

LIANZA STANDING COMMITTEE FOR COPYRIGHT - BRIEFING FOR INCOMING MINISTER (FEBRUARY 2023)

LIBRARIES AND COPYRIGHT LEGISLATION

Aotearoa New Zealand is facing a review of the Copyright Act in the coming year with profound implications for libraries, access to knowledge, and the creative economy. The global pandemic and climate change have pushed libraries to increasingly operate in and occupy the digital space. The Copyright Act 1994 has not been reviewed for thirty years and apart from minor tinkering, does not recognise the virtual library or users accessing resources online. Without meaningful and consistent input into the review process, there is every chance that the legislative changes could severely disadvantage libraries.

Publishers have the money and the resources to lobby Ministers and MBIE, to write submissions and press releases. Publishers won't hesitate to put forward a view that favours their own interests at the expense of the balance that the copyright law should strive for. For example claiming that "Fair Use" is "free use" and authors benefit from more restrictive copyright laws, when research has shown the opposite is true. The Committee does not have the resources to counter this.

Copyright law either directly governs or indirectly affects core library functions and is of tremendous practical importance to our members and patrons. As stewards and purchasers of cultural works, we feel a special obligation to ensure creators receive adequate reward through our copyright system. As institutions founded on the principle that public access to knowledge is a valuable social good, we also stand firmly behind the importance of limitations on copyright to maintaining a vibrant creative and scientific economy and an informed public.

To achieve a better balance in the copyright law, we are seeking:

Usable and effective copyright exceptions

Libraries and archives are entrusted with exceptions under the Copyright Act 1994 that are essential to key patron services and library preservation activities. Our members report that these exceptions are inadequate. We need exceptions that are flexible to manage rapidly changing circumstances. For example: librarians breach copyright each time they provide storytimes for preschoolers and read a whole book out loud. This key activity for encouraging reading and developing comprehension is even more difficult for libraries operating in the digital space when the physical library is shut and librarians are working from home during pandemics or extreme acts of nature. Not only did children benefit from hearing and seeing their local librarian during the virtual storytime, but at least one library was reading books for their elderly patrons including residents in rest homes. This required permission from the publisher with the resulting very limited choice of reading material. These core library activities should be covered by exceptions, but are not.

The current Act is also unsuited for the needs of modern, digital preservation practices including the provision, use and preservation of digital content. Similar problems significantly impact other exceptions, and reform is needed to broadly ensure that exceptions are adequate and fit for purpose.

Limited and evidence-based expansion of copyright protection

The scope and scale of copyright protection has historically expanded with every review. Each expansion curtails or complicates the services libraries are able to provide the public and diminishes the public domain. We support certain carefully targeted and evidence-based expansions of copyright protection. But we oppose giveaways to industry that come at the expense of public access to knowledge, such as the extension of already-long copyright terms beyond the international minimum. The NZ-UK and NZ-EU Fair Trade Agreements, signed in 2021 and 2022 respectively, cemented the extension of the term of copyright from life of the creator +50 years to life + 70 years into our legislation. All of the issues relating to the administration of copyright are amplified by these term extensions. We welcome a long transition period for this implementation to ensure mitigations can be put in place.

Increased public access to certain publicly-funded works

Copyright protections for publicly funded research and for Crown copyright works rarely incentivise the creation of those works, yet can impede socially valuable uses of them. We invite reconsideration of Crown copyright in its entirety, and also support statutory licensing of public access to publicly-funded research.

Protection of Taonga works and Mātauranga Māori

Any reform of the Copyright Act 1994 needs to consider the issues raised in Wai262 and the Waitangi Tribunal's recommendations relating to the protection of taonga works and taonga derived works. We welcome this protection ideally through a sui generis (standalone) legal framework which complements existing intellectual property legislation.

We have provided more detailed comments in our 2019 [submission](#).