

## New Zealand Copyright Law – Fair Dealing Exceptions in Education

This information is provided by Copyright Licensing Limited (CLNZ) for the purpose of informing the Canadian government about an area of copyright law and its operation in New Zealand. We are aware that the House of Commons Standing Committee on Industry, Science and Technology has started its review of the Canadian Copyright Act and is interested in how other territories provide for access to published works for education institutions. We have limited our comments to the operation of the Act and CLNZ's licensing schemes. Exceptions and licensing schemes also operate in New Zealand for access to musical and broadcast works in education. The 3 types of licence offerings are all available to New Zealand schools via <http://www.getlicensed.co.nz>

### Fair Dealing Exceptions

The New Zealand Copyright Act (the Act) provides a number of fair dealing exceptions. The main categories of these are:

- (1) Research or private study
- (2) Criticism, review and news reporting
- (3) Educational purposes (including examination purposes)
- (4) Libraries and archives
- (5) Public Administration
- (6) Access to published works for people with a print disability

Given the Standing Committee's interest to access in education, we will provide comment on numbers 1 and 3 above.

### Research and Private Study

Fair dealing for research or private study is covered in [Sec 43 of the Act](#) which states:

- (1) *Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work.*
- (2) *For the avoidance of doubt, it is hereby declared that fair dealing with a published edition for the purposes of research or private study does not infringe copyright in either the typographical arrangement of the edition or any literary, dramatic, musical, or artistic work or part of a work in the edition.*
- (3) *In determining, for the purposes of subsection (1), whether copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, a court shall have regard to—*
  - (a) the purpose of the copying; and*
  - (b) the nature of the work copied; and*
  - (c) whether the work could have been obtained within a reasonable time at an ordinary commercial price; and*
  - (d) the effect of the copying on the potential market for, or value of, the work; and*
  - (e) where part of a work is copied, the amount and substantiality of the part copied taken in relation to the whole*

work.

*(4) This section does not authorise the making of more than 1 copy of the same work, or the same part of a work, on any one occasion.*

The exception provided by Section 43 is aimed at individuals who are undertaking their own research and private study and is limited to the making of single copies. It does not permit the making of multiple copies for students.

## Education Exceptions

The sections of the Act relating to fair dealing for educational purposes are aimed at institutions that are copying for their students. Fair dealing for educational purposes is covered in a number of sections:

[Sec 44](#) Copying for educational purposes of literary, dramatic, musical or artistic works or typographical arrangements

[Sec 44a](#) Storing copies for educational purposes

[Sec 45](#) Copying for educational purposes of films and sound recordings

[Sec 46](#) Anthologies for educational use

[Sec 47](#) Performing, playing, or showing work in course of activities of educational establishment

[Sec 48](#) Copying and communication of communication work for educational purposes

[Sec 49](#) Things done for purposes of examination

Most notably, and most easily understood by teaching staff, is the quantified exception provided in Section 44 which enables the unremunerated use of 3% or 3 pages of a work, in multiple copies, for students. When the copy is made from a whole work (such as a poem, short story or article) no more than 50% of the work can be copied. Moreover, the work from which the copy is made cannot be copied at the same institution within a 14-day period.

The voluntary licensing schemes offered by CLNZ build on these exceptions. The CLNZ licence, for which a fee per equivalent full time student is paid, provides access to 10% or 1 chapter of a work, in multiple copies, for students.

In addition to the above, the licence also enables copying of entire works if they are not currently available in the market; copying of parts of works where the works have been purchased but are yet to be received; copying of small amounts in excess of the 10% limit (for an additional per-page fee).

The licence fees in place for government-funded education institutions in 2018 are:

- Primary school (year 0 to year 8) \$1.65 per student
- Secondary school (year 9 to year 14) \$3.30 per student
- University students \$23.68 per equivalent fulltime student



Other tertiary institutions have fees ranging between the level of the university and school fees.

Materials copied in reliance on the licence can be made available to students in either paper or digital copies. Information on the licenses, including a video explanation and downloadable guides, are available at <http://copyright.co.nz/licenses-and-permission/education>

The Section 49 exception for Examination Purposes allows the unremunerated use of any copyright material in the compilation of examination questions for the purpose of examining student achievement. This exception is most heavily relied upon by the NZ Qualifications Authority (NZQA) – the government agency responsible for external school examinations. When NZQA provide copies of prior year examination papers for students to practice on any copyright material is removed.

### **Amendments Currently Underway**

A draft of an amendment to the Copyright Act that will implement the [WIPO Marrakesh Treaty into New Zealand](#) law, has recently been published. The amendment will enable any educational institution that registers its intentions with the New Zealand government agency responsible for the Copyright Act (MBIE), to make accessible format copies of published works for a student who is print disabled.

A [consultation process](#) is being conducted by MBIE to identify issues with how the current Copyright Act is operating in New Zealand. This is in the early stages and an [Issues Paper](#), recently published, will be followed by a consultation period and then an assessment by the government as to whether any change will be actioned.

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