

# COPYRIOT



## COUNTERING EROSION OF THE PUBLIC DOMAIN



Image credit: [interest.co.nz](http://interest.co.nz)

New Zealand has negotiated a free trade agreement with the European Union (FTA). The agreement requires that New Zealand extend the term of copyright from life plus 50 years to life plus 70 years and provide additional protections for technological protection measures (digital locks). Unlike the 15 years grace of a similar agreement with the UK, the implementation must be within four years of the FTA coming into effect.

Implementation of these commitments will be undertaken as part of the current review of the Copyright Act 1994, which has been in abeyance since the start of the pandemic.

The Ministry of Foreign Affairs and Trade has indicated that entry into force of the agreement may not occur until the end of 2024, meaning we are likely to have until late 2028 to implement them.

Copyright extension comes at the expense of the public domain

— works whose copyrights have expired, and that have come to belong to all of us, collectively. It does this for the benefit of the very few works that have continued commercial relevance many decades after release. We know — and Government reports confirm — that this loss has a substantial monetary and cultural cost.

The Government has said that the effects of term extension can be mitigated by broadening some of the fair dealing provisions in the Copyright Act. These include the education and library exceptions. The Committee has considered some of the changes we would like to see to the Copyright Act, not only to counter the term extension but also to bring the Act more in line with how libraries function in the digital age.

The LIANZA Special Committee on Copyright (LSCC) relies on members of the library and information community to provide examples of the

challenges faced by librarians and the benefits, actual and potential, that the committee can put before officials and parliament to support our case.

### Some of the changes the committee is considering are:

- **Recognising the public domain:** The current Copyright Act treats the public domain as an afterthought, rather than an affirmative and powerful part of our copyright system. We need the law to both recognise and protect the public domain.
- **Orphan works:** Term extension will exacerbate the issue of orphan works. The Act needs to make provisions for use of individual orphan works.
- **Mass digitisation:** There needs to be a provision in the legislation for mass digitisation by galleries, libraries, archives and museums to remove the need to often take a risk-

based approach to mass digitisation.

- **Crown Copyright:** The 100-year term for Crown copyright should be rethought to better support New Zealanders' use of public-funded content.

## LIBRARY EXCEPTIONS

### Prescribed libraries –

**interloans:** The description of 'prescribed library' needs to be clarified to ensure it covers libraries that may be situated in commercial businesses. These libraries are not conducted for profit and enabling their collections to be accessed as part of the interloan scheme benefits the whole of society.

### Controlled digital Lending

**(CDL):** The CDL provision in section 56A of the Act enables the library to lend a lawfully acquired digital copy to its members. Extending this to include all works that the library has lawfully acquired, that are not otherwise available electronically at an ordinary commercial price, could solve several problems faced by libraries. These include publishers limiting the availability of eBooks to one-copy-one-user licences, which can be many times the cost of a hard copy book. Or setting licences for eBooks to expire after a certain number of unilaterally determined uses, effectively requiring libraries to pay for the same content repeatedly.

**Education exceptions:** Libraries, museums and galleries deliver school holiday programmes and other educational programmes to members of the public - it would be of benefit to these communities if they were covered by the same exceptions as educational institutions.

Clarifying nested rights in copyright expired works: The term of copyright for films and audio recordings expires 50 years from the end of the year in which the work was first made available to the public. It is unclear whether these can be copied and used or whether the nested rights would prevent their use. Libraries and Archives should be able to use and distribute these to patrons as normal works.

### Contracting out of exceptions

**in the Act:** Some publishers have terms in their licences which forbid libraries to copy and use their works under exceptions in the Act. The Act is silent on this. The Act should explicitly state that contracts cannot override exceptions in the Act.

**Quotation rights:** This is the single most important requirement of the Berne Convention. It is likely that this will be enacted during the reform process. This would allow libraries to advertise works in their collections by playing snippets of music and films on their websites.

## WHAT CAN YOU DO?

While the changes we propose would be of benefit to libraries, the publishers are a powerful lobby group, with money and resources that we do not have. Making the changes we need to the Act requires input from everyone. The Ministry in charge of reviewing the Act has repeatedly said that they rely on concrete examples to support our arguments for change, in particular the way in which libraries operate in the digital world where pandemics and natural disasters can close libraries at very short or no notice.

- The committee would appreciate any examples you can provide of the availability and cost of licences for electronic books, problems faced in digitising collections, and any activities you would like to offer to the public that are not possible because of copyright restrictions.
- In your library consider setting up a copyright group that meets regularly to think about and collect examples we can use to support our arguments, emphasising the public good role of libraries. If you are professionally registered, these activities can be used to meet your re-validation requirements, particularly BOK 1: information environment, policy and ethics.

You will also be helping preserve the public domain and all its benefits. Contact us here with your examples: [lianzacopyright@gmail.com](mailto:lianzacopyright@gmail.com)