

Attached is a submission for consideration of some further changes to the Copyright Act. If implemented the changes would provide many increased efficiencies for libraries and would not affect the entitlements of the copyright holder.

The changes would bring the following efficiencies

- Decrease the amount of paper and toner used to provide current library service
- Remove time delays when providing library services to remote users
- Remove access barriers to documents only available on-line to those clients that have no or very poor access to the internet
- Decrease postal costs to libraries
- Allow libraries to provide directories of Internet resources thus saving staff searching

Sincerely,

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Government Libraries Proposed Exceptions

Format-shifting

11.8 Format-shifting is the practice of copying material from one format to another. This is also sometimes called 'space-shifting' or 'platform shifting'. Item-to-item copying in the same format (eg duplicating an audio CD) is not format-shifting.

11.9 Format-shifting is a common practice for music. An old example was copying a vinyl record to an audio-cassette so the music could be played on a portable player or in a car. Digital technology permits an audio CD to be copied in a compressed format (through a personal computer) in the embedded memory of a portable music player. In the near future it appears that an increasing range of copyright material will be used by way of mobile phones. The JSCOT and Senate Select Committee also proposed that format-shifting (or space-shifting) for personal use should not be an infringement of copyright.

(i) as a specific exception

11.10 There currently is no exception in the Copyright Act for format-shifting.

11.11 A number of European Union member states and other countries may allow format-shifting through statutory licences for private copying.

11.12 The New Zealand Government has issued a position paper which proposes a narrow exception that would permit the owner of a legitimate copy of a sound recording to make one copy of that sound recording (and the music it contains) in each format for his or her personal use¹. The New Zealand Government notes that remunerated statutory licences operating in other countries (such as in Europe and Canada) generally have broader private or personal copying rights than its proposed exception. It is understood that a levy scheme was not pursued because of the New

<p>Issue: Should the Copyright Act be amended to include a specific exception for format-shifting, and if so, for what materials and under what conditions?</p>

Proposal for an exception

- 1 Provide exception under the Copyright Act to allow libraries to scan and provide electronic copies from print resources held within their collection to send to clients via email. The copies would be made under the same guidelines/rules set out in the Act that allow libraries to provide print photocopies of material. Copies would be sent as a PDF and have a notice to say the client is only able to keep one electronic copy or print one hard copy.

Justification

- Reduction in the use of paper
 - Increase efficiency of delivery, thus being able to provide clients in remote areas with timely library services.
 - Reduction in costs to libraries in terms of postal delivery
 - Client would still only get the same materials they are currently able to receive under copyright restrictions. Only the method of delivery would change
- 2 Provide exception under the copyright law to allow libraries to download documents/resources available on the Internet and provide a copy to clients

either as a hardcopy or as an e-mail. The libraries would have to provide details to the client on the original location, i.e. the internet site from which it was downloaded.

Justification

- These publications are provided free on the internet and should be available to everyone.
- Currently the Internet is not a tool which all government employees have access to.
- People in remote areas and those working from home do not have the bandwidth required to be able to download some of the larger documents/resources

Back-up copying

11.16 Back-up copying refers to the action of a purchaser of a legitimate copy of copyright material making a permanent copy in the same format as the original copy in case it is lost or damaged. An exception of this kind is to be contrasted to format-shifting which is making a reproduction in a different format to the original copy.

(i) as a specific exception

11.17 The Copyright Act contains an exception that allows the making of back-up copies of computer programs where done by, or on behalf of, the owner or licensee of the original copy (s 47C). This exception is limited and the back-up copy can only be made for certain specified purposes. It does not include the copying of other copyright material that is usually associated with computer programs such as images, sound recordings and cinematograph film.

11.18 Relevant policy considerations in relation to the existing exception in s 47C are that computer programs may be more likely to be corrupted and are utilitarian in nature. Computer programs and associated data may also represent a considerable investment for users. These considerations do not necessarily apply to other copyright material, such as commercially made CDs and DVDs which may not be as easily damaged by normal use in a player.

<p>Issue: Should the Copyright Act be amended to include a specific exception for making back-up copies of copyright material other than computer programs, and if so, for what materials and under what conditions?</p>

Proposal for an exception

1. Provide exception under the copyright law to provide government libraries to download and preserve copies of documents and web pages relevant to the provision and development of government services.

Justification

- Web based resources are constantly moving and disappearing. Therefore documents which are used for research and development of government services become almost impossible to find when they need to be referred to in official documents.

2. Provide exception under the Copyright Act to provide libraries with the ability to make back up copies of audiovisual material held within their libraries. This would only allow for one copy of the video/tape/DVD/CD to ensure that if the original is damaged or destroyed, it is able to be replaced.

Justification

- Especially important when the resources are no longer commercially available or when the resource is part of large expensive kit or when the resource itself is fragile and the copy is made for the purposes of preservation.

Uses for other purposes

11.20 It is acknowledged that some consider many other uses of copyright material should be subject to an exception in the Copyright Act. One example may be 'orphaned works' i.e. copyright works whose authors are difficult or even impossible to find. Another possible situation is the use of a copyright work as a parody.

11.21 The Government is interested in whether there are other uses of copyright material that should be considered as an exception to the exclusive rights of the copyright owner and the proposed form of any such provision.

Issue: Should the Copyright Act be amended to include any other new specific exception to copyright and, if so, under what conditions?

Proposal for an exception

1. Provide exception under the Copyright Act to allow libraries to provide links without having to ensure that the links do not break copyright laws.

Justification

- It is not practical to expect library staff to review all material provided within a web site to ensure that copyright laws are not in breach. A library should be able to provide the link in good faith that the web site owner has complied with copyright laws.

2. Provide an exception under the Copyright Act to allow web archiving of internet publications, which is a requirement of the Northern Territory's Publications (Legal Deposit) Act 2004.

Justification

- Legal Deposit of all publications is a requirement under the Publications (Legal Deposit) Act, but currently it is still necessary to obtain individual publishers' permissions to deposit a copy in a web archive, a time consuming and often unsuccessful task. In effect, the need to obtain individual permissions makes it impossible for the Northern Territory Library to comply with the NT Act.

ⁱ http://www.med.govt.nz/buslt/int_prop/digital/position/position-08.html#P368_100583