



Copyright 101

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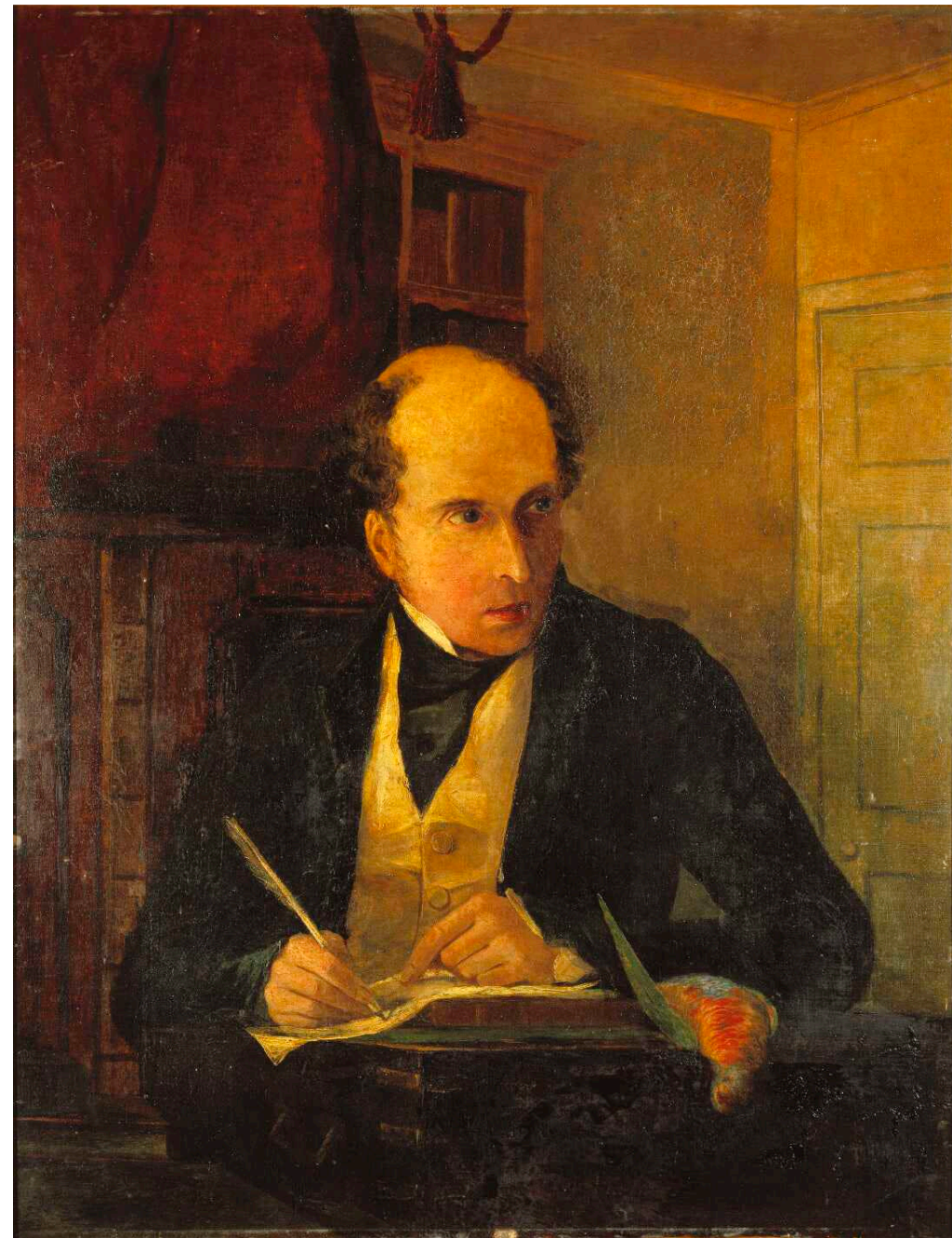


Copyright 101 for libraries

- What is copyright?
- Why does copyright exist and what does it do?
- What does it cover?
- How long does copyright last for?
- Orphan works
- Exceptions for libraries
 - Copying
 - Rentals
 - Technological Protection Measures (TPM)
- Questions?
- Useful sources

What is copyright?

- It's an intellectual property right.
- In New Zealand copyright is governed by the Copyright Act 1994 and the Copyright Regulations 1995 and subsequent amendments.
- It protects your original expression of an idea or ideas.
- In New Zealand it applies automatically once something is created – you don't need to register it
- Your work does not need to have a © statement on it to be protected by copyright;
- Copyright also applies to material on the internet.



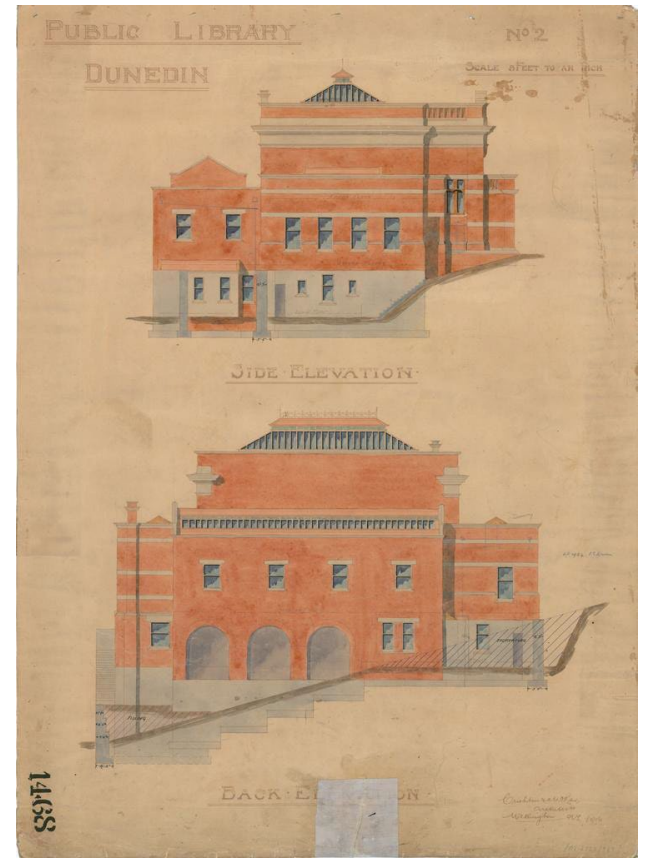
Harrison, George Henry, 1816-1846. [Harrison, George Henry] 1816-1846 :[Portrait of William Swainson engaged in ornithological research. 1836?]. Ref: G-499. Alexander Turnbull Library, Wellington, New Zealand. [/records/22907947](#)

Why does copyright exist?

- To ensure creators can make a living
- To encourage creators to make new works
- To protect the integrity of a creator's work

What does copyright do?

- It limits what other people can do with a work
- It gives the copyright holder exclusive rights to make copies of the work, publish it, publicly perform it, transmit it and adapt or reuse the work.
- The copyright holder can decide to license or give permission to other people to copy or reuse their work.
- They can also choose to transfer or sell their rights to another person or company.



No. 668. Dunedin Public Library, plans for library, Moray Place, Dunedin, Crichton & McKay architects. Side and back elevation plans. MS-2758/0967/002 Hocken Collections, Uare Taoka o Hākena, University of Otago

What does copyright cover?

Section 14

In New Zealand copyright covers original work including :

- literary, dramatic, musical, or artistic works
- sound recordings
- films
- communication works
- typographical arrangements of published editions.



Auckland Libraries Heritage Collections 968-10245 <https://kura.aucklandlibraries.govt.nz/digital/collection/photos/id/329826>

Works may include a number of items with different copyright holders and terms

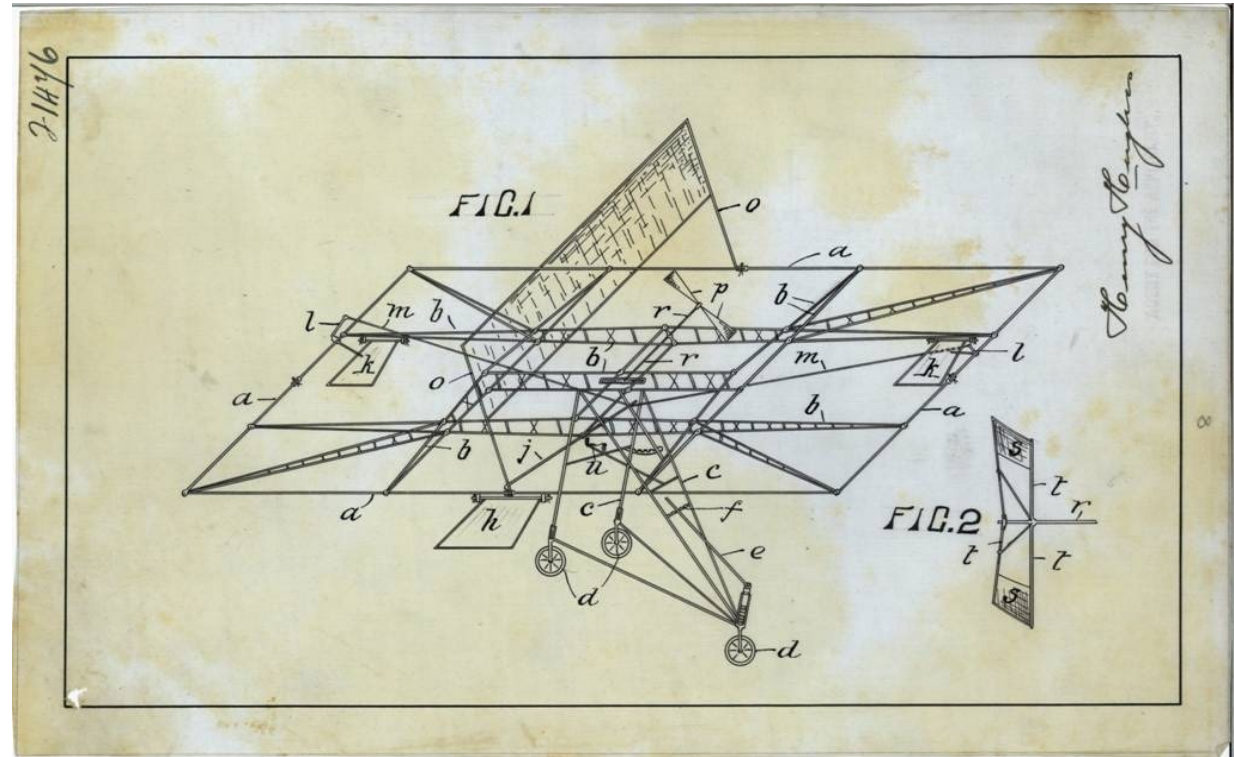
Copyright is not...

- A **patent** – a patent protects inventions, new processes or new materials.
- A **trademark** – a trademark protects your brand, such as logos, colours, words and/or names.
- A **design** registration – protects the visual design of your product.
- These need to be registered with the Intellectual Property Office.

No copyright

section 27

Under New Zealand legislation some things, such as Reports of Royal Commissions, Bills or Acts do not attract copyright.



Richard Pearse, design for a flying machine, patent no. 21476. Archives NZ: ABPJ W4832 7396 Box 17 / 87637 collections.archives.govt.nz/web/arena/search#/?q=1842607 Licenced under a Creative Commons Attribution 2.0 licence ([CC BY 2.0](https://creativecommons.org/licenses/by/2.0/))

Taonga and Wai 262

- Copyright is a Western concept based on individual property rights.
- Māori concepts of kaitiakitanga are seen in terms of kinship and obligations to the collective.
- Wai 262 refers to a Waitangi Tribunal Claim made in 1991 by six claimants on behalf of themselves and their iwi: Haana Murray (Ngāti Kuri), Hema Nui a Tawhaki Witana (Te Rarawa), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu), and John Hippolite (Ngāti Koata).
- The Waitangi Tribunal released its report on Wai 262 “Ko Aotearoa Tēnei” in 2011.
- In terms of copyright and other intellectual property, the Tribunal recommended that:
 - new, specialised independent commissions be established for both trademarks and patents.
 - for future commercial use of Māturanga Māori or taonga the kaitiaki should be consulted and in some cases would need to approve the proposed use.
- The Waitangi Tribunal recommendations are not binding on the government. In response the previous government established Te Pae Tawhiti in 2019 - a whole-of-government response to Wai 262 in 2019.

How long does copyright exist for?

Sections 22-26

- In New Zealand, in general, it lasts for 50 years, either
 - after the creator's death, or
 - for sound recordings or films after it was made, or
 - was first made available to the public – whichever is the later.

There are some exceptions such as

- Rights over the typographical layout of a publication lasts for 25 years from the date of publication.
- Crown copyright – lasts for 100 years from the end of the calendar year in which the work was first made available.

Note that New Zealand is due to extend the term from 50 years to 70 years.



Bill Sutton portrait, c.1919. Christchurch City Libraries CCL-Arch2122-B01-005 Archive 2122

William (Bill) Sutton (above) became a well-known Canterbury artist who had been painting since at least 1934. He died at 82, in 2000, so his work is still in copyright until the end of **2050**.

Once copyright has expired



- Once the copyright in a work has expired, it can be freely copied and reused – all or parts of - it by anyone.
- This is often referred to as “being in the public domain”.
- The painting on the left was painted in 1893. The artist, James Nairn died in 1904, so copyright in his work expired at the end of 1954.

Orphan works

An orphan work is a way of describing a work where the copyright status can't be determined.

This is normally because:

- The creator is unknown, or
- The creator is known but their death date can't be determined, and/or
- They or their descendants can't be located to ask permission to reuse a work.

Like “public domain”, “orphan work” is not a term used in our current Copyright Act



Unknown authorship

Section 7

- Under New Zealand law we have an exception in the case of “unknown authorship”.
- If an author is unknown, and it is reasonable to assume copyright has expired, or it is reasonable to assume the author has died 50 or more years ago, you may copy or reuse the work.

7 Meaning of unknown authorship

- (1) For the purposes of this Act, a work is of **unknown authorship** if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.
- (2) For the purposes of this Act, the identity of an author shall be regarded as unknown if it is not possible for a person who wishes to ascertain the identity of the author to do so by reasonable inquiry; but if that identity is once known it shall not subsequently be regarded as unknown.

Compare: 1962 No 33 s 11(3), (4); Copyright, Designs and Patents Act 1988 s 9(4), (5) (UK)

- Unfortunately, the Act doesn’t state what constitutes a “reasonable inquiry” and we don’t have any case law that might give guidance around this.
- Best advice is that if you want to reuse a work that you think is might be in copyright but you don’t know the author or can’t find out anything about them is that you thoroughly document all the searches you have made.

General exceptions

Sections 40-49

- Incidental copying of copyright work.
- Fair dealing for the purposes of criticism or review.
- Fair dealing for the purposes of news reporting.
- Fair dealing for the purposes of research and private study.
- For educational purposes.

There is no 10% rule



TV One news team. Broadcasting Corporation of New Zealand, Archives NZ. Archives reference: ABHJ W3602 Box 10: collections.archives.govt.nz/web/arena/search#/?q=2106587. This photo is licensed under a [Creative Commons Attribution 2.0 generic licence](#).



Fair dealing

Section 43 (3)

- What counts as **fair dealing** varies depending on the particular case.
- The Copyright Act lists the following criteria that the courts may be taken into account when deciding on what is “fair dealing” for research or private study.
 - the reason or purpose for copying – such as commercial or non-commercial
 - the nature of the work
 - whether the work could have been purchased at a reasonable cost within a reasonable timeframe
 - possible impact of the copying on the market or commercial value of the work
 - amount copied and the substantiality of it as compared to the work as a whole.

Library exceptions

Sections 50-56

- Only apply to librarians of “prescribed libraries”.
- Prescribed libraries are defined in section 50 of the Act and in the Copyright (General Matters) Regulations 1995.
- Four main reasons for the exceptions:
 - to make copies (for individuals and other libraries)
 - to communicate digital copies
 - to rent works
 - to circumvent technological protection measures (TPMs) (on behalf of users)

Libraries and archives

50 Interpretation

- (1) In sections 51 to 56C, unless the context otherwise requires,—

archive—

- (a) means—

- (i) Archives New Zealand (Te Rua Mahara o te Kāwanatanga); or
- (ii) the National Library; or
- (iii) the sound archive maintained by Radio New Zealand Limited; or
- (iv) the film archive maintained by Television New Zealand Limited; or
- (v) the film archive maintained by the New Zealand Film Archive Incorporated; or
- (vi) any collection of documents (within the meaning of [section 2](#) of the Official Information Act 1982) of historical significance or public interest that is in the custody of and being maintained by a body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit; and

- (b) includes, in relation only to its holding of public archives (within the meaning of [section 4](#) of the Public Records Act 2005), an approved repository within the meaning of that section of that Act

prescribed library means—

- (a) the National Library; or
- (b) the Parliamentary Library; or
- (c) every law library provided and maintained under [section 375\(1\)](#) of the Lawyers and Conveyancers Act 2006 or provided and maintained by the New Zealand Law Society; or
- (d) a library maintained by an educational establishment, government department, or local authority; or
- (e) a library of any other class of library prescribed by regulations made under this Act, not being a library conducted for profit.

- (2) In sections 51 to 56C, every reference to the librarian of a prescribed library or the archivist of an archive shall be read as including a person acting on behalf of the librarian or archivist.

Compare: Copyright, Designs and Patents Act 1988 s 37(6) (UK)

Section 50(1): amended, on 31 October 2008, by [section 30](#) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 50(1) **archive** paragraph (a)(i): substituted, on 21 April 2005, by [section 67\(1\)](#) of the Public Records Act 2005 (2005 No 40).

Section 50(1) **archive** paragraph (b): substituted, on 21 April 2005, by [section 67\(1\)](#) of the Public Records Act 2005 (2005 No 40).

Section 50(1) **prescribed library** paragraph (c): substituted, on 1 August 2008, by [section 348](#) of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 50(1) **prescribed library** paragraph (c): amended, on 7 July 2010, by [section 4](#) of the Copyright Amendment Act 2010 (2010 No 55).

Section 50(2): amended, on 31 October 2008, by [section 30](#) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).



Library exceptions – copying

Copying for research or private study

Sections 51, 52, 53

- must be requested by a user
- can only be used by them for research or private study
- only 1 copy per person per occasion
- charges can only be to cover costs (includes a reasonable contribution to general expense of copying for library)
- can be a digital copy but the librarian must destroy any additional copies
- a digital copy must be accompanied by a notice that sets out the terms of the use of the copy.

Library exceptions – copying

How much can be copied?

- There is no 10% rule
- The Copyright Act talks of a “reasonable proportion” but doesn’t define that further.

51 Copying by librarians of parts of published works

- (1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with, make from a published edition (other than a published edition that is an article in a periodical), for supply to any person, a copy of a reasonable proportion of any literary, dramatic, or musical work, and may include in the copy any artistic work that appears within the proportion copied, without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.
- You need to think about the whole work and the amount you are copying in relation to that.
 - With periodicals – you can copy **one article** from an issue for a user.
 - You can only copy more than one article from the same issue if the articles relate to the same subject matter.

Book covers

- Book covers may be copied for non-commercial purposes by a prescribed library without the need for further permission.
- This is not in the Act but is an agreement between the New Zealand Society of Authors, Publishers Association of New Zealand and Copyright Licensing New Zealand, LIANZA and SLANZA

Library exceptions: copying for other prescribed libraries

Copying an entire work

Section 54

Only applies to **books**

Library receiving the copy:

- Hasn't been able to buy a copy for the preceding 6 months
- Keeps records about what has been copied, and
- Allows the copyright owner to look at those records if requested
- Must pay the copyright owner for the work copied, if the owner requests it.
- Must confirm all of the above in writing to the library copying the item.

If a digital copy is supplied, the library supplying it must destroy all additional copies



Library exceptions: copying for preservation or replacement

Section 55

- Librarian may make a copy *if* it isn't "reasonably practicable" to purchase another copy.
- A physical copy may be added to the library's collection, *in addition to* or in place of the original.
- However, while a digital copy may be made if the original item is at risk of loss, damage or destruction, it must replace the original item. The original item should not be accessible to members of the public.

Copies for other libraries

- Copies can be supplied to other libraries to *replace* an item of theirs that has been lost, destroyed or damaged.
- This exception can only be used if it isn't "reasonably practicable" for the other library to purchase another copy.

Library exceptions: copying of unpublished works.

Section 56

Librarian may make a copy of “certain unpublished works” so long as these conditions are fulfilled.

- The copy is for research or private study
- Only one copy is provided to one user at the same time
- Any charges can only be to cover costs
- Main difference from earlier exception is that the entire unpublished work may be supplied, not just a reasonable proportion.

If it is a digital copy, the librarian must provide a written notice saying it is only for the user’s own research or private study. All additional digital copies must be destroyed.

Only exception to this is if the copyright owner has prohibited copying and the librarian is aware of this or ought to have been aware of it at the time they make the copy.

Library exceptions: communicating digital copies

Section 56A

56A Library or archive may communicate digital copy to authenticated users

- (1) The librarian of a prescribed library or the archivist of an archive does not infringe copyright in a work by communicating a digital copy of the work to an authenticated user if the following conditions are met:
 - (a) the librarian or archivist has obtained the digital copy lawfully; and
 - (b) the librarian or archivist ensures that each user is informed in writing about the limits of copying and communication allowed by this Act, including that a digital copy of a work may only be copied or communicated by the user in accordance with the provisions of this Act; and
 - (c) the digital copy is communicated to the user in a form that cannot be altered or modified; and
 - (d) 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—
 - (i) the library or the archive has purchased; or
 - (ii) for which it is licensed.
- (2) In subsection (1), **authenticated user** means a person who—
 - (a) has a legitimate right to use the services of the library or archive; and
 - (b) can access the digital copy only through a verification process that verifies that the person is entitled to access the digital copy.

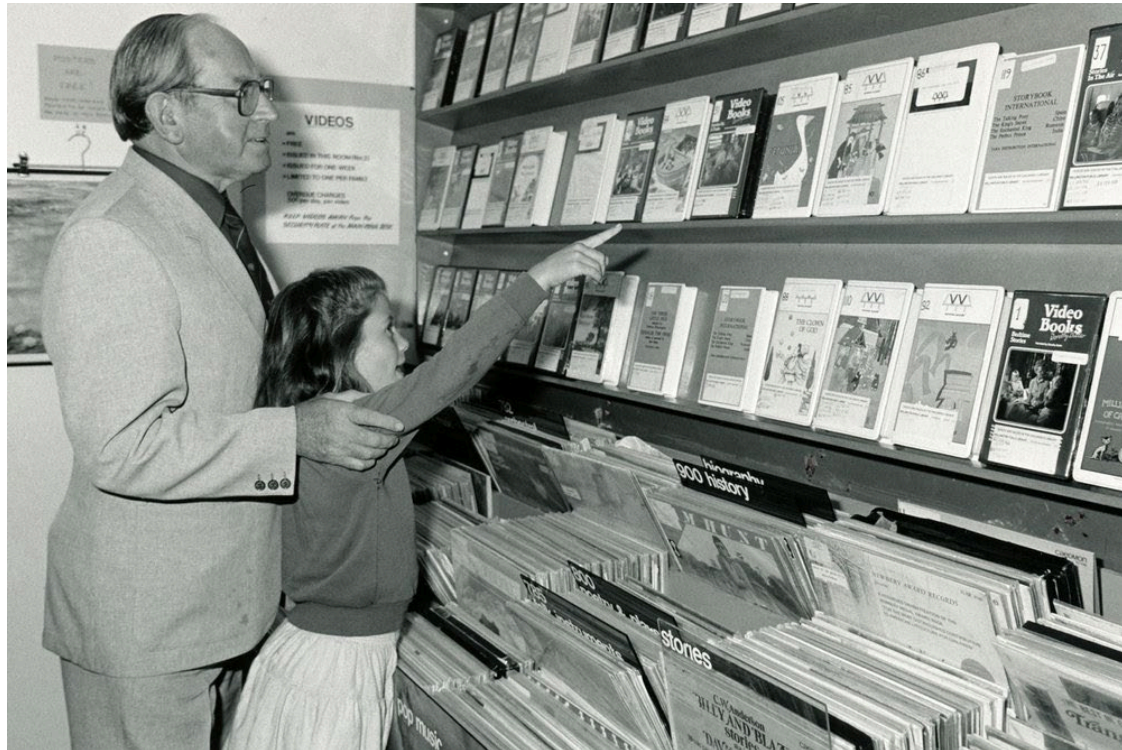
Section 56A: inserted, on 31 October 2008, by [section 37](#) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Library exceptions: renting works

Section 79

Prescribed libraries may rent out computer programmes, sound recordings and films under certain conditions

- Rental is not done to make a profit
- Work must have previously been put into circulation with the licence of the copyright owner



Library exceptions: circumvention of a technological protection measure (TPM) *Section 226D*

- **The user must have**

- been prevented from using the work by a TPM
- requested help from the copyright owner or licensee and either
 - Been refused assistance, or
 - Not received a response in a reasonable time, and
- asked the librarian for help

- **The librarian must**

- confirm that what the user wants to do is a permitted act, and
- confirm that the user has sought help from the copyright owner and been refused or not received a response, and
- make a declaration in the form required to the supplier of the TPM circumvention device (the information about how to do this is in the [Copyright \(General Matters\) Regulation 1995](#), section 5C)

He pātai?

You can also email questions to: lianzacopyright@gmail.com after this talk.

With many thanks to Mandy Henks and Kim Gutchlag for allowing us to re-use and adapt their slides.



Useful sources

Copyright Act 1994 <https://www.legislation.govt.nz/act/public/1994/0143/latest/DLM345634.html>

Copyright (General Matters) Regulations 1995 <https://www.legislation.govt.nz/regulation/public/1995/0146/28.0/DLM201682.html>

Intellectual Property Office – Copyright <https://www.iponz.govt.nz/learn-ip/copyright/>

Te Pae Tawhiti <https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/te-pae-tawhiti>

Copyright Licencing New Zealand <https://www.copyright.co.nz/>

Creative Commons <https://creativecommons.org/>

Use of book covers by school and public libraries in NZ <https://www.librariesaotearoa.org.nz/korero-blog/use-of-book-covers-by-school-and-public-libraries-in-aotearoa>

Ko Aotearoa Tēnei <https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>

Te Pae Tawhiti <https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/wai-262-te-pae-tawhiti>

Te Kete Ipurangi <https://www.tki.org.nz/Copyright-in-schools>

University of Otago <https://www.otago.ac.nz/administration/copyright>

LIANZA Standing Committee on Copyright <https://www.lianza.org.nz/about/what-we-do/advocacy/lsccl/>