



Submission to Australian Law Reform Commission Copyright in the Digital Economy July 2013

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CLNZ is part of a global network of copyright collectives that provide centralised licensing services for the reproduction of extracts from books, magazines, journals and other periodicals. Centralised licensing makes it easier for users of copyright works to legally reproduce material from published works. CLNZ also works to protect the rights of creators to ensure that they receive a fair reward for the use of their works.

The recognised RRO (Reproduction Rights Organisation) in New Zealand and a member of IFRRO (International Federation of Reproduction Rights Organisations), CLNZ has non-exclusive mandates to represent authors and publishers from throughout the world in offering licensing services in New Zealand. CLNZ is the New Zealand equivalent to Copyright Agency in Australia but operates with wholly voluntary, not statutory, license schemes. CLNZ has copyright licenses with all of the universities and polytechnic institutions in New Zealand as well as schools, businesses and government agencies.

CLNZ supports and commends the submissions of:

- Copyright Agency| Viscopy
- Australian Copyright Council
- International Federation of Reprographic Rights Organisations
- Publishers Association of New Zealand
- International Publishers Association

Introduction

In its discussion paper, the ALRC asserts that 'voluntary' licensing would be more efficient than statutory licensing and yet the paper is completely absent of examples of how this would work in practice. Our experience of voluntary licensing in New Zealand demonstrates that it can lead to inequity in the provision of content in education, to high risks of non-compliance with law and licenses and cost burdens and uncertainties for copyright owners and users.

Recent experience in New Zealand shows that the push for changes to license offerings is generally predicated purely on a financial basis and the true and full value of the license ecosystem is not appreciated or acknowledged by education administrators. A fair and reasonable license framework, such as the Australian statutory license, gives teachers access to all of the materials they need to be able to deliver quality education outcomes to their students. At the same time, copyright owners are appropriately acknowledged and remunerated for the use of their works and the remuneration allows

investment in new and innovative materials. The fairness and simplicity of this ecosystem is not the same under a voluntary licensing regime where access is inequitable, compliance erratic and returns to copyright owners which undermine their ability to invest are reduced.

In the past 3 months the New Zealand publishing sector has been rocked by the announcement of the withdrawal from our market of 3 multinational publishing operations. Public discussion on this has centred on concern that “our stories” (New Zealand stories) may not be as widely told in the future. A vibrant local publishing community is critical to education success. Access to overseas publications is valuable but not as essential to children having an understanding of their own country. This is where local publishers and particularly local education publishers who know the market and the curriculum, add so much value. The Australian Statutory License provides both educators and publishers with what they need to deliver quality education outcomes in Australia. The ALRC has failed in its report to recognize this value in the broader cultural and economic sense.

Submission

CLNZ particularly endorses the comments of the International Publishers Association’s submission in regard to copyright law and the notion of introducing “fair use” into Australian law. In light of this, we will not make further comment on these aspects of the discussion paper. We will focus on the system of statutory licensing in the education sector as it compares to the voluntary licensing schemes in operation in New Zealand.

The existing framework of the Statutory License has been seen for years by New Zealand copyright owners as delivering a more equitable return for the use of copyright materials in education. The benefits of the license schemes operated by the collective management organisations in the Australian and New Zealand education markets are:

1. Certainty for teaching staff in what they can copy from and what quantity they can copy
2. Significantly reduced administration costs where rights clearance is given in advance via the license rather than being required for each piece of copying the institution / staff member wishes to complete
3. The ability to deliver copies in either paper or electronic formats to suit the needs of the institution and/or teacher and/or student
4. A reasonable return to the copyright owner that compensates for the revenue lost from a work being copied rather than purchased
5. An income stream for the copyright owner that enables investment into new works and new technologies

Example

In 2012, an owner-operator of a New Zealand education publishing business who has a distribution channel in the Australian market received a distribution payment from Copyright Agency for the copying of one of the publishers’ works in Australian primary schools. The publisher was able to use the funds to redevelop her website to enable Australian teachers to buy future resources online, receive updates as new resources were being developed and to communicate directly with the publisher on how the resources were being used in Australian schools. Without the payment from the Statutory License, the publisher would not have been able to make this investment.

This example demonstrates how a small publisher may benefit from the Statutory License on a level playing field with larger publishers. This ability to reinvest by smaller publishers ensures that teachers will have access in future to a wide range of materials for their teaching and not just the materials created by the larger, multinational publishers. In addition this this, development of local published content for the local market has significant educational benefits for Australian students.

The New Zealand Education System

For more than two decades, New Zealand schools have been self-managing under a system known as “Tomorrows Schools”. In practice, this means that the 2500+ schools in the country operate as individual businesses under a framework of delivering educational outcomes on behalf of the Ministry of Education. Compliance with law and the management of risk is the responsibility of each school’s Board of Trustees whose members are appointed by the school community, from the school community. The majority of school Boards are members of the NZ School Trustees Association (NZSTA) – an organisation that provides essential services to support members in their governance and employer roles including the ongoing development of trustees and boards through professional development opportunities.

Copyright Licensing in New Zealand Schools

The administration of copyright licensing for schools has been managed by NZSTA since 2006. NZSTA operates a One-Stop-Shop for the three collective management organisations that offer the voluntary licenses into schools – CLNZ for print-based works, APRA/PPNZ for music and Screenrights for TV/ Radio. Under the voluntary licensing regime, schools choose which of the 3 licenses they wish to take out and make payment to NZSTA. We understand that this is similar to the arrangements for the independent school sector in Australia. However, not all schools take up all of the licenses and some schools have none of the licenses which means that not all teachers have equal access to the materials and resources they need to offer their students quality learning experiences. Unlicensed schools also run the risk of non-compliance and do not have access to the indemnity provision of the licenses.

Compliance with copyright law is not the core business of schools. In Australia, schools benefit from the provisions of the Statutory License beyond just the wide range of published material that can be legally copied from. The reduced risk to schools from copyright infringement is not readily quantifiable, but could perhaps be considered in terms of what a commercial insurance policy would cost to provide legal defense against infringement. The dollar figure for all schools would be considerable. As this stands in New Zealand, the copyright owners bear this cost via the indemnity they provide in the license agreements, but only for those schools that are licensed.

Copyright Licensing in the New Zealand Tertiary Sector

For the past decade CLNZ has had license agreements in place with the New Zealand tertiary education sector for two, five-year terms. The desire to achieve a five year term was predicated on the need for certainty of the provision of copyright works under license and a need for financial certainty on the part of the education organisations. Both of these outcomes from licensing are more adequately delivered in Australia via the Statutory License.

Scope of Copyright Licenses in Education

The scope and use of material under the Statutory License is what determines the price of the license in the Australian education sector. Having said that, the per student degree rate for polytechnics in New Zealand is higher than that for TAFEs in Australia, and the per-student rate CLNZ is currently seeking from New Zealand universities in the Copyright Tribunal is similar to that paid by Australian universities. You cannot compare only the license fee paid in other countries to that paid in Australia without consideration to the content and the uses that each country's license covers. For example, in New Zealand, the following works are specifically excluded from the CLNZ license and permission to copy these works must be sought directly from the copyright owner:

- digital content
- internet-based content
- New Zealand newspaper content (prior to 2013)
- Printed sheet music
- Stand alone artworks
- Loose maps and charts

As we understand the Australian system, all of these works are available for Australian educators to use in their teaching and they can rely on the Statutory License to do so without the need for separate copyright clearance and at the same time, the creators of these works are both compensated and acknowledged. New Zealand schools must either rely on and be aware of either the Section 44 exception for education in the Copyright Act 1994, or take the time to read and understand the Terms and Conditions of Use for these types of material (if such terms are readily accessible).

Further information on our licenses in education can be found at www.copyright.co.nz/Educational/

Implementation of Surveys

Surveys of the materials being copied under license are required to both enable the distribution of license fees to copyright owners and, to a lesser extent, to quantify the volume of copying being undertaken in reliance on the license. The method of surveying in New Zealand is very similar to that in Australia. A sample of organisations in each level of education (schools, universities etc) is agreed each year and data is collected on what is copied in these institutions over a specified period. In New Zealand schools this period is 8 weeks. In the tertiary sector it is a full academic year. CLNZ Research and Data Entry staff review the data provided and record only that material copied in reliance on the CLNZ License. At the conclusion of each survey period, license fees are distributed to copyright owners based on the volume of copying of each copyright owner's works. This includes payment to overseas copyright owners whose works have been copied by New Zealand education organisations.

Particularly in the tertiary sector, surveys have been seen as a burden on education institutions. The reality however is that a survey (which in the New Zealand tertiary sector only takes place once every five years for each institution) provides an opportunity for the institution to focus on compliance with law and licenses and with academic best-practice. An institution's attitude to a survey has, from our experience, a direct correlation with its attitude to respecting and complying with the law and license terms.

Example One

In 2011, a New Zealand tertiary institution was to be involved in a CLNZ survey. In conjunction with collecting data of works copied in reliance on the CLNZ license, the institution also undertook a professional development programme with all staff on copyright compliance and the use of the institution's own intellectual property. A review of library holdings and licenses was completed, as was a review of the materials being used by staff in their teaching programmes to ensure that these were current and best-practice in their field. This pro-active and positive approach to a survey demonstrated a respect for the material and the copyright owners who make it available under license, in addition to providing the institution with valuable information to enable it to better manage its business.

Example Two

CLNZ is currently working with a New Zealand tertiary institution on the implementation of a technology solution that will enable the institution to comply with licenses and the law prior to using a copyright work, rather than only during a survey. By investing in this technology the institution will have up to the minute data available to it on the materials being used by its teaching staff and compliance with its legal obligations. The data on material usage will then be digitally available to CLNZ for importation into our system to enable distribution of license fees to copyright owners.

Creators have historically incurred significant costs due to the inefficiencies of the education sector who have been slow adopters of technology that can improve their own ability to manage content usage and dissemination and compliance. The examples above demonstrate how a fair and reasonable approach to surveys can improve outcomes for both the teaching institution and copyright owners.

Provision of Accessible Works for Visually Impaired Students

New Zealand copyright law has an exception for the creation of accessible format works for people with a print disability. In order to be able to undertake conversions an organisation must be prescribed in Regulations. New Zealand schools are not prescribed bodies and require the specific permission of the copyright owner to create an accessible version of a work for a student. This comes at a cost in time to the school and frequently delays the provision of the work to the student which has consequences for their learning. The provisions of the Australian Statutory License in the area of works for print disabled students is seen as exceptionally efficient and cited by New Zealand schools as best-practice that they would like to see emulated in New Zealand.