



**Publishers
Association of
New Zealand**
Te Rau o Tākupu

A COPYRIGHT MANIFESTO

Since New Zealand's Guest of Honour appearance at the Frankfurt Book Fair in 2012, I've been fascinated by the intensity of the languages, the unbelievable range of genres and styles, the high speed and, above all, the devotion with which New Zealand's authors and publishers keep the world in suspense with new content and ideas. I'm very proud of the fact that the Kiwis play along with us every year in Frankfurt and take the time to show us how a real 'dropkick' works.

— JUERGEN BOOS, DIRECTOR OF THE FRANKFURT BOOK FAIR

The New Zealand Publishing Environment

From Margaret Mahy to Eleanor Catton, from primary school readers to apps, the New Zealand publishing industry is a major producer of cultural and educational content for New Zealand readers and is a significant contributor to the national economy.

The Publishers Association of New Zealand (PANZ) is an incorporated society representing over 80 trade, educational, scholarly and digital publishers. Our members are local independents and large international publishers, educational and trade publishers, publishers for adults and for children, for students and professionals — combining to produce over 2,000 new titles a year. Publishers incentivise new creations by commissioning new writing and illustrations, paying authors royalties for their work.

Export of New Zealand creativity is a key focus and has been propelled by New Zealand's guest of honour status at the Frankfurt and Taipei book fairs. In both education and trade publishing, digital — from ebooks to licensed platforms to ecommerce — is business as usual. According to the latest PWC report, the book industry directly accounted for almost 3,000 FTEs and had a direct

GDP impact of \$167 million. The publishing industry forms a part of the wider creative economy that employs over 20,000 New Zealanders and has a direct economic contribution of over \$1.7 billion.

The Role of Copyright

The investment in creativity by New Zealand publishers is made possible because of the law's recognition of ownership over intellectual property.

Good copyright law enables authors to make choices about how their work is made available to readers. Many of those authors chose to work with publishers, who transform their words into books and find them an audience in New Zealand and overseas.

When that happens, good copyright law enables authors and publishers to be rewarded for their hard work. And then good copyright law underpins a healthy intellectual property marketplace — where readers and authors, publishers and photographers, reviewers and educators can buy and sell that intellectual property to fuel new creations.

Think of that old dog Hairy Maclary. From one book by author and illustrator Lynley Dodd,



a whole pile of follow-on creation has ensued. Through the enterprise of local publisher Ann Mallinson, Hairy Maclary has become not only a highly successful series of books, sold throughout the world and published in everything from Slovenian to Chinese, but also an ongoing theatre production, a series of television shows, and merchandise from soft toys and t-shirts to nappies. Local company Kiwa Digital has licensed the dog to teach Te Reo on one of its language apps. A robust intellectual property marketplace and an enterprising publisher have enabled one author's creation to circulate in multiple forms to a global audience. And throughout all these incarnations, Hairy Maclary has got hundreds of thousands of kids reading and learning. That's how good copyright law produces significant social, cultural and economic value for New Zealand.

New Zealand has good copyright law, but we think it could be better. We need copyright law that gives New Zealand creators control over their global aspirations, that is effective in digital as well as in print, that uses licensing and exceptions to minimise transaction costs when required, that deals effectively with those who would like to take content for free, and that harmonises our law with those of our key trading partners. PANZ believes that better copyright law will enable the growth of New Zealand publishing and the wider creative economy on which much of our nation's future economic growth depends.

Key objectives for Copyright Law

We look for copyright law that brings significant economic, legal and cultural wellbeing for New Zealand.

Economic benefits

- Copyright law should incentivise the growth of New Zealand's creative economy, a key to our future in a knowledge-based global economy.
- Copyright law should help facilitate an efficient intellectual property marketplace, with clear incentives for creation and distribution of content, and easy access and low transaction costs for those who want to buy that content.
- Copyright law should prevent Internet monopolies appropriating content for free and thereby dominating the intellectual property marketplace.

Legal benefits

- Copyright law should allow creators to decide how their content will be shared — for free, or on paid platforms, or not shared at all.
- Copyright law should give certainty to owners and users of intellectual property so that both can operate efficiently.
- Copyright law should provide effective enforcement mechanisms so that the law works.
- Copyright law should be format neutral — whether work is in digital or print should have no impact on rights and exceptions.

Cultural benefits

- Copyright law should ensure that the stories of New Zealanders, particularly the stories of tangata whenua, are owned by their creators so that those creators get to choose how their stories are shared.
- Copyright law should incentivise the



creation of original New Zealand stories — educational materials for primary schools and resources for universities, poetry and art books, cookbooks and memoirs — so that New Zealanders can know themselves.

- Copyright law should incentivise the distribution of those stories by allowing writers, publishers, printers, booksellers and other elements of the value chain to earn their just rewards.
- Copyright law should enable easy access to intellectual property — through an efficient intellectual property marketplace, licenses that lower transaction costs, and exceptions for certain specific cases.

The Future of New Zealand Copyright Law

New Zealand has good copyright law. We believe it can be better. PANZ sees several opportunities to improve copyright law to realise increased economic, legal and cultural benefits to New Zealand.

Five key principles guide our proposals:

1. Copyright exceptions are limited to special cases that don't undermine revenue to creators

The opportunity

Publishers are not only big producers of copyright material; we are also big re-users of other people's content. We use illustrations and quotations in our books, or buy rights to put pieces of writing together into an anthology. Alongside librarians, educators, journalists and scholars, publishers are

fierce protectors of our fair dealing rights to use short excerpts without permission: free speech and a vibrant critical culture requires it.

But we are also used to paying to use material when it falls outside those fair dealing bounds. And we expect others to do the same because publishers and authors depend upon rights revenue to make a living. In New Zealand, rights represent 12% of total publishing revenue.

Fortunately, more literary content is more available to buy than ever before. Alongside our traditional bookstores, online bookstores here and overseas now offer individuals an unprecedented range of books in digital and print. As well as buying print books, schools and libraries can now buy or license the world's trade and educational books as ebooks or online platforms for their users. And for schools and universities, Copyright Licensing New Zealand (CLNZ) offers a license that allows course use of articles and chapters from books as physical course packs or digital collections.

The best way to keep expanding access to literary and educational work is to limit statutory exceptions to certain special cases that do not undermine revenue to creators, and by doing so allow the market of ideas to flourish: enabling people who want to use, adapt or consume work to pay for it, directly or through licensing. For producers and consumers of intellectual property to operate efficiently, those limited exceptions need to be clear and certain.

The problem

Exceptions become the rule: The revised objectives for the Copyright Act Review argue that the law should permit reasonable access to works for use,



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modification, self-expression, adaptation and consumption, where exceptions to exclusive rights are likely to have a net benefit for New Zealand. If New Zealand is a net importer of copyright, then New Zealand could gain net benefits by granting everyone an exception for everything. New Zealand's treaty obligations prevent that; so does our interest in rewarding creators and growing the creative economy, and so too does our interest in facilitating competitive markets. Except in certain special cases, people who want access to works for use, adaption and consumption should be paying for that use. As publishers and as readers, we do that all the time.

Some exceptions are too narrow: We think that New Zealand can enhance some exceptions to copyright, because they allow more intellectual freedom and do not undermine the ability of authors and publishers to make a living. We would welcome the introduction of the parody and quotation exceptions, as instituted in the United Kingdom, to New Zealand.

Exceptions are finely balanced: New Zealand has a strong educational exception now that allows students and teachers to use material for teaching, research and private study while remunerating publishers when the use is substantial for course packs and such like. We make it easy for educational establishments to do this work by offering them licensed access to the whole world of content. New Zealand educational publishing is a \$64 million industry producing locally relevant materials that help our children get smarter. Professional publishers provide textbooks and digital content used by accountants, lawyers and

other professions for professional certification and development. Many trade publishers, university presses and professional publishers produce material used in schools and universities. Up to 10% of educational publisher revenue comes from licensing material to schools and universities through collective licensing. It is essential that the educational exception is not broadened in a way that would destroy this key source of revenue. Canada did that and the elimination of collective licensing revenue has led to a significant reduction in Canadian educational material available to Canadian learners, a 16% reduction in publishing jobs and revenues in two years, and several major publishers exiting the market.

Exceptions are too broad: Some of New Zealand's copyright exceptions are broader than comparable countries around the world and produce no net gain for the country

Commercial use: In similar jurisdictions to us (such as the United Kingdom) the fair dealing exception for research and private study and for libraries is restricted to non-commercial use. That means that when a school student is writing a history paper they can photocopy pages from a book. But it also means that when a law or accounting firm is wanting to educate its partners on some area of expertise, they pay for the content.

Educational exception — format neutrality: The New Zealand exception was instituted in an age of reprographic copying, non-reprographic copying (that is, with a pen and paper) and other terms that today's student couldn't understand. Educational institutions want to work with print and digital



material; and they want to make them available in print or digital to students to meet need. We need a copyright law that is format neutral: that allows limited access under the exception to the material, in whatever form it is; and that ensures publishers get paid when work is used in, for example, course packs, whatever the source (digital or print) and the use (digital or print).

Educational exception — ability to copy a whole work: This provision does not exist in comparable jurisdictions and undermines the market. If teachers want a whole work, they should be buying it.

Educational exception — license availability: Alongside United Kingdom law, the educational copying exception should be available only if a license is not offered. Copyright law aims to create an efficient market in intellectual property. Licensing provides that efficient marketplace so that the requirements for an exception in special cases is no longer met.

The solution

- Limit exceptions to certain special cases that do not undermine revenue to creators.
- Institute a parody and quotation exception modelling ourselves on the United Kingdom.
- Do not extend the current fair dealing exceptions for education.
- Limit the fair dealing for research and private study and the libraries exception to non-commercial use.
- Make the educational exception format neutral and update it to correspond to United Kingdom law.

2. Creators control how their work is sold around the globe.

The opportunity

The best writing reaches readers around the world because local publishers understand their market, see an opportunity for a particular work, and take the author and the work to readers in that territory.

The Luminaries, for example, is published by Victoria University Press in New Zealand; by Granta in the United Kingdom; by Little Brown in the United States; by Ambo Anthos in the Netherlands; and by many more local publishers all over the world. In education, Wendy Pye's ambition to 'teach the world to read' has led her to partner with different publishing companies in different markets to take her books and digital content to readers globally: for example, Penguin Random House in China, EdVenture Books in Singapore, and HarperCollins in the United Kingdom.

Like those overseas partners for New Zealand books, publishers based in New Zealand work to bring international books to our readers. They take a significant risk every time they publish an international book into our local market — buying rights, shipping over physical copies or printing locally, and investing in sales and marketing to reach new readers. Publishers find new readers and create new markets by securing the rights from the creator to publish a book in a particular territory. That benefits creators, publishers and consumers.

The problem

New Zealand publishers cannot operate effectively in that global world, buying and



selling territorial rights to great books, because the New Zealand Copyright Act was amended in 1998 to end territorial copyright — allowing booksellers and wholesalers in this country to import books from anywhere no matter who holds rights in the territory. New Zealand is the only English-language market to adopt such rules.

That makes local New Zealand publishers reluctant to sell international rights, because they often find themselves competing against overseas editions of their own book that have been co-published in some other market.

Without a secure market for international books, New Zealand publishers, both local and multinational firms, are reluctant to invest in such work. Since 1998, the New Zealand offices of some of the world's largest publishers (Macmillan, Hachette, Pearson, HarperCollins, Reed and Penguin Random House) have all either closed or significantly downsized their presence in New Zealand. Those changes have eliminated hundreds of local jobs in publishing and printing, and have undermined the publishing landscape on which New Zealand authors depend.

The reduction in publisher presence in New Zealand, and the extra hurdles facing New Zealand publishers trying to sell international rights, both hurt the ability of New Zealand authors to make a living and reach readers around the world.

The end of territorial copyright has not given consumers what they were promised. Between 2008 and 2015, the average selling price for books in Australia, where territorial copyright is in place, fell by -12.4% while in New Zealand the average selling price rose by +7.6%. The range of

books on sale in New Zealand in the same period fell by -34.5% and volume sold fell by -15.7%. New Zealand consumers are not getting the lower prices and increased access to books promised by the end of territorial copyright — they are getting the opposite.

The solution

- Institute the 30-day rule used in Australia. There, territorial copyright applies, allowing local publishers to invest in their local market, but if the local publisher does not publish their edition within 30 days of international publication, retailers and wholesalers are free to import from anywhere. As in New Zealand, individuals, libraries and others are always able to buy books from any retailer anywhere.

3. Collective licensing is supported to enable more access.

The opportunity

Getting access to the world of content can sometimes be tough. Teaching a university course may require using excerpts from a dozen or more books and journals, sourced from a dozen or more publishers.

Some books are old, some publishers have gone out of business, some don't answer the phone. To enable quick and easy access for students and teachers at all levels, publishers and authors have created collective licensing organisations to provide a one-stop shop for users of content to license access. Collective licensing is a key tool in establishing an effective and efficient copyright system.



The problem

Schools licensing: Only about 2/3 of New Zealand schools currently take out a licence with CLNZ. That leaves 1/3 without access to a world of great educational content, puts them in legal jeopardy if staff are photocopying or scanning material without permission, and reduces the revenue to creators. Unlicensed private training establishments represent a similar problem.

Licence availability and the availability of the exception: In the United Kingdom, if a licence is available for schools, for example, then they no longer have access to the statutory educational exception. Because there is a market solution, there is no longer a need for an exception. By instituting the same approach, New Zealand would encourage all schools to become licensed and get access to a world of content that will improve educational outcomes.

Orphan works: Sometimes a potential user of content — whether a publisher, a blogger, a library or a theatre company — can't locate the owner of the copyright. This is rare in New Zealand for literary works, but it can happen trying to track down the rights holder or a photograph. Collective licensing provides a viable solution to this problem — with the licensing organisation being legally enabled to license the material, pay the owner when they find them, and use unclaimed money to benefit creators.

The solution

- Ministry of Education institutes blanket licensing of content for schools.
- Tertiary Education Commission funding becomes dependent upon Private Training

Establishments being legally compliant.

- Availability of a license means that the statutory exception is no longer available.
- Government establishes collective licensing approach to orphan works.

4. Copyright law is effective in a digital age

The opportunity

Publishers have embraced digital publishing. Whether as ebooks or apps, educational platforms or games, publishers in New Zealand and overseas have invested hugely in turning their work into formats that consumers want. And the results have been astounding. In 2015, Nielsen reported that New Zealand had the fastest-growing ebook market in the world.

The problem

As digital reading has become more common, so has piracy. Great New Zealand writing, from textbooks to novels, appears regularly on pirate sites — a temptation to all those hungry for the written word. Publishers can issue takedown notices, but as soon as they do the work may reappear on another pirate site. Copyright enforcement rules don't work in the digital age. To keep pace with technological developments, new solutions are needed.

The solution

- Limit safe-harbour immunity for Internet Service Providers (ISPs) in line with the RapidShare case in Germany, so that Internet hosts must take reasonable care to ensure that they are not hosting pirated content.



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- Follow the United Kingdom and Australia by instituting effective site-blocking legislation so that sites like The Pirate Bay are not accessible from New Zealand.
 - Institute statutory damages for copyright infringement.
 - Establish a small claims process for copyright infringement so that authors and publishers can effectively enforce their rights.
5. New Zealand law harmonises with our key trading partners

The opportunity

As buyers and sellers of intellectual property, publishers frequently cross borders in the rights marketplace. That marketplace is significantly more efficient if laws harmonise internationally — so we know if we can use a quotation or a picture

here, we can also use it overseas; and we know that a work is either in or out of copyright here and everywhere else that we want to market our intellectual property.

The problem

- New Zealand remains out of step with its key trading partners on copyright term. Developments in United Kingdom copyright law (parody, satire, quotation, the license caveat for educational exceptions and so forth) mean that New Zealand is also increasingly out of step with its closest comparable copyright regime.

The solution

- Take up key United Kingdom copyright innovations.