



Library and Information Association of New Zealand
Te Rau Herenga O Aotearoa

Submission to the

Committee Secretariat

Foreign Affairs, Defence and Trade Committee

13 March 2022

Submission on the International treaty examination of the UK-NZ Free Trade Agreement

Copyright term extension

Under the FTA, New Zealand has agreed to extend the term of copyright for (literary, dramatic, musical or artistic works, performances and sound recordings) by 20 years beyond that required by existing international agreements relating to copyright of the life of the author plus 50 years or 50 years from publication, or if unpublished, 50 years from the making.

The National Interest Analysis of the Agreement notes that the cost of term extension is not readily quantifiable but acknowledges that once implemented it will potentially bring higher longer-term costs. Economic modelling for the Trans Pacific Partnership Agreement estimated an annual cost of \$55 million.

In addition to the potential costs, term extension will reduce the ability of New Zealanders to access and use copyright works as part of New Zealand's cultural heritage. Paragraph 4.18.2 of the National Interest Analysis acknowledges that term extension will increase the number of works for which use and access will be restricted. It will impede libraries in fulfilling their purposes, and on this basis the Library and Information Association of New Zealand Aotearoa (LIANZA) does not support term extension.

Term extension will particularly impact on library digitisation projects: there will be a longer period before works come into the public domain and can be digitised, including a 20-year freeze on any New Zealand works entering the public domain. It will be even more difficult than it already is to trace copyright owners, to seek permission to copy their work, and the many non-commercial works, including the extensive unpublished

collections of libraries, will remain unnecessarily locked up from access and use. Library users will have reduced access to digitised works and the advantages that digitisation brings (such as 24/7 access from home, school or workplace, keyword searching facilities, etc).

Extension of copyright duration will also restrict the re-use of copyright works (including texts, photographs, illustrations etc) in new research publications; frustrate research and scholarship that builds on older scholarship; limit creativity and the production of new knowledge; limit the ability of researchers to exploit new technologies such as data and text mining; impact on educational courses and research; and reduce access to recorded information and knowledge by New Zealanders.

LIANZA submits that the section in article 17.48 of the Agreement extending the term of copyright. should be excised. If this is not possible, then LIANZA seeks a recommendation from the Committee that Article 17.47 of the Agreement which permits the provision of limitations or exceptions be implemented to go some way towards mitigating the impact of the extension of the term of copyright. In particular copyright legislation should be amended to provide for:

- copyright owners to be free to renounce copyright - experience in clearing rights for digitisation projects has demonstrated that some creators would be happy to be allow their works to enter the public domain, while retaining their moral rights.
- a limitation on remedies for use of orphan works, similar to the one included in the Australian Copyright Amendment (Access Reform) Bill 2021.
- exceptions to be developed for non-expressive uses of works such as text and data mining.
- libraries to digitise and lend works in their collections that are not available for sale in electronic format

Implementation

LIANZA submits it is critical, given the potential impact on libraries and cultural institutions, the full 15 year transition period from ratification to implementation of the extension to the term of copyright be taken.

Consultation

As a key civil society copyright stakeholder, LIANZA would have valued the opportunity to provide input during the negotiations. We are disappointed to have been excluded on such a core matter that will have a significant impact on our ability to make works in our collections available, particularly electronically. We also regret the short timeframe provided for submissions, particularly during a time when individuals and organisations are under pressure from Covid.

We would like to have the opportunity to speak to our submission and to work with the government and interested parties in mitigating the detrimental effects of term extension on the New Zealand library sector.

