

# **THE POSSIBLE EFFECTS ON NEW ZEALAND LIBRARIES OF THE TPP IP NEGOTIATIONS**

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- LIANZA is the Library and Information Association of New Zealand Aotearoa
- Founded in 1910
- Represents about 450 public, educational, commercial, industrial, legal, health and government libraries in New Zealand
- LIANZA is very concerned at the possible implications for New Zealand libraries of the TPP IP negotiations

# (1) RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

- Most large New Zealand libraries, particularly tertiary and research libraries, order books and other library materials (apart from works published in New Zealand) directly from overseas through specialist library suppliers located in the countries of publication
- Because of the volume of business, these materials are supplied at prices which are much cheaper than can be obtained from New Zealand suppliers
- Often, materials are supplied freight-free

# RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

So,

- A ban on parallel importing would steeply increase the cost of library materials
- This would result in far fewer books and other materials being acquired by libraries
- To the detriment of present and future library users

# RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

- Libraries would also be deprived of many of the specialist services provided by overseas library suppliers – specialist services such as:
  - obtaining and supplying materials from ad-hoc and non-commercial publishers
  - supply of cataloguing data to national bibliographic databases
  - shelf-ready book processing
  - searching for out-of-print books on the second-hand book market

# RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

- Because of the diversity and specialist nature of library purchases, library materials which had to be ordered through New Zealand suppliers would take much longer to be supplied
- This is particularly so because most publishers represented in New Zealand do not carry stock here of the materials required by libraries

# RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

- The re-introduction of a ban on parallel importing therefore would:
  - increase library costs
  - result in fewer books and other materials being acquired
  - involve slower speed of supply
  - remove access to specialist supplier services

# RE-INTRODUCTION OF BAN ON PARALLEL IMPORTING

- The re-introduction of a ban on parallel importing would therefore:
  - limit the ability of libraries to make as much recorded knowledge available as cheaply as possible and as quickly as possible to library users
  - impede education, research and scholarly endeavours in New Zealand
- If a ban on parallel importing is to be re-introduced, there must be an exception for libraries



## (2) EXTENSION OF COPYRIGHT DURATION

- Copyright duration in New Zealand has been the life of the author plus 50 years since 1913 (i.e. for just on a hundred years)
- Prior to 1913 copyright duration was the life of the author or 28 years, whichever was the greater period
- An extension of copyright duration beyond the present period of life of the author or creator plus 50 years can not be justified

# EXTENSION OF COPYRIGHT DURATION

- Certainly, an extension will be of no benefit whatsoever to the creators of literary, dramatic, musical, artistic or scientific works – they are long dead
- An extension of copyright duration will be of benefit only to the creators' heirs and successors (including large corporate organisations that claim copyright ownership of the original works) – to an extent that in LIANZA's view is well beyond what is reasonable

# EXTENSION OF COPYRIGHT DURATION

- An extension of copyright duration will particularly impact on library digitisation projects:
  - there will be a longer period before works come into the public domain and can be digitised
  - it will be even more difficult than it already is to trace copyright owners, to seek permission to copy their work
  - public access to works already digitised by libraries and other institutions may have to be withdrawn
  - library users, students and teaching staff will have reduced access to digitised works and the advantages that digitisation brings (such as 24 / 7 access from home, school or work place, keyword searching facilities, etc)

# EXTENSION OF COPYRIGHT DURATION

- Extension of copyright duration will:
  - make it even more difficult than it already is to trace copyright owners
  - restrict the re-use of currently out-of-copyright works (including texts, photographs, illustrations etc) in new scholarly, educational and research publications
  - frustrate research and scholarship that builds on older scholarship
  - limit creativity and the production of new knowledge
  - impact on educational courses and research
  - reduce access to recorded information and knowledge by New Zealanders

### **(3) RESTRICTIONS ON “FAIR DEALING” PROVISIONS**

- The “fair dealing” provisions in current New Zealand copyright law permit use of in-copyright work for criticism or review of a work or performance, for reporting current events, and for research or private study, under already tight restrictions
- These exceptions recognise that, while the rights of authors, creators, publishers and other copyright owners must be protected, these rights should not be unlimited

# RESTRICTIONS ON “FAIR DEALING” PROVISIONS

- Most scholarship and research builds on older scholarship
- Knowledge will be extended, and society will benefit, if users are able to make use of in-copyright works under prescribed conditions
- The further tightening of the fair dealing provisions will impede research and scholarship, and prevent legitimate re-use – to the disadvantage both of users and of society as a whole

## (4) LIBRARY COPYRIGHT EXCEPTIONS

- One of the primary purposes of a library is to make published information available to its users
- Obviously, no library is able to purchase and make available all books, all journals, all databases and all other types of materials ever published
- The Copyright Act therefore provides a number of exceptions that permit libraries, under prescribed conditions, to do certain things

# LIBRARY COPYRIGHT EXCEPTIONS

- These exceptions include:
  - making copies for users of parts of published works and of periodical articles
  - supplying copies for the users or collections of other libraries
  - making copies of works for preservation or replacement purposes
  - copying certain unpublished works
  - communicating digital copies to authenticated users
  - renting computer programs, sound recordings and films etc



# LIBRARY COPYRIGHT EXCEPTIONS

- Copies may be in print or digital format, but where digital copies are supplied, additional even tighter conditions are prescribed
- The continuation of these exceptions is vital if libraries are to fulfil their role in making the world's recorded information available to all New Zealanders
- Any additional restrictions would greatly impede the ability of libraries to meet the needs of their users

## **(5) INCREASE IN THE PROTECTION GIVEN TO TPMs**

- TPMs can prevent a work from being utilised in ways that are permitted by New Zealand copyright law, thereby depriving users of the rights granted to them under New Zealand legislation
- The New Zealand Copyright Act makes it clear that TPMs that enjoy legal protection in New Zealand do not include processes, devices or systems that “control geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work” (s. 226(b))

# INCREASE IN THE PROTECTION GIVEN TO TPMs

- The Act also states that the issuer of a work protected by a TPM does not have the right to prevent or restrict the exercise of an act that is itself permitted under New Zealand copyright law (s. 226D(1))
- The Act therefore provides a process whereby “qualified persons” such as librarians, archivists and those employed by an educational establishment may, under fairly tight restrictions, lawfully circumvent a TPM on behalf of users – for example to enable them to play a recording on a different type of device, or ensure preservation of a digital copy, etc (s. 226D-226E)

# INCREASE IN THE PROTECTION GIVEN TO TPMs

- An increase in the protection given to TPMs (for example by stopping librarians from overriding TPMs in order to make materials available to their users) will result in those users being deprived of their lawful rights and prevented from exercising exceptions or undertaking acts permitted by current New Zealand copyright law
- LIANZA does not believe that there is any need for an increase in the protection currently given to TPMs

## (6) BALANCE OF COPYRIGHT LAW

- Good copyright law 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
- It is essential that this balance be maintained – it must not be changed to be even more in favour of copyright owners than it is already

# BALANCE OF COPYRIGHT LAW

In LIANZA's view:

- Any changes to New Zealand copyright law must be in the best interests ***not only of***
  - copyright owners ***but also of***
  - users of copyright works
  - libraries
  - educational, research and other institutions  
*and*
  - New Zealand society as a whole

