

COPYRIGHT FOR PUBLIC LIBRARIANS

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WHAT IS THE PURPOSE OF COPYRIGHT?

- Copyright is a form of intellectual property – which is a generic term for a range of property rights that provide protection for “creations of the mind”
- Copyright does not, however, exist until a work is recorded, in writing or otherwise
- Copyright protects the recorded expression of a work – it does not protect the ideas or knowledge incorporated in the work (*you patent ideas*)

THE PURPOSE OF COPYRIGHT

- Copyright gives to the creator of a work the exclusive right to do certain specified things in relation to that work
- These exclusive rights are, however, qualified by the provision of certain exceptions, which permit others to make use of the copyright work under specified conditions, without first getting permission from the copyright owner
- The Copyright Act 1994 calls these exceptions “permitted acts”

THE PURPOSE OF COPYRIGHT

- The first copyright legislation was the Statute of Anne (1710)
- This defined the purpose of copyright as being “to support learning and the sharing of ideas”
- This general principle has continued in copyright legislation ever since

THE PURPOSE OF COPYRIGHT

- Copyright is a balance, between
 - encouraging the creativity and protecting the rights of authors and publishers

and

 - providing for the needs of society to benefit from and make use of the ideas and knowledge incorporated within publications

THE PURPOSE OF COPYRIGHT

- Copyright law is partly about copying
- **Definition:**

“Copying means, in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital format) in any medium and by any means” (s. 2(1))
- But copyright law is about much more than just copying

THE PURPOSE OF COPYRIGHT

- Copyright law also covers:
 - performing, playing or showing work in public
 - performers' rights
 - communicating work (*making work available via a computer network, the Internet, an intranet or server*)
 - format shifting
 - file sharing, downloading and uploading
 - importation
 - technological protection measures
 - copyright management information
 - copyright licensing etc

ACTS RESTRICTED BY COPYRIGHT

(s. 16)

- Copying a work, or any part of it
- Publishing a work
- Issuing copies of a work to the public
- Performing, playing, or showing a work in public
- Making a work available to the public by means of an electronic retrieval system
- Broadcasting or communicating a work
- Making an adaptation of a work
- Authorising another person to do any of these things

WHAT DOES COPYRIGHT COVER?

- These acts restricted by copyright apply to a wide range of types of works :
 - literary, dramatic, musical and artistic works
 - books, periodicals, newspapers, personal papers
 - maps, charts, diagrams, graphs, sheet music
 - sound recordings, films, videos, DVDs, CD-ROMs
 - photographs, illustrations, paintings, multi-media
 - communication works
 - sound and television broadcasts
 - works of architecture
 - computer programs, software, databases, web pages
 - typographical arrangements of published editions

QUALIFICATION FOR COPYRIGHT

(ss. 17-20)

- These works are covered, whether published or produced in New Zealand or overseas
- New Zealand copyright law applies in New Zealand to
 - New Zealand citizens
 - those resident in New Zealand
 - institutions incorporated under New Zealand law
 - citizens and those resident in a prescribed foreign country
 - institutions incorporated under the law of a prescribed foreign country
- Citizens in New Zealand are subject to New Zealand copyright law, not to the copyright laws of overseas countries (*unless they are publishing overseas*)

WHO OWNS COPYRIGHT? (s. 21)

- Copyright is normally owned by the author
- Copyright in a work made by an employee in the course of employment is owned by the employer
- Copyright in commissioned work such as photographs, sound recordings, paintings, maps, computer programs etc is owned by the person who commissions and pays for the work, unless there is an agreement to the contrary

WHO OWNS COPYRIGHT?

- Copyright in theses and in unpublished work is owned by the author
- Copyright in sound or tape recordings (such as oral histories) and in films is owned by the person who undertook the arrangements for making the sound recording or film (s. 5(2)(b))

COPYRIGHT OWNERSHIP

- There may be separate copyright ownership in illustrations, photographs, graphics, maps, diagrams, graphs etc that are included in a work
- Copyright ownership may be passed to others by contract or agreement
- Many authors pass copyright ownership to their publishers as part of the contract to publish
 - so for most commercially published work, copyright ownership rests with the publisher
- Copyright ownership is passed by will, or as part of a person's estate, to her/his inheritors

HOW LONG DOES COPYRIGHT LAST FOR? (ss. 22-25)

- Literary, dramatic, musical or artistic works, unpublished works
 - 50 years after the death of the author
 - if no author, 50 years after publication
- Films or sound recordings
 - 50 years after the work was made or communicated
- Typographical arrangements of published editions (including new editions of older works)
 - 25 years after the edition was first published

CROWN COPYRIGHT (ss. 26-27)

- Crown copyright continues for 100 years
 - 25 years for typographical arrangements of published editions
- There is no copyright in :
 - bills and acts
 - regulations, by-laws
 - parliamentary debates
 - court and tribunal judgments
 - reports of
 - select committees
 - royal commissions
 - commissions of inquiry
 - ministerial inquiries
 - statutory inquiries

COPYRIGHT INFRINGEMENT (ss. 29-39)

- Copyright is infringed by:
 - copying a work, or any part of it
 - publishing a work
 - issuing copies of a work to the public
 - performing, playing or showing a work in public
 - making a work available to the public by means of an electronic retrieval system
 - broadcasting or communicating a work to the public
 - making an adaptation of a work
 - importing an infringing copy
 - possessing or dealing with an infringing copy
 - providing the means for making an infringing copy
 - permitting the use of premises for an infringing performance
 - providing apparatus for an infringing performance

TRANSIENT COPYING (s. 43A)

- The copy displayed on a computer screen when accessing the Internet or other computer file is called a transient copy
- Section 43A confirms that this “transient reproduction of work” does not infringe copyright in the work

IMPORTATION (s. 35)

- Parallel importation is not an infringement of copyright law
- Libraries may therefore import library materials directly from overseas suppliers
- Libraries may assume that the supply of copies by overseas document delivery companies is lawful
- Films produced principally for cinematic release may not be imported, other than for person's private or domestic use, within 9 months of first being made available to the public (*expires on 31 October 2013*)

WHAT ARE THE “PERMITTED ACTS”?

(Part 3)

- The major “permitted acts” are:
 - Copying for criticism, review, and news reporting (s. 42)
 - Copying for research or private study (s. 43)
 - Copying for educational purposes (ss. 44-49)
 - Copying by libraries and archives (ss. 50-57A)
 - Copying for public administration (ss. 58-66)

PERMITTED ACTS (Part 3)

- The provisions of Part 3 are to be construed independently (s. 40)
 - “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

COPYING FOR CRITICISM, REVIEW, AND NEWS REPORTING (s. 42)

- Copyright is not infringed by fair dealing with a work for the purposes of
 - criticism or review
 - reporting current events
- “Fair dealing” is not defined
- The fair dealing must be accompanied by a sufficient acknowledgement
- Photographs are specifically excluded from this exception

COPYING FOR RESEARCH OR PRIVATE STUDY (s. 43)

- Fair dealing with a work for the purposes of research or private study does not infringe copyright
- In determining what is fair, a court shall have regard to :
 - the purpose of the copying (it must be for research or private study) *and*
 - the nature and significance of the copying, taken in relation to the work as a whole *and*
 - whether the work could have been obtained within a reasonable time at an ordinary commercial price *and*
 - the effect of the copying on the potential market for, or value of, the work *and*
 - the amount and substantiality or importance of the part copied, taken in relation to the whole work

COPYING FOR RESEARCH OR PRIVATE STUDY (s. 43)

- The whole of a periodical article may be copied
- Only a small proportion of a book or other work may be copied, and never the whole of a book
- Only one copy of the same work, or the same part of a work, may be made on any one occasion
- These provisions relate to all works capable of being copied, including pictures and sheet music
- Works may be summarised or précised
- Short quotations may be copied
- Due acknowledgement should be made to the work from which the copy, précis or quotation is taken

COMPLIANCE

- Notices explaining these conditions should be provided at library self-service photocopiers, printers and scanners
- Libraries should have a compliance programme to ensure that the conditions are being observed
- Libraries should keep a record of when and by whom the checks were undertaken, so that they can demonstrate on an ongoing basis that the Copyright Act is being complied with

COPYING FOR EDUCATIONAL PURPOSES BY PUBLIC LIBRARIES

- Public libraries may make multiple copies of materials for school projects under the provisions of s. 44(3-4), if the copying is done by or on behalf of an educational establishment
- No more than the greater of 3% or 3 pages may be copied
- If this means that the whole of the work would be copied, then only 50% of the work may be copied
- No charge may be made for the copies

COPYING FOR EDUCATIONAL PURPOSES BY PUBLIC LIBRARIES

- Public libraries may also make single copies of materials for school projects under the provisions of ss. 51-52 (*Copying by librarians*)
- Only a “reasonable proportion” of a literary, dramatic or musical work, or the whole of a periodical article, may be copied
 - There is no “ten percent rule” (Carrington Judgment NZLR 1991 v. 2 p. 574-593)
- More than one article from the same issue of a periodical may be copied if these relate to the same subject matter

COPYING FOR EDUCATIONAL PURPOSES BY PUBLIC LIBRARIES

- There must be a specific request to the librarian to provide a copy by the person wanting the copy
- Multiple copies may not be made in expectation of subsequent requests for copies by other students
 - Salmon Judgment *NZLR* 2002 v. 3 p. 76-98
- Any payment must be no more than the cost of production plus a reasonable contribution to the general expenses of the library

COPYING BY LIBRARIES (ss. 50-57A)

- Copying for a library user (ss. 51-52, 56, 56B)
- Communicating digital copies to authenticated library users (s. 56A)
- Copying for preservation or replacement (ss. 55)
 - including digital copies (ss. 55(3), 55(4))
- Copying for vertical files
- Current awareness services
- Abstracts (s. 71)

PRESCRIBED LIBRARIES (s. 50)

- Prescribed libraries are:
 - the National Library
 - the Parliamentary Library
 - the District Law Society Libraries
 - libraries maintained by educational establishments
 - libraries maintained by government departments
 - libraries of Crown entities
 - libraries maintained by local authorities
 - libraries that are members of the Interloan Scheme
 - both Charter and non-Charter members, *and*
 - overseas libraries

COPYING BY LIBRARIES

COPYING FOR A LIBRARY USER (ss. 51-52, 56)

- The librarian of a prescribed library may make for supply on the same occasion to any person 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
 - more than one article from the same issue of a periodical if these relate to the same subject matter
 - an unpublished work, provided that the copyright owner has not prohibited the copying

COPYING BY LIBRARIES

COPYING FOR A LIBRARY USER (ss. 51-52, 56)

- There must be a specific request to the librarian to provide the copy by the person wanting the copy
- The person must use the copy only for the purposes of research or private study (but the librarian does not need to establish this before supplying the copy)
- Any payment must be no more than the cost of production plus a reasonable contribution to the general expenses of the library
- “Reasonable proportion” is not defined
 - in essence, it is the significance of what is copied that impacts on “reasonable proportion”, not simply the amount
 - there is no “ten percent rule”

COPYING BY LIBRARIES

COPYING FOR A LIBRARY USER (s. 56B)

- Where the copy is supplied in **digital format**:
 - the librarian of the supplying 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 librarian must also, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied

COPYING BY LIBRARIES

COPYING FOR A LIBRARY USER (s. 56B)

- The required notice could read:

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

COPYING BY LIBRARIES

COMMUNICATING DIGITAL COPIES TO AUTHENTICATED LIBRARY USERS (s. 56A)

- The librarian of a prescribed library may communicate a digital copy of a work to authenticated users, provided that:
 - the librarian has obtained the digital copy lawfully
 - each user is informed in writing about the limits of copying and communication allowed by the Act
 - the digital copy is communicated to the user in a form that cannot be altered or modified
 - the number of users who access the digital copy at any one time is not more than the aggregate number of digital copies of the work that the library has purchased, or for which it is licensed

COPYING BY LIBRARIES

COMMUNICATING DIGITAL COPIES TO AUTHENTICATED LIBRARY USERS (s. 56A)

- “Authenticated user” is defined as:
 - a person who has a legitimate right to use the services of the library *and*
 - who can access the digital copy only through a verification process that verifies that the person is entitled to access the digital copy
- The required notice could be included as part of the login process to the digital file in which the digital copy is stored
- Suggested wording for the notice is given in LIANZA’s *Copyright Guidelines* Appendix 3

COPYING BY LIBRARIES

COMMUNICATING DIGITAL COPIES TO AUTHENTICATED USERS (s. 56A) SUMMARY

- Section 56A therefore allows a prescribed library that has already lawfully obtained a copy of a work in digital format to communicate that copy to its users without a licence, provided that the required conditions have been complied with
- Like other library copying provisions, it allows communication without requiring authorisation
- Section 56A therefore applies to digital works for which the library does not already have permission from the copyright owner or exclusive licensee to communicate or make available on a computer network

COPYING BY LIBRARIES

COMMUNICATING DIGITAL COPIES TO AUTHENTICATED USERS (s. 56A) SUMMARY

- Section 56A does not apply where permission to communicate has already been granted by the copyright owner – for example:
 - works included in electronic databases that are subject to licence agreements signed by the library with database providers, aggregators or publishers
(because contract law allows signatories to an agreement to opt out of copyright law)
- Section 56A also does not apply to digital copies of works that are out-of-copyright – for example:
 - out-of-copyright works digitised by the library
(because copyright law does not apply to works that are out-of-copyright)

COPYING BY LIBRARIES

COMMUNICATING DIGITAL COPIES TO AUTHENTICATED USERS (s. 56A) SUMMARY

- Section 56A does not authorise a library to make a digital copy of an in-copyright work.
- Rather, section 56A authorises a library to make available a digital work that the library has obtained lawfully.

COPYING BY LIBRARIES

COPYING FOR PRESERVATION OR REPLACEMENT FOR THE LIBRARY'S OWN COLLECTIONS (s. 55)

- The librarian of a prescribed library may make a copy (other than a digital copy) of any item in its collections, either in addition to or in place of the item, provided that:
 - the copy is made for the purposes of preservation or replacement
 - it is not reasonably practicable to purchase a copy of the item

COPYING BY LIBRARIES

COPYING FOR PRESERVATION OR REPLACEMENT FOR THE LIBRARY'S OWN COLLECTIONS (s. 55)

- 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, under the same conditions
- This saves the supplying library from having to undertake the copying for the requesting library

COPYING BY LIBRARIES

COPYING FOR PRESERVATION OR REPLACEMENT FOR THE LIBRARY'S OWN COLLECTIONS (s. 55(3))

- The librarian of a prescribed library may make a **digital copy** of any item in its collections, provided that:
 - the original item is at risk of loss, damage, or destruction
 - the digital copy replaces the original item
 - the original item is not accessible by members of the public after replacement, except for research purposes
 - it is not reasonably practicable to purchase a copy of the original item

COPYING BY LIBRARIES

COPYING FOR PRESERVATION OR REPLACEMENT FOR OTHER LIBRARIES (s. 55)

- The librarian of a prescribed library may make a copy (other than a digital copy) of any item in its collections, for replacing an item in the collections of another prescribed library, provided that:
 - the item in the other library has been lost, destroyed, or damaged
 - it is not reasonably practicable to purchase a copy of the item

COPYING BY LIBRARIES

COPYING FOR PRESERVATION OR REPLACEMENT FOR OTHER LIBRARIES (s. 55(4))

- The librarian 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
 - it is not reasonably practicable to purchase a copy of the original item
- 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

COPYING BY LIBRARIES

COPYING FOR VERTICAL FILES

- Vertical files may include:
 - original works
 - copies made under s.54 (copying for the collections of other libraries)
 - copies made under s.55 (copying for preservation or replacement)
 - copies made with the permission or licence of the copyright owner
 - copies made from works that are out of copyright

COPYING BY LIBRARIES

COPYING FOR VERTICAL FILES

- It is not permissible to make a second copy of a copy supplied through Interloan in either print or digital format “just in case” another user may want it at a later date
- This is because the item was requested for the user’s research or private study, not for the library or for other users
- Material held in vertical files may be copied:
 - by librarians of prescribed libraries under ss. 51-56
 - by individuals under s. 43

COPYING BY LIBRARIES

CURRENT AWARENESS SERVICES

- The copying of the contents pages of a journal will not normally infringe copyright, because:
 - the copying is not substantial in terms of either amount or significance, in relation to the work as a whole
 - the contents pages are not normally more than a “reasonable proportion” of the work, copying of which is allowed under s. 51 (but note the requirements of that section)
- However, if the contents pages contain detailed descriptions of the articles, they might be considered substantial, in which case copying would be an infringement of copyright

COPYING BY LIBRARIES

CURRENT AWARENESS SERVICES

- It is permissible to set up current awareness profiles for the regular distribution of contents pages to staff or library users
- It is also permissible to copy periodical articles and distribute these to library users as part of a current awareness service, provided that:
 - there is a specific request to provide a copy by the person wanting the copy
 - no person is supplied on the same occasion with more than one copy

(continued)

COPYING BY LIBRARIES

CURRENT AWARENESS SERVICES

(continued)

- no person is supplied on the same occasion with copies of more than one article from the same issue of a periodical, unless the copies supplied all relate to the same subject-matter
- any charge made is no more than the cost of production of the copies plus a reasonable contribution to the general expenses of the library
- the persons to whom the copies are supplied use them only for the purposes of research or private study

COPYING BY LIBRARIES

ABSTRACTS (s. 71)

- Abstracts which accompany articles on a scientific or technical subject published in a periodical may be copied, issued to the public, or included in a database
- This provision does not include abstracts accompanying articles that are not on a scientific or technical subject

INTERLOAN

- Copyright is concerned (among other things) with the making of copies (including digital copies)
- Copyright does not apply to the lending and receipt of original works – books, issues of periodicals, audio-visual works, etc

INTERLOAN

- Copying for Interloan is about:
 - Copying for the users of other libraries, including in digital format (ss. 53, 56C)
 - Requesting library responsibilities (ss. 51, 52, 56B)
 - Copying for the collections of other libraries, including in digital format (ss. 54, 56C)
 - Copying for overseas libraries
 - Overseas libraries are now prescribed libraries, so copies may be supplied to them

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES

(ss. 53, 56C)

- The librarian of a prescribed library may 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, including any artistic work included in the article
 - two articles from the same issue of a periodical, if these articles relate to the same subject-matter
 - *note “two articles”, not “more than one article” as in s. 52 (copying for a library user)*

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES

(ss. 53, 56C)

- 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
- The person who is supplied with the copy must use it only for the purposes of research or private study
- The copy must not subsequently be used for any other purpose
 - for example, it must not be copied for the requesting library's vertical file

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES

(ss. 53, 56C)

- “Reasonable proportion” is not defined in the Act
- Guidance may be obtained from
 - s. 43 fair dealing for research or private study
 - 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
- There is no “ten percent rule”

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES

(ss. 56C)

- Where the copy is supplied in **digital format**:
 - the librarian supplying the digital copy must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied
 - this applies both to the supplying library, and to the requesting library supplying the digital copy to its user

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES REQUESTING LIBRARY (s. 56B)

- The librarian of the requesting library must also 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 required notice could read:

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

INTERLOAN

COPYING FOR THE USERS OF OTHER LIBRARIES REQUESTING LIBRARY (s.56C)

- It is permissible for the requesting library to place the **digital copy** on a server 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, such date to be “as soon as is reasonably practicable”
 - the digital copy is deleted from the server on, or very soon after, than date

INTERLOAN

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

- The librarian of a prescribed library may make a copy (including a **digital copy**) of any part of or a complete book for the collections of another prescribed library, 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
 - on demand, pays equitable remuneration to the copyright owner for the work copied

INTERLOAN

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

- It is within the spirit of this section of the Act for the librarian of a prescribed library to borrow a book from another library and make a copy of it for placing in its collections, under the same conditions
- This saves the supplying library from having to undertake the copying for the requesting library

INTERLOAN

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

- Note that this provision applies only to books (not periodical articles) but includes any artistic work in the book
- It does allow for out-of-print books to be copied completely
- Where the copy is supplied in **digital format**:
 - the librarian supplying the digital copy must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied

INTERLOAN

COPYING FOR THE USERS OR COLLECTIONS OF OTHER LIBRARIES SUMMARY

- The supply of **digital copies** via Interloan is therefore a two-step process:
- Supplying library to the requesting library
 - sections 53 / 54 and 56C apply
- Requesting library to its own user
 - sections 51 / 52 and 56B apply

INTERLOAN CHARGING

- The Copyright Act does not prohibit charging for supply on Interloan
- Generally, charges are limited by the Act to no more than the cost of production of the copy plus a reasonable contribution to the general expenses of the library
- The charges may be paid by
 - the requesting library
 - the end-user
 - someone else

INTERLOAN

CHARGING

- Charges may be levied to cover premium services such as urgent delivery or supply by fax
- There is no prohibition on charging
 - for copyright-cleared copies obtained from overseas
 - where any copyright right held by the library permits charging
- 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 by the Act

FILMS AND SOUND RECORDINGS (ss. 79, 81)

- Prescribed libraries and educational establishments may rent sound recordings and films to any person, provided that:
 - no profit is intended
 - the work has been put into circulation with the licence of the copyright owner
- Libraries which are not established or conducted for profit may play sound recordings as part of their activities, provided that:
 - any admission charge is applied solely for the purposes of the library

FILMS AND SOUND RECORDINGS

- This exception does not apply to videos, broadcasts or communication works, the playing or showing of which in public is a restricted act (s.32(2))
- However, the playing or showing of a sound recording, film, broadcast or communication work for the purposes of instruction at an educational establishment is permitted (s.47)
- Copyright ownership of a tape recorded interview or film rests with the person who arranged to make the recording or film (s.5(2)(b))
- Copyright ownership of a communication work rests with the person who makes it (s.5(2)(c))

COPYING OF SOUND RECORDINGS IN LIBRARIES (s. 81A)

- s. 81A, *Copying sound recording for personal use*, states that copyright in a sound recording is not infringed by copying it, if all of the following conditions are met:
 - (a) the sound recording is not a communication work [i.e. is not a radio or television broadcast, newscast, etc] *and*
 - (b) the copy is made from a sound recording that is not itself an infringing copy [i.e. is a lawful copy] *and*
 - (c) the sound recording is not borrowed or hired *and*
 - (d) the copy is made by the owner of the sound recording *and*
 - (e) that owner acquired the sound recording legitimately *and*
 - (f) the copy is used only for that owner's personal use *and*
 - (g) no more than 1 copy is made for each playing device *and*
 - (h) the owner of the sound recording retains ownership of the copies

COPYING OF SOUND RECORDINGS IN LIBRARIES (s. 81A)

- s. 81A, therefore, allows copying (including format shifting) of a sound recording, but only from a legitimately-acquired sound recording already owned by the person making the copy, and only for her/his personal use or for the personal use of others in her/his household
- s. 81A does not allow the copying of sound recordings downloaded from the Internet, or from sound recordings held and owned by the library
 - because in neither case does the person making the copy own the recording

DOWNLOADING OF MUSIC IN LIBRARIES

- Certain Internet sites legally permit downloading of music from those sites, either with or without payment of a fee
- If the website clearly states that the music may lawfully be downloaded, then it is permissible for the downloading to be undertaken on a library computer, and for the copy then to be copied onto the user's own device

DOWNLOADING OF MUSIC IN LIBRARIES

- Unless this is so, downloading of music from the Internet is a breach of copyright, and should not be undertaken either on library computers, or on individuals' own computers
- The subsequent copying of the unlawfully-downloaded music onto individuals' own devices only compounds the breach of copyright

COPYING AND DOWNLOADING OF FILMS, VIDEOS, DVDs

- There is no provision in the Copyright Act for format shifting of films, videos, DVDs etc
 - format shifting is permitted only for personally-owned sound recordings, and only for personal use
- Likewise, there is no provision in the Copyright Act for copying or downloading of films, videos, DVDs etc without the prior permission of the copyright owner
 - libraries should take all reasonable and practicable steps to stop the unlawful copying or downloading of such materials in the library

CD-ROMs

- CD-ROMs are compilations, having the same copyright protection as literary works
- There is likely to be separate copyright, owned by different people, in each of the components
 - text, photographs, films, sound recordings, musical work, dramatic work, artistic work, literary work, etc
- There may also be restrictions on use which must be complied with – for example
 - networking, printing, or using for commercial purposes, etc

COMPUTER PROGRAMS (ss. 79, 80)

- Prescribed libraries and educational establishments may rent computer programs to any person, provided that:
 - no profit is intended
 - the work has been put into circulation with the licence of the copyright owner
- Libraries may also loan computer programs in the same way that they loan books
- However, to comply with licence agreements which prohibit networking or the use of computer programs by more than one user
 - it may be desirable for libraries to place a label on the disc pockets, requesting borrowers to remove the computer programs from their systems when they return them to the library

COMPUTER PROGRAMS

(ss. 80, 80A-80D)

- Back-up copies of computer programs may be made by or on behalf of the lawful users of computer programs, in order to preserve the originals in case they should be lost, destroyed, or rendered unusable
- Back-up copies of other media may not be made
- Sections 80A-80D cover the decompilation and copying, adapting, studying or testing of computer programs, under certain conditions

ELECTRONIC DATABASES

- Electronic databases are compilations, having the same copyright protection as literary works
- They are themselves protected as separate works, even if they contain only non-copyright or out-of-copyright material
- Publication, making a work available by means of an electronic retrieval system, and communicating work are all restricted acts
- The use or networking of an electronic database will generally require permission from each affected copyright owner

ELECTRONIC DATABASES

- Copies may be made from commercial electronic databases only in terms of the library's licence agreements with the database suppliers
- Permission to include copyright material in a database will need to cover:
 - copying the work in the first place – scanning or re-keying are forms of copying
 - making the work available by means of an electronic retrieval system
 - performing, playing, or showing the work in public

COPYRIGHT AND THE INTERNET

- There is copyright in most types of material on the Internet:
 - email messages
 - postings to bulletin boards, news groups, social networking sites
 - books, articles, reports and other publications
 - music, films and videos, games
 - databases
 - web pages etc

COPYRIGHT AND THE INTERNET

- The fact that something is posted on the Internet does not automatically give anyone the right to download, store, copy or disseminate it, unless:
 - the author or copyright owner
 - has waived copyright, *or*
 - specifically granted permission, *or*
 - has made the work available via an open content licence such as a Creative Commons licence which permits downloading or copying
 - the Copyright Act allows copying / downloading
 - the work is in the public domain, i.e. out of copyright
 - the copyright owner has been dead for more than 50 years !

COPYRIGHT AND THE INTERNET

- It has been argued that
 - placing material on the Internet without restrictions is an implied licence to view, download, print, store and / or disseminate the material
- It has also been argued that
 - downloading, printing, storing and / or disseminating material from the Internet breaches the copyright owner's exclusive right to reproduce or communicate the work
- In the U. S., courts have been ruling in favour of this second argument
- When in doubt, permission should always be sought in advance from the copyright owner

MORAL RIGHTS (ss. 94-110)

- Moral rights attach to authors rather than to copyright owners in general
- They include:
 - the right to be identified as the author or director (which right must be asserted in writing)
 - the right to have works treated in a way that is not derogatory (*defined in s. 98(1)*)
 - the right not to have works falsely attributed
- Librarians must take care not to offend against these rights
 - for example in library displays, or in listing a work in an electronic retrieval system such as a catalogue

MORAL RIGHTS

PRIVACY (s. 105)

- There is also a right to privacy in relation to photographs or films commissioned for private or domestic purposes
- Copies may not be issued or communicated to the public, or the work exhibited or shown in public, without the permission of the commissioning person

INFRINGING FILE SHARING REGIME (ss. 122A-122U)

- File sharing is where “material is uploaded via, or downloaded from, the Internet using an application or network that enables the simultaneous sharing of material between multiple users” (*s. 122A(1)*)
- It involves the sharing of music, video, game files etc over computer networks such as the Internet – often without authorisation
- It therefore breaches the copyright owners’ copyright, and denies them revenue they might otherwise earn if they sold these creative works

INFRINGING FILE SHARING REGIME (ss. 122A-122U)

- The infringing file sharing regime provides copyright owners with a special process for taking enforcement action against people who infringe copyright through file sharing
- It is a process of escalating infringement notices sent by IPAPs (Internet protocol address providers, i.e. ISPs), at the instigation of copyright owners, to IPAP account holders who are alleged to have repeatedly infringed copyright through file sharing

INFRINGING FILE SHARING REGIME (ss. 122A-122U)

- Account holders have the right to challenge any of the infringement notices
 - detection
 - warning
 - enforcement
- But must do so within 14 days of the date of the infringement notice

INFRINGING FILE SHARING REGIME (ss. 122A-122U)

- The infringing file sharing regime also includes involvement of the
 - Copyright Tribunal
 - can award compensation of up to \$15,000 if a breach of copyright is substantiated
 - District Court
 - in the future will be able to order suspension of the account holder's Internet account for up to six months

INFRINGING FILE SHARING REGIME (ss. 122A-122U)

- Libraries or their parent bodies may receive infringement notices from their IPAPs
- They must take action –
 - challenge the infringement notices (s. 122G)
 - and*
 - investigate, and attempt to stop, any substantiated copyright infringement

INFRINGING FILE SHARING REGIME

PROBLEMS FOR LIBRARIES

- An account holder is not the same as a user – an account holder such as a library may have many thousands of users
- Alleged repeat infringements may apply, not to multiple instances by one user, but to single instances by a number of different users
- Account holders may be unable to identify alleged copyright infringers, particularly if the alleged repeat infringements took place on public-access Internet computers, either because the library does not require users to authenticate, or because records of use are kept for only a very short time or not at all

OBLIGATIONS OF LIBRARIES

- Nevertheless, libraries have an obligation to take all reasonable and practicable steps to minimise copyright infringement in their institutions
 - whether by their own staff, or by library users
 - whether on staff computers, or on public Internet-access computers
- Libraries must also be able, if required, to demonstrate to copyright owners, the Copyright Tribunal or District Court that they have done so

COPYRIGHT INFRINGEMENT

- File sharing is not, of course, the only method of copyright infringement that may occur in libraries
- Other methods include –
 - photocopying, scanning
 - copying of audio, video
 - copying CDs to MP3s or iPODs
 - copying DVDs
- Libraries must take all reasonable and practicable steps to minimise copyright infringement in their institutions

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Have a library copyright policy, that sets out procedures for dealing with copyright infringement
 - see *Sample Library Copyright Policy* on the LIANZA copyright webpage
- Ensure that all library staff are aware of copyright law, and know where to find the *LIANZA Copyright Guidelines*
- Designate someone to whom staff may refer when a copyright issue arises
 - preferably a senior library manager

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Educate library users about copyright issues
 - including issues relating to copyright and the Internet, and unlawful downloading
- Post warning notices about unlawful downloading or copying above public-access Internet computers, photocopiers, scanners, and other library-supplied equipment
- Place warning notices on screen-savers
 - There are sample warning notices in LIANZA's *Copyright Guidelines*

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Block peer-to-peer traffic
- Block access to Internet sites the sole purpose of which is known to be to facilitate unlawful downloading of materials from the Internet
- Place restrictions on the file size that can be downloaded

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Require users of Internet-access computers to authenticate
- Set up systems to record by time, date and computer the contact details of users
 - There will be difficulties where users are not registered library members
- Retain these records, and enable them to be searched, so that instances of alleged unlawful file sharing can be investigated

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Investigate charges of alleged copyright infringement
- Of course:
 - always treat users with respect
 - observe and preserve their privacy
 - consider them to be innocent until evidence proves otherwise
- Where charges are substantiated and offender identified, provide information and warn that repetition will have consequences

MINIMISING COPYRIGHT INFRINGEMENT

Libraries should:

- Respond in a timely manner to charges of alleged copyright infringement
 - you have the right to challenge and dispute such charges
 - advise if you are not able to identify individuals who have used library computers on dates and times at which breaches of copyright have been alleged
 - be prepared to list the steps taken in your library to minimise copyright infringement

DEALING WITH ALLEGATIONS OF INFRINGEMENT ON LIBRARY STAFF COMPUTER

- If possible, identify the staff member concerned
- If this can be done, ascertain the facts of the case
- If the alleged breach is substantiated, give the staff member additional instruction on copyright law in general and the current incident in particular
- Warn that a repetition may result in disciplinary action being taken under the library's employment contract with that staff member
- At the same time, remind all staff of their obligation to comply with copyright law

DEALING WITH ALLEGATIONS OF INFRINGEMENT ON PUBLIC-ACCESS COMPUTER

- If possible, identify the name and contact details of the person using the computer on the specified date and time
- If this can be done, ascertain the facts of the case
- If the alleged breach is substantiated, give the person information on copyright law as this affects library users
- Warn that a repetition may result in the person being banned from using public-access Internet computers in the library

DEALING WITH ALLEGATIONS OF INFRINGEMENT ON PUBLIC-ACCESS COMPUTER

- If notification is received of a second apparent breach of copyright by the same person, and if that breach is substantiated, give the person a second warning
- If notification is received of a third apparent breach of copyright by the same person, and if that breach is substantiated, tell the person that s/he may not use public-access Internet computers in the library, other than to access the library catalogue or library-subscribed electronic resources, for a period of six months

DEALING WITH ALLEGATIONS OF INFRINGEMENT ON PUBLIC-ACCESS COMPUTER

- If the person is a member of the library, note this information on the person's library record
- However, in many cases it may not be possible to identify the person using the public-access computer on the specified date and time
 - because the library does not require users to authenticate *or*
 - because records of use are kept for only a very short time or not at all

DEALING WITH ALLEGATIONS OF INFRINGEMENT ON PUBLIC-ACCESS COMPUTER

- Where this is so, report back to the IPAP or copyright owner that the alleged breach has been investigated but that the alleged infringement can not be substantiated or alleged infringer identified
- If requested, supply a copy of the library's Copyright Policy as evidence that the library is taking all actions within its power to comply with copyright law, and to attempt to ensure that breaches of copyright within the library are minimised

WHAT DO I SAY TO LIBRARY USERS?

- **Establish the facts:**

Excuse me, I notice that you appear to be copying material from the Internet / CD / DVD – is this so?

- **Ascertain whether the person is aware of copyright law:**

Are you aware that New Zealand copyright law does not allow the copying of such material without the prior permission of the copyright owner? Do you have such permission to make a copy?

WHAT DO I SAY TO LIBRARY USERS?

- **Explain the reason behind copyright law:**

The reason for this law is to protect the rights of authors / composers / performers / copyright owners, so that they receive a return for all their efforts in creating the work, and therefore can go on creating additional works

WHAT DO I SAY TO LIBRARY USERS?

- **Outline the impact on the library:**

The library could be held liable for breaches of copyright law occurring on library-supplied computers / photocopiers / equipment

- *If this happened, the library would be required to remove the equipment, and no longer be able to make Internet-access computers / photocopiers / scanners available to library users*

WHAT DO I SAY TO LIBRARY USERS?

- **Detail the impact on library users:**

The consequence would be that all library users would be disadvantaged

- **Ask the user to stop:**

I must therefore ask you, please, to stop copying this material

WHAT DO I SAY TO LIBRARY USERS?

- **Point out the consequences of future breaches of copyright:**

If you are observed breaching copyright in the library again, you will be asked to leave the library, and you may be banned from using library computers or other equipment for a period

CONCLUSION

- Librarians have a vested interest in ensuring that the provisions of the Copyright Act are complied with and observed
- We may not like some of the things in the Act
- But most copyright holders are reasonable, and willing to cooperate with educational and library endeavours, provided that prior authorisation is obtained
- It is always open for permission to copy to be sought from the copyright owner by the person wanting to make the copy

CONCLUSION

- Copyright law strives to achieve a fair and equitable balance, for the ultimate benefit of
 - authors and copyright owners
 - users of in-copyright works
 - society as a whole
- What we librarians have to do is find ways of making the Copyright Act work for us
- And that requires us first to understand the Act and its provisions
- Today's presentation is intended to help in this

FURTHER INFORMATION AND ASSISTANCE

- LIANZA copyright website
<http://www.lianza.org.nz/resources/copyright>
- Publications
 - *The Copyright Act 1994 and amendments: guidelines for librarians*
 - *Implications for Interloan of the Copyright Act 1994 and amendments*
 - *Questions and answers on copyright for librarians*
 - *Sample library copyright policy*
- Links to other sources

FURTHER INFORMATION AND ASSISTANCE

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