



Council of New Zealand University Librarians

Kaunihera o ngā Kaimahi Whare Pukapuka i ngā Whare Wānanga o Aotearoa

SUBMISSION TO THE MINISTRY OF ECONOMIC DEVELOPMENT

DIGITAL TECHNOLOGY AND THE COPYRIGHT ACT 1994

(1) CONZUL, the Council of New Zealand University Librarians, representing the eight New Zealand University Libraries, is pleased to make the following submission on the Ministry of Economic Development's *Digital Technology and the Copyright Act 1994: Position Paper* (December 2002).

GENERAL PRINCIPLES

(2) CONZUL agrees with the statements in the *Position Paper* paragraph 24 that:

- copyright law must ensure a balance between the rights of authors and copyright owners, and the needs of society to benefit from the ideas and knowledge incorporated within publications;
- the key principle guiding the development of copyright policy is the enhancement of the public interest; and
- the approach to law reform must be based on broad principles, not narrowly conceived rights and exceptions.

(3) These principles are given expression in the important document *Limitations and Exceptions to Copyright and Neighbouring Rights in the Digital Environment: an International Library Perspective*, issued by IFLA (the International Federation of Library Associations and Institutions) in October 2002 – please see <http://www.ifla.org/III/clm/p1/ilp.htm>.

(4) CONZUL endorses the *Position Paper*'s recognition (paragraph 28) of the essential role played by libraries in providing access to copyright works, thereby contributing towards meeting the needs of copyright users and the public interest.

(5) CONZUL strongly supports the view (*Position Paper* paragraph 31) that copyright law should be technologically neutral, and written in such a way that it applies to both present and future technologies. In particular, CONZUL believes that legislative provisions should apply consistently across the digital and print / analogue environments; and that the Copyright Act's "permitted acts" should apply equally to print, audio, video, digital or any other formats.

(6) CONZUL also endorses the *Position Paper* statement (paragraph 30) that copyright law should be clear and transparent.

(7) In response to the questions in the *Position Paper* paragraphs 13 and 14, therefore, CONZUL considers that the Copyright Act is in need of amendment, to give effect to these two objectives; and that the principles of copyright should apply equally to all types of formats, with digital formats wherever possible being treated the same as other formats.

REPRODUCTION RIGHT (Part Two)

(8) CONZUL agrees that, as suggested in the *Discussion Paper* paragraph 39, the definition of “copying” should be amended specifically to include digital formats. CONZUL also recommends that the definition of “copying” should specifically cover the conversion of a work from one format (print, video, etc) into digital format.

(9) In particular, CONZUL supports the position of the Royal New Zealand Foundation for the Blind in regard to the making of digital copies for distribution to those with disabilities.

(10) CONZUL believes that it is essential that transient copying be excluded from the definition of “copying”, so that it does not fall within Section 16 of the Act.

COMMUNICATION TO THE PUBLIC (Part Three)

(11) CONZUL considers that works communicated to the public should be copyright-protected, and that copyright owners should be able to control how their work is made available, whether in print or digital format or via the Internet, provided that it is made clear that “permitted acts” (copying for research or private study, copying for educational purposes, copying by librarians or archivists, etc) apply equally to digital works as they do to other types of works.

(12) As recommended in the *Position Paper* paragraphs 61 and 64, CONZUL considers that a technologically-neutral communication right, that applies to all types of transmission in any format, should be included in the Act, replacing the present references to “cable programme service” and “transmission service”, the definitions of which are both unclear and lack comprehensiveness.

INTERNET SERVICE PROVIDER LIABILITY (Part Four)

(13) CONZUL agrees with the approach taken by the Ministry in Part Four of the *Position Paper*, and in particular that:

- organisations such as educational institutions and libraries that are not generally considered to be ISPs should be excluded from some liability (paragraphs 80 and 82);
- an exception from liability for transient copying will cover ISPs (paragraph 83);
- the Act should provide an exception for caching (paragraph 86);
- the proposals outlined in paragraphs 89-93 regarding secondary infringement should be adopted.

TECHNOLOGICAL PROTECTION MEASURES (Part Five)

(14) CONZUL is concerned at the steps being taken by some information providers, to use technological measures to override the rights granted under copyright law. CONZUL therefore agrees with the *Position Paper* that libraries should not be prevented by technological protection measures from taking advantage of the library exemptions permitted under New Zealand law.

PERMITTED ACTS AND EXCEPTIONS (Part Eight)

(15) As stated earlier, CONZUL strongly supports the points made in paragraph 153 of the *Position Paper*, that users of copyright materials must be able to take advantage of technological developments, and that the existing exceptions in the Act should apply in the digital environment, unless cogent reasons exist to the contrary.

Libraries

(16) With regard to libraries, CONZUL considers that the current list of permitted acts in the Act is adequate to ensure that users have reasonable access to works in the digital environment, provided that the definition of copying includes both the copying of digital works, and the conversion of non-digital works into digital format. CONZUL does not agree that the wording of the present Act, in defining “copying”, is sufficiently clear, and recommends that the definition be amended so that there can be no room for doubt that both copying of digital works, and conversion of non-digital works into digital form, are covered.

(17) CONZUL supports the view (paragraph 171) that the Act should include an exception that permits the digital archiving of complete collections for preservation purposes.

Copying for educational purposes

(18) CONZUL strongly supports the points made in the LIANZA submission paragraphs 31 to 36 regarding copying for educational purposes. Both universities and their libraries require the right to make digital copies of copyright materials, so that these may be made available to students in electronic format via an intranet server that is accessible only to authenticated students. In CONZUL’s view, the Act should be amended to make clear that making copyright material available in a restricted-access electronic retrieval system for educational purposes, both on-site and remotely, is permitted.

(19) CONZUL disagrees with the view expressed in paragraph 175 of the *Position Paper*, that libraries should be permitted to provide access only to material that is made available by the copyright owners in digital form. Only a small proportion of the world’s publishing output is already in digital form, being confined in the main to materials published in the last few years. If New Zealand’s universities and their libraries are to meet the educational needs of their students, they must be able to digitise and make available materials not currently in digital form as well.

(20) Further, CONZUL strongly disagrees with the suggestion that libraries be permitted to provide access to digital materials only through on-site terminals. Implementation of this provision would defeat the whole objective of making best use of developing technologies (paragraph 174), and would prevent libraries from servicing the needs of online learners, both on- and off-campus.

(21) CONZUL considers that the issue is not one of limitation by physical location, but of limitation by electronic means, with authorised users controlled by authentication onto the licensed institution's network. The Ministry's recommendations in paragraph 175 of the *Position Paper* about digitisation and access are in complete opposition to world-wide developments in e-learning and managed learning environments.

(22) In summary, CONZUL recommends that the Copyright Act be amended to permit educational institutions and their libraries to copy materials into electronic format for educational purposes, and also to provide access to digitized materials for their students via an intranet server that is accessible only by authenticated students and staff of the educational institution, both on-site and externally.

(23) This recommendation is in line with the report of the E-Learning Advisory Group *Highways and Pathways: Exploring New Zealand's E-Learning Opportunities* (March 2002), Recommendation 7, "That the Government ensure that the review of the Copyright Act 1994 meets the needs of students and educational institutions in a digital environment". This report also includes as Appendix 3 a paper on Digital Copyright by the New Zealand Vice-Chancellors' Committee – please see <http://www2.minedu.govt.nz/step/download/e-learning.pdf>. In CONZUL's view, the ability of New Zealand to lead in the area of e-learning requires a legislative framework that allows what is an essential component of e-learning to occur – that is, the integration of tuition with information provision within the e-learning environment.

(24) Paragraph 183 of the *Position Paper* rightly argues that "copyright policy has to achieve a balance that does not undermine incentives and impinge unduly on the appropriate commercial exploitation of works by the copyright owners". The way to achieve this is by providing guidance on how the statutory licences should operate in the digital environment – both in the areas of digitisation and communication. Licences drawn up for the print environment do not adequately cover the communication rights (that is, distributing digitally via the Internet or intranets) of the digital environment.

Inter-library loan

(25) The university libraries are heavy users of Interloan, on behalf of their students and staff, as they seek to share their information resources with one another and with other types of libraries within New Zealand. Interloan is a critical component of the universities' teaching, learning and research environment.

(26) Section 53 of the Act permits a prescribed library to make a copy of a work for the user of another prescribed library. CONZUL considers that it should be immaterial whether this copy is provided in print or electronic format; and given the advantages of supply in electronic format for both the supplying library and the requester, CONZUL recommends that libraries should be permitted to supply on Interloan copies both of works already in digital format, and of works that have been digitized from hard copy for this purpose.

(27) Exclusion of transient copying from the Act's definition of "copying" (paragraph 10 above) will facilitate digital transmission of Interloan requests.

(28) Paragraph 179 of the *Position Paper* reports the concern of copyright owners that the digital distribution of their works increases the number of copies in circulation. This need not be so, since both the supplying and receiving libraries can be required to delete the digitized Interloan material after transmission; and the person who requested the material is of course bound by the Act not to make additional copies – there is no difference here between the digital and print environment, and the digitised material could easily be accompanied by a form statement to this effect.

WIPO INTERNET TREATIES (Part Nine)

(29) CONZUL is concerned that the WIPO Internet treaties appear to be shifting the balance towards advantaging copyright owners, at the expense of users of copyright works. CONZUL believes very strongly that it is imperative that any changes in copyright legislation should be framed in such a way that ensures that the appropriate balance is maintained, for the benefit of New Zealand society a whole.

Sue Pharo

Chair

Council of New Zealand University Librarians (CONZUL)

20 February 2003