

**IMPLICATIONS FOR INTERLOAN
OF THE
COPYRIGHT ACT 1994
AND AMENDMENTS**

Fifth Edition

Edited for the Te Puna Strategic Advisory Committee

by

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IMPLICATIONS FOR INTERLOAN OF THE COPYRIGHT ACT 1994 AND AMENDMENTS

These guidelines are intended to provide an explanation of the provisions of the Copyright Act 1994 (as amended) which relate specifically to the sending of copies of material on Interloan between libraries in New Zealand. For a more detailed explanation, it is recommended that libraries should consult the Act and seek further advice from their legal advisers.

The guidelines do not relate to the lending or receipt of original books or issues of serials on Interloan, which are unaffected by the Act and are therefore permitted.

1. PRESCRIBED AND NON-PRESCRIBED LIBRARIES (s.50)

- 1.1 The Copyright Act 1994 divides New Zealand libraries into prescribed libraries and non-prescribed libraries.
- 1.2 Libraries prescribed in the Act are:
 - The National Library
 - The Parliamentary Library
 - The District Law Society Libraries
 - Libraries maintained by educational establishments
 - Libraries maintained by government departments
 - Libraries maintained by local authorities
- 1.3 Libraries prescribed in the Copyright (General Matters) Regulations 1995 (SR 1995/146) are:
 - Libraries that are members of the Interloan Scheme jointly administered by the National Library of New Zealand and the New Zealand Library and Information Association: Te Rau Herenga o Aotearoa (now the Library and Information Association of New Zealand Aotearoa: Te Rau Herenga o Aotearoa).
- 1.4 Libraries prescribed in the Copyright (General Matters) Amendment Regulations 1998 (SR 1998/281) are:
 - Libraries of Crown entities, as that term is defined in section 2 of the Public Finance Act 1989.
- 1.5 The Interloan Scheme has two categories of library: Charter library and non-Charter library. Both categories of library are members of the Interloan Scheme and are therefore prescribed libraries.
- 1.6 Non-prescribed libraries are all libraries that are not prescribed.
- 1.7 Non-prescribed libraries, other than those conducted for profit, may apply to be classed as prescribed libraries (s.234).

2. THE SUPPLY OF COPIES ON INTERLOAN

- 2.1 The Copyright Act 1994 is concerned (among other things) with the making of copies. It does not apply to the lending and receipt of original works, which continue to be permitted.
- 2.2 Copying by librarians is governed by sections 51-56C of the Act.
- 2.3 However, section 40 specifically states that these provisions “are to be construed independently of one another so that the fact that an act is not permitted by one provision does not mean that it is not permitted by another provision”. This means that librarians may choose under which section of the Act copying is undertaken, provided that the provisions of that section are complied with.

3. INTERLOANS AND PRESCRIBED LIBRARIES – COPYING FOR THE USERS OF OTHER LIBRARIES (ss.53, 56C)

- 3.1 Section 53 of the Copyright Act allows librarians of a prescribed library to make from a published edition, for supply to another prescribed library, one copy (including a digital copy) of:
 - a “reasonable proportion” of any literary, dramatic or musical work, including any artistic work that appears within the proportion copied;
 - the whole of a periodical article, together with any artistic work included in the article;
 - or
 - two articles from the same issue of a periodical, together with any artistic work included in the articles, if these articles relate to the same subject-matter.
- 3.2 The user must have requested the library to which the copy is provided to supply that user with the copy for the purposes of research or private study.
- 3.3 The person who is supplied with the copy must use it only for the purposes of research or private study.
- 3.4 “Reasonable proportion” is not defined in the Act. However, guidance may be obtained from s.43 (fair dealing for research or private study) and s.44(3-4) (copying for educational purposes). In essence, it is the significance of what is copied that impacts on “reasonable proportion”, not the simple amount that is copied. It is especially important to note that there is no “ten percent rule”.
- 3.5 Copies may not be supplied to a non-prescribed library.
- 3.6 It is recommended that these procedures be followed:
 - the request for a copy must be made by a named individual who personally wants the copy for research or private study;
 - the person to whom the copy is supplied must have assured the requesting library that the use of the copy will be for research or private study;
 - the copy must not subsequently be used for any purpose other than the person’s research or private study (for example, it must not be copied for the requesting library’s vertical file or collections);

- where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating: “This copy is made for your private study or for your research. The Copyright Act 1994 prohibits the sale, letting for hire or copying of this copy”;
- where the copy is supplied in digital format:
 - the librarian of the requesting prescribed library must give to the person to whom the copy is supplied, at the time the copy is supplied, a written notice that sets out the terms of use of the copy. The notice should state:

“This copy is made for your private study or for your research. The Copyright Act 1994 prohibits the sale, letting for hire or copying of this copy”.

The notice could be incorporated in an email to which the digital copy is attached, or given to the user in some other appropriate way;

- both the requesting and the supplying prescribed library must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied;
- the digital copy may be placed on a server by the requesting library for the user to uplift, provided that:
 - only the user for whom the digital copy was obtained is able to access and uplift that copy;
 - the user is given the required written notice at the time the digital copy is placed on the server;
 - the user is informed of the date on which the digital copy is to be deleted from the server, such date to be “as soon as is reasonably practicable” (which should be no more than two months later); and
 - the digital copy is deleted from the server on or very soon after that date.
- The supply of digital copies via Interloan is thus a two-step process:
 - supplying prescribed library to the requesting prescribed library – sections 53 / 54 and 56C apply
 - requesting library to its own user – sections 51 / 52 and 56B apply.

3.7 It is probably permissible for a library that supplies a copy by fax also to send by post to the requesting library the copy that was faxed, since the purpose of sending the copy by post is only to ensure that the requester receives a higher-quality copy than faxed transmission often allows.

3.8 There is no requirement to keep records of Interloan requests, other than in the special circumstance of copying for the collections of other libraries under s.54 (see paragraph 6.1 below), which requires the librarian to whom the copy is supplied to keep a record identifying the work copied.

4. INTERLOANS AND NON-PRESCRIBED LIBRARIES

- 4.1 Librarians of a non-prescribed library may not make copies for or supply copies to any library or person, where the copies are made from works still in copyright and for which the copyright owners have not expressly permitted the making of copies.
- 4.2 Librarians of a non-prescribed library may loan an original work (not a copy) to another library or person for the purpose of Interloan.
- 4.3 Where the original is received by a prescribed library, it may be copied by that library for supply to a person for the purpose of research or private study under the provisions of sections 51 and 52 of the Copyright Act.
- 4.4 It is recommended that these procedures be followed:
- the receiving prescribed library should make any copy immediately upon receipt of the original and return the original immediately;
 - the prescribed library which makes the copy should place a sticker or stamp on the copy stating: “This copy is made for your private study or for your research. The Copyright Act 1994 prohibits the sale, letting for hire or copying of this copy”.
- 4.5 Where the original is received by a non-prescribed library, the user who has requested the item (not the library) may make a copy for him or herself provided that the provisions of s.43 (copying for research or private study) are observed. This copy should be made immediately upon receipt of the original which should then be returned immediately.

5. INTERLOANS AND OVERSEAS LIBRARIES

- 5.1 There is no restriction on the supply of copies obtained from overseas, provided (in general) that the copies were made in compliance with the copyright legislation of the source country, and that no limiting copyright license covering the material copied exists in New Zealand.
- 5.2 If a copy is obtained from overseas, any instructions from the supplier should be adhered to.
- 5.3 As from August 2010, overseas libraries are deemed members of the Interloan Scheme and are therefore prescribed libraries in terms of ss.50, 53, 54 and 55
- 5.4 New Zealand libraries may therefore supply copies to overseas libraries, as well as loan original works for the purpose of Interloan.

6. COPYING FOR THE COLLECTIONS OF OTHER LIBRARIES (ss.54, 56C)

- 6.1 Librarians of a prescribed library may make a copy (including a digital copy) for the collections of another prescribed library any part of or a complete book, including any artistic work in the book, provided that the librarian to whom the copy is supplied:
- has been unable to obtain it at an ordinary commercial price within the preceding six months;
 - keeps a record identifying the work copied;

- permits inspection of the record by the copyright owner; and
 - on demand, pays equitable remuneration to the copyright owner for the work copied.
- 6.2 This provision applies only to books, not to periodical articles, serials, music scores or other types of library materials. It does allow for out-of-print books to be copied completely.
- 6.3 It is recommended that these procedures be followed:
- the requesting prescribed library must assure the supplying prescribed library in writing that the conditions listed in s.54 as outlined above have been complied with;
 - where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”;
 - where the copy is supplied in digital format, the supplying library must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied.
- 6.4 It is within the spirit of this section of the Act for the librarian of a prescribed library to borrow an item from another library and make a copy of it, for the purposes of adding it to its own collections, provided that the conditions listed under paragraph 6.1 above have been met. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”.
- 6.5 Librarians of non-prescribed libraries may not request or supply copies under this section.

7. COPYING FOR PRESERVATION OR REPLACEMENT (s.55)

- 7.1 Librarians of a prescribed library may make a copy (other than a digital copy) of any item in its collections for replacing in the collections of another prescribed library an item that has been lost, destroyed, or damaged, provided that it is not reasonably practicable to purchase a copy of the item.
- 7.2 Librarians of a prescribed library may make a digital copy of any item in its collections, provided that:
- the digital copy is used to replace an item in the collections of another prescribed library that has been lost, damaged, or destroyed; and
 - it is not reasonably practicable to purchase a copy of the original item.
- 7.3 It is recommended that these procedures be followed:
- the requesting prescribed library must assure the supplying prescribed library in writing that the conditions listed in s.55 as outlined above have been complied with;
 - where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating that: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.

- where the copy is supplied in digital format, the supplying library must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied.
- 7.4 It is within the spirit of this section of the Act for the librarian of a prescribed library to borrow an item from another library and make a copy of it, for the purposes of preservation or replacement, provided that it is not reasonably practicable to purchase a copy of the item. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.
- 7.5 Librarians of non-prescribed libraries may not copy to replace items in their collections and may not ask the librarians of other libraries to copy to replace items in their collections under this section.

8. CHARGING FOR INTERLOAN

- 8.1 The Copyright Act 1994 does not prohibit charging for the supply of a copy. Generally, charges are limited by the Act to not more than the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library. The charge is payable by the end-user, but may be paid by someone who is not the end-user, including the requesting library. It is recommended that any charging for supply of Interloans be limited as above.
- 8.2 Charges may also be levied to cover premium services such as urgent delivery or supply by fax.
- 8.3 There is no prohibition on charging for copyright-cleared copies obtained from overseas or where any copyright right held by the library otherwise permits charging.
- 8.4 A prescribed library may rent computer programs, sound recordings, films and videos to any person where the rental charge is non-profit-making (s.79). Effecting this rental through Interloan is not prohibited.
- 8.5 It is believed that the recommended charges within the current Interloan Scheme are in accordance with these provisions.

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