

THE COPYRIGHT ACT 1994
AND AMENDMENTS :
GUIDELINES FOR LIBRARIANS

Seventh Edition

**Produced by the Standing Committee on Copyright of the
Library and Information Association
of New Zealand Aotearoa
Te Rau Herenga o Aotearoa**

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THE COPYRIGHT ACT 1994 AND AMENDMENTS : GUIDELINES FOR LIBRARIANS

NOTE: These guidelines are intended to provide an explanation of the provisions of the Copyright Act 1994 (as amended) and their implications for libraries, as these are understood at present by the Library and Information Association of New Zealand Aotearoa : Te Rau Herenga o Aotearoa. It is recommended that librarians should consult the Act and its amendments and, for more detailed explanation, seek further advice from their legal advisers.

COPYRIGHT

1. DEFINITION OF COPYRIGHT (ss.14-16)

- 1.1 Copyright is a property right that enables the copyright holder to do certain specified things (listed in s.16) in relation to the following original works:
- literary, dramatic, musical or artistic works
 - sound recordings
 - films
 - communication works
 - typographical arrangements of published editions, e.g. the typesetting and layout of a new edition of a work.
- 1.2 Copyright therefore covers a very wide range of materials, including books, periodicals, newspapers, personal papers, musical and art works, sound recordings, films, videos, DVDs, photographs, multi-media works, communication works, sound and television broadcasts, computer programs and software, computer databases, CD-ROMs, maps, charts, diagrams, graphs, sheet music, paintings, works of architecture, and typographical arrangements of published editions.
- 1.3 These works are covered, whether they are published or produced in New Zealand or overseas.
- 1.4 Copyright does not, however, exist until a work is recorded, in writing or otherwise.
- 1.5 Copyright is not solely a right to copy. It includes a number of other rights relating to the work as well – for example to perform, play or show the work in public, or to communicate the work.
- 1.6 The lending (issuing) of works is not normally a breach of copyright.

2. COPYRIGHT OWNERSHIP (s.21)

- 2.1 Copyright is normally owned by the author. However, if a work is made by an employee in the course of employment, that person's employer owns the copyright. And if someone commissions a work such as a photograph, sound recording, painting, model, map or computer program to be made, then the person who commissions and pays for the work is the copyright owner.
- 2.2 Copyright ownership may be passed to others by contract or agreement. Many authors of books and periodical articles, for example, pass copyright ownership to their publishers. Hence, for most commercially published work, copyright ownership rests with the publisher.
- 2.3 There may be separate copyright ownership in illustrations, photographs, graphics, maps, diagrams or graphs, etc. that are included in a periodical article, book or communication work.
- 2.4 Copyright ownership in dissertations and theses rests with the author.
- 2.5 Copyright ownership in unpublished works rests with the author.

3. DURATION OF COPYRIGHT (ss.22-27)

- 3.1 Copyright in a literary, dramatic, musical or artistic work expires 50 years from the end of the calendar year in which the author died, or if the author is unknown, 50 years from the end of the calendar year in which the work was first made available to the public.
- 3.2 Copyright in a film or sound recording expires 50 years from the end of the calendar year in which the work was made, or 50 years from the end of the calendar year in which the work was made available by publication, broadcast or communication to the public.
- 3.3 Copyright in a typographical arrangement of a published edition (including a new edition of an older work) expires 25 years from the end of the calendar year in which the edition was first published.
- 3.4 Copyright in an unpublished work expires 50 years from the end of the calendar year in which the author died, or if there is no author, 50 years from the end of the calendar year in which the work was made.
- 3.5 Copyright in Crown publications continues for 100 years. However, there is no copyright in any of the following Government publications: bills, acts, regulations, bylaws, parliamentary debates, reports of select committees laid before the House of Representatives, judgments of courts and tribunals, reports of Royal commissions, commissions of inquiry, ministerial inquiries and statutory inquiries.

4. INFRINGEMENT OF COPYRIGHT (Part II, ss.29-39, 93)

4.1 Copyright is infringed by a person who, without permission, does any of the following restricted acts:

- copies the work, or any part of it;
- publishes the work;
- issues copies of the work to the public (note that “issuing” here does not refer to the lending of original works to the public);
- performs, plays or shows the work in public;
- makes the work available to the public by means of an electronic retrieval system;
- broadcasts the work;
- communicates the work to the public;
- makes an adaptation of the work, or does any of the above in relation to an adaptation.

4.2 Copyright is also infringed by a person who, without permission:

- imports an infringing copy;
- possesses or deals with an infringing copy;
- provides the means for making an infringing copy;
- permits the use of premises for an infringing performance;
- provides apparatus for an infringing performance.

4.3 “Providing means for making infringing copies” (s.37) is not intended to include libraries which provide public photocopying machines, but rather to cover equipment specifically designed for copying a particular work on a commercial scale, e.g. the use of moulds for making three-dimensional objects which infringe copyright.

4.4 Where the Act allows a copy to be made, subsequent selling or letting for hire of that copy is not permitted. Furthermore, subsequent selling or letting for hire may make what was once a permitted copy an infringing copy.

5. PRINCIPAL SECTIONS OF THE ACT

5.1 The sections of the Copyright Act 1994 which are of particular relevance to librarians are:

s.2(1)	Interpretation – and in particular the definitions of “copying”, “communicate” and “communication work”
ss.12 and 35 and Part VII	Meaning of, and importing, infringing copy, and parallel importing provisions
ss.26-27	Crown copyright
Part II	Infringement of copyright
s.43	Research or private study
ss.44-49	Copying for educational purposes
ss.50-56E	Copying by librarians or archivists
s.58	Copying by Parliamentary Library for Members of Parliament
s.71	Abstracts of scientific or technical articles
s.79	Rental of films etc. by educational establishments and libraries
s.80	Back-up copy of computer program

ss.82-91	Communication works
s.93	Subsequent dealings with copies made under Part III
ss.94-110	Moral rights
ss.122A-122U	Infringing file sharing regime
ss.147-168	Copyright licensing
ss.226-226E	Technological protection measures
ss.226F-226J	Copyright management information

5.2 These sections are dealt with below under the generic category of library activity which they most affect.

6. PRESCRIBED AND NON-PRESCRIBED LIBRARIES (s.50)

6.1 The Copyright Act 1994 divides New Zealand libraries into prescribed libraries and non-prescribed libraries.

6.2 Libraries prescribed in the Act are:

The National Library
The Parliamentary Library
The District Law Society Libraries
Libraries maintained by educational establishments
Libraries maintained by government departments
Libraries maintained by local authorities.

6.3 Libraries prescribed in the Copyright (General Matters) Regulations 1995 (SR 1995/146) are:

Libraries that are members of the Interloan Scheme jointly administered by the National Library of New Zealand and the New Zealand Library and Information Association : Te Rau Herenga o Aotearoa (now the Library and Information Association of New Zealand Aotearoa : Te Rau Herenga o Aotearoa).

6.4 Libraries prescribed in the Copyright (General Matters) Amendment Regulations 1998 (SR 1998/281) are:

Libraries of Crown entities, as that term is defined in section 2 of the Public Finance Act 1989.

6.5 The Interloan Scheme has two categories of library: Charter library and non-Charter library. Both categories of library are members of the Interloan Scheme and are therefore prescribed libraries.

6.6 Non-prescribed libraries are all libraries that are not prescribed.

6.7 Non-prescribed libraries, other than those libraries conducted for profit, may apply to be classed as prescribed libraries (s.234(b)).

6.8 A library that forms part of an organisation conducted for profit is not in itself necessarily a library conducted for profit.

- 6.9 While prescribed libraries may take advantage of the permitted acts listed in ss.51-56C and 79, non-prescribed libraries may not. That is, unless licensed by the copyright owner to do so, the librarians of non-prescribed libraries may not:
- copy a reasonable proportion of a work, a whole work, or a periodical article for their own users or for the users of other libraries;
 - copy a work for the collections of other libraries;
 - copy a work or article to preserve or replace an item in their own collections or the collections of other libraries;
 - copy an unpublished work for any person;
 - rent a computer program, sound recording or film to any person;
 - communicate digital copies of works.
- 6.10 Librarians of non-prescribed libraries are encouraged to think of alternative ways in which they can assist their own users to make use of the Copyright Act provisions available to those users.
- 6.11 As from August 2010, overseas libraries are deemed members of the Interloan Scheme and are therefore prescribed libraries in terms of ss.50, 53, 54 and 55.

ACQUISITIONS

7. PARALLEL IMPORTING (s.35 and s.12)

- 7.1 With the enactment of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998, it is no longer an infringement of copyright to import into New Zealand an object (including a book or other work) that has been made by or with the consent of the owner of the copyright, or other equivalent intellectual property right, in the country in which the object was made.
- 7.2 This means that it is now legal for libraries to import books or other works directly from overseas, rather than through New Zealand distributors or booksellers.
- 7.3 It continues to be an offence to import into New Zealand a pirated copy of a work.
- 7.4 The cost of publications supplied by overseas document delivery companies includes a royalty fee. Librarians may assume that such supply is lawful and not in breach of the parallel importing provisions of the Act.
- 7.5 Under the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003, copyright in a film produced principally for cinematic release is infringed if a copy of the film is imported into New Zealand, other than for a person's private or domestic use, within 9 months of it first being made available to the public, whether in New Zealand or elsewhere. This restriction expires on 31 October 2013.

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

- 8.1 Librarians of a prescribed library may make a copy (including a digital copy) for the collections of another prescribed library of any part of or a complete book, including any artistic work in the book, 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; and
 - on demand, pays equitable remuneration to the copyright owner for the work copied.
- 8.2 This provision applies only to books. It does not apply to serials, music scores or other types of library materials. It does allow for out-of-print books to be copied completely.
- 8.3 The requesting prescribed library must assure the supplying prescribed library in writing that these conditions have been complied with.
- 8.4 Where the copy is supplied in print format, it is recommended that a sticker or stamp should be placed on the copy stating: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”.
- 8.5 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 adding it to its own collections, provided that the conditions listed under paragraph 8.1 above have been met. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”.
- 8.6 Where the copy is supplied in digital format, 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.
- 8.7 Librarians of non-prescribed libraries may not request or supply copies under this section.

9. COPYING FOR PRESERVATION OR REPLACEMENT (s.55)

(a) for the library’s own collections

- 9.1 Librarians of a prescribed library may make a copy (other than a digital copy) of any item (including books and journal issues) 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 and provided that it is not reasonably practicable to purchase a copy of the item.
- 9.2 Librarians 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 by the digital copy except for purposes of research, the nature of which requires or may benefit from access to the original item; and
- it is not reasonably practicable to purchase a copy of the original item.

(b) for the collections of other libraries

- 9.3 Librarians of a prescribed library may make a copy (other than a digital copy) of any item in its collections for replacing in the collections of another prescribed library an item that has been lost, destroyed, or damaged, provided that it is not reasonably practicable to purchase a copy of the item.
- 9.4 Librarians 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; and
 - it is not reasonably practicable to purchase a copy of the original item.
- 9.5 The requesting prescribed library must assure the supplying prescribed library in writing that the conditions listed in s.55 as outlined above have been complied with.
- 9.6 Where the copy is supplied in print format, it is recommended that the supplying prescribed library should place a sticker or stamp on the copy stating: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.
- 9.7 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, provided that it is not reasonably practicable to purchase a copy of the item. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.
- 9.8 Where the copy is supplied in digital format, 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.
- 9.9 Librarians of non-prescribed libraries may not copy to replace items in their collection and may not ask other libraries to copy to replace items in their collections under this section.

10. COPYING FOR VERTICAL FILES

- 10.1 Vertical files may include only original works; copies made under s.54 (copying to add to the collections of other libraries); copies made under s.55 (copying for preservation or replacement); copies made by or within the licence of the copyright owner; or copies made from works that are out-of-copyright.

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

INTERLOAN

See the separate guidelines on Interloan in Schedule 1 (below).

PUBLIC COPYING

11. COPYING BY LIBRARIANS FOR THEIR USERS (ss.51, 52, 56, 56B)

- 11.1 Librarians of a prescribed library may make for supply on the same occasion directly 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, together with any artistic work included in the article; or
 - more than one article from the same issue of a periodical, together with any artistic work included in the articles, if these articles relate to the same subject matter.
- 11.2 There must be a specific request to the librarian to provide a copy by the person wanting the copy.
- 11.3 Only one copy may be supplied to each person. It is permissible for named individuals to request through one person that a librarian of a prescribed library supply a single copy to each of them. But it is not permissible for librarians to make multiple copies and supply these to one person who then on-distributes the copies to other people, since under ss.51-52 librarians of prescribed libraries are authorised to supply only one copy to any person on the same occasion, and there must be a request by the person to the librarian to supply the copy.
- 11.4 The person to whom the copy is supplied must use the copy only for the purposes of research or private study. There is no obligation on the librarian to establish this before making the copy, but of course, if the librarian does know this, then a copy must not be made or supplied.
- 11.5 Any payment required must be no more than the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library.

- 11.6 “Reasonable proportion” is not defined in the Act. However, guidance may be obtained from s.43 (fair dealing for research or private study) and s.44 (copying for educational purposes). In essence, it is the significance of what is copied that impacts on “reasonable proportion”, not simply the amount that is copied. It is especially important to note that there is no “ten percent rule”.
- 11.7 Where the copy is supplied in print format, it is recommended that a sticker or stamp should be placed on the copy stating: “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”.
- 11.8 Librarians of a prescribed library may make for supply to any person one copy of an unpublished work, provided that the copyright owner has not prohibited the copying. The conditions outlined above in paragraphs 11.4 and 11.5 apply.
- 11.9 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 notice should state: “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.
- 11.10 In addition, the librarian must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied.
- 11.11 Librarians of non-prescribed libraries may not make copies for users of their libraries.

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

- 12.1 Librarians of a prescribed library may communicate (that is, transmit or make available by means of a communication technology, including by means of a telecommunications system, electronic retrieval system or computer network) a digital copy of a work to an authenticated user, provided that:
- the librarian has obtained the digital copy lawfully;
 - the librarian ensures that each user is informed in writing about the limits of copying and communication allowed by the Act, including that a digital copy of the work may only be copied or communicated by the user in accordance with the provisions of the Act (a sample written notice, which could be included as part of the login process to the digital file in which the digital copy is stored, is given in Appendix 3);
 - the digital copy is communicated to the user in a form that cannot be altered or modified; and
 - 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.
- 12.2 “Authenticated user” means 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.

- 12.3 So, section 56A allows the librarians of 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 agreement, provided that the conditions listed in paragraph 12.1 above have been met. 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. Because contract law permits signatories to an agreement to contract out of copyright law, section 56A does not apply where permission to communicate, with or without restrictions, has already been agreed between the prescribed library and the copyright owner – for example, digital copies of university theses, or works included in electronic databases which are subject to conditions as set out in licence agreements signed by the library with database providers, aggregators or publishers. 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.
- 12.4 Librarians of non-prescribed libraries may not communicate digital copies to users.

13. CURRENT AWARENESS SERVICES

- 13.1 The copying of a contents page or pages of a journal will not normally infringe copyright in that journal, because the copying is not substantial in terms of either the amount or the significance, in relation to the work as a whole. Where this is so, the copying may be done by anyone.
- 13.2 However, if the contents page contains detailed descriptions of the articles in the publication, it may be arguable that it is a more substantial part of the work, and copying may therefore be an infringement of copyright. Such pages would need to be considered on a case-by-case basis.
- 13.3 Librarians of prescribed libraries have a further defence (if needed) in that s.51 allows copying from a “published work” as long as only a “reasonable proportion” is copied. A journal issue or volume fits within the definition of a “published work”, and the contents pages would not normally be more than a “reasonable proportion”. The following conditions apply under s.51: the copying may be supplied “to any person” as long as it is one copy only, is to be used only for the purposes of research or private study, and any payment required is limited to the cost of production of the copy and a reasonable contribution to the general expenses of the library.
- 13.4 It is permissible to set up current awareness profiles for the regular distribution of contents pages to staff or library users.
- 13.5 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 the librarian to provide a copy by the person wanting the copy;
 - no person is supplied on the same occasion with more than one copy;
 - 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 payment required is no more than the total of the cost of production of the copies and 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.

14. COPYING BY LIBRARY USERS FOR THEMSELVES (s.43)

- 14.1 “Fair dealing” with a work for the purposes of research or private study does not infringe copyright in the work. In determining what is fair, users must take into account:
- the purpose of the copying – it must be for research or for private study;
 - the nature and significance of what is copied, in relation to the work as a whole;
 - whether the work can be obtained within a reasonable time at an ordinary commercial price;
 - the effect of the copying on the potential market for, or value of, the work;
 - the amount and substantiality or importance of the part copied, taken in relation to the whole work.
- 14.2 Provided that these fair dealing guidelines are observed, it is permissible to copy the whole of a work, for example all of a periodical article. However, only one copy of the same work, or the same part of a work, may be made on any one occasion.
- 14.3 All libraries which provide photocopiers or scanners for users to do their own copying should provide information on copyright rules by means of notices which draw users’ attention to these conditions and offer a clear explanation of them. A sample notice is given in Appendix 1.
- 14.4 These provisions relate to all works that are capable of being copied, including pictures and sheet music.
- 14.5 Librarians should establish a compliance programme, to ensure that the conditions of the Act are being observed.

EDUCATIONAL COPYING

15. COPYING FOR EDUCATIONAL PURPOSES (ss.44, 44A, 46)

- 15.1 Under s.44(1), a copy of the whole or part of a literary, dramatic, musical or artistic work may be made by any means, provided that:
- the copying is done in the course of instruction (which includes preparation),
 - by or on behalf of the person giving a lesson at an educational establishment,
 - to assist the instructor in preparing and giving the lesson, and
 - no more than one copy is made on any one occasion.

- 15.2 Under s.44(2), multiple copies of the whole or part of a literary, dramatic, musical or artistic work may be made, provided that:
- the copying is done in the course of instruction (which includes preparation),
 - by the person who is giving the course or by a person who is receiving the instruction, and
 - the copying is not done by means of a reprographic process (that is, the copying is done by hand).
- 15.3 Under ss.44(3-4), multiple copies of part of a literary, dramatic, musical or artistic work may be made, provided that:
- the copying is done for an educational purpose, or by or on behalf of an educational establishment,
 - no charge is made for the supply of a copy to any student, and
 - no more than the greater of 3% or 3 pages are copied. If these conditions would result in the whole work being copied, then only 50% may be copied. Further, neither the part of the work copied under these conditions, nor any other part of the work, may be copied by or on behalf of anyone in that educational establishment within 14 days.
- 15.4 Under s.44(4A), copies of a work made under ss.44(3-4) may be communicated (that is, transmitted or made available by means of a communication technology, including by means of a telecommunications system, electronic retrieval system or computer network) to students or other people who are to receive, are receiving, or have received, a lesson that relates to the work.
- 15.5 Under s.44A, educational establishments may store a copy of a page or pages from a work that is made available on a website or other electronic retrieval system, provided that:
- the material is stored for an educational purpose;
 - the material is displayed under a separate frame or identifier; identifies the author (if known) and source of the work; and states the name of the educational establishment and the date on which the work was stored;
 - the material is restricted to use by authenticated users (defined as participants in the course of instruction for which the material is stored, who can access the stored material only through a verification process that verifies that they are entitled to access the stored material); and
 - the stored material is deleted within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.
- 15.6 Section 46 details the stringent conditions under which anthologies may be compiled for educational use.
- 15.7 Licensing agreements (see paragraphs 26.1-26.6 below) allow more generous conditions for multiple copying for educational purposes.

- 15.8 Public libraries copying materials for school projects may do so under the provisions of s.44(3-4) (copying for educational purposes) if the copying is done on behalf of an educational establishment (note that the 3% / 3 pages / 50% restriction applies). Public libraries may also copy materials for school projects under ss.51-52 (copying by librarians), provided that the provisions of those sections of the Act are observed. In particular, it should be noted that there must be a specific request to the librarian to provide a copy by the person wanting the copy, and only a single copy may be made. It is not permissible under s.51-52 to make multiple copies in expectation that there will be subsequent requests for copies by other students.

16. COURSE RESERVE COLLECTIONS

- 16.1 The placing of copies of materials which are in high demand in a library's print or electronic Course Reserve, Restricted Loan or Desk Copy collection is permitted if the copies are made in accordance with sections 44(3-4A), 44A, 54, 55 or 56A of the Copyright Act. However, each of these sections has its own specific conditions, and libraries wishing to copy for print or electronic Course Reserve collections under any of these sections must take care to ensure that they comply with those conditions. Some libraries may be able to do so, while for other libraries compliance with the conditions of some sections may not be possible.
- 16.2 A teacher or lecturer at an educational establishment may make multiple copies of part of a work for educational purposes under the terms of s.44(3-4A) outlined in paragraphs 15.3-15.4 above (note particularly the 3 per cent / 3 pages restriction), or, where applicable, under the terms of any copyright licensing scheme. A copy may then be placed in or accessed through the library's print or electronic Course Reserve collection.
- 16.3 A librarian may also make copies under the same terms, as s.44(3) allows copying to be done "by or on behalf of an educational establishment".
- 16.4 A teacher, lecturer or librarian at an educational establishment may, under s.44A, store a copy of a page or pages from a work that is made available on a website or other electronic retrieval system, and permit access by authenticated students through the library's electronic Course Reserve collection, provided that the conditions outlined in paragraph 15.5 above have been complied with. Since these conditions may be difficult to achieve in the library's electronic Course Reserve collection, it may be preferable for such storage to be undertaken by teaching staff utilising course management systems, rather than by the library. Links can, of course, be made from the library's electronic Course Reserve collection to digital resources stored elsewhere.
- 16.5 A copy of all or part of a book (but not of a periodical article) to be added to the library's collections under s.54 (Copying by librarians for collections of other libraries) may be placed in the library's print or electronic Course Reserve collection, provided that the conditions outlined in paragraphs 8.1-8.7 above have been complied with. Since these conditions may be difficult to achieve in the library's print or electronic Course Reserve collection, it may be preferable for copies made under s.54 to be placed in the library's permanent collections, rather than in its Course Reserve collection.

- 16.6 Section 55 of the Act permits the librarian of a prescribed library to make a copy of any item in its collection for the purposes of “preserving or replacing that item by placing the copy in the collection of the library in addition to or in place of the item”. If (but only if) the reason that a copy of a periodical article or section of a book is placed in the library’s print Course Reserve collection is to reduce wear and tear on the original issue of the periodical or book and therefore help to preserve it, copies may be made under this section. Note that a digital copy may be made and placed in the library’s electronic Course Reserve collection for preservation or replacement purposes only if the original item is replaced by the digital copy, and “is not accessible by members of the public except for purposes of research, the nature of which requires or may benefit from access to the original item” (s.55(3)). See paragraphs 9.1-9.2 above. Since these conditions may be difficult to achieve in the library’s print or electronic Course Reserve collection, it may be preferable for copies made under s.55 to be placed in the library’s permanent collections, rather than in its Course Reserve collection.
- 16.7 Section 56A allows digital copies of works to be communicated to authenticated users, including through the library’s electronic Course Reserve collection, provided that the conditions outlined in paragraphs 12.1-12.4 above have been complied with. Since these conditions may be difficult to achieve in the library’s electronic Course Reserve collection, it may be preferable for copies made under s.56A to be communicated via a separate system, rather than through the library’s electronic Course Reserve collection. Links can, of course, be made from the library’s electronic Course Reserve collection to digital resources stored elsewhere.
- 16.8 Lecturers at those educational establishments which belong to a copyright licensing scheme may, if the scheme permits, make enough print copies of a work to distribute to everyone in the class, or provide access electronically to authenticated students, thereby by-passing the library’s Course Reserve collection altogether.
- 16.9 Print copies from or electronic access to journal articles in library-subscribed e-journal databases may be permitted to be placed in or accessed through the library’s print or electronic Course Reserve collection, in accordance with the terms of the library’s licence agreements with electronic database publishers and providers. However, libraries should be aware of the complexities of keeping track of which database licence agreements permit this.
- 16.10 A copy of a work received on Interloan from another library may not be placed in a print or electronic Course Reserve collection, if it was received for the research or private study of the teacher or lecturer, since the copy was supplied for the needs of the recipient, not of the recipient’s students. However, it is permissible for a copy received on Interloan to be copied and included in print course-packs for students, provided that this copying is recorded in any sampling survey required under copyright licensing agreements.
- 16.11 A user who borrows an original item from the library’s print Course Reserve collection, or who accesses an item through the library’s electronic Course Reserve collection, may make one copy from it, provided that the copying is within the limits of fair dealing set out in s.43 (outlined in paragraph 14.1 above). However, a user who borrows a photocopy from a print Course Reserve collection may not make a copy of it. If students are required to read photocopied materials, these should be issued or made available to them in print or electronic course-packs in accordance with copyright licensing schemes and licence agreements with electronic database providers.

- 16.12 Since copies received from an overseas document supply company will have been made in accordance with the copyright legislation of the source country, and a royalty fee included in the cost, the copies may be included in a library's print or electronic Course Reserve collection, provided that no further copies are made by the library, and provided that any contractual stipulations received with the copies from the supplier are complied with.
- 16.13 It is always permissible for original books and original issues of periodicals to be placed in the owning library's print Course Reserve collection. Any subsequent copying of such original works by library users must be in accordance with the relevant provisions of s.43, as outlined in paragraph 14.1 above.
- 16.14 Copying for a library's Course Reserve collection may not be undertaken under section 51 ("Copying by librarians of parts of published works") or section 52 ("Copying by librarians of articles in periodicals"). The Salmon Judgment (Copyright Licensing Ltd v University of Auckland and others, *NZLR* 2002 v. 3, p. 76-98) at paragraph 103 states, in relation to these two sections, that "it is implicit that a request must be made by, or at least on behalf of, the person wanting to use the copy for the purposes of research or private study". Copies made by librarians for Course Reserve collections do not meet this requirement.

17. RECORDING BY EDUCATIONAL ESTABLISHMENTS (ss.45, 48)

- 17.1 A film or film sound-track may be copied for the purposes of instruction, but only for a course on how to make films or film sound-tracks, and provided that no charge is made for the supply of the copy.
- 17.2 Likewise, a sound recording may be copied for the purposes of instruction, but only if the course relates to the learning of a language, or is conducted by correspondence, and provided that no charge is made for the supply of the copy.
- 17.3 Recordings or copies of recordings of broadcasts or communication works may be made or communicated by or on behalf of an educational establishment for the educational establishment's educational purposes, unless there is a licensing scheme available and the educational establishment knew that fact. Screenrights: the Audio-Visual Copyright Society (PO Box 1248, Neutral Bay, NSW 2089, Australia) administers a licensing scheme for off-air recording and copying for New Zealand educational institutions.
- 17.4 Recordings or copies of recordings of broadcasts or communication works may be made and supplied by an educational resource supplier to an educational establishment for the educational establishment's educational purposes, unless there is a licensing scheme available and the educational establishment or the educational resource supplier knew that fact.

MULTI-MEDIA

18. FILMS AND SOUND RECORDINGS (ss.79, 81, 81A)

- 18.1 Prescribed libraries and educational establishments may rent sound recordings and films to any person as long as no profit is intended, and the work has been put into circulation with the licence of the copyright owner.
- 18.2 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.
- 18.3 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 under s.47.
- 18.4 Copyright ownership of a tape recorded interview or film rests with the person who has arranged to make the recording or film (s.5(2)(b)).
- 18.5 Copyright ownership of a communication work rests with the person who makes the communication work (s.5(2)(c)).
- 18.6 Section 81A allows copying (including format shifting) of sound recordings, but only from legitimately acquired sound recordings 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. Section 81A does not allow the copying of sound recordings held and owned by the library, because the person making the copies does not own the recordings. However, the copying or format shifting of a person's own sound recordings by that person in the library using library-supplied equipment is not prohibited.
- 18.7 There is no provision in the Copyright Act for copying or format shifting of films, videos or DVDs.

19. COMPUTER PROGRAMS (ss.79-80)

- 19.1 Computer programs such as CD-ROMs may include text, photographs, films, sound recordings, musical work, dramatic work, artistic work and literary work. They are compilations, having the same protection as literary works, and there may be separate copyright, owned by different people, in each of the components. There may also be restrictions on use (for example networking, printing, or using for commercial purposes) which must be complied with.
- 19.2 Prescribed libraries and educational establishments may rent computer programs under the same conditions as sound recordings and films, that is, as long as no profit is intended and the work has been put into circulation with the licence of the copyright owner.
- 19.3 Libraries may also loan out computer programs in the same way that they loan out books. However, to comply with licence agreements which prohibit networking or the use of the

program by more than one simultaneous user, it may where appropriate be desirable for libraries to place a label on the disk pocket, requesting borrowers to remove the computer program from their system when they return it to the library.

- 19.4 A back-up copy of a computer program may be made by or on behalf of the lawful user of the program, in order to preserve the original in case it should be lost, destroyed or rendered unusable. There is no provision for back-up copies of other media to be made.

20. ELECTRONIC DATABASES

- 20.1 The issues for librarians in this context are the creation and use of electronic databases as a way of preserving library materials or extending multi-user access to such materials.
- 20.2 Electronic databases are compilations, a form of literary work (s.2(1)), and are themselves protected as separate works, even if they contain only non-copyright or out-of-copyright material.
- 20.3 Publication, which means the issue of copies of a work to the public and which includes making a work available to the public by means of an electronic retrieval system (s.10(1)), is a restricted act (s.31). So, too, is communicating a work to the public (s.16(1)(f)) – that is, transmitting or making available by means of a communication technology, including by means of a telecommunications system, electronic retrieval system or computer network (s.2(1)).
- 20.4 The creation, networking or use of an electronic database will generally require permission from each affected copyright owner.
- 20.5 In using commercial electronic databases, copies may be made only in terms of the library's contract with the supplier of the database.
- 20.6 The Copyright (New Technologies) Amendment Act 2008 incorporates a new s.44A into the Copyright Act 1994 which permits educational establishments to store work made available on a website or other electronic retrieval system for educational purposes. See paragraph 15.5 above.
- 20.7 Replacement s.48 allows the copying and communication of a communication work for educational purposes. See paragraphs 17.3-17.4 above.
- 20.8 Under new s.56A, librarians of prescribed libraries may communicate digital copies to authenticated users. See paragraphs 12.1-12.3 above.
- 20.9 Apart from these exceptions, unless there is specific permission to do so, it is illegal to include copyright material in a database which is accessed by third parties.
- 20.10 Permission to include copyright material in a database will need to cover a number of different actions:
- 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.

21. COPYRIGHT AND THE INTERNET

- 21.1 There is copyright in most types of material on the Internet – email messages, postings to bulletin boards, news groups and social networking sites, books, articles, reports, conference papers and other publications, music, films and videos, games, databases, websites, etc. The fact that something is posted on the Internet does not automatically give anyone the right to download, copy, store or disseminate it, unless the author or copyright owner has specifically granted permission or waived copyright, or has made the work available via an open content licence such as a Creative Commons licence which permits free downloading or copying, or the Copyright Act allows this, or the work is out of copyright and in the public domain.
- 21.2 It has been argued that the placing of material on the Internet without restrictions is an implied licence allowing others to view, download, print, store and/or disseminate the material. However, 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 (s.16). When in doubt, permission should always first be obtained from the copyright owner.
- 21.3 There may be separate copyright in trade-marks, logos, photographs, illustrations, sound, video and images.
- 21.4 The provision of hypertext links from one website to another may breach copyright in trade-marks, logos or other material.
- 21.5 Defence against a charge of breach of copyright is likely to relate to what use was made of the copy: for example, whether it was for research or private study, or whether any financial gain was made from its use.
- 21.6 Librarians must ensure that any use of materials on the Internet complies with copyright law, or with licence or contractual agreements.
- 21.7 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. But unless this is so, the downloading of music from the Internet is a breach of copyright, and may not be undertaken either on library computers, or on individuals' own computers. And the subsequent copying of the illegally-downloaded music onto individuals' own devices only compounds the breach of copyright.
- 21.8 There is no provision in the Copyright Act for downloading or copying of films without the prior permission of the copyright owner.
- 21.9 Libraries should take all reasonable and practicable steps to stop the illegal downloading or copying of materials in the library.

22. INTERNET SERVICE PROVIDERS (ISPs) AND INFRINGING FILE SHARING REGIME (ss. 92B-92E, 122A-122U)

22.1 The Copyright (New Technologies) Amendment Act 2008 and Copyright (Infringing File Sharing) Amendment Act 2011 insert into the Copyright Act 1994 new sections 92B-92E relating to Internet service provider liability, and new sections 122A-122U relating to infringing file sharing.

22.2 Because the earlier section 92A has been repealed, libraries are no longer included in the definition of Internet service provider (ISP), and therefore sections 92B-92E do not apply to libraries.

22.3 Section 122A(1) inserts a definition of “**IPAP, or Internet protocol address provider**” which applies to sections 122B-122U:

“IPAP, or Internet protocol address provider, means a person that operates a business that, other than as an incidental feature of its main business activities, –
(a) offers the transmission, routing, and providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing; and
(b) allocates IP addresses to its account holders; and
(c) charges its account holders for its services; and
(d) is not primarily operated to cater for transient users”.

This definition is worded specifically to exclude libraries, schools, universities and businesses “that provide Internet access but are not traditional ISPs”.

22.4 Libraries and/or their parent organisations are, however, included in section 122A(1)’s definition of “**account holder**”, which “in relation to an IPAP, means a person who has an account with the IPAP”.

22.5 Sections 122B-122U create an **infringing file sharing regime**, which 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, at the instigation of copyright owners, to IPAP account holders who are alleged to have repeatedly infringed copyright through file sharing.

22.6 “**File sharing**” is defined in section 122A(1) as “where –
(a) material is uploaded via, or downloaded from, the Internet using an application or network that enables the simultaneous sharing of material between multiple users; and
(b) uploading and downloading may, but need not, occur at the same time”.

22.7 Account holders have the right to challenge any of the infringement notices (detection notice, warning notice, enforcement notice), but must do so within 14 days of the date of the infringement notice.

22.8 The infringing file sharing regime also includes involvement of the Copyright Tribunal, which can award compensation of up to \$15,000 if a breach of copyright is substantiated, and of the District Court, which can order suspension by an IPAP of the account holder’s Internet account for up to six months.

- 22.9 Libraries are affected by the infringing file sharing regime as IPAP account holders. Libraries or their parent organisations may receive infringement notices from their IPAP, and if so are required to take action – to challenge the infringement notices, and to investigate and attempt to stop any substantiated copyright infringement.
- 22.10 The infringing file sharing regime raises a number of problems for organisations such as libraries:
- An account holder (an organisation that has an account with an IPAP) is not the same as a user (a person who uses the Internet services made available by an account holder). An account holder such as a library, university or school may have many thousands of users.
 - In a library situation, alleged repeat infringements may apply, not to multiple instances by one user, but to single instances by a number of different users.
 - Account holders such as libraries may not be able 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.
- 22.11 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, and 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.
- 22.12 LIANZA recommends that libraries should take the following steps to minimise copyright infringement:
- Libraries should have a copyright policy that sets out procedures for dealing with copyright infringement. LIANZA’s Standing Committee on Copyright has prepared a sample policy, entitled *Sample Library Copyright Policy*, which is available on LIANZA’s copyright webpage at <http://www.lianza.org.nz/resources/copyright> and which libraries are free to adopt or adapt if they wish to do so.
 - Libraries should ensure that all staff are aware of copyright law, and know where to find these *Copyright Guidelines*.
 - A senior library manager should be nominated, to whom staff may refer when a copyright issue arises.
 - Library users should be educated about copyright issues, including issues relating to copyright and the Internet.
 - Warning notices about illegal downloading or copying should be posted above public-access computers, photocopiers, scanners and other library equipment, and on screen-savers. A sample warning notice is given in Appendix 2 (below).
 - Where possible, access should be blocked to Internet sites the sole purpose of which is known to be to facilitate the illegal downloading of materials.
 - Charges of alleged copyright infringement should be investigated – of course always treating users with respect, observing and preserving their privacy, and considering them to be innocent unless evidence proves otherwise.
 - Where breaches of copyright by a library staff member are substantiated, the person should be given additional instruction about copyright law in general and the current incident in particular, and warned that a repetition may result in disciplinary action being taken under the library’s employment contract with that staff member.

- Where breaches of copyright by a library user are substantiated, and the user can be identified, the person should be given information about copyright law as this affects library users, and warned that a repetition may result in the person being banned from using public-access Internet computers in the library for a period.
- Charges of alleged infringement should be responded to in a timely manner. Libraries do have the right to challenge and dispute such charges; they should report back to the IPAP or copyright owner if they are not able to identify individuals who have used library computers on dates and times at which breaches of copyright have been alleged; and they should be prepared to list the steps taken by their library to minimise copyright infringement.

23. TECHNOLOGICAL PROTECTION MEASURES (ss.226, 226A-E)

- 23.1 The Copyright (New Technologies) Amendment Act 2008 replaces s.226 in the Copyright Act 1994 and adds new ss.226A-E, dealing with technological protection measures. A **technological protection measure (TPM)** is defined as “any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright in a TPM work; but, for the avoidance of doubt, does not include a process, treatment, mechanism, device, or system to the extent that, in the normal course of operation, it only controls any access to a work for non-infringing purposes (for example, it does not include a process, treatment, mechanism, device, or system to the extent that it controls geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work)”. A **TPM work** “means a copyright work that is protected by a technological protection measure”. A **TPM circumvention device** “means a device or means that is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of a technological protection measure, and has only limited commercially significant application except for its use in circumventing a technological protection measure”. (Section 226).
- 23.2 The making, importation, sale, distribution, letting for hire or advertising for sale or hire of a TPM circumvention device that applies to a technological protection measure, or the provision of a service to enable or assist a person to circumvent a TPM, are prohibited if it is known or there is reason to believe that it will, or is likely to be, used to infringe copyright in a TPM work. Publication of information to enable or assist circumvention of a technological protection measure is also prohibited if it is intended that the information will be used to infringe copyright in a TPM work. (Sections 226A and 226C).
- 23.3 Where a TPM work is issued to the public by, or under licence from, the copyright owner, the rights of the issuer of the TPM work are the same as a copyright owner has in relation to an infringing copy. However, these rights do not prevent or restrict the exercise of a permitted act. (Sections 226B and 226D).
- 23.4 Further, the rights of the issuer of a TPM work do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable a “qualified person” to exercise an act permitted under the Copyright Act, using a TPM circumvention device on behalf of the user of a TPM work. (Section 226D).
- 23.5 In this context a “qualified person” includes the librarian of a prescribed library, the archivist of an archive (or a person acting on behalf of the librarian or archivist), an educational establishment, or any other person specified by the Governor-General by Order in Council. (Section 226D(3)).

- 23.6 A qualified person must not be supplied with a TPM circumvention device on behalf of a user unless the qualified person has first made a declaration to the supplier in the prescribed form. (Section 226D(4)). The prescribed form of the declaration is given in Appendix 4.
- 23.7 The user of a TPM work who wishes to exercise a permitted act but cannot practically do so because of a TPM may do either or both of the following:
- (a) apply to the copyright owner or the exclusive licensee for assistance enabling the user to exercise the permitted act; and/or
 - (b) engage a qualified person (for example, the librarian of a prescribed library) to exercise the permitted act on the user's behalf using a TPM circumvention device, but only if the copyright owner or the exclusive licensee has refused the user's request for assistance or has failed to respond to it within a reasonable time. (Section 226E).
- 23.8 Before using a TPM circumvention device on behalf of a user of a TPM work, the qualified person would need to be sure that the TPM circumvention device is to be used to exercise a permitted act; and that the user has requested assistance from the copyright owner or exclusive licensee and has either been refused assistance or has not received a response within a reasonable time. (Section 226E).
- 23.9 A qualified person who exercises a permitted act on behalf of the user of a TPM work may make a charge for this service, but any charge made must not be more than a sum consisting of the total of the cost of the provision of the service and a reasonable contribution to the qualified person's general expenses. (Section 226E(4)).
- 23.10 So the steps are:
- a user is prevented from using a work by a TPM;
 - the user approaches the librarian of a prescribed library or other qualified person for assistance;
 - the librarian or other qualified person confirms that what the user wants to do is a permitted act;
 - the librarian or other qualified person confirms that the user has requested assistance from the copyright owner or licensee, and has either been refused assistance or has not received a response within a reasonable time;
 - the librarian or other qualified person makes a declaration to the supplier in the prescribed form and obtains a TPM circumvention device;
 - the librarian or other qualified person exercises the permitted act on the user's behalf, using the TPM circumvention device.

24 COPYRIGHT MANAGEMENT INFORMATION (ss.226F-J)

- 24.1 Section 226F defines the meaning of copyright management information as "information attached to, or embodied in, a copy of a work that identifies the work, and its author or copyright owner, or identifies or indicates some or all of the terms and conditions for using the work, or indicates that the use of the work is subject to terms and conditions".
- 24.2 Copyright management information must not be removed or modified without the authority of the copyright owner or exclusive licensee, unless the person who removes or

modifies the CMI does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work. (Section 226G).

- 24.3 A person must not, in the course of business, make, import, sell, let for hire or advertise for sale or hire a copy of a work if any copyright management information attached to, or embodied in, the copy has been removed or modified without the authority of the copyright owner or exclusive licensee, unless the person does not know, and has no reason to believe, that the CMI has been removed or modified without the authority of the copyright owner or exclusive licensee. (Section 226H).

GENERAL

25. MORAL RIGHTS (Part IV, ss.94-110)

- 25.1 Moral rights attach to authors rather than to copyright owners in general. They include the right to be identified as the author or director, the right to have works treated in a way which is not derogatory, and the right not to have works falsely attributed. The right to be identified must be asserted in writing. “Derogatory treatment” means any addition to, deletion from, alteration to, or adaptation of a work, or any distortion or mutilation of a work, which is “prejudicial to the honour or reputation of the author or director” (s.98(1)).
- 25.2 Librarians should take care not to offend against these rights – for example, in library displays or in listing a work in an electronic retrieval system.
- 25.3 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 consent of the commissioning person.

26. COPYRIGHT LICENSING (Part VIII, ss.147-168)

- 26.1 Part VIII of the Act sets out provisions for licensing schemes which allow for the copying of in-copyright works in a more generous way than is provided for under the Act. The underlying assumption is that copyright owners receive financial returns under the licence for any copying which is done by the parties to the licence.
- 26.2 Examples of such licences are the agreements which many New Zealand educational institutions have entered into with Copyright Licensing Ltd (PO Box 33 1488, Takapuna, Auckland 0740, email cll@copyright.co.nz) which allow more generous conditions for multiple copying by reprographic means for educational purposes than are provided for in s.44(3-4) and s.46.
- 26.3 It appears to be the intention of the Act to encourage copyright licensing schemes.
- 26.4 Other licensing agreements are with Screenrights (covering off-air copying and recording of radio and television broadcasts), and Print Media Copyright Agency (covering copying from New Zealand newspapers).

- 26.5 Libraries or institutions do not need to enter into copyright licence agreements if the copying that they are undertaking is within the provisions of the Copyright Act.
- 26.6 If a library decides that copying which it wishes to undertake is not within the provisions of the Copyright Act, it should negotiate with an RRO (reproduction rights organisation) a copyright licence agreement which meets its needs.
- 26.7 Authors and publishers (including non-commercial and ad hoc publishers) are encouraged to release their work with clear licensing arrangements, such as under the terms of a Creative Commons licence (see <http://www.creativecommons.org.nz/>) which state clearly the use that may be made of the work.

27. CHARGING

- 27.1 For charging relating to Interloan, see paragraphs 8.1-8.5 of the separate guidelines on Interloan in Schedule 1 (below).
- 27.2 Any payment required for copying by librarians for their users must be no more than the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library (ss.51-52, 56).
- 27.3 No direct charge may be made for the supply of copies made for educational purposes under s.44(3-4) or s.45, unless the copying is done under the terms of a license agreement that permits charging.
- 27.4 Prescribed libraries and educational institutions may rent computer programs, sound recordings or films to any person as long as no profit is intended, and the work has been put into circulation with the licence of the copyright owner (s.79).
- 27.5 The loan of original printed works (e.g. books and issues of periodicals) is not an infringing act, and a rental charge is therefore permitted.
- 27.6 Any charge made for exercising a permitted act on behalf of the user of a TPM work must be no more than the total of the cost of the provision of the service and a reasonable contribution to the general expenses of the qualified person (s.226E(4)).

28. OTHER RELEVANT SECTIONS OF THE ACT

- 28.1 Section 43A, “Transient reproduction of work”, clarifies that a transient or incidental copy of a work, which is an integral and essential part of a technological process for making or receiving a communication that does not infringe copyright, or enabling the lawful use of, or lawful dealing in, the work, and has no independent economic significance, does not infringe copyright in the work.
- 28.2 Section 58, “Copying by Parliamentary Library”, allows Parliamentary Library officers to copy a literary or dramatic work, and any artistic work included in that work, for any Member of Parliament, and to supply a recording of a broadcast or communication work or a transcript of a recording, if it is required by any Member of Parliament in the course of his or her duties, provided that only one copy is supplied on the same occasion.

- 28.3 Sections 59-63 set out copyright exemptions for public administration, such as copying for parliamentary and judicial proceedings, royal commissions and statutory inquiries; copying of material open to public inspection or on official registers, and of material communicated to the Crown in the course of public business; and use of copyright material for services of the Crown.
- 28.4 Section 71, “Abstracts of scientific or technical articles”, allows abstracts which accompany articles on a scientific or technical subject to be copied and issued to the public, or included in a database. This exception does not include abstracts accompanying articles that are not on a scientific or technical subject.

29. PENALTIES (ss.120-122, 122O-122P, 123, 131-133, 226C(2), 226J(2))

- 29.1 The copyright owner may take civil action seeking remedies such as damages, injunctions, delivery up of infringing copies, and remedies otherwise available in respect of infringement of any other property right. An exclusive licensee may also have recourse to these remedies.
- 29.2 An infringement of a moral right is actionable by the person entitled to the right, by bringing civil proceedings for damages, or an injunction, or both.
- 29.3 Under the infringing file sharing regime, the Copyright Tribunal can award compensation of up to \$15,000, and a District Court can order suspension of an Internet account for up to six months.
- 29.4 If criminal liability is applicable and is established, there is provision for a maximum fine of \$150,000 or imprisonment for up to 5 years.
- 29.5 The managers of the institution to which the library belongs are also liable, if it is proved that any infringement took place with their authority or knowledge and they failed to take all reasonable steps to stop or prevent it.

30. COMPLIANCE

- 30.1 Librarians need to ensure that all their staff are familiar with and observe the requirements of the Copyright Act.
- 30.2 Libraries which provide photocopiers or scanners for users to do their own copying should provide information on copyright rules by means of notices which draw users’ attention to these conditions and offer a clear explanation of them. A sample notice is given in Appendix 1.
- 30.3 It is not, however, sufficient for librarians just to give instructions to library staff and users. They should also establish a compliance programme, with regular checks being made that the conditions of the Act are being observed, and with a record being kept of when and by whom these checks have been undertaken.
- 30.4 By this means librarians will be able to demonstrate on an ongoing basis that the Act is being complied with.

31. PROBLEM SOLVING TIPS

31.1 As an overall guide to the Copyright Act 1994 the following questions provide both an outline to the Act and a tool for establishing whether or not the activity which anyone is about to undertake is a breach of copyright:

- | | |
|--|----------|
| 1. Is it a copyright work? | s.14 |
| 2. Has the copyright expired? | ss.22-25 |
| 3. Is the activity in question a restricted act? | s.16 |
| 4. Is the activity in question a primary infringement? | ss.29-34 |
| 5. Is the activity in question a secondary infringement? | ss.35-39 |
| 6. Is the activity in question an exception to infringement? | ss.40-93 |
| 7. Who is the owner of the copyright? | s.21 |
| 8. What accommodation can be reached? | |

If the answers to questions 1 and 3 or 4 or 5 are yes, and if the answers to questions 2 and 6 are no, then you are infringing copyright and should look to questions 7 and 8 for a solution.¹

¹ Calhoun, D.C. *Copyright for art librarians*. Paper presented at ARLIS/ANZ Conference, Wellington, September 1994.

SCHEDULE 1

IMPLICATIONS FOR INTERLOAN OF THE COPYRIGHT ACT 1994 AND AMENDMENTS

These guidelines are intended to provide an explanation of the provisions of the Copyright Act 1994 (as amended) which relate specifically to the sending of copies of material on Interloan between libraries in New Zealand. For a more detailed explanation, it is recommended that libraries should consult the Act and seek further advice from their legal advisers.

The guidelines do not relate to the lending or receipt of original books or issues of serials on Interloan, which are unaffected by the Act and are therefore permitted.

1. PRESCRIBED AND NON-PRESCRIBED LIBRARIES (s.50)

1.1 The Copyright Act 1994 divides New Zealand libraries into prescribed libraries and non-prescribed libraries.

1.2 Libraries prescribed in the Act are:

The National Library
The Parliamentary Library
The District Law Society Libraries
Libraries maintained by educational establishments
Libraries maintained by government departments
Libraries maintained by local authorities

1.3 Libraries prescribed in the Copyright (General Matters) Regulations 1995 (SR 1995/146) are:

Libraries that are members of the Interloan Scheme jointly administered by the National Library of New Zealand and the New Zealand Library and Information Association : Te Rau Herenga o Aotearoa (now the Library and Information Association of New Zealand Aotearoa : Te Rau Herenga o Aotearoa).

1.4 Libraries prescribed in the Copyright (General Matters) Amendment Regulations 1998 (SR 1998/281) are:

Libraries of Crown entities, as that term is defined in section 2 of the Public Finance Act 1989.

1.5 The Interloan Scheme has two categories of library: Charter library and non-Charter library. Both categories of library are members of the Interloan Scheme and are therefore prescribed libraries.

- 1.6 Non-prescribed libraries are all libraries that are not prescribed.
- 1.7 Non-prescribed libraries, other than those conducted for profit, may apply to be classed as prescribed libraries (s.234).

2. THE SUPPLY OF COPIES ON INTERLOAN

- 2.1 The Copyright Act 1994 is concerned (among other things) with the making of copies. It does not apply to the lending and receipt of original works, which continue to be permitted.
- 2.2 Copying by librarians is governed by sections 51-56C of the Act.
- 2.3 However, section 40 specifically states that these provisions “are to be construed independently of one another so that 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.

3. INTERLOANS AND PRESCRIBED LIBRARIES – COPYING FOR THE USERS OF OTHER LIBRARIES (ss.53, 56C)

- 3.1 Section 53 of the Copyright Act allows librarians of a prescribed library to 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, together with any artistic work included in the article; or
 - two articles from the same issue of a periodical, together with any artistic work included in the articles, if these articles relate to the same subject-matter.
- 3.2 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.
- 3.3 The person who is supplied with the copy must use it only for the purposes of research or private study.
- 3.4 “Reasonable proportion” is not defined in the Act. However, guidance may be obtained from s.43 (fair dealing for research or private study) and 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. It is especially important to note that there is no “ten percent rule”.
- 3.5 Copies may not be supplied to a non-prescribed library.

3.6 It is recommended that these procedures be followed:

- the request for a copy must be made by a named individual who personally wants the copy for research or private study;
- the person to whom the copy is supplied must have assured the requesting library that the use of the copy will be for research or private study;
- the copy must not subsequently be used for any purpose other than the person's research or private study (for example, it must not be copied for the requesting library's vertical file or collections);
- where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating: "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";
- where the copy is supplied in digital format:
 - the librarian of the requesting prescribed 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 notice should state:

"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;

- both the requesting and the supplying prescribed library must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied;
- the digital copy may be placed on a server by the requesting library 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 from the server, such date to be "as soon as is reasonably practicable" (which should be no more than two months later); and the digital copy is deleted from the server on or very soon after that date.
- The supply of digital copies via Interloan is thus a two-step process:
 - supplying prescribed library to the requesting prescribed library – sections 53 / 54 and 56C apply
 - requesting library to its own user – sections 51 / 52 and 56B apply.

3.7 It is probably permissible for a library that supplies a copy by fax also to send by post to the requesting library the copy that was faxed, since the purpose of sending the copy by post is only to ensure that the requester receives a higher-quality copy than faxed transmission often allows.

- 3.8 There is no requirement to keep records of Interloan requests, other than in the special circumstance of copying for the collections of other libraries under s.54 (see paragraph 6.1 below), which requires the librarian to whom the copy is supplied to keep a record identifying the work copied.

4. INTERLOANS AND NON-PRESCRIBED LIBRARIES

- 4.1 Librarians of a non-prescribed library may not make copies for or supply copies to any library or person, where the copies are made from works still in copyright and for which the copyright owners have not expressly permitted the making of copies.
- 4.2 Librarians of a non-prescribed library may loan an original work (not a copy) to another library or person for the purpose of Interloan.
- 4.3 Where the original is received by a prescribed library, it may be copied by that library for supply to a person for the purpose of research or private study under the provisions of sections 51 and 52 of the Copyright Act.
- 4.4 It is recommended that these procedures be followed:
- the receiving prescribed library should make any copy immediately upon receipt of the original and return the original immediately;
 - the prescribed library which makes the copy should place a sticker or stamp on the copy stating: “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”.
- 4.5 Where the original is received by a non-prescribed library, the user who has requested the item (not the library) may make a copy for him or herself provided that the provisions of s.43 (copying for research or private study) are observed. This copy should be made immediately upon receipt of the original which should then be returned immediately.

5. INTERLOANS AND OVERSEAS LIBRARIES

- 5.1 There is no restriction on the supply of copies obtained from overseas, provided (in general) that the copies were made in compliance with the copyright legislation of the source country, and that no limiting copyright license covering the material copied exists in New Zealand.
- 5.2 If a copy is obtained from overseas, any instructions from the supplier should be adhered to.
- 5.3 As from August 2010, overseas libraries are deemed members of the Interloan Scheme and are therefore prescribed libraries in terms of ss.50, 53, 54 and 55.
- 5.4 New Zealand libraries may therefore supply copies to overseas libraries, as well as loan original works for the purpose of Interloan.

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

- 6.1 Librarians of a prescribed library may make a copy (including a digital copy) for the collections of another prescribed library any part of or a complete book, including any artistic work in the book, 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; and
 - on demand, pays equitable remuneration to the copyright owner for the work copied.
- 6.2 This provision applies only to books, not to periodical articles, serials, music scores or other types of library materials. It does allow for out-of-print books to be copied completely.
- 6.3 It is recommended that these procedures be followed:
- the requesting prescribed library must assure the supplying prescribed library in writing that the conditions listed in s.54 as outlined above have been complied with;
 - where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”;
 - where the copy is supplied in digital format, 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.
- 6.4 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 adding it to its own collections, provided that the conditions listed under paragraph 6.1 above have been met. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 54 of the Copyright Act 1994”.
- 6.5 Librarians of non-prescribed libraries may not request or supply copies under this section.

7. COPYING FOR PRESERVATION OR REPLACEMENT (s.55)

- 7.1 Librarians of a prescribed library may make a copy (other than a digital copy) of any item in its collections for replacing in the collections of another prescribed library an item that has been lost, destroyed, or damaged, provided that it is not reasonably practicable to purchase a copy of the item.
- 7.2 Librarians 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; and
 - it is not reasonably practicable to purchase a copy of the original item.

- 7.3 It is recommended that these procedures be followed:
- the requesting prescribed library must assure the supplying prescribed library in writing that the conditions listed in s.55 as outlined above have been complied with;
 - where the copy is supplied in print format, the supplying prescribed library should place a sticker or stamp on the copy stating that: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.
 - where the copy is supplied in digital format, 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.
- 7.4 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, provided that it is not reasonably practicable to purchase a copy of the item. The borrowing library should place a stamp or sticker on the copy stating that: “This copy has been made in accordance with the provisions of section 55 of the Copyright Act 1994”.
- 7.5 Librarians of non-prescribed libraries may not copy to replace items in their collections and may not ask the librarians of other libraries to copy to replace items in their collections under this section.

8. CHARGING FOR INTERLOAN

- 8.1 The Copyright Act 1994 does not prohibit charging for the supply of a copy. Generally, charges are limited by the Act to not more than the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library. The charge is payable by the end-user, but may be paid by someone who is not the end-user, including the requesting library. It is recommended that any charging for supply of Interloans be limited as above.
- 8.2 Charges may also be levied to cover premium services such as urgent delivery or supply by fax.
- 8.3 There is no prohibition on charging for copyright-cleared copies obtained from overseas or where any copyright right held by the library otherwise permits charging.
- 8.4 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.
- 8.5 It is believed that the recommended charges within the current Interloan Scheme are in accordance with these provisions.

COPYRIGHT ACT 1994

WARNING

Copyright owners are entitled to take legal action against persons who infringe their copyright. Any copying of copyright material not expressly permitted by the Copyright Act 1994 (as amended) may infringe copyright.

**THIS LIBRARY FORBIDS AND DOES NOT AUTHORISE
THE USE OF ITS PHOTOCOPYING MACHINES OR SCANNERS
FOR ANY PURPOSE WHICH CONSTITUTES
AN INFRINGEMENT OF COPYRIGHT**

There is copyright in all literary, dramatic, musical and artistic work until 50 years after the death of the author, or for a work of unknown authorship 50 years after the work has been made publicly available, or for typographical arrangements 25 years after an edition was published. There is copyright in most Crown publications until 100 years after the work was made.

COPYING WHICH MAY BE DONE ON THIS MACHINE

- ❑ Copies may be made if the copying is “fair dealing” (section 43), that is:
 - the copying is done solely for a person’s research or private study, *and*
 - the person doing the copying takes into account the nature and purpose of the copying, *and*
 - the copying is done because the work could not be obtained within a reasonable time by purchase at an ordinary commercial price, *and*
 - the copying will not be detrimental to the potential market for, or value of, the work, *and*
 - the copying takes into account the amount and substantiality of the part copied, taken in relation to the work as a whole (it is unlikely to be fair dealing if you copy a whole work, a whole chapter of a work, a summary, or the whole or greater part of the treatment of a particular topic in a work), *and*
 - only one copy is made of the same work or the same part of a work on any one occasion.
- ❑ Copies may be made of works where the copyright has expired.
- ❑ Abstracts accompanying scientific and technical articles in periodicals may be copied (section 71).

This machine is made available on the express condition that users will pay the Library for any loss suffered in respect of any claim made against it for breach of copyright.

It is your personal responsibility to comply with copyright law.
The Copyright Act 1994 is available in this Library. Please ask.

APPENDIX 2

SAMPLE NOTICE REGARDING COPYING AND DOWNLOADING FROM THE INTERNET

COPYRIGHT ACT 1994

WARNING

COPYING AND DOWNLOADING FROM THE INTERNET

There is copyright in most types of material on the Internet – email messages, postings to bulletin boards, news groups and social networking sites, books, articles, reports, conference papers and other publications, music, films and videos, games, databases, websites, etc. The fact that something is posted on the Internet does not automatically give anyone the right to download, copy, store or disseminate it, unless the author or copyright owner has specifically granted permission or waived copyright, or has made the work available via an open content licence such as a Creative Commons licence, or the Copyright Act allows this, or the work is out of copyright and in the public domain.

Users found to be illegally copying or downloading materials from the Internet will be banned from using computers in the Library.

COPYING OF MUSIC FROM LIBRARY-OWNED CDs

Section 81A of the Copyright Act 1994 (as amended) permits copying (including format shifting) from a sound recording only where the sound recording has been legitimately acquired and is 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.

Copying of music from CDs or other sound recordings owned by the Library is therefore prohibited.

DOWNLOADING OF MUSIC FROM THE INTERNET

Music may be downloaded from the Internet, and copied onto personally-owned devices, only from web sites that legally permit downloading. A fee may be payable.

Unless the web sites specifically state that downloading of music may lawfully be undertaken, downloading is a breach of copyright and may not be undertaken on computers in the Library.

***Copyright owners are entitled to take legal action
against persons who infringe their copyright.
It is your personal responsibility to comply with copyright law.***

APPENDIX 3

SAMPLE WRITTEN NOTICE WHEN COMMUNICATING DIGITAL COPIES TO AUTHENTICATED USERS

LIMITS OF COPYING AND COMMUNICATION

This digital copy has been made available in accordance with section 56A of the Copyright Act 1994 (as amended). Section 56A requires the library to give to each user information about the limits of copying and communication of copyright-protected works allowed by the Act.

1. The copying or communication of a work by a user without the copyright owner's permission is an infringement of copyright, unless it is:
 - for criticism, review, or news reporting (section 42)
 - for research or private study (section 43)

2. This digital copy may be copied or communicated by the user only in accordance with the provisions of the Copyright Act.

The above notice could be included as part of the login process to the digital file in which the digital copy is stored.

APPENDIX 4

DECLARATION BY QUALIFIED PERSON IN RELATION TO TPM CIRCUMVENTION DEVICE

A declaration by a qualified person under section 226D(4) of the Copyright Act must be in the form of a statement that –

- (a) contains the following information:
 - (i) the name of the qualified person;
 - (ii) the contact details of the qualified person, which must include telephone number, postal address, email address, and fax number (if a fax number is available);
 - (iii) the basis on which the person making the declaration is a qualified person and authorised to make the declaration;
 - (iv) the name and postal address of the supplier of the TPM circumvention device;
 - (v) the date of the request for the qualified person to use the TPM circumvention device;
 - (vi) a description of the purpose for which the use of the TPM circumvention device has been requested; and
- (b) states that it is the qualified person's intention to use the TPM circumvention device strictly in accordance with the Act; and
- (c) is signed by the qualified person.

Copyright (General Matters) Regulations 1995 (SR 1995/146), clause 5C
Copyright (General Matters) Amendment Regulations 2008 (SR 2008/352), clause 4

APPENDIX 5

COPYRIGHT ACT 1994 : SUMMARY TABLES by Cathie Harrison, updated by Tony Millett

Note: The information in these tables is necessarily highly abbreviated and of a very generalised nature. There may be additional factors that are relevant as to whether or not something is an infringement of copyright.

If you need further information, please contact your lawyer.

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>LITERARY</p> <p>Books, newspapers, periodicals, theses, poems, song lyrics, letters, manuals, catalogues, compilations, multi-media such as CD-ROMs, computer programs *, electronic works in any format, etc.</p> <p>* set out separately below</p>	<p>Any work, other than a dramatic or musical work, that is written, spoken or sung; includes a table or compilation, and a computer program (s.2)</p>	<p>Author i.e. creator; or (subject to agreement to contrary) employer if made in course of employment (s.21)</p> <p>For computer-generated works, the person making the arrangements for creation (s.5(a))</p>	<p>50 years from death of author</p> <p>For works of unknown authorship: 50 years from when first made available to public</p> <p>For computer-generated works: 50 years from when work made (s.22)</p> <p>For older works see First Schedule clauses 17-19</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including storing the work in any medium by any means (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Performing in public</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>Making an adaptation</p> <p>Doing re an adaptation the above acts</p> <p>(ss.16 & 30-34)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.46: anthologies for educational use</p> <p>s.47: performing, playing or showing work at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.51: copy reasonable proportion of published work for research or private study</p> <p>s.52: copy article for research or private study</p> <p>s.53: as above, to user of other prescribed library for research or private study</p> <p>s.54: copy for collection of other prescribed library when unable to obtain</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.67: copy anonymous or pseudonymous work where reasonable to assume copyright has expired</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
LITERARY (continued)					s.71: copy or issue to public abstract of scientific or technical article s.72: make sound recording of performance of song for certain archives

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
COMPUTER PROGRAMS	Not defined	Subject to agreement to contrary, person who commissions (and pays or agrees to pay for) the making of a computer program (s.21)	<p>50 years from death of author</p> <p>For works of unknown authorship: 50 years from when first made available to public</p> <p>For computer-generated works: 50 years from when work made (s.22)</p> <p>For older works see First Schedule clauses 17-19</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including storing the work in any medium by any means (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Performing in public</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>Making an adaptation</p> <p>Doing re an adaptation the above acts</p> <p>(ss.16 & 30-34)</p>	<p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>s.55: copy by prescribed library to preserve or replace work</p> <p>s.56: copy unpublished work by prescribed library for research or private study</p> <p>s.79: rental by an "educational establishment" or prescribed library</p> <p>s.80: back-up copy of computer program</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>DRAMATIC</p> <p>Plays, operas, screenplays, choreographic works, etc.</p>	<p>Includes a work of dance, mime, scenario or script for a film (s.2)</p>	<p>Author i.e. creator; or (subject to agreement to contrary) employer if made in course of employment (s.21)</p> <p>For computer-generated works, the person making the arrangements for creation (s.5(a))</p>	<p>50 years from death of author</p> <p>For works of unknown authorship: 50 years from when first made available to public</p> <p>For computer-generated works: 50 years from when work made (s.22)</p> <p>For older works see First Schedule clauses 17-19</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including storing the work in any medium by any means (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Performing in public</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>Making an adaptation</p> <p>Doing re an adaptation the above acts</p> <p>(ss.16 & 30-34)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.46: anthologies for educational use</p> <p>s.47: performing, playing or showing work at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.51: copy reasonable proportion of published work for research or private study</p> <p>s.52: copy article for research or private study</p> <p>s.53: as above, to user of other prescribed library for research or private study</p> <p>s.54: copy for collection of other prescribed library when unable to obtain</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
DRAMATIC (continued)					s.67: copy anonymous or pseudonymous work where reasonable to assume copyright has expired s.70: public reading of reasonable extract s.71: copy or issue to public abstract of scientific or technical article

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>MUSICAL</p> <p>Music and songs e.g. composers' scores</p>	<p>Music, exclusive of any words intended to be sung or spoken with the music or any actions intended to be performed with the music (s.2)</p>	<p>Author i.e. creator; or (subject to agreement to contrary) employer if made in course of employment (s.21)</p> <p>For computer-generated works, the person making the arrangements for creation (s.5(a))</p>	<p>50 years from death of author</p> <p>For works of unknown authorship: 50 years from when first made available to public</p> <p>For computer-generated works: 50 years from when work made (s.22)</p> <p>For older works see First Schedule clauses 17-19</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including storing the work in any medium by any means (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Performing in public</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>Making an adaptation</p> <p>Doing re an adaptation the above acts</p> <p>(ss.16 & 30-34)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.46: anthologies for educational use</p> <p>s.47: performing, playing or showing work at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.51: copy reasonable proportion of published work for research or private study</p> <p>s.52: copy article for research or private study</p> <p>s.53: as above, to user of other prescribed library for research or private study</p> <p>s.54: copy for collection of other prescribed library when unable to obtain</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
MUSICAL (continued)					s.67: copy anonymous or pseudonymous work where reasonable to assume copyright has expired s.72: make sound recording of performance of song for certain archives

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>ARTISTIC</p> <p>Paintings, drawings, maps, plans, charts, engravings, photographs, sculpture, craft works, etc.</p>	<p>A graphic work, photograph, sculpture, collage or model, irrespective of artistic quality; a work of architecture, being a building or a model for a building; or a work of artistic craftsmanship (s.2)</p>	<p>Author i.e. creator; or (subject to agreement to contrary) employer if made in course of employment; or person who commissions (and pays or agrees to pay for) the taking of a photograph or the making of a painting, drawing, diagram, map, chart, plan, engraving, model or sculpture (s.21)</p> <p>For computer-generated works, the person making the arrangements for creation (s.5(a))</p>	<p>50 years from death of author</p> <p>For works of unknown authorship: 50 years from when first made available to public</p> <p>For computer-generated works: 50 years from when work made (s.22)</p> <p>For older works see First Schedule clauses 17-19</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including storing the work in any medium by any means (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>(ss.16 & 30-33)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.51: include any artistic work that appears in the proportion copied of a published literary, dramatic or musical work for research or private study</p> <p>s.52: copy article for research or private study, including any artistic work</p> <p>s.53: as above, to user of other prescribed library for research or private study</p> <p>s.54: include artistic work in copy of literary, dramatic or musical work copied for collection of other prescribed library when unable to obtain</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.67: copy anonymous or pseudonymous work where reasonable to assume copyright has expired</p> <p>s.73: copy by photographing, filming etc sculptures or works of artistic craftsmanship in public place/premises open to public</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>SOUND RECORDINGS</p> <p>Records, tapes, compact discs, etc.</p>	<p>A recording of sounds, from which the sounds may be reproduced, or a recording of the whole or any part of a literary, dramatic or musical work, from which the sounds reproducing the work or part may be reproduced, regardless of medium or the method (s.2)</p>	<p>The author -- the person by whom the arrangements necessary for the making of the sound recording are undertaken (s.5(b)); or the person who commissions (and pays or agrees to pay for) the making of a sound recording (s.21)</p>	<p>50 years from making, or 50 years from when first made available to the public (s.23)</p>	<p>Copying the work, i.e. reproducing or recording in any material form (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Playing in public</p> <p>Broadcasting</p> <p>Communicating to the public (ss.16 & 30-33)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>Education</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.47: playing ... sound recording at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.70: making of a sound recording of a public reading</p> <p>s.79: rental by an "educational establishment" or prescribed library</p> <p>s.81: non-profit club or society play a sound recording</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>FILMS</p> <p>Movies, videos and electronic images</p>	<p>A recording on any medium from which a moving image may by any means be produced (s.2)</p>	<p>The author -- the person by whom the arrangements necessary for the making of the film are undertaken (s.5(b)); or the person who commissions (and pays or agrees to pay for) the making of a film</p>	<p>50 years from making, or 50 years from when first made available to the public (s.23)</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including the making of a photograph of a film (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Showing in public</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>(ss.16 & 30-33)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>Education</p> <p>s.45: copying films and sound recordings for certain educational purposes</p> <p>s.47: showing ... film at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.79: rental by an "educational establishment" or prescribed library</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>BROADCASTS</p> <p>Radio and TV</p>	<p>A transmission of a programme by wireless communication, where the transmission is capable of being lawfully received by members of the public or for presentation to members of the public (s.2)</p>	<p>The person who makes the broadcast (s.5(c))</p>	<p>50 years from making (s.24)</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including the making of a photograph of a broadcast (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p> <p>Broadcasting</p> <p>Communicating to the public</p> <p>(ss.16 & 30-33)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>Education</p> <p>s.45: copying ... broadcasts for certain educational purposes</p> <p>s.47: playing or showing broadcast at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.70: broadcasting public reading</p> <p>s.84: recording for private and domestic purpose</p> <p>s.87: free public playing</p> <p>s.90: recording for certain archival purposes</p> <p>s.91: recording and making transcripts by media monitors</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
<p>COMMUNICATION WORKS</p> <p>Includes broadcasts, cable programmes, cable TV, and some online library services</p>	<p>Transmission of sounds, visual images, or other information, or a combination of any of these, for reception by members of the public (s.2)</p>	<p>The person providing who makes the communication work (s.5(c))</p>	<p>50 years from when the communication work was first communicated to the public (s.24)</p>	<p>Copying the work, i.e. reproducing or recording in any material form, including the making of a photograph</p> <p>Issuing copies to the public (defined s.9)</p> <p>Broadcasting</p> <p>Communicating the work to the public (ss.16 & 30-33)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>Education</p> <p>s.45: copying ... communication work for certain educational purposes</p> <p>s.47: playing or showing communication work at "educational establishment" for purposes of instruction</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.55: copy to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p> <p>s.70: including public reading in communication work</p> <p>s.84: recording for private and domestic purpose</p> <p>s.87: free public playing</p> <p>s.90: recording for certain archival purposes</p> <p>s.91: recording and making transcripts by media monitors</p>

TYPE OF WORK	DEFINITION	FIRST OWNER	TERM OF COPYRIGHT	RESTRICTED ACTS	ACTS PERMITTED (subject to certain conditions)
TYPOGRAPHICAL ARRANGEMENTS OF PUBLISHED EDITIONS	<p>"Typographical arrangement" not defined in the Act -- it is the particular way a work is laid out</p> <p>"Published edition" means the published edition of the whole or any part of one or more literary, dramatic or musical works</p>	<p>The publisher (s.5(e))</p>	<p>25 years from publication (s.25)</p>	<p>Copying the work, i.e. reproducing in any form (defined s.2)</p> <p>Issuing copies to the public (defined s.9)</p>	<p>s.41: incidental copying</p> <p>s.42: fair dealing for criticism or review, or for reporting current events</p> <p>s.43: fair dealing for research or private study</p> <p>s.44: copying for certain educational purposes</p> <p>s.48: recording of broadcasts and copying and communication of communication work by "educational establishment" for educational purposes</p> <p>s.49: things done for purposes of examinations</p> <p>Prescribed Libraries</p> <p>s.51: copy reasonable proportion of published work for research or private study</p> <p>s.52: copy article for research or private study</p> <p>s.53: as above, to user of other prescribed library for research or private study</p> <p>s.54: copy for collection of other prescribed library when unable to obtain</p> <p>s.55: copy by prescribed library to preserve or replace work</p> <p>s.56: copy unpublished work for research or private study</p>

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