

Changes to the Copyright Act What NZ authors and publishers need to know

The New Zealand government has amended Sec 69 of the Copyright Act in order to implement a World Intellectual Property Organisation (WIPO) agreement, known as the Marrakesh Treaty. The aim of the Treaty is to increase access to published materials for people who have a print disability. It is important that New Zealand authors and publishers are aware of these changes and the rights and obligations that you have as copyright owners. You may be contacted by organisations that intend to make copies of your books that will then be provided to people with a print disability in New Zealand and in other countries that have signed up to the Marrakesh Treaty. The information provided below outlines what the law says and the steps you may take. Firstly some important definitions:

Accessible Format Copy – a copy of a work (book, article or other publication) that has been made into a format that meets the needs of a person with a print disability (e.g DAISY, Braille or large print)

Authorised Entity (AE) – a non-profit organisation such as a library or school or a charitable entity.

Print Disability – an impairment that prevents a person from enjoying a printed copyright work to the same degree as a person who does not have that impairment, but excludes impairments that can be improved using corrective lenses

	What an AE Must Do*	What an Author or Publisher May Do
1	Take “all reasonable steps” to notify the copyright owner of a work that it intends to make a copy in an accessible format.	<p>If the work is already available in the format that’s needed, let the AE know where it can be purchased from. If your work is in EPUB3, this may already meet the accessibility requirements being sought.</p> <p>Ask the AE to send the notification in an email, including the format they plan to convert the work into.</p> <p>Forward the notification email¹ to afc@copyright.co.nz and include details of the format/s the work is available in for the NZ market</p>
2	Only provide AFCs to people who have a print disability	Ask the AE how it evidences that the person it intends to provide the copy to has a print disability
3	Respect the integrity of the original work, taking into account changes needed to make the work accessible	Ask to review the AFC when the AE has created it. This will enable you to reassure yourself that the author’s moral rights have been respected
4	Make and keep a record of a work it has made, provided, reproduced, imported or exported	Ask to inspect the records of the AE

**Individuals who have a print disability may also undertake some of the above activities for themselves.*

The new legislation makes it clear that an AE may both import and export AFCs. If an AE is importing an AFC the work can only be provided to a person with a print disability or another AE. If an AFC is being exported, the work can only be sent to an AE or a person with a print disability in another Marrakesh Treaty country.

AEs must keep a record of the AFCs it makes, imports or exports and Copyright Owners may inspect those records. Fees may be charged by AEs for providing AFCs to people.

¹ CLNZ, on behalf of NZSA and PANZ, will collate the notifications to inform advocacy with government at a later date

Under the previous Sec69 some authors and publishers chose to share their digital files with organisations working with the visually impaired. There is no legal obligation to do this under the new legislation. If you choose to do so, you may like to use the attached template email.

It is important that the publishing industry's experiences in working with the new law are communicated back to government. The responsible Minister, Kris Faafoi, has committed to considering further changes to Sec69 of the Act, during the wider Copyright Act review. In order to do this, we need you to tell us when you're approached by AEs or other organisations or individuals.

Email Template

(please copy to afc@copyright.co.nz when you use this template)

Dear XXXXX,

We have agreed to provide you with a [name of file format eg pdf] version of our copyright work [title of the book] so that you can [insert one of the options A or B below]

A : make an accessible copy in [name of file format eg large print] for your student / client in accordance with the legal requirements of Sec 69 of the Copyright Act

B : provide our digital file to your student / client in accordance with the legal requirements of Sec 69 of the Copyright Act

The security of our digital files, and any files you create using our digital file, are extremely important to us. If a digital copy of this work is made available to anyone other than those who have purchased the work in a digital form or had it provided for their personal use in accordance with Sec 69 of the Copyright Act, income will not flow back to author.

Prior to us sending you the file, we require that you and your institution provide the following undertakings:

1. That the client / student has a print disability as defined in the Copyright Act and that this has been verified using an appropriate process.
2. To only use the file for the purpose noted above and in full compliance with Sec 69 of the Copyright Act.
3. To advise your client / student that the file they receive is solely for their personal use and not to be shared with anyone else.
4. To take all reasonable steps to ensure that the digital file cannot be copied or further distributed and is stored in a secure system at all times.
5. Not to sell, reproduce or otherwise use the digital file for any other purpose than the purpose outlined here.
6. To acknowledge the rights of both the author/s and publisher of the work, including the right to take legal action should the work be used in any way other than the terms outlined here.

If you do not have the authority to give these undertakings for your institution, please copy this email to the person who can. We will require their written confirmation prior to supplying the digital file.

Regards, [Copyright Owner Name]