

1. COPYRIGHT IN THE TERTIARY EDUCATION SECTOR

(a) What this section is about

This section of the Guide provides a general outline of aspects of copyright relevant to the New Zealand tertiary education sector. It highlights the importance of copyright to tertiary education and summarises the statutory framework for copyright protection. It then outlines the applicable statutory exceptions to copyright relevant in the educational context, including the educational exceptions and fair dealing provisions. The various licensing schemes and other licensing models that apply to TEIs are discussed.

(b) Importance of copyright to tertiary education

(i) Copyright is everywhere

Most information resources used (and produced) in the tertiary education sector are protected by copyright. Text books, journal articles, course packs, anthologies, software, lecture notes, theses, digital files, website material, images, diagrams, music, audio and video clips, broadcasts and podcasts - all are subject to the system of copyright protection. The ability to copy from, use and re-use this material is essential to the furtherance of tertiary educational purposes.

(ii) Copyright is fundamental to education

a. The ability to share, test and develop what came before us is how we learn and innovate. Copyright plays an important part in encouraging the creation and dissemination of works that convey ideas and knowledge. Without a functioning copyright system, content creators would be less likely to invest the time, effort and money into producing the high quality learning materials that teachers and students value and society benefits from.

b. Many authors rely on the fact that they may receive financial reward from the product of their creative effort. On the other hand, some authors create and publish material without any expectation or requirement for financial reward. These authors may place more value on free, open access to the material they create. The wide dissemination achieved through open access platforms provides other benefits, such as increased recognition for their work, promotion and citations. In any case, the basis of copyright is that authors have a right to choose if, how and when their works will be reproduced and communicated, subject to appropriate limitations to ensure sharing and access is not hampered.

(iii) Tertiary participants both creators and users

Teachers and students in the tertiary education system are often both significant creators and users of copyright content. They have a vested interest in understanding how copyright impacts on their ability to use third party content and how it protects their own work. It is important for all tertiary education participants to copy and share content legally and fairly as they would expect others to copy and share their work.

(iv) Importance of attribution

a. Acknowledging the author or source of a work is an expectation whenever third party material is copied and distributed in the tertiary educational space. The concept of attribution is legally required in a number of situations, including under moral rights, fair dealing and educational copying provisions. In addition, licence agreements generally

require licensees to acknowledge the author or source of a work. Even in situations where it may not be a strict legal requirement, it is good academic practice to acknowledge the source of any third party material relied upon. The manner of acknowledgement will depend on the type of material and the relevant discipline.

b. Despite its importance, acknowledging the source of a copyright work is not a substitute for permission. If permission is legally required to use all or part of a work, identifying the work is not enough.

(c) Key principles

(i) Copyright Act

Copyright law is regulated by the Copyright Act 1994 which sets out the types of material that can be protected by copyright and how it applies to that material. It also sets out basic “default rules” regarding ownership of copyright in certain works and what permitted uses apply to that material. The Copyright Act is the place to start to determine what rights you have with material you create in the education context and also what you can legally do with third party copyright material, whether that is incorporating quotes in a course assignment or thesis, producing copies of articles for students or playing video clips in class. Infringement of copyright by staff and students may result in infringement action being taken under the Copyright Act against them and also potentially against their institution.

(ii) Agreements which modify copyright

In practice, the default rules in the Copyright Act, in particular those relating to copying from text-based works for distribution in class, are fairly restrictive. Consequently, the default rules are often altered and extended by commercial agreements between copyright owners (or their representatives) and TEIs. Licence agreements entered into by educational institutions extend the type and amount of material that can be copied and distributed to staff and students than would otherwise be allowed under the Act. Individuals in the tertiary education sector also have access to special licences, particularly in the online context, that give them additional allowance to use content for the furtherance of educational purposes.

(d) TEI own copyright policies

TEIs have a responsibility to ensure that their staff and students comply with copyright rules. Most institutions have their own written copyright policies which outline expectations placed on their students and staff when dealing with third party material. In some cases, failure to copy and share copyright material legally and fairly may result in disciplinary action being taken by the education provider against staff or students.

(e) Works protected by copyright

(i) Types of work

a. The vast majority of material used in the tertiary education sector is capable of copyright protection. Copyright protects most original material that is intended to entertain or convey information. It applies regardless of any artistic or literary merit in the material. More traditional types of copyright material (such as written content, musical compositions and artworks) are protected along with material that involves a technological presentation of other works (such as published design layout, audio and video clips, broadcasts and webcasts).

- b. The categories of protected works protected under the Copyright Act are described below:

Category of work	Description
Literary work	Material (other than a dramatic or musical work) that is written, spoken, or sung, such as words of a book, poem, newspaper or journal article, speech or song. Includes tables, compilations and computer programs.
Dramatic work	Includes plays, works of dance or mime, film scenarios, scripts.
Musical work	Musical compositions (scores and sheet music) but not including any lyrics or sound recordings
Artistic work	Includes paintings, drawings, diagrams, maps, charts, photographs, sculptures, collage, models, works of architecture and works of artistic craftsmanship.
Typographical arrangement	The typographical arrangement of words and associated elements in published editions, such as books, journals, newspapers, posters and websites separate from the underlying works they contain, such as literary or dramatic works.
Sound recording	The recordings from which sounds may be reproduced, such as on CDs and audio files, separate from underlying music or other works they contain.
Film	Moving images such as on video or a DVD, separate from the underlying works they contain such as scripts and music.
Communication work	Radio and television broadcasts and internet transmissions, separate from the underlying works they contain, such as scripts, music and films.

(ii) More than one work in a single educational resource

There can be more than one type of copyright work in a single resource item. It is important to be aware of the separate copyrights in each item to avoid the risk of infringement when using third party works. For example, in a text book there may be a separate copyright in the literary work or works (such as each short story or novel); the typographical arrangement of the published edition; and artistic works (such as each illustration, photograph or diagram). Similarly, in a DVD or video clip there may be a separate copyright in the film (the moving images); the dramatic work (a screenplay); the music composition (musical work); and sound recording (recorded sounds synchronised with the moving images). In some cases there may be a mixture of public domain works (material in which copyright has expired) and copyright works in a single resource. There can also be different copyright owners applicable in a single resource. For example, each work incorporated in the text book or film may have a different copyright owner and a different copyright duration.

(g) What are the rights under copyright?

(i) Economic rights

Copyright is known as an economic right because it gives authors the opportunity to derive an income from their creative effort. Once an original work is recorded in some way (such as on paper in on a digital file) the author automatically has a bundle of exclusive economic rights in relation to that work. Each of these rights exist independently from one another and may be separately dealt with. To the owner, copyright is a set of exclusive rights, but from a content user's perspective it is a set of "restricted acts".

(ii) Exclusive rights applying to each type of work

Copying, publishing and communication to the public are restricted acts for all types of copyright work. Other restrictions apply to specific categories of work. A summary of the exclusive rights /restricted acts applying to each category of work is detailed in the table below.

Category of work	Copyright Rights / Restricted Acts
Literary work	<ul style="list-style-type: none">• copy• issue copies to the public (first publication)• rent copies to the public (computer programs only and subject to conditions)• communicate to the public• perform in public• adapt (including translation from one language to another or making a dramatised version), or do any of the above in relation to an adaptation
Dramatic work	<ul style="list-style-type: none">• copy• issue copies to the public (first publication)• communicate to the public

	<ul style="list-style-type: none"> • perform in public • adapt (including translation from one language to another or converting to a literary work), or do any of the above in relation to an adaptation
Musical work	<ul style="list-style-type: none"> • copy • issue copies to the public (first publication) • communicate to the public • perform in public • adapt (making an arrangement or transcription), or do any of the above in relation to an adaptation
Artistic work	<ul style="list-style-type: none"> • copy • issue copies to the public (first publication) • communicate to the public
Typographical arrangement	<ul style="list-style-type: none"> • copy
Sound recording and film	<ul style="list-style-type: none"> • copy • issue copies to the public (first publication) • rent copies to the public • play or show in public • communicate to the public
Communication work	<ul style="list-style-type: none"> • copy • issue copies to the public (first publication) • play or show in public • communicate to the public

(iii) Moral rights

a. Summary. There are certain rights which attach to authors and are separate from the economic rights. Under the Copyright Act, moral rights belong to authors of literary, dramatic, musical and artistic works, as well as to directors of films. The moral rights can be summarised as the right:

- to be identified as the author of their work (the right of attribution);
- to object to derogatory treatment of their work (the right of integrity); and
- to not have a work falsely attributed to them (the right against false attribution).

Moral rights are personal rights and remain with the author even if they have transferred copyright to another person or if copyright is initially owned by someone else. Moral rights last as long as copyright lasts.

b. Right of attribution. To be enforceable, the right to be identified must be “asserted” in writing. An author who has asserted this right must be identified reasonably prominently in relation to all copies of the work.

c. Right of integrity. In practice, the author’s right of integrity means that others have an obligation to not alter an author’s work without the author’s written permission. Alterations to an author’s work may be considered prejudicial to their honour or reputation so anyone who publishes someone else’s protected work needs to get consent to make alterations before publication to avoid infringing moral rights.

d. Right against false attribution. Representing a work as an author’s work when it has in fact been altered by someone else, may infringe the moral right relating to false attribution.

e. Academic practice and agreements reinforce moral rights. It is standard practice in an academic context to accurately attribute writers, illustrators, photographers, filmmakers and others wherever reasonably possible. This will be the case even if the right of attribution is not formally asserted by an author. Most agreements which grant TEIs permission to use copyright material in certain ways require the copyright user to accurately attribute the source of material they use and to copy exactly. For example, the terms of the CLNZ licence require all copying to be exact, as well as true to the typographical format of the work copied.

f. Right to privacy. The Copyright Act sets out a right to privacy in relation to photographs or films commissioned for private or domestic purposes. The person who commissions these works has the right not to have copies issued to the public, exhibited or shown in public or communicated to the public. This contemplates situations where the commissioner of these works does not own copyright in them. The right to privacy applies to works made after the commencement of the Copyright Act and lasts for the same duration as copyright.

(iv) Performers’ rights

Under the Copyright Act, performers have certain rights in their performances of a dramatic, musical or literary work. Performers have the exclusive right to give consent for the recording of their performance (or a substantial part of it), other than for private or domestic use, or for a live transmission of a performance. Performers' rights expire 50 years from the end of the year when the work was first performed.

(h) Infringement of copyright

(i) What does it mean to infringe copyright?

Copyright is infringed if a person does any of the restricted acts in relation to someone else’s copyright material, without the copyright owner’s permission. Actions that are not restricted will not infringe the law. For example, exhibiting an artwork in a public art gallery is not an infringement of copyright, so permission is not required by the copyright owner. However, uploading the work onto a webpage (a communication to the public) without permission is usually an infringement.

(ii) Infringement by authorisation

A person may be liable for copyright infringement committed by others if they authorise

an infringing act. For example, an employer may be liable for an employee's infringement. To authorise means to "sanction, approve or countenance" the infringing conduct. In some cases, "turning a blind eye" may amount to authorisation. Care needs to be taken when TEIs and their staff make available the means by which others might infringe copyright. It is important to take steps to actively discourage the use of computer systems and other TEI equipment to infringe copyright works.

(iii) Infringement by copying

a. "Copying". Copying is a restricted act in relation to all types of work and is arguably the most common compliance concern in the tertiary education space. Copying happens when resources are reproduced or recorded in some way, such as by hand, photocopying, scanning, downloading or uploading a work. Literary, dramatic, musical or artistic works are also copied when they are stored on a computer. In relation to artistic works, copying includes making a 3-dimensional copy of a two-dimensional work and the making of a 2-dimensional work out of a three-dimensional work. It also includes making a photograph of any single image in a film or communication work. Format-shifting of any kind, such as converting material from MP3 files to a CD, is a form of copying.

b. "Substantial part" In most cases it is obvious if a whole work is copied. Copying also occurs when a "substantial part" of a work is copied and this is not always so obvious. There are no legal guidelines about the quantity of material or percentage of a work that makes up a substantial part — it is a matter of fact and degree in each case. Often it is said that the *quality* of what is taken, rather than the quantity is what matters. A substantial part is essentially any important or distinctive part of the whole work and this may be a very small part of a work. Reproducing a few lines from a poem, an extract from a book or a paragraph from a journal article can be considered a substantial part of a work. Typically, educational use or research will call for an important or distinctive part of a work to be reproduced.

(iv) Illegal file sharing

a. Illegal file sharing has important implications for staff and students at TEIs. There is a regime under the Copyright Act for bringing legal action against internet users who infringe copyright via a file sharing network. This regime was introduced via the Copyright (Infringing File Sharing) Amendment Act 2011.

b. What is file sharing? File sharing is the downloading or uploading of material using peer-to-peer (P2P) networks or applications that allow material to be shared among multiple users. Examples of file sharing applications include Shareasa, BitTorrent, Ares, Kazaa, Limewire, BearShare and eMule. Not all file sharing is illegal – it is only when copyright material is infringed in the process.

c. Process for illegal file sharing claims. The copyright owner can forward allegations and evidence of illegal file sharing to internet service providers (ISPs), who are then required to send infringement notices to their customers informing them that they may have breached copyright via file sharing. The ISP may send up to three infringement notices and an account holder has the opportunity to challenge these notices. Account holders will be required to provide an explanation and may have their access to the network temporarily removed. If there has been no resolution following the three-notice process, then illegal file sharing claims may be referred to the Copyright Tribunal. The Tribunal may make awards of up to \$15,000 based on damage sustained by the copyright owner.

- (v) **Other types of infringement.** In some situations, copyright owners can take action against people who alter digital copyright management information or who deal in devices intended to circumvent technological protection measures. Under the Copyright Act there are additional restrictions on importing infringing copies of copyright material, commercial dealing with infringing copies and providing assistance to others to infringe copyright.
- (vi) **Remedies for infringement.** Copyright owners may enforce their copyright by bringing legal proceedings against those who infringe their copyright. Remedies for infringement include damages, account of profits and injunctions to prevent further infringement. Some types of deliberate copyright infringement may give rise to criminal liability. Students and teachers can be personally liable for their copyright infringement in an educational context and in some circumstances their TEI may also be liable.
- (vii) **Key to avoid infringing**
Teachers and students in the tertiary education sector can avoid the risk of infringing copyright by understanding what content is protected and what the restrictions are on use. Where there is no existing permission or copyright exception, it will be necessary to get permission from copyright owners whenever copyright resources are copied or shared with others.

(i) Where copyright does not apply

(i) Using less than a substantial part

Copyright issues do not arise unless there is use of a “substantial part” of a copyright work. In the educational sector, it is safe to assume that most uses of copyright material will involve a substantial or important part of a work. However the use of names, titles and headlines is an exception. Where these aspects are part of a greater work, copying of those individual aspects usually will not infringe copyright in the whole work as it would not be considered a substantial part. Names titles and headlines are not protected by copyright as stand-alone works as they are considered so commonplace and unoriginal that copyright is simply not ascribed to them. In addition, using short stand-alone texts (such as slogans or tweets) will often not give rise to copyright issues as they may not be sufficient to be a literary work for copyright purposes.

(ii) Where copyright has expired

a. Copyright does not last for ever. For most types of works, copyright lasts until fifty years from the end of the year in which the author dies. For typographical works, copyright lasts for 25 years from the end of the year of publication. Other types of copyright material have slightly different periods of protection. Material in which copyright has expired is sometimes referred to as being in the “public domain”.

b. Copying and publishing public domain works. Anyone may copy or publish a public domain work without the need to get permission. Where a public domain work is published (or republished), the publisher owns copyright in the typographical layout of that particular edition and during the period of the publisher’s copyright, may prevent someone else making an exact copy of the edition. However, the copyright in the work itself (such as the story, poem or play) is not revived by the republishing; anyone can still reproduce all or parts of it.

(iii) Own works

Generally, if you have created copyright material which you own, you will not need to get permission to copy. However, care needs to be taken in making assumptions as to who owns certain rights in copyright material, because there may be restrictions on its use. For example, if you created certain material in the course of employment as a lecturer or in accordance with a research contract, your employer or funder may own the copyright or may have imposed conditions on its use. For teachers, it cannot be assumed that material owned by the Ministry of Education can be used without restriction (although often content may be available under an open access licence). If you have published your own material, any transfer or licence you have granted to a publisher may have an impact on what you can do with the material.

(iv) Excluded works

a. Although the vast majority of works are capable of copyright protection, there are some materials that are not. Under the Copyright Act a few types of “public” documents do not have copyright protection so there is no need to seek permission from copyright owners. Excluded works are:

- Parliamentary bills, Acts and regulations;
- Bylaws;
- Parliamentary debates;
- Select Committee reports;
- Court and tribunal judgements; and
- Reports of Royal commissions, commissions of inquiry, ministerial or statutory inquiries.

b. It is important to remember that the format in which some excluded material is published may still be protected by copyright as a typographical arrangement.

(v) Transient copying

The simple act of browsing the internet results in temporary electronic copies being created in a computer’s memory. There is special provision in the Copyright Act that clarifies that this type of copying does not infringe copyright in the work if the reproduction is transient or incidental and it has no independent economic significance. Such copying must be an integral and essential part of a technological process for making or receiving a communication that does not infringe copyright or enable the lawful use of or lawful dealing in the work.

(vi) Statutory exceptions

There are a number of statutory exceptions under the Copyright Act that allow people to use copyright material in certain ways without needing to get permission. These balance the author’s exclusive right to control the uses made of their work. From a content user’s perspective, these exceptions are known as “permitted uses” and they are a defence against infringement. The permitted uses most relevant in an educational context fall under three main categories:

- a. Fair dealing
- b. Educational use; and
- c. Miscellaneous uses (particular uses in specific circumstances).

(j) Fair dealing

- (i) **Importance.** Fair dealing is one of the most important permitted uses for tertiary students and researchers. When fair dealing applies there is no need to get permission from owners to use copyright works. In New Zealand, fair dealing allows people to deal with any type of copyright material for the purposes of their own research or private study, criticism and review or news reporting, where it is fair to do so.
- (ii) **Guidelines.** There are no specific guidelines on how much copying is allowed under fair dealing. There is a common misconception that any copying up to 10% of a work is fair dealing, however this is incorrect. The Copyright Act does not indicate a quantity of copyright material that can be copied. Content users need to ensure their dealing fits into one of the three specific purposes listed in the Act and that the dealing is fair in the circumstances.
- (iii) **Purposes of the dealing.**
- Criticism and review.* Fair dealing for the purpose of criticism or review allows a person to copy copyright material when they are critiquing or reviewing that material, for example in an academic paper, in a book or film review, or when making a documentary film. Some courts have also accepted that protection can extend to criticism of the ideas to be found in a work and its social and moral implications. A fair dealing for criticism or review must be accompanied by a “sufficient acknowledgement”. This generally means that the author (not the copyright owner) and the title of the work are acknowledged.
 - News reporting.* A fair dealing with a work for the purpose of reporting current events may be relevant when writing a submission for a newspaper article. Fair dealing for news reporting purposes also requires “sufficient acknowledgement” unless the reporting is by means of a sound recording, film or communication work. The news reporting exception does not apply to photographs, so permission is always required to reproduce or communicate photographs when reporting current events.
 - Research or private study.* Fair dealing for research or private study is a key provision for students and researchers. The terms “research” and “private study” are understood by their ordinary meaning. “Research” has been described as “a diligent and systematic inquiry or investigation into a subject in order to discover facts or principles”. In New Zealand, research may be commercially or privately motivated whereas private study is personal to the student. In either case, only an individual doing the copying can rely on the fair dealing defence. The exception does not cover dealings for someone else’s research or study, for example, a teacher copying for research purposes of students. Only one copy can be made of material at any one time, so copying for group research or study is not permitted. (The educational copying provisions and educational licence schemes facilitate copying for students in the educational context.)
- (iv) **Uses subsequent to research or study.** It is important to note that the fair dealing exception for research / private study applies only to the use associated with research or study, but not to any subsequent uses, such as publication of that research. Publication would involve making multiple copies, which is not allowed under the provision.
- (v) **Requirement of fairness.** For fair dealing to apply, it is not enough that a use fit within one of the specified purposes. The dealing must also be “fair” in the circumstances. There are several factors listed in the Copyright Act that are to be taken

into account in determining whether copying is fair (although it is likely a court would also refer to these factors for other dealings). The fairness factors are summarised below:

- a. the purpose of the copying (for example, copying for commercial purposes is less fair than copying for personal use);
- b. the nature of the work copied (the degree of skill, judgement or labour that went into creating the work may be relevant);
- c. whether the work could have been obtained within a reasonable time at an ordinary commercial price (it may be fair to copy all or part of a work that is not available commercially, but unfair to copy where you can buy it);
- d. the effect of the copying on the potential market for or value of the work (for example, where a work is available for sale or licence); and
- e. the amount and substantiality of the part copied (for example, it is less fair to copy a large or important part of a work than to copy a small or unimportant part. It may be fair to copy a whole work, such a journal article or a poem. It would not be fair to copy a whole book (unless it is not available for purchase).

(k) Exceptions for educational use

(i) Application of education provisions

There are a range of exceptions in the Copyright Act that apply specifically to the use of copyright material for educational or instruction purposes by or within “educational establishments”. All public tertiary institutions and non-profit private or government training establishments are educational establishments for copyright purposes. There will be some private tertiary institutions that may not come within the definition for the purposes of the Act. (See section 2 of the Copyright Act.) The education provisions contemplate use within the class room situation for teachers, lecturers and students enrolled in a course of study. In most cases, establishments are not allowed to charge students for the supply of copied material made under the Copyright Act.

(ii) Copying of literary, dramatic, artistic, musical, typographical works – section 44, 46

- a. *Multiple copying of print works.* For most TEIs, copying extracts from text-based copyright material is a necessity, either for incorporation in hard copy or electronic course packs or for class room purposes. The Copyright Act allows educational establishments to make multiple copies of small extracts from these works for students. The copying is limited to 3% or 3 pages, whichever is the greater. Where such copying would cover a whole work (such as a poem, short story or article), copying is limited to 50% of the work. A work cannot be re-copied by the institution within 14 days. Communication of copies to students by electronic means is permitted, meaning teachers can put a copy of an extract on an intranet for students to access or e-mail a copy to students. There is no right to copy any artistic work under this provision, except if it appears within the text of the copied print works.
- b. *Single copies of print works.* There is permission for teachers to copy up to a whole work by any means, to prepare for instruction or use for instructional purposes. Only one copy can be made on any one occasion. This would allow a lecturer to

photocopy or scan and project on to a screen for students to view in a lecture theatre. However the provision does not allow copying for students, making available for students to copy, or communicating the copy to students. So placing a copy of a whole work on an intranet is not permitted as this amounts to the restricted act of communication to the public. Single copying of up to a whole work *by hand* by either the teacher or the student is also permitted for the purposes of instruction.

- c. *Multiple copying of short extracts from anthologies.* There is specific permission for copying of short extracts from literary, dramatic or musical works in an anthology that has been published for use in educational establishments. There are several conditions applicable.

(iii) Storing webpages – section 44A

Websites contain a variety of copyright content, including computer programs, text, images, diagrams, typographical works and compilations. Educational establishments are permitted to store webpages for educational purposes provided that the material:

- is displayed under a separate frame or identifier;
- identifies the author (if known) and the source of the work; and
- states the name of the educational establishment and the date of storage.

The stored material must be restricted to use by students and teachers who can access it only through a verification process (such as a user password). The establishment must delete the stored webpage within a reasonable time once it is no longer relevant to the course of instruction for which it was stored.

(iv) Copying sound recordings, films, communication works – section 45

Teachers and students are permitted to copy films, sound recordings or communication works (and any underlying works) for the educational purposes of making a film or film sound track. There is no permission under this provision to show or play these works in public. Copying of sound recordings by teachers or students is also allowed where a lesson relates to the learning of a language or is conducted by correspondence.

(ii) Performing, playing or showing works – section 47

Students or staff can perform literary, dramatic or musical works, for instruction purposes during class. Sound recordings, films and communication works can also be played or shown. The audience in any case may only be students, staff or others directly connected with the activities of the educational establishment (not parents and guardians).

Performances, playing or showing before a paying or public audience are not permitted.

(iii) Copying and communicating communication works – section 48

Copying of communication works such as broadcasts and internet transmissions and communicating them within the educational establishment is allowed. An important qualification is that there is no licensing scheme available to administer these rights. Currently there is a licensing scheme administered by Screenrights for the off-air recording by educational institutions in New Zealand, which effectively nullifies the provision.

(iv) Anything done for examination purposes – section 49

Staff and students are allowed to copy any copyright material if it is for the purposes of examination. This can involve setting the questions, communicating the questions to candidates, or answering the questions. Assignments, theses and dissertations which count towards a student's final grade in a course are considered "examinations". Copying

for course packs or for other lecture material would not be covered by this exception nor would storage of examination papers in library databases for future student reference.

(l) Miscellaneous permitted uses

- (i) There is a collection of miscellaneous provisions which apply to particular uses of copyright material in specific circumstances, many of which may have relevance in a tertiary educational context. Some of these are summarised below:
 - a. **Incidental copying – section 41**
Incidental copying of any type of work (but not the deliberate copying of music or lyrics) in an artistic work, sound recording, film or communication work. The publishing, playing or showing of such copies to the public is also permitted.
 - b. **Anonymous works – section 67**
Any use of literary, dramatic, musical or artistic works where the author is unknown and it is reasonable to assume copyright has expired or that the author died at least 50 years ago.
 - c. **Scientific or technical abstracts – section 71**
Copying and publishing article abstracts from scientific or technical journals and issuing such copies to the public (such as including in an electronic database).
 - d. **Buildings (artistic works) – section 73**
Copying by painting, drawing, photographing or filming, or communicating a visual image, or issuing copies to the public.
 - e. **Sculptures, building models, craft works – section 73**
Permanently situated in a public place or in premises open to the public. May copy by painting, drawing, photographing or filming, or communicating a visual image, or issuing copies to the public.
 - f. **Back-up, decompilation and adapting of computer programs – Section 80**
Subject to certain conditions.

(m) Tertiary institution copyright licences

- (i) **Licensing generally**
The educational provisions in the Copyright Act are insufficient to cater to the copying and other content requirements of most education providers. TEIs enter into licences to increase the amount of a work that can be copied for their students. A licence is essentially permission to make more use of a work than is otherwise allowed under copyright rules. Rights in a particular copyright work can be licensed separately for a particular purpose, term or place and subject to conditions such as payment of a fee. The terms of any licence that a TEI enters into covering the use of certain copyright material impacts on how that material may be used by staff and students.
- (ii) **Licensing schemes**
The Copyright Act provides for licensing schemes to extend permitted uses of copyright in an educational context. To overcome the challenges of licensing faced by copyright owners where there are multiple works being used by institutional users, copyright owners have formed collecting societies to act on their behalf and license their works under licensing schemes. As there is no system of copyright registration in New Zealand

and no central database that you can search to find a copyright owner, collecting societies benefit TEIs because they can deal with one locatable entity rather than a multitude of individual owners. There are several licensing schemes available to TEIs in New Zealand. Institutions that have a licence agreement with a collecting society do not need to get direct permission from copyright holders provided that the copying or other use is within the terms of the licence.

(iii) Copyright Licensing NZ

a. Copyright Licensing New Zealand (CLNZ) represents publishers and authors in providing licences to organisations which reproduce copyright material from hard copy, text-based resources. Educational institutions take up licences with CLNZ to increase the amount that can be legally copied from published books, journals and periodicals. CLNZ collects licensing fees for the reproduction of such material and distributes it to publishers and authors.

b. Under the CLNZ licence, teaching staff may make multiple copies from books, text books, journals, periodicals and newspapers for supply to students enrolled in a course of study at the licensed institution. Unlike copying under the Copyright Act, TEIs may recover costs incurred in providing copies to students under the licence. Copying may be done from printed originals up to the following limits:

- 10 percent or one chapter of a book, whichever is greater;
- A whole article from a journal or periodical (including newspapers) or more than one if they are on the same subject;
- Up to 15 pages of a poem, short story, play or essay when published in a collection of works;
- A whole diagram or illustration which is published as part of a literary work.

c. Copies may be provided to students in hard copy or electronically via a password protected system, such as by e-mail, via an intranet or an electronic whiteboard. The CLNZ licence also allows copying of out-of-print works in their entirety, provided that permission is first obtained from CLNZ who must be satisfied that the work cannot be obtained within a reasonable time at an ordinary commercial price.

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