

STAFF NEWSLETTER USE OF COPYRIGHT MATERIALS 2003

This newsletter is not intended to provide staff with a complete picture of copyright issues. It does, however, attempt to outline some key changes that come into effect in 2003 and to remind staff of their obligations when using copyright materials.

Staff members frequently use copyright material for educational purposes within the University. The University also has legal and ethical obligations to ensure that the use of this material complies with the provisions of the Copyright Act or relevant copyright licences.

The following information outlines the permitted uses of copyright material within the University environment and restrictions which must be observed. Note that a court can impose severe penalties on both individuals and the University if copyright is breached.

1. WHAT IS COPYRIGHT?

Copyright is a right given to the creator of an original work to control the use made of that work. In many cases there will be a “bundle” of copyrights associated with each original work. Thus the author of a book will typically own the copyright in the written words, an artist may own the copyright in diagrams in the book, whilst the publisher will own the copyright in the “layout” of the published book. A television broadcast may well have 20 or more rights owners given the rights of writers, music composers, musicians, set designers, choreographers and the like.

Copyright law attempts to balance the rights of owners and users of copyright materials. Under New Zealand law there are certain “education” provisions that are relevant to the use of copyright materials by the University.

2. YOUR RIGHT TO USE COPYRIGHT MATERIALS

Copyright exists for a limited time in an original work by virtue of the Copyright Act 1994 (for further information see section 7 below). While a work remains under copyright, any use of that work must comply with the Act, or with a relevant copyright licence, or individual permission sought from the relevant rights owners.

Works in which copyright has expired may be copied without limitation.

The Copyright Act creates exceptions to copyright that permit certain uses of copyright material in specific circumstances.

One such exception under the fair dealing provisions of the Act applies to staff and students in the course of their private research and study. Under section 43 of the Act, if the copying satisfies a number of criteria (i.e. the nature of the work copied; the purpose the copying; the availability and cost of the work; the effect of copying on the market for the work; and the amount and substantiality of the part copied) staff and

students can make a single copy of a work or a part of a work for their private research or study without infringing copyright.

New Zealand courts have not determined how much copying will constitute a “substantial” amount. It seems likely that, under this provision, it will be permissible for a staff member or student to make one copy of an article from a journal published some time ago because copies of that journal will not be readily available at an ordinary commercial price. However, a court may well find that a staff member or student who copies, say, two chapters, or a key summary, from a book available locally has breached the fair dealing provisions. Please take care when relying on this provision.

In certain circumstances, and with sufficient acknowledgement, you may be entitled to copy an insubstantial portion of a work for the purpose of criticism or review under section 42 of the Act.

Copying for other purposes must comply with the Act or with copyright licences as outlined below.

3. YOUR OBLIGATIONS WHEN USING COPYRIGHT MATERIALS

3.1 Attribution

All copyright material copied and used within the University must be fully and correctly identified so that the source of the material copied, author, creator and/or publisher are clearly ascertainable by any person who receives a copy of the work.

3.2 Moral Rights

Authors and creators of copyright material possess “moral rights” under the Copyright Act. These include the right to be correctly identified as the author or creator of a work, as well as the right to object to any derogatory treatment of their work. These rights impose obligations upon staff and students when copying or otherwise using a work.

3.3 No modification

The provisions of the Copyright Act mean that copyright material should not be modified. In other words, if a work is copied it should be an accurate copy. This is consistent with the author’s moral right to object to “derogatory treatment” of the work and means that staff and students should not alter the image or text without the express permission of the rights holder.

Note that, in the process of advancing knowledge, staff and students may well develop their own original expression of an existing original work without infringing copyright. This would mean for example that you might copy a diagram from a published work saying “X describes the process as follows” and ensure that the diagram is fully attributed. Then, consistent with the right to criticise or review a work, you could follow that with your interpretation of the

diagram explaining why and how you have modified the original diagram. That way your rights, and the rights of the creator of the original are respected.

Equally, it will normally be possible for a teacher to include “linking comments” between copied extracts so long as it is clear where each copied extract begins and ends and its source.

3.4 What is a Copyright Licence?

The University has agreed to purchase a number of licences to allow staff to copy and use copyright materials for the educational purposes of the University. These typically extend the limits on copying and distribution of those copies beyond the limits imposed by the Copyright Act.

For each licence there are strict entitlements which must be complied with at all times to ensure that the protection afforded by the licence will be available to the staff member making or authorising the making of the copy and to the University.

Staff must ensure they are aware of the provisions of the relevant licences before relying upon them to make copies for educational purposes.

3.5 Copyright Warning Notice

When copyright materials are made available, particularly in coursepacks or compilations, the following warning should be prominently displayed with those materials.

You are being provided with copies of copyright material made for educational purposes. These include extracts of copyright works copied under copyright licences. You may not make these materials available to other persons, nor make a further copy for any other purpose. Failure to comply with the terms of this warning may expose you to legal action by a rights owner and/or disciplinary action by the University.

3.6 Participating in Copyright Surveys

It is a condition of copyright licences that, in exchange for the right to make copies of works in excess of the entitlements under the Act, staff must participate in copyright surveys. The terms of our licences ensure that:

- i) The data collected during the survey is confidential to the licensing agency and the University. It cannot be used as the basis of a prosecution for a breach of copying entitlements; and
- ii) the information gained from the surveys will be used to determine payments to rights owners.

4. COPYING PRINT MATERIALS

Unless the author has been dead for more than 50 years **and** the work from which you wish to copy was published more than 25 years ago, material accessed from hard copy or print sources may not be copied or used except within the limits of the Act or a licence.

4.1 A Single Copy

As noted in section 2 above, the fair dealing provisions of the Copyright Act 1994 allow staff and students to make a **single copy** of a portion of a copyright work for their private research and study. The amount which can be copied under these provisions is not specified and, as explained in section 2, normally only a small portion of a work should be copied if you rely on this provision.

4.2 Multiple Copies

The University has agreed to enter into a new copyright licence from 1 January 2003 primarily covering copying from **print originals** (i.e. copying from hard copy **books or periodicals/journals**). *Note: - the licence does not permit copying from electronic books or electronic journals*

This licence allows staff to make **multiple copies** of print originals for the educational purposes of the University. Under the licence, these multiple copies may be made available in **print or electronic format**.

A print format copy is made available as a photocopy.

An electronic format copy may be made available either:

- i) over a secure University Intranet;
- ii) by email to those students enrolled in a particular course; or
- iii) by means of the distribution of a CD to students enrolled in a particular course.

Please see the attached memorandum for further information regarding the new CLL licence. CLL will be providing a brochure outlining the licence provisions shortly and all staff will receive a copy.

5. COPYING BROADCASTS

The University holds a licence with Screenrights, which enables staff to copy radio and television broadcasts and cable programmes in New Zealand. These copies must be made for the educational purposes of the University and may be made in any format, including a digital format. All copies must be clearly labelled in the prescribed manner.

Please see the Screenrights brochure “Universities, Copying from Television and Radio” for further information regarding this licence.

6. COPYING OTHER MATERIALS

Note that copying electronic databases, maps, music and the like, falls into this category. These types of materials cannot be copied under print materials or broadcast licences mentioned above.

Any entitlement to copy such materials will usually be specified as a condition of the terms under which the material is purchased. In other words, any rights to make or distribute copies will be determined at the time of purchase and staff cannot assume a

right to make or distribute copies of these materials. Please check carefully before you copy such works.

6.1 Electronic Databases

The Library and various departments within the University purchase the right to use copyright material contained in electronic databases. The terms under which these databases are purchased determine the uses the University can make of them. Therefore the right of staff and students to copy and use this material will vary according to those terms. Before copying and/or distributing material from such databases, advice must be sought from the Library or department which hosts the database. Normally the best practice is to give other staff and students the electronic address for the relevant information, allowing them to access the materials directly from the database site. This will avoid allegations that the staff member has breached copyright.

6.2 Copyright Material on the Internet

Staff must not assume that because material is on the Internet it can be freely copied and distributed. In some cases copyright material is placed on the internet under very strict conditions. Sometimes it can be freely copied, but other times it has been placed on the internet without the permission of the rights owners and copying such materials breaches copyright. As above, the best practice is to give staff and students the electronic address for the relevant information, allowing them to access the materials directly from the web. Staff and students should always be warned that they may only copy works from the internet provided that they do not infringe the rights of the copyright owner.

7. DURATION OF COPYRIGHT

Copyright expires after a specified period. Non-copyright material may be copied in full and dealt with freely by the public.

The duration of copyright varies depending on the type of work protected.

Literary, dramatic, musical or artistic works remain copyright protected until the end of the period of 50 years from the end of the calendar year in which the author dies. In addition a typographical arrangement, typically a published book or journal, remains protected for 25 years from the end of the calendar year in which it was first published. Thus, new copyright protection attaches to each successive edition of a work; so that material contained within a new edition of a book is subject to the copyright protection the book enjoys. That work may not be copied or dealt with unless it is done so under a licence or with the express permission of the rights holder.

Copyright in a broadcast or cable programme expires at the end of a period of 50 years from the end of the calendar year in which the broadcast was made, or the cable programme is included in a cable programme service

7.1 Out of Print Copyright Material

Unless copyright has expired, as described above, a copyright work that is out of print is still subject to copyright protection. Such works cannot be copied beyond the extent permitted by the licence without express permission of the rights holder or the licensing agency. For further details, contact:

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CLL COPYRIGHT LICENCE 2003 – 2007

COPYING OF PRINT ORIGINALS AND THEIR DISTRIBUTION IN PHOTOCOPY OR ELECTRONIC FORM

The University has agreed to enter into a new copyright licence with CLL, to be effective from 1 January 2003. The details of the licence are still being finalised.

The new licence will offer staff significant advantages in the preparation of course packs and compilations for students. We are distributing the following information about this licence in order to enable staff to plan accordingly.

1. Rights granted under the licence

The licence permits staff to make **multiple copies** of a limited portion of an original copyright work published in hard copy format (i.e. typically a book or journal) for the educational purposes of the University.

These copies may be made available to enrolled students either as:

- (1) photocopies (e.g. as lecture handouts, or in coursepacks, or compilations) ; or
- (2) electronic format, by means of
 - (i) a secure University Intranet; or
 - (ii) email to students enrolled in the relevant course; or
 - (iii) a CD distributed to students enrolled in the relevant course.

2. Permitted Limits of Copying

The licence extends the limits of copying permitted under the Copyright Act. For each type of work, the portion of a work that may be copied under the licence is given below:

Type of Work	Educational Copying entitlements under the Copyright Act 1994	Photocopying or electronic copying permitted under the 2003 CLL licence
Book	3% or 3 pages, but not if that includes a “whole work”	10% or 1 chapter, whichever is greater
Periodical Article	Not permitted because it is a whole work	The whole article or more than one article from the same issue of a periodical publication where each of the articles copied is on the “same” subject matter
Poem or short story	Not permitted because a poem or short story is a “whole work”	Up to 15 pages of the whole or a part of the work
Diagrams & Illustrations	Can copy if it is part of 3% or 3 pages of the work - i.e. it is embedded in the text. Cannot copy the diagram by itself as it is a “whole work”	The whole diagram or illustration published in a textual work unless it has been reproduced “with permission”
Out of Print Works	Whole works cannot be copied without permission of the rights owner(s) even if the work is unavailable	Photocopying only of up to and including the whole work provided CLL has previously confirmed it is

		satisfied that the work cannot be obtained within a reasonable time at an ordinary commercial price
Repeat Copying	No staff member or student (anywhere within the University) can copy from the same work within 14 days	Permitted provided it is not copied by the same staff member for the same course, paper, unit or module

3. Attribution of works copied under the licence

The source of all copyright material copied and made available under the licence must be identified to enable the licensing agency to make payments to the rights owners.

In addition staff have legal and ethical obligations to ensure that each extract copied is fully and accurately attributed.

To meet these requirements staff members must provide the following details for each extract copied:

- Title of publication
- Date of publication
- Publisher
- Title of work/extract
- Author of work
- ISBN/ISSN
- Pages copied

Where extracts are handed out as photocopies to a lecture or tutorial group, the attribution information should be clearly marked on the extract.

Where extracts are included in a photocopied coursepack, the attribution information must either be:

- i) included in the index for the coursepack; or
- ii) clearly marked on the extract at the commencement of that extract; or
- iii) shown on a "title page" for the extract (e.g. by copying the title page of the work from which the extract is copied and adding any of the extract details (e.g. chapter number, pages copied and ISBN/ISSN) not shown on that page.

Where extracts are made available electronically, the attribution information must be shown before the extract commences. It should also be shown on the index.

4. Copyright Warning

Every coursepack (whether made available in photocopy or electronic format) must contain a warning to the effect that it contains copies of copyright material made under licence and that recipients may not make further copies of these materials, nor make the coursepack available to other persons.

A recommended warning is included in the staff newsletter. See section 3.5.

A licence requirement will be that electronic coursepacks must require students to "agree" to the conditions contained within this warning before they can access the content of the coursepack.

5. Copyright Surveys

Under the terms of the licence copyright surveys have been greatly restricted and the previous departmental surveys of all day to day copying over 8 weeks have been dropped in favour of sampling coursepacks only (though there is a provision that would allow some departmental day to day copying to be monitored during one year of the five year term of the licence).

Under the new arrangements CLL will conduct an annual survey of copyright material contained in coursepacks or compilations in order to determine the payments to be made to rights holders from the fees paid by the University on behalf of each student. The details of these surveys are yet to be agreed but each area should normally only be surveyed once during the 5 year term (though mergers and restructurings can mean some doubling up).

6. Works excluded from the licence

Some copyright material is not able to be copied or made available under the terms of the CLL licence. This material may only be used in accordance with the terms and conditions of a relevant purchase agreement, another copyright licence (if such a licence exists and the University agrees to pay the licence fee), or with the express permission of the rights holder.

Works which cannot be copied under the 2003 CLL licence include:

- Works available on or downloaded from the Internet
- Printed music (including the words)
- Loose maps and charts
- Unpublished religious orders or service
- New Zealand newspapers (as from 1 October 2003)
- House journals and other free publications primarily for employees of commercial businesses, industrial undertakings or public services
- Illustrations and/or photographs published separately and reproduced with permission of the rights holder in the work being copied
- Any work on which the rights holder has prominently stipulated that it may not be copied under any copyright licence
- Privately owned documents issued for tuition purposes and limited to clientele who pay fees
- Theses, dissertations and student papers

For further information, contact:

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