For use in the course of instruction; or
- (iii) In the course of instruction; and

(c) The copying is done by or on behalf of the person who is to give, or who is giving, a lesson at an educational establishment; and

(d) No more than one copy of the whole or part of the work or edition is made on any one occasion”.

It should be noted, however, that in his High Court Judgment dated 22 February 2002, Salmon J. ruled that copying under section 44(1) must be “for the instructor’s purpose of preparing and giving the lesson”, and not for other purposes. Therefore a copy of the PowerPoint presentation which contains copyright material may not be photocopied for students, or placed in the Library’s Course Reserve Collection, or copied into an electronic database which is accessible electronically by students.

Staff members may also copy copyright material into a PowerPoint presentation under section 44(3-4), within the 3% / 3 pages limitation.

27. Q: Can I copy a diagram from another publication into my thesis?

A: It is permissible to include in a thesis quotations or short extracts taken from another work, under the fair dealing provisions of the Copyright Act (sections 42-43), provided that “such fair dealing is accompanied by a sufficient acknowledgement” (which is, of course, standard academic practice). This would cover a diagram in a book. If the diagram is clearly the work of a third party (that is, reproduced by the author of the book from another work), acknowledgement should be given both to the original source of the diagram, and to the work from which the diagram is being copied. If, however, the diagram has a copyright statement attached to it (normally indicated by a “c” in a circle e.g. ©) then it should not be copied without obtaining prior written permission from the copyright owner indicated.

28. Q: I would like to copy a photograph in a book of a painting held in a London library, and use the copy as the frontispiece to my thesis. What are the copyright implications?

A: There is copyright in the original painting, which lasts for 50 years after the death of the painter. There is copyright in the photograph of the painting, which lasts for 50 years after the death of the photographer. And there is copyright in the reproduction of the photograph in the book, which lasts for 25 years after the book was first published. So unless both the painter and photographer have been dead for more than 50 years, and the book was published more than 25 years ago, then the photograph of the painting may not be reproduced without permission. And just to complicate matters further, the library that owns the painting may hold reproduction rights. I suggest that, in the first instance, you write to the publisher of the book in which the photograph appears.

29. Q: Some time ago we paid a company to build a website for us. No contract was signed. Who owns the copyright to the web pages? Are we free to use the page design to build other pages?

A: Section 21 of the Copyright Act 1994 states:

“(3) Where (a) a person commissions, and pays or agrees to pay for, the taking of a photograph or the making of a computer program ... and (b) the work is made in pursuance of that commission, that person is the first owner of any copyright in the work.

(4) Subsection 3 of this section applies subject to any agreement to the contrary.”

What this means is that, unless you have signed a licence agreement passing copyright ownership over to the company that built the website, you own the copyright and can use and develop it how you wish. However, if you have signed an agreement passing copyright ownership over to the company that built the web site, then you will have to get their permission.

30. Q: Can we claim copyright without putting a name beside it? For example, we produce client newsletters, we send them to accountants, they brand them as their own, and then send them to their clients. We would still like to claim copyright to the articles and only allow subscribing accountants to use them, but we don't want the University name on the newsletters as then the clients know who writes them.

A: Under New Zealand law, you do not need to “claim” or register copyright: the Copyright Act section 14(1) states that “Copyright is a property right that exists, in accordance with this Act, in original works ...”. This is different to the U.S., where copyright work is registered.

Under section 21(2) of the Copyright Act, “Where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person's employer is the first owner of any copyright in the work”. However, this University normally returns the copyright to the author of the work.

The standard symbol for indicating that a work is in copyright is the letter c in a circle (©). There is no obligation to indicate the owner of the copyright, though it is normal to put with the copyright symbol the year of publication, e.g. © 2008.

I should have thought that the easiest way is for you to have a letter of contract with the accountants to whom you send the articles, stating that, while you are happy for them to use the articles in their client newsletters, you are retaining copyright in the articles. A simple letter will suffice to make this claim.

31. Q: We would like to have available in the department, for archival purposes, on CD-ROM the complete readings that were issued to students in previous years. Can we do this?

A: Neither the Copyright Act, nor the CLL licence agreement, allows this. You would need to seek permission from Copyright Licensing Ltd.

32. Q: I would like to show short clips of videos in lectures. The videos will be hired from a video shop, or purchased. Am I infringing copyright by doing this? Also, what happens if I want to include a short clip in an online course?

A: Section 47 of the Copyright Act allows “The playing or showing, for the purposes of instruction, of a sound recording, film, broadcast, or communication work ...”, provided that the audience consists of “persons who are students or staff members at an educational establishment or are directly connected with the activities of the establishment”. So unless when hiring or purchasing the video you sign a licence agreement that prohibits this (thereby overriding the Copyright Act), you may show clips of videos in lectures. The same applies to DVDs.

However, the Copyright Act does not permit copies from commercially-published videos or DVDs to be included in a “communication work”, which includes an Internet or Intranet service such as an online course, without the prior permission of the copyright owner.

If the film has been recorded off-air, then the copying and inclusion in an online course is permitted under the University’s licence agreement with Screenrights; but this licence applies to off-air copying or recording only, and not to videos or DVDs hired or purchased.

To include clips from commercial videos or DVDs in an online course, permission would need to be obtained from the copyright owner.

33. Q: I am involved in a LMS discussion, and would like to cut and paste into the LMS several of the messages that have appeared recently in a listserve. Will this raise any copyright issues?

A: Legally, there is copyright in anything published (“publication” is defined in Section 10(1) of the Copyright Act as “the issue of copies of the work to the public”), and this includes emails and papers on the Internet. It could be argued that, by placing an email on a public forum service such as a listserve, the author/copyright owner is granting an implied licence to all other users of the service to access and use the material. On the other hand, it can be argued that making use of a person’s work that is on the Internet breaches the copyright owner’s exclusive right to reproduce the work and determine how it should be used.

Legally, you should probably seek the permission of each person who contributed to the listserve discussion. Morally, you should also do so, as the authors may wish to re-word their statements, or make other changes, if they know these are to be used in a different way and via a different forum.

34. Q: Is it permissible to download music (e.g. MP3 or MPEG files) from the Internet for personal use and load these onto a University computer?

A: No. 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. If ITS becomes aware that copyright materials have been downloaded to University servers, it is obliged to ensure that these are removed.

35. Q: What is the copyright position regarding copying of copyright material by University administrators, for example for Council or University committees?

A: Section 44(3-4) of the Copyright Act states that copyright is not infringed by copying part of a work, if the copying “is done for an educational purpose”, and the copying “is done by or on behalf of an educational establishment”, provided that “the copying is of no more than the greater of 3 percent of the work or edition or 3 pages of the work or edition”. These limits are extended by the licence agreement with CLL, which in clause 2.1 states that “CLL grants to the Licensee the right to copy copyright material for authorised purposes by authorised persons ...”. Clause 1.1 of the licence agreement defines “authorised purposes” as “the educational purposes of the Licensee, including study, research and use in the course of educational instruction”; and “authorised persons” as “the academic and general staff and duly authorised agents of the Licensee”.

In some very limited circumstances administrative copying may possibly be covered by section 42 (copying for criticism, review, and news reporting) or section 43 (copying for research) of the Copyright Act.

36. Q: Is Waikato Print required to ensure that work copied for private study is used for that purpose?

A: Normally, copying for research or private study will be undertaken by the person wanting it. However, there is nothing in the Copyright Act that prevents someone else making the copy, provided that the “fair dealing” provisions of section 43 are complied with. It may be useful to ask the requester to sign a declaration that the copying is for the requester’s own research or private study, and will not be used for any other purpose; and that the copying is in accordance with the provisions of section 43 of the Copyright Act. Only one copy may be made.

Copying for research or private study under section 43 should be distinguished from copying for educational purposes under section 44(1). This latter section allows one copy of all or part of a work to be made, provided that the copying is for the personal use of a person “who is to give, or who is giving, a lesson at an educational establishment”, and is “for use in the course of instruction”.

37. Q: Can Waikato Print copy a chapter from a book for a lecturer, and then in two weeks time copy another chapter from the same book for the same class? And what about copying the same chapter on behalf of a different lecturer for a different class?

A: The Copyright Act permits repeat copying for educational purposes after 14 days. The CLL licence (Schedule 2 para 1.6) allows “Making a repeat copy from a work within 14 days providing 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 CLL licence does not prohibit copying of the same chapter on behalf of a different staff member for a different class.

There is nothing in the Copyright Act or CLL licence preventing an academic staff member requesting a second chapter to be copied at a later date for a class (note that this is not “repeat copying”). However, this method could not be used to end up copying the whole of a book. If the whole of an out-of-print book is required, permission should first be obtained from CLL who need to be “satisfied that sufficient copies of that work cannot be obtained within a reasonable time at an ordinary commercial price” (Schedule 2 para 1.5).

38. Q: Can multiple chapters of a book be copied for course-packs?

A: No. The CLL licence (Schedule 2 para 1.2) permits “Copying of up to 10 per cent of a work (other than an article in a periodical publication) or one chapter of the work, whichever is the greater”. Copying beyond this requires the prior written permission of the copyright owner or CLL.

39. Q: Who owns copyright in an article written by a staff member for a newspaper?

A: In general terms, copyright in works written by a staff member is owned by that staff member, unless s/he passes copyright ownership over to the publisher as part of the contract to publish the work.

40. Q: What are Waikato Print’s obligations with regard to copying work received from outside the University?

A: It is the responsibility of the person or organisation requesting the copying or printing to ensure that it does not breach copyright law or any licence agreement that the institution may have – Waikato Print is just acting as the agent of the external person or organisation. However, Waikato Print does have an obligation to try to ensure that copyright laws are not breached – just as it does in related areas such as defamation or obscenity. If there is any doubt, refer back to the requester. You could ask the requester to sign a declaration that the copying is in accordance with copyright law and/or relevant licence agreements.

41. Q: Is Waikato Print permitted to copy photographs from books in print course-packs?

A: There is often separate copyright in photographs published in books. If the copying is being done under section 43 of the Copyright Act (copying for research or private study), the “fair dealing” provisions of that section apply. If the copying is being done for inclusion in course-packs under the provisions of the CLL licence, then provided that the photograph or illustration is part of a book, its copying is covered by the licence, since the licence (Schedule 2 para 1.4) permits “Copying of the whole of an artistic work (such as an illustration) where it is published in a copyright work and is copied in accordance with the provisions of this Schedule”.

42. Q: Can Waikato Print copy artistic works?

A: I suggest you first think about what the purpose of the copying is, and then the type of work being copied.

If the copying is for course-packs (print or electronic), or multiple copies to be handed out to students, then the CLL licence applies. Loose maps and charts are specifically excluded from the CLL licence, as are illustrations and photographs published separately from a work (Schedule 3 paras 3 and 7). However, the licence (Schedule 2 para 1.4) permits the copying of the whole of an artistic work (which includes illustrations, photographs, maps and charts) that is published in a copyright work and is copied in accordance with the provisions of the licence. If the material to be copied is specifically excluded from the CLL licence, then sections 44(3) to 44(7) of the Copyright Act apply.

If the copying is to enable a person (including a student) to prepare for or give a course of instruction, which includes a tutorial or presentation to a class, then section 44(1) of the Copyright Act applies. This section allows one copy of a “literary, dramatic, musical, or artistic work” to be made, and the purpose of the copying must be to assist the person to prepare for or give the course or provide instruction – it may not be used for any other purpose.

If the copying is for research or private study, then the “fair dealing” provisions of section 43 of the Copyright Act apply. Only one copy is permitted.

43. Q: Does the CLL licence apply to students?

A: The CLL licence (clause 2.1) grants to the University “the right to copy copyright material for authorised purposes by authorised persons in accordance with the terms and conditions of this Agreement”. “Authorised persons” are defined in clause 1.1 as “the academic and general staff and duly authorised agents of the Licensee”. The CLL licence, therefore, applies to copying by students only where the students are undertaking the copying on behalf of and at the direct request of a University staff member.

44. Q: Can a lecturer scan print periodical articles and make these available via the Learning Management System?

A: Yes. Section 44(4A) states that “a copy of a work made in accordance with subsections 44(3) and (4) may be communicated to a person who is a student or other person who is to receive, is receiving, or has received, a lesson that relates to the work”. “Communicate” includes transmitting or making available “by means of a communication technology, including by means of a telecommunications system or electronic retrieval system” (section 2(1)), and includes a computer network. ClassForum and MyWeb would be included in this definition.

The CLL licence agreement allows print materials to be scanned into electronic format and made available as an “electronic course-pack” to enrolled students and staff involved in the particular course of instruction. The CLL licence covers print-to-print and print-to-electronic copying only: it does not apply to materials that are already in electronic form.

45. Q: Can theses be copied?

A: Copyright in student theses, dissertations and papers is owned by the student, not by the University. They are specifically excluded from the CLL licence (Schedule 3 para 10), but are covered by the Copyright Act. The whole of a thesis or dissertation may not be copied without the prior permission of the author.

46. Q: Can standards be copied?

A: Standards may be copied under the terms of the Copyright Act, or (in the case of multiple copies issued to students) under the terms of the CLL licence unless “the copyright owner has prominently stipulated that it may not be copied under any copyright licence” (Schedule 3 para 8).

47. Q: Can academic staff provide links to MP3 sites in the context of academic work / assignments?

A: There is no copyright in a URL, so it is not illegal to provide URL links to Internet sites. However, a judge might rule that, by providing links to sites without providing a warning regarding use of (including downloading from) those sites, the University could be seen as facilitating (if not encouraging) the possibility of breach of copyright by those who access those sites. A suitably-worded warning notice might be appropriate.

48. Q: Is it permissible to turn a document that is in pdf format into word format, so that it can be played back on a voice synthesizer by a blind student?

A: Section 69(1) of the Copyright Act allows the making or communicating of “copies or adaptations of published literary or dramatic works for the purpose of providing persons who have a print disability with copies that are in Braille or otherwise modified for their special needs, without infringing copyright in those literary or dramatic works”. Section 69(2) sets out the conditions under which copies or adaptations may be made. However, the right to do this is restricted to “A body prescribed by regulations made under this Act”, and the University of Waikato is not one of them. You would need, therefore, to obtain prior permission from the copyright owner, or ask Copyright Licensing Ltd if they are able to grant permission.

49. Q: May a charge be made for print course-packs?

A: Yes. The CLL licence (clause 2.6) says that “The Licensee may make a reasonable charge to recover costs and overheads incurred by the Licensee in providing copies of the copyright material”. For materials copied under the CLL licence, this overrides section 44(3)(e) of the Copyright Act, which states that “No charge [may be] made for the supply of a copy to any student or other person who is to receive, is receiving, or has received a lesson”.

50. Q: Can I scan a chapter of a book into a word document, then condense it down to about two pages and copy it for my students?

A: Publishers are very concerned that either print or electronic copies of their publications (books or periodical articles) should be exact reproductions of the originals, with the same typeface, layout, wording, etc. The CLL licence (Schedule 2 para 4.2) requires that “the material copied is a reasonably accurate copy of the original which preserves the structure, layout, authenticity and integrity of the original”. While the licence does allow lecturers to add commentary or explanatory notes to materials copied under the licence, it does not permit a staff member to copy a chapter of a work into another format, then condense and/or edit it (so that in effect this becomes a different work to the work that was published), and then make copies of that edited work for student course-packs.

51. Q: Can copies of programmes such as movies be copied from television and made available for students to watch?

A: Yes – the University’s licence agreement with Screenrights allows off-air recordings to be used for the educational purposes of the University. Note that the Screenrights licence applies to off-air copying or recording only – it does not cover videos or DVDs borrowed from video hire shops, or commercially-published videos or DVDs.

52. Q: Can student performances be recorded on video for assessment purposes?

A: Section 176 of the Copyright Acts states that “Fair dealing with a performance or recording – (a) for the purposes of criticism or review ... does not infringe any of the rights conferred by this Part of this Act”. It is not clear whether a Court would hold that the copying of the whole of a student performance for criticism or review would constitute fair dealing. Certainly, as required by section 171(1), the consent of the student(s) would have to be obtained.

It should be noted that section 177(1), which deals with “Things done for purposes of instruction or examination”, is neither clear nor generous, and applies only “where the lesson is on how to make films or film sound-tracks or relates to the learning of a language or is conducted by correspondence ...”.

53. Q: Can performances be recorded for the personal record of the performers?

A: A work may be copied under section 43, copying for research or private study, provided that the “fair dealing” provisions of that section are complied with. Section 171(1)(a) states that the consent of the performer(s) is not required if the copy is made for “private and domestic use”.

54. Q: Who owns the copyright and intellectual property in work created by academic staff, e.g. for their online classes?

A: Section 21 of the Copyright Act deals with Ownership of Copyright. Subsection (2) states: “Where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person’s employer is the first owner of any copyright in the work”. Subsection (4) states that this applies “subject to any agreement to the contrary”. So in terms of the Copyright Act, copyright is owned by the University.

However, in effect the University passes copyright ownership back to the author, so that s/he is able to negotiate directly with publishers regarding publication of the work. The University’s *Handbook on Research and Outside Professional Activities* states (page 6 paragraph 4): “Where an author produces a copyright work in furtherance of his or her academic career and privately enters into a contract for the publication of that work with a publisher, that author becomes the automatic and legal owner of the copyright. The University encourages publication and consequently does not claim copyright in books and articles published by organisations outside the University, unless the intellectual property has been created specifically for teaching purposes, or has been created under an externally-funded research contract”.

The *Handbook on Research and Outside Professional Activities* also states (page 6 paragraph 2) that “Where research activity is undertaken in the course of a staff member’s duties to the University and utilising the University’s resources, the ownership of any intellectual property rights arising from the research normally belongs to the University”.

55. Q: Can I print out online resources (e.g. from Ebsco or ProQuest databases, or from the electronic version of a journal) to include in print course-packs for students?

A: This can not be done under the CLL licence, since this applies only to print-to-print or print-to-electronic copying. Some of the licence agreements which the Library has with electronic journal and database vendors allow printing from their databases for print course-packs, while others do not. Some allow you to provide links directly to the resource, either at publication or at specific article level. Other licence agreements do not refer to course-packs at all.

Generally speaking, publishers are more willing to allow wider use of their content than are aggregators like Ebsco and ProQuest. This is because publishers own the copyright in the content they make available, whereas aggregators do not.

Both Ebsco and ProQuest allow you to provide hypertext links from an online bibliography, list of course readings, or setup such as ClassForum or MyWeb, which point the student either to the source publication or to the specific article. By using this mechanism you avoid the need to provide print course-packs altogether.

56. Q: What does the Copyright Act say about material (excluding electronic databases) sourced from the Internet? I know that the CLL licence does not cover this.

A: The CLL licence (Schedule 3 para 1) specifically excludes “Works downloaded from the Internet”.

The Copyright Act 1994 makes no mention of the Internet.

The Copyright (New Technologies) Amendment Act 2008 refers to the Internet only in the context of Internet service providers.

You cannot assume that, because a work is made available via the Internet, there is no copyright in that work. In fact, the reverse is true – you should assume that there is copyright in anything made available on the Internet, unless the copyright owner has specifically stated that copyright in the work is waived or is in the public domain, or unless the author has been dead for more than 50 years. There is no implied licence to copy, just because materials have been made available on the Internet.

Further information is given in the *Copyright Guidelines for Academic Staff and Students*.

57. Q: If we buy a DVD, can short clips from it be put onto video for use in teaching? At present, most teaching rooms are set up for video but not for DVD.

A: Section 45(2)(a) of the Copyright Act allows films (which include videos and DVDs) to be copied for educational purposes only “where the lesson is on how to make films or film sound-tracks”. The CLL licence does not cover films. This means that you would need to obtain permission from the copyright owner if you wish to make a copy of all or part of a DVD for educational purposes.

While recording for purposes of time shifting is permitted (section 84), format shifting is not.

That said, I imagine that a judge would view sympathetically (I would, if I were a judge!) the transfer of all or part of a film from DVD to video format if the sole purpose of doing this is to enable you to show the film to a class, and provided that the video is wiped clear after the class has been given.

58. Q: Can questions (about 5 pages, non-consecutive) from a text-book (not one we are using) be photocopied and distributed to students in class? And do the questions need to be attributed to the author of the text-book?

A: Yes. The CLL licence (Schedule 2 para 1.2) allows copying of up to 10% or one chapter of a work, whichever is the greater. The licence does not say that the 10% has to be consecutive pages. The licence (clause 2.4(a)) also states that the licensee will “include appropriate bibliographical detail wherever possible”. So yes, the extract(s) do need to be attributed.

59. Q: Can we import a DVD directly from the UK? Are there any classification issues involved?

A: Yes. DVDs and films may be imported directly from overseas distributors. One exception to this is that it is an infringement of copyright to import into New Zealand, other than for a person’s private or domestic use, a film “produced principally for cinematic release” within 9 months of it first being made available to the public, whether the first release was in New Zealand or overseas. This provision is repealed on 31 October 2013 (section 35(3-5)).

The Films, Videos and Publications Classification Act 1993 requires that films, videos and DVDs be labelled before being “supplied to the public or offered for supply to the public”. However, section 8(1) of this Act lists a large number of types of films which are exempt from labelling requirements, including “any film directly related to the curriculum of pre-school, primary, secondary, or tertiary educational institutions”.

60. Q: Is it permissible to reprint a case taken from a book that was included and distributed to students for an examination last semester. Can this case be reprinted on the Web and/or in hard copy?

A: If you are asking whether the case can be reprinted for use in an examination, then the answer is yes: section 49 of the Copyright Act states that “Copyright is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to

the candidates, or answering the questions”. If, however, the case is to be copied and put in a print or electronic course-pack, then the provisions of the licence agreement with CLL will apply.

61. Q: Is it illegal to scan the front or back cover of a book, or its table of contents, turn that scan into a jpeg, and then use this as a teaching resource, for example in a powerpoint slide?

A: In my view this would not be in breach of section 44(1) (Copying for educational purposes) of the Copyright Act.

62. Q: Are we allowed to put printouts of New Zealand Government Web pages into course-packs?

A: You should assume that there is copyright in materials made available on the Web, unless the copyright owners have specifically said that copyright is waived, or that the material is in the public domain, or that the material may be freely copied. This applies equally to Government websites, which are covered by Crown copyright (section 26), unless the material falls into one of the types of works listed in section 27.

It is always open to you to obtain permission from the copyright owner. Such permission is very likely to be freely given.

Section 44A does allow educational establishments to store a copy of pages from a work that is made available on a website or other electronic retrieval system and make this available to authenticated users for an educational purpose.

Alternatively, why not just give the URL of the website that is being referred to, so that students may access the site or the relevant documents directly?

63. Q: We want to use an image off a DVD cover on the front of a course reader. Is this permissible?

A: There is copyright in the artistic work that constitutes the image on the DVD cover.

Section 44(5) of the Copyright Act states that “Copyright in an artistic work is not infringed by the copying by means of a reprographic process or by any other means, of the whole or part of that work if the artistic work is included within the part of any work or edition copied under subsection (3) of this section”. Since the artistic work on the DVD cover does not form part of a work (book or periodical article) being copied, its copying is not permitted under this section of the Act.

The licence agreement with CLL (Schedule 2 clause 1.4) allows “Copying the whole of an artistic work (such as an illustration) where it is published in a copyright work and is copied in accordance with the provisions of this Schedule”. Clause 1.1 of the licence agreement defines “Copyright work” as (a) published, literary or dramatic works; (b) artistic works published as part of or incidental to a literary or dramatic work; in which copyright subsists”. A DVD cover is not a “literary or dramatic work”, and therefore its copying is not covered by the CLL licence.

You could seek permission from the publisher of the DVD – but the publisher may well not own the copyright in the artistic work on the cover, so may not be able to grant permission.

64. Q: What is the position regarding use of texts from newspapers and magazines/journals, both online and print, such as editorials, opinion columns and letters to the editor, in photocopied handouts to students?

A: New Zealand newspapers are excluded from the licence agreement with Copyright Licensing Ltd (CLL), but are covered by the Universities' licence agreement with Print Media Copyright Agency (PMCA) – an outline of this licence is given in the answer to Q. 2 above. Copying within the limits of the Copyright Act is of course also permitted.

Copying from overseas newspapers is governed by licence agreements which the Library has with the providers of the newspaper databases. You would need to check with the Library as to what is permitted under each licence agreement, all of which are different.

The CLL licence does cover (within strict limits) the copying for course-packs of articles in print periodicals and from books. Letters to the editor printed in periodicals are not “articles” and are therefore not covered by the CLL licence. However, editorials, opinion pieces, etc in periodicals are “articles” and are therefore covered by the licence.

Copying from electronic resources (e-journals and e-books) is not covered by the CLL licence. However, copying may be allowed under the licence agreements which the Library has with database providers.

An alternative approach, where you want students to read an electronic resource (overseas newspaper or periodical article), is to point to the electronic resource by citing its URL. Students may then access the resource online, and if they wish to do so, may make a single copy for their own research or private study under the provisions of section 43 of the Copyright Act.

65. Q: Is there any policy preventing academic staff from publishing their lecture notes on the Web, available to the public?

A: Section 21(2) of the Copyright Act states that “where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person’s employer is the first owner of any copyright in the work”. This means that the University owns the copyright in academic staff work, including lecture notes.

However, in effect the University passes copyright ownership back to the author, so that s/he is able to negotiate directly with publishers regarding publication of the work – see the University’s *Handbook on Research and Outside Professional Activities*. While this relates specifically to books and articles published outside the University, it would also presumably apply to unpublished materials such as lecture notes. If so, there is no legal reason preventing academic staff publishing their own lecture notes on the Web.

It may be preferable, however, for staff to publish their lecture notes within an authenticating log-in system such as the Learning Management System, so that only students enrolled in a particular paper can access these.

66. Q: I am writing my PhD literature review and would like to include some nice diagrams/drawings from books and other published material. Can I scan these, show them in the literature review and reference them to the original source?

A: The copying you describe is covered by section 43 of the Copyright Act, “Copying for research or private study”. This states that “Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work”, and then goes on to list the factors which a court would take into account in determining what is “fair dealing” – the purpose of the copying; the nature of the work copied; whether the work could have been obtained within a reasonable time at an ordinary commercial price; the effect of the copying on the potential market for, or value of, the work; and, where part of a work is copied, the amount and substantiality of the part copied, taken in relation to the whole work.

It is the last of these that is particularly relevant. Provided that you are not copying a substantial part of the work(s) in which the diagrams and drawings appear, and provided that you give due acknowledgment to the work(s) from which the copies are made (which is standard academic practice), you are likely to be within the “fair dealing” provisions of this section of the Copyright Act.

67. Q: We have been advised that a book used regularly in our courses as a teaching resource is unavailable and out-of-print. Are we therefore able to photocopy the entire book and retain it as a teaching resource in our department?

A: The fact that a book is out-of-print does not affect the copyright in the book. You may copy the whole of a book only if you have the prior permission of the copyright owner. I suggest you write to the publisher to seek permission. Note that a royalty payment may be required.

However, under the licence agreement with Copyright Licensing Ltd (Schedule 2 para 1.5), you may copy up to and including the whole of an out-of-print work for inclusion in print course-packs issued to students, 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.

68. Q: The Library holds a video which would be very useful for some of our courses. Can a copy be made for this department’s internal use, i.e. not for loan?

A: It is not permissible under New Zealand Copyright law to make a copy of a video without first obtaining permission from the copyright owner. If an additional copy of a video is required, it should be purchased. If it is no longer available, then permission should be obtained from the copyright owner (normally the publisher) or exclusive licensee.

69. Q: I have received by email a copy of a speech made in Parliament. Does this have copyright status?

A: Section 15 of the Copyright Act states that “Copyright does not exist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise”.

There is copyright in the email recording of the speech which you have received (and, if it is also on a website, in the recording of the speech on the website). Copyright will be owned either by the author, or by the Crown.

Section 27 of the Act states that there is no copyright in certain Crown publications, including “The New Zealand Parliamentary Debates”. So when the speech is recorded in the New Zealand Parliamentary Debates, there will be no copyright in that recording of the speech. However, this does not apply in the present instance, since the copy you have received is not from the New Zealand Parliamentary Debates.

In my view, therefore, there is copyright in the version of the speech that you have received. If you wish to reproduce it beyond what is permitted by the Act (e.g. for criticism, review, and news reporting under section 42, for research or private study under section 43, or for educational purposes under sections 44-49) then you should first obtain permission from the author. I am sure that permission will be given.

70. Q: One of the books most useful for a course I am teaching will not be available through the University Bookshop until too late in the year. Is it permitted to break a chapter into segments, issue segments to small groups within a class (so that the whole chapter is distributed), so that each group can discuss their section then share their findings at the end of the class? The printed segments would be collected and destroyed before the class is dismissed.

A: It is certainly permissible under the CLL licence to copy less than the whole of a chapter, and issue multiple copies of the different portions of the chapter to different groups of students within a class. There is no requirement to collect the segments at the end of the class and destroy them.

However, I suspect what you are asking is whether this can be done class after class, so that, over the period of the course, more than one chapter from the same book (or, perhaps, most of the book) has been copied and distributed, albeit different segments of it to different groups of students within the class. If so, I believe that you should contact CLL, explain what is proposed, and seek their permission. The CLL licence agreement (clause 2.3) specifically states that copying beyond the limits set out in the agreement must have CLL's prior approval/clearance.

71. Q: How do I register copyright on a study guide that is used by overseas distance students?

A: In New Zealand you cannot register copyright – there is automatic copyright as soon as a publication is published (which is defined as “issued to the public”). So you do not have to put anything on the publication in order to claim copyright. However, if you wish to indicate (particularly to overseas users) that there is copyright in the publication, put a © followed by the publication date and the name of the publisher or copyright owner, on the verso of the title-page of the publication.

72. Q: In the Māori and Bilingual programmes we use a lot of songs of Māori artists, both known and unknown. What are our copyright obligations regarding the use of songs as a teaching resource?

A: Under section 14(1)(a) of the Copyright Act there is copyright in “Literary, dramatic, musical, or artistic works”. Under section 15(1), copyright exists in such works only if “the work is recorded, in writing or otherwise”. Section 16(1) lists “Acts that are restricted by copyright”, including copying the work, performing the work in public, playing the work in public, etc.

The Copyright Act permits in-copyright work to be used for certain purposes, under exceptions specified in the Act. These include for criticism, review, and news reporting (section 42); for research or private study (section 43); for educational purposes (sections 44-49); and by libraries (sections 51-56). The restrictions specified in these sections must be complied with.

Section 47 of the Act deals with “Performing, playing, or showing work in course of activities of educational establishment”. In effect, this section states that the performance of a musical work, or the playing or showing of a sound recording, for students and staff at an educational establishment, is permitted. So, if you are performing a song, or playing a sound recording of a song, to a class, then that is permitted. However, you may not copy a sound recording for educational purposes, except where the copying is being done for a lesson that relates to the learning of a language, or is conducted by correspondence (section 45(4)(a)).

The licence agreement with Copyright Licensing Ltd does not cover music. The licence with Screenrights covers off-air copying only.

73. Q: Does Copyright law allow us to place a book of course readings into Course Reserve in the Library, or at the Faculty Information Centre desk? If we were to make the course readings available that way, students would be able to photocopy from it.

A: There is nothing in the licence agreement with Copyright Licensing Ltd to prevent you depositing a copy of a book of readings in the Library, and asking that it be held as a Course Reserve. 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.

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. So again, 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, rather than a copy of the course-packs being placed in the Library's Course Reserve Collection or at the Faculty Information Centre desk.

74. Q: We are currently putting PowerPoint presentations used in our lectures on the courses' LMS websites. Under copyright rules, are we able to use a map or picture taken from a book in any PowerPoint presentation put on ClassForum?

A: The licence with Copyright Licensing Ltd permits copying from a print original, and making this available electronically to students enrolled in a specific course. Schedule 2 para 1.4 of the licence specifically allows "Copying of the whole of an artistic work (such as an illustration) where it is published in a copyright work and is copied in accordance with the provisions of this Schedule". I believe, therefore, that what you want to do is permissible under the CLL licence.

Note that there should be due acknowledgment of the source from which the map or picture has been taken. Note also that the material copied must be "a reasonably accurate copy of the original" (Schedule 2 para 4.2); and that "all material made available will have associated with it an appropriate copyright warning notice" (Schedule 2 para 4.4).

75. Q: As an academic my single biggest problem is trying to get pdf copies of recent papers from journals that the Library does not provide electronic access to. Why is there a blank refusal by the Library to interloan pdf files?

A: This issue has nothing to do with New Zealand (or overseas) copyright law. Rather, it has to do with the licence agreements signed by libraries on behalf of their institutions with electronic database publishers and vendors.

Each database is subject to a separate licence agreement. Each licence agreement is different, and each has its own stipulations about what is allowed regarding supply of copies of articles to requesters at other institutions via Interloan. Most (but not all) licence agreements allow individual articles to be printed off from vendor databases and be supplied on Interloan in paper format; a few allow individual articles to be printed off and be supplied electronically using a system such as Ariel; very few allow individual articles to be supplied in electronic (pdf or HTML) format.

The reason for this is that most publishers and vendors want libraries to subscribe to their services, and not obtain articles from other libraries at no financial benefit to the publishers or vendors.

It is not a matter of "a blank refusal by the Library to Interloan pdf files". It is a matter of what formats other libraries are permitted to supply to us as the requesting library, under the terms of their licence agreements.

76. Q: A staff member has had his/her research published in a journal and as a book chapter. The research consists of qualitative data based on "stories". The researcher wishes to reuse the data. Is this allowed, given the fact that quantitative data can be reused and researchers have ownership of quantitative data – do the same rules apply to qualitative data?

A: Copyright relates to the form in which material is presented – what the Copyright Act calls "original works" (section 14). There does have to be a "work" – you cannot copyright an idea (you patent an idea). "Copyright does not exist in a literary or dramatic or musical work unless or until the work is recorded, in writing or otherwise" (section 15).

When a staff member publishes a book, a chapter in a book, or a journal article, it is normally (although not always) the case that copyright in that work is passed over to the publisher. But this copyright relates to the “work” (book, chapter or article), not to the research or data (whether qualitative or quantitative) that forms the basis of the work. So in my view, academic staff may re-use the data, whether qualitative or quantitative, without affecting the copyright of any work that the data has been used for.

I am not aware of any “rules” relating to “ownership” of data, either qualitative or quantitative.

77. Q: For a music course, students are required to create CDs of their own compositions, and these CDs become the property of the department. Is it permissible to make a copy of the master CD which can be used for general borrowing or use by other students, so that the master copies are held in reserve and not lost?

A: Ownership of a work (book, CD, DVD, etc) does not include copyright ownership of the content of the work. Your department may own the CD, but does not thereby own the copyright in the composition on the CD. This copyright is owned by the student who created the CD – unless the student has passed copyright ownership over to the department, along with ownership of the CD.

You could require that students deposit two copies of their CDs with the department; or you could ask students to sign a form that allows the department to make a copy in order to preserve the original copy of the CD.

78. Q: We wish to publish a new edition of a book that was published in 1962, the author of which died in 1965. We would be making slight changes to approximately 10% of the current text; changing illustrations; adding supplementary notes into the text; and adding two extra chapters. What are the copyright implications?

A: Since copyright lasts for 50 years after the death of the author, the book is still in copyright, and the copyright will be owned by whoever the author passed copyright ownership over to. While you are in effect creating a new work, this is very much dependent on around 90% of the original work, which you are copying, so to do so might well be held by a Court to be in breach of the copyright in the original book. You should, therefore, seek permission of the copyright owner. If, however, this proves to be impossible, because the original publisher is no longer in existence and you are unable to trace the descendants of the original author, you could go ahead with your project, relying on the likelihood that a Court would take into account the difficulties of finding the copyright owner. You should, however, be aware that there is some risk in doing so.

79. Q: I would like to place pdf copies of journal articles downloaded from e-journals subscribed to by the Library into the LMS for access by students enrolled in my courses. Is this permissible? Are there any restrictions, for example the number of articles I can use from the same journal?

A: If the journal articles are copied from print originals, the copying will come under the terms of the licence agreement with Copyright Licensing Ltd. This licence allows you to make “electronic course-packs” – that is, make electronic copies from print originals, and place these on a secure server (for example, in ClassForum) for students in a specific class to access. You can copy the whole of an article, and more than one article from the same issue of a journal provided that each of the articles from that journal issue is on the same subject matter. Note that the CLL licence does not cover copying from electronic databases or e-journals subscribed to by the Library.

If the journal articles are copied from electronic databases or e-journals subscribed to by the Library, the copying will come under the terms of the separate licence agreements that the Library has signed on behalf of the University with the database vendors or e-journal publishers. Each

licence is different, and in the main do not allow copying for either print or electronic course-packs.

Rather, database vendors and e-journal publishers prefer you to point to the articles on their websites by including the article URLs in the bibliographic citations provided to students.

80. Q: In the past I have provided students in my classes with study guides, for purposes of their own study, that contain scanned diagrams from textbooks and research articles, all properly referenced, but they are not complete pages from those sources. Am I still permitted to do this under the CLL licence?

A: This appears to be permitted under Schedule 2 clause 1.4 of the CLL licence agreement.

81. Q: A couple of years ago I obtained through Interloan a photocopy of a book chapter, which I would now like to include in a booklet of readings for an undergraduate course. Is this legal?

A: Yes. The CLL licence allows licensees to include copying of Interloan copies of copyright material under the terms of their licence where the works cannot be purchased or obtained by any other means. Such copying must, of course, be included in any sampling survey conducted under the terms of the CLL licence.

82. Q: Can web pages be copied and included in course-packs for students?

A: It must be assumed that there is copyright in web pages, whether or not there is a copyright symbol or statement claiming copyright, unless copyright has expired, or copyright has been explicitly waived by some statement such as “there is no copyright in these web pages”, “materials on these web pages is in the public domain”, “material on these web pages may be freely copied”, etc.

Web pages or documents on web pages are “literary work” which may be copied under the terms of section 44(3-4), “Copying for educational purposes”, of the Copyright Act. But note the 3% / 3 pages limitation, and also the qualification that if 3% or 3 pages constitutes the whole of the work, then no more than 50% of the whole work may be copied.

The CLL licence agreement does not cover web pages.

Section 44A of the Copyright Act allows “a work that is made available on a website or other electronic retrieval system” to be stored by an educational establishment for educational purposes and accessed by authenticated users.

An alternative approach is for students to be pointed to the web pages or other electronic resources by the provision of hypertext links from bibliographic citations in reading lists.

83. Q: As part of my digital storytelling initiative I would like to add music to the stories. Is this permitted?

A: Not without seeking permission from the copyright owner or from APRA.

84. Q: A lecturer wants to use two New Zealand cases in print course-packs, but first wants to adapt and delete some of the information in the cases. Is this permissible?

A: The CLL licence Schedule 2 clause 4.2 states that the Licensee must use its best endeavours to “ensure that the material copied is a reasonably accurate copy of the original which preserves the structure, layout, authenticity and integrity of the original”. This allows lecturers to add

commentary or explanatory notes, but would not allow changes and deletions. Permission should therefore first be obtained from the copyright owner (author or publisher).

85. Q: I wish to include an image from Holbein's *Danse Macabre* in an advertisement for a public lecture. Is this permissible?

A: Since Hans Holbein died in 1543, his work is long out of copyright. However, if the image you wish to use is from a book that was published less than 25 years ago, then there may be copyright in that version of the image, and you should first obtain permission from the publisher of the book.

86. Q: I have just published a book about the University's research into science education, which two former doctoral students wish to translate into Chinese. What steps do I need to take to minimize unauthorised copying of the book once it has been translated?

A: I suggest you claim copyright by including a copyright statement in the publication. This is usually done by adding a ©, the date of publication and the name and address of the copyright owner on the verso of the title-page. You could also add a statement such as: "All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, whether electronic, mechanical, photocopying, recording or otherwise, except as permitted by the New Zealand Copyright Act 1994, without the prior permission of the copyright owner".

87. Q: I wish to take a photograph of a painting on the university campus for my father, who is an artist and historian in Los Angeles. Is this permitted?

A: There is copyright in artistic work, which lasts for 50 years after the death of the artist. Copying a work is one of the acts restricted by copyright. So unless the artist has been dead for more than 50 years, you may not take a photograph of it without first obtaining permission from the copyright owner.

88. Q: We wish to use songs from *The Sound of Music* in the Alumni Review. We also wish to video the performance and make it available to the performers. Are there copyright issues?

A: Yes. Unless covered by a performance licence with APRA, you will need permission from the copyright owners of the music both to use the songs, and to record them. And under section 171(1)(a) of the Copyright Act, you will also need the consent of the performers to make a recording of the performance.

89. Q: Can copies of books of course readings be held in the Library, for students to use?

A: There is nothing in the CLL licence which states that copies of course-packs may not be placed in the Library – in the Course Reserves collection, for example – and issued to students from there. However, it should be noted that students are not legally allowed to make photocopies from the copies of course-packs placed in the Library. If it is likely that students will wish to make their own copies, the course-packs should be issued to students in the normal way, and not placed in the Library.

90. Q: I wish to provide copies of an article not held by the Library for the 15 students enrolled in one of my courses. The article can be purchased from the publisher, but with a minimum number of 100 copies. How can this article be made available for the students?

A: Obtain a copy of the article through Interloan, then copy it for your students. It is permissible for a copy received on Interloan to be copied and included in print course-packs, or distributed in class to students, provided that the copying is recorded in any sampling survey required under the CLL licence agreement.

91. Q: The Spanish Department wishes to screen Spanish language movies free to the public every fortnight. Is this permissible?

A: Under s.16(1)(e) of the Copyright Act 1994 you are not permitted to show a film in public, unless you have permission from the copyright owner, or unless there is an exception in some other section of the Act. There is such an exception in section 47, but this is limited to the showing of a film “for the purposes of instruction”, and provided that the audience is limited to “persons who are students or staff members at an educational establishment or are directly connected with the activities of the establishment”. It is fully permissible for you and other staff in your department to show films, provided that these are shown for the purposes of instruction, and the audience is limited to students and staff of the University.

92. Q: For a few years now we have been compiling a database of numerical data on various aspects of the New Zealand economy – in effect, we are creating a time series on spreadsheets. The sources of data that we have used have usually been published books or articles from journals. We have been conscientious in acknowledging every source that has been used, though we have not always obtained permission from the authorities behind every source. We hope to make this database available to the public. Are there any copyright issues in relation to our use of small amounts of numerical data from a wide variety of sources?

A: Copyright protects the form in which a work is presented. By taking numerical data from a variety of different works, you have not breached copyright in those works, since you have not copied the form in which the original data were presented.. In effect, the database you have created is a new work, of which you are the owner of the copyright.

93. Q: Who owns copyright in papers presented at a conference?

A: The author, unless there is a contract (or implied contract) with the author that passes copyright to the conference organiser or publisher. I do not think that it can be assumed that, by presenting a paper at a conference, the author of the paper is automatically giving permission to someone else to distribute or publish the paper. The publisher should, therefore, first approach the author as owner of the copyright in the paper.

94. Q: I am creating an online bibliography on family violence which updates an earlier printed publication. Am I able to re-use some of the abstracts from the earlier publication, or would all the abstracts need to be re-written?

A: Section 71 of the Copyright Act states that it is not an infringement of copyright in either the abstract or the article to copy the abstract, or issue copies to the public, where the abstract indicates the contents of an article on a scientific or technical subject. There seems no reasonable grounds for depriving articles on the social sciences from this exception; and since abstracts are not in themselves substantive – they are just a summary of the work, and do not include new information not already in the articles – it seems unlikely that their re-use in a subsequent bibliography would be in breach of any copyright in the abstracts.

95. Q: Does copying a Microsoft screen with toolbars, etc, to put in a publication, breach copyright? If so, who should I approach to ask permission to copy?

A: A Microsoft screen on the Internet would have copyright in it, both in the content and in the typographical arrangement – i.e. the layout, graphics used, etc. It is highly unlikely that an action would be brought against you if you are just reproducing a few pages for educational purposes. If you want to get permission, I suggest you contact Microsoft.

96. Q: I have been doing some research on the ways in which election billboard advertisements are interpreted. I have gathered a number of billboard advertisements by photographing them on the roadside, and then formatted the images into a questionnaire document. If I were to publish this research, would copyright be a concern?

A: There will certainly be copyright in the billboards, owned by whoever commissioned the billboards to be made. However, what you are wanting to do is probably covered by section 42, copying for criticism, review, or news reporting. In effect, this section states that fair dealing with a work for these purposes does not infringe copyright in the work, provided that there is sufficient acknowledgement.

Unfortunately, section 73 (“Representation of certain artistic works on public display”) does not apply because this is limited to works that are permanently situated in a public place.

It is always open to you to obtain permission from the copyright owners – presumably, the political parties themselves or their electorate offices. I should think that permission would be willingly given – unless they are ashamed of their billboard advertisements.

97. Q: Are academic staff who purchase or hire a video or DVD able to show part or all of the movie to a class? Often the initial trailer indicates that it is only to be used for home use, and that any sort of public viewing is prohibited.

A: In my view, a “shrink-wrap” licence (one that you find only after you have purchased the video/DVD and have unwrapped the packaging), or something recorded by the copyright owner or distributor at the beginning of the video/DVD, is not a true licence agreement. I believe that a licence agreement must be considered and agreed to (and preferably signed) by both parties before it can take effect. I do not think that the purchaser is under any requirement to comply with the vendor’s stipulations, since these were unknown at the time of purchase or hire and have not been agreed to or signed by the purchaser. It seems to me that in such cases New Zealand’s copyright law (which may, in any case, be different from the copyright law in the country of origin of the video/DVD) prevails.

I therefore consider that section 47 of the Copyright Act 1994 is what must be complied with. Section 47(2) makes it clear that playing or showing a work, for the purposes of instruction, at an educational establishment is not a playing or showing of the work in public, which is a restricted act under section 32(2). But note the restriction of section 47(3) – the video/DVD can not be shown to parents or guardians of students, or indeed to any other members of the public.

Section 47 makes no distinction between the type of film (educational, commercial) that may be shown.

98. Q: I wish to use an unreported judgment of an Australian law case in course materials. The judgment is freely available electronically through AUSTLII. But do I have to obtain a print copy for inclusion in print course-packs?

A: The CLL licence covers multiple copying for print or electronic course-packs made available to students, but all copying must be from print originals (because CLL acts only “on behalf of certain owners and licensees of published copyright material in hard copy format ...” (CLL

licence agreement paragraph B). If you want to include an overseas-published case or judgment in a print course-pack, a print copy of the original case will first have to be obtained.

An alternative approach would be for you to give to the students the URL link to the judgment, so that they can access the electronic version directly. We should be moving away from print course-packs.

Of course, if it is a New Zealand judgment, there is no copyright in it (Copyright Act 1994 section 27(1)(g)), so the issue would not arise.

99. Q: Can copies made for educational purposes be distributed electronically to students?

A: Yes. Section 44(4A) of the Copyright Act states that copies made for educational purposes under the terms of section 44 subsections (3-4) may be “communicated” (i.e. transmitted or made available by means of a communication technology, telecommunications system, electronic retrieval system or computer network) to students.

100. Q: Because web pages change fairly frequently, it would be very useful to be able to take a snapshot of web pages on a given date, for analysis by students. Is this permissible?

A: Yes. Section 44A of the Copyright Act allows an educational establishment to store for an educational purpose a copy of pages from a work that is made available on a website or other electronic retrieval system. The material must be displayed under a separate frame or identifier, identify the author (if known) and source of the work, and state the name of the educational establishment and the date on which the work was stored. The stored material must be restricted to use by authenticated users (defined as participants in the course of instruction for which the material is stored, and who can access the stored material only through a verification process that verifies that they are entitled to access the stored material), and must be deleted within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.

FURTHER INFORMATION

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

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

Tony Millett’s *Copyright Guidelines 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%20CoNZ.pdf> .

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

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