

# GUIDE: USE OF COPYRIGHT MATERIALS EFFECTIVE FROM 2011

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*[These guidelines were originally prepared by Grant Willis and Melanie Johnston for use by staff at the University of Auckland and have been adapted, with the permission of the authors, for use by staff at AUT University. These guidelines do not constitute legal advice.]*

The structure and content of this guide to copyright has been changed to reflect changes in the Copyright Act and our licences. These changes will impact on the way in which content may be delivered to students. Feedback from staff, which can be incorporated into the next update, is welcome.

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## 1 INTRODUCTION

This guide is primarily designed to provide staff with guidance when copying material for teaching purposes. The guide cannot provide staff with a complete picture of copyright issues, but it reminds staff of their obligations when using copyright materials. This is necessary to:

- (a) Reduce the exposure of individual staff and the University to the risks associated with the use of copyright material belonging to other parties;
- (b) Assist staff to make full legal use of the materials at their disposal by clearly identifying responsibilities (rights and obligations); and
- (c) Promote compliance with the Copyright Act 1994 (the "Act") and the copyright licences the University has entered into.

The Guide sets out in some detail the relevant provisions in the Act which permit the copying and performance of works for teaching purposes and the licences the University has entered into to extend the limits of what can be copied under the Act.

The University has licences covering the copying of books, journal articles, music, newspapers, broadcasts and some material posted on the Internet.

This guide updates staff on relevant changes to the Act and our licences, which have occurred since the guide was last distributed and which may impact on staff ability to copy materials and distribute these to students. The two main changes are:

- (a) The ability of staff to:
  - (i) arrange performances of music, and to copy and communicate music for educational purposes under the music licence the University has entered into with APRA/AMCOS and PPNZ; and
  - (ii) store and use films downloaded from the Internet for our educational purposes under the Screenrights Licence.
- (b) Staff are no longer required to participate in the Screenrights individual staff surveys.

## 2 WHAT IS COPYRIGHT?

Copyright gives owners the exclusive right to control copying of their works and the way material is publicly disseminated, e.g. through public performance, broadcasting or making material available on the Internet. This bundle of rights can be sold, licensed or otherwise transferred by the owner's will or by licence or contract to another person or entity.

Copyright protects original literary, dramatic, musical, artistic works and communication works. The types of work included in these categories are:

- A 'literary work' is any work which is written, spoken, or sung, and includes a table or compilation, and a computer programme.
- A 'dramatic work' includes a work of dance or mime and a scenario or script for a film;

- A 'musical work', is a work consisting of music, but does not include the words intended to be sung or spoken with it, or any actions intended to be performed with the music;
- An 'artistic work' is a graphic work, photograph, sculpture, collage or model, irrespective of artistic quality; a work of architecture, that is a building or model of a building, and works of artistic craftsmanship (industrial prototypes);
- A 'communication work' is a transmission of sounds, visual images, or other information, or a combination of any of those, for reception by members of the public and includes television and radio broadcasts, cable programmes and materials made available on the Internet.

The Act also protects sound recordings; cinematograph films; and published editions of works.

Generally speaking copyright protects the way information is expressed, but not mere facts or information.

Copyright law attempts to balance the rights of owners and users of copyright materials. Bear in mind there may be multiple copyright owners for each copyright work, thus for a published book copyright owners may include:

- The author who wrote the text;
- Graphic artists who produced diagrams used in the text; and
- Publishers who produced and distributed the work.

## **2.1 Works not protected by Copyright**

Under s 27 of the Copyright Act no copyright exists in any of the following works which may be copied freely:

- Bills and Acts of the New Zealand Parliament;
- New Zealand Regulations and bylaws;
- Reports of New Zealand Parliamentary Select Committees;
- New Zealand Parliamentary Debates;
- Judgments of any New Zealand court or tribunal; \* and
- Reports of New Zealand Royal commissions, commissions of inquiry, ministerial inquiries and statutory inquiries.

\* The ability to copy judgments of any New Zealand court or tribunal does not extend to copying the headnote of the case, nor does it extend to judgments or reports from outside New Zealand.

## **3 DURATION OF COPYRIGHT**

Copyright expires after a specified period. Materials in which the copyright in all the works which comprise those materials have expired 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. A typographical arrangement or copyright in the layout, 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 pages of a book published before 1986 may be copied without limit provided the author of the text, and any annotations and notes, died before 1961. 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.

Other types of works, for example, published and unpublished films and sound recordings made before 1944 will be out of copyright. Unpublished films and sound recordings made between 1 December 1944 and 31 December 1960 will be out of copyright because these types of works were not protected by earlier copyright legislation. For further information on when specific types of works fall into the public domain see the DigitalNZ reference guide referred to in clause 3.1.

Copyright in a communication work expires 50 years from the end of the calendar year in which the communication work is first communicated to the public. Thus copyright will expire at the end of 50 years from the calendar year in which the a television or radio broadcast was first made.

**Note:** The term of copyright protection varies from country to country and in many countries the period of protection is 70 years from the death of the author.

### 3.1 Public Domain Guide

DigitalNZ has created an easy reference guide "Copyright terms and the public domain in New Zealand", for anyone wanting to know what was out of copyright in New Zealand as of 1 January 2011. The guide is available on the DigitalNZ website at:

<http://makeit.digitalnz.org/guidelines/enabling-use-reuse/public-domain-guide/>

## 4 STAFF AND STUDENT OWNERSHIP OF COPYRIGHT

Under AUT University's **Intellectual Property Rights Policy**, the University claims legal and beneficial ownership of and reserves all rights in and to Intellectual Property created by Staff, Students and Visitors in the Course of Duties or created using the University's Resources.

Notwithstanding any other provision in the policy the University waives its entitlement to copyright in books, published papers, articles, films sound recordings, artistic works and also in any personal material and/or notes created outside the Course of Duties by Staff, Visitors and Students, except for Course Materials and material commissioned by the University under an agreement.

The policy is available on the intranet in the **Policies and Statutes** folder under the heading **Research and Commercialisation**. Click here <https://thewire.aut.ac.nz/>

## **5 COPYING OF MATERIALS NOT COVERED BY THE UNIVERSITY'S LICENCES**

While a work remains protected by copyright, use of that work must comply with the Act, or with a relevant copyright licence, or be authorised by individual permission sought from the relevant rights owner.

The University has entered into a number of licences which permit the copying of various types of copyright works. In certain circumstances you may have to rely on the fair dealing provisions in the Act to copy certain works for which we have been unable to obtain licences, or for which the licences we have do not extend to copying or performing that work, for example musical scores must be copied under the Act, and ballets, operas, musicals etc and dramatic works, may only be performed under the Act. For further information on licences see clause 7 below.

Works in which copyright has expired (see clause 3) or in which no copyright exists may be copied without limitation.

### **5.1 Fair Dealing**

The fair dealing provisions in the Copyright Act create exceptions to copyright that permit certain uses of copyright material in specific circumstances. Fair dealing means a use which is reasonable in the circumstances. The main fair dealing provisions which staff can rely on are copying for:

- Private Study and Research;
- Criticism and Review; and
- Educational Provisions (Teaching).

#### **5.1.1 Private Study and Research**

Under s 43 of the Act, staff and students may be able to make a single copy of a work or a part of a work for their private research or study without infringing copyright.

How much of a work may be copied will depend on what is "fair" in the circumstances. If the copying is challenged by the copyright owner the court takes into account: the nature of the work copied; the purpose of 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 to determine if the copying is fair.

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. However, a court may well find that a staff member or student who copies without permission, two chapters, from a book available locally has breached the fair dealing provisions.

#### **5.1.2 Criticism and Review**

In certain circumstances, and with sufficient acknowledgement, you may be entitled to reproduce a portion of a work for the purpose of criticism or review under s 42 of the Act. There is no clear formula for the amount which can be copied under this provision. This will depend on the particular circumstances of the use. The courts have held that the following factors will determine whether a use is fair:

- The number and extent of quotations and extracts from the work copied: too many quotes, and quotes which are too long, are unlikely to be considered fair;
- Whether the proportion of the work quoted or the number of images copied is more than is necessary to criticise or review the work; long extracts and short comments will not be considered fair;
- The degree to which the use competes with the work copied, so, for example, if the use would reduce demand for and affect sales of the work copied;
- In some instances whole works may be copied, for example if a work of art or a short poem was being criticised or reviewed;
- A court would be less likely to consider that copying for criticism or review is “fair” if a work copied is unpublished or not widely distributed;
- The copying must be for criticism, but need not be of the work criticised or reviewed. It may be permissible to copy a work for the purpose of illustrating certain points in relation to the work being criticised; and
- Criticism may extend to the ideas underlying the work.

Any works copied under this provision of the Act must be identified by title or other description and by author unless the work has been published anonymously and it is not possible by reasonable inquiry to ascertain who the author is.

### **5.1.3 Teaching (or Education provisions)**

The “education” provisions permit certain copying for educational purposes. Section 44 of the Act permits lecturers to make copies for their own teaching purposes and to make very limited copies of portions of works for distribution to students.

#### **(a) Lecturing**

##### **(i) Sound recordings, DVDs and videos**

The Act permits the playing of sound recordings, DVDs or videos and the performance of works of dance or drama during a lecture or tutorial but does not permit the making of copies of these works unless certain conditions are met which are set out below in clause 5.1.3(b)(v).

##### **(ii) Literary works, musical scores and artistic works**

Sections 44(1) permits the making of one copy of a literary work, musical score and artistic work for use in a course or when preparing for a course. This would for example, permit the copying of works for inclusion in power point presentations. Copies of presentations containing third party copyright works can only be distributed to students in accordance with the requirements set out in the section headed “Course Materials” below or the licences in clause 7. Section 44(2) allows unlimited copying for teaching purposes, but only if it is transcribed by hand and not photocopied or scanned.

#### **(b) Course Materials**

##### **(i) Section 44(3) – Copying Literary Works**

Section 44(3) also allows very limited **multiple copying** from literary and dramatic works or sheet music for distribution to students. Under this provision staff may make multiple copies of up to 3% or 3 pages of a whole work or edition. However, you may not copy more than 50% of a whole work under this section. If the edition or work is 3 pages or less (e.g. short story, musical score or poem), no more than 50% of the work may be copied.

Graphics/charts, poems and illustrations are considered whole works and therefore cannot be copied under the 3 % or 3 pages limitation unless they form part of the book or journal article etc being copied.

(ii) *Sections 44A and 48 - Copying and Storing **Works from the Internet***

Even though there may be no claim as to copyright ownership, material on the Internet is protected by copyright and cannot be freely copied and distributed. There are two amendments in the Act which permit the copying of work posted on the Internet:

- Section 44A allows electronic distribution of material on websites for particular (named) courses; and
- Section 48 allows the copying and communication of communication works within the University for its educational purposes.

These provisions in the Copyright Act do not permit the copying of material which has been placed on the Internet without the permission of the rights owner. Staff must not for example copy pirated movies and make those available to students. Copying such materials breaches copyright. Copyright owners have also successfully sued owners of websites which link or facilitate linking to sites which contain copyright materials posted without the permission of copyright owners.

#### SECTION 44A – STORAGE OF WEBSITE PAGES

Section 44A permits the storage of copies of a page or pages of websites on a secure web site, for example the learning management system, Blackboard.

This does not permit storage of materials made available on the electronic databases in the library or from any other subscription website. Section 44A only applies to a work that is already available on a website or other electronic retrieval system other than the library databases.

A secure website is one which is available only to a person who has a legitimate right to access the website, (i.e. a staff member or student enrolled in a particular course for which the material is made available), and can only be accessed through a verification process such as one involving a user ID and password that verifies that the staff or student is entitled to access that material.

The right to post material obtained from a website on to University learning management systems is not unfettered. Staff must comply with the requirements set out in the provision:

- The material must be displayed under a separate frame or identifier; and
- The author (if known) and the source of the work must be identified; and
- The name of the University and the date on which the work was posted onto the learning management system or intranet must be added to the material; and
- The material must be restricted to authenticated users only i.e. it must not be made available on a publicly available website; and
- The material must be deleted within a reasonable time after the material is no longer relevant to the course of instruction for which it was stored.

It is important to note that the deletion requirement relates to the particular course of instruction for which the website pages have been stored, not to any course of instruction. Thus if a course is to be offered in the next semester and

the same material will again be used, that material can be stored in anticipation of that course being offered.

Note also that the original work which is stored must be available electronically so the section does not apply to a hard copy of a work which is scanned and loaded on to a computer by a staff member and made available by that method. If scanning of a hard copy is undertaken, this must comply with the requirements of the CLL licence.

Archiving the stored work for future use is not permissible, as pointed out above, the storage of the work must be for and only for the particular course of instruction for which the work has been copied and stored. However there is nothing to prevent a staff member from making one copy of a work other than a film, video or sound recording, provided that the work has been copied from a website and providing the copying is done under s 44 in the course of preparation for instruction; or for use in the course of instruction; or in the course of instruction. Once the work is required for the course of instruction, it can then be loaded on to the intranet and provided to students under s 44A.

#### SECTION 48 COPYING AND COMMUNICATING WORKS POSTED ON THE INTERNET

Section 48 allows the copying and communication of works posted on the Internet, within the University for its educational purposes. This means works posted legitimately on websites can be photocopied, copied on to a DVD or distributed to students by email, providing it is for the University's educational purposes.

The ability to copy works from the Internet does not extend to copying works which are available under a licensing scheme. So for example if a book or journal was available on the Internet and also available in hard copy it must be copied under the CLL licence and must comply with the terms of that licence. If the material was only available on the Internet then it may be copied under s 48. The ability to copy and distribute materials from the Internet applies until such time as a licensing scheme licensing educational institutions to copy material on the Internet becomes available and the University is aware of the licensing scheme. We currently have licences to copy music, films and talkback radio from the Internet. See clause 7 below which explains the licences the University has entered into.

[Section 48 does not extend to copying from the library databases which are separately licensed to the University. Copying from these databases must be strictly in accord with the individual database licence.](#)

#### (iii) Section 45 – Copying **Commercial DVDS and Videos**

The Act makes provision for copying of films and sound recordings for the purpose of instruction in the making of films or film soundtracks. The film may be copied in the course of preparing the lecture or tutorial, for use in the lecture or tutorial; or during the lecture or tutorial; or after the lecture or tutorial. These copies can be distributed/communicated to students who are enrolled in the particular course, providing no charge is made to the student for the supply of the copy. This means any lecture on film making can be recorded as part of the Lecture Recording Programme and distributed to students on Blackboard.

Sound recordings may be copied for the purposes of learning a language or correspondence teaching but should not be copied otherwise except under the Music Licence. This means that copies cannot be made of any recordings in the library databases unless the particular database licence permits such copying.



(iv) **Performing, playing or showing literary, dramatic or musical works**

The licensors of the music licence the University has entered into have been unable to obtain the rights to perform grand right works which include operas, ballets, musicals and other dramatic works set to music. This means staff and students have to rely on the Copyright Act to perform these works. The Act permits the performance, playing or showing of sound recordings, films, literary, dramatic or musical works before an audience consisting of persons who are students or staff members of the University or directly connected with the activities of the establishment. The works must be performed either by:

(a) staff and students in the course of the activities of the University; or by

(b) any other person for the purposes of instruction.

Note: The Act specifically prohibits the inclusion of parents or guardians in the audience of such a performance, playing or showing of a work.

(v) **Other Copying**

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

## **6 YOUR OBLIGATIONS WHEN USING COPYRIGHT MATERIALS**

### **6.1 Moral Rights**

Authors and creators of copyright material are granted “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.

N.B. Altering or editing an author’s work may constitute derogatory treatment. These rights impose obligations upon staff and students when copying or otherwise using a work.

### **6.2 Attribution**

All copyright material copied and used within the University must be fully and correctly attributed so that the source of the material copied is clearly ascertainable by any person who receives a copy of the work. This includes the copying of literary works, musical works, films, photographs, plans of buildings, and works of art. Depending on the type of work copied, the author composer, director, architect, artist, publisher, edition and the URL and date of the copy (if the work is copied from the Internet) must be recorded. This is also important to avoid problems when copyright surveys are undertaken.

### **6.3 No Modification**

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.

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 each extract is fully attributed, it is clear where each copied extract begins and ends and what is the source of each extract.

## 7 COPYING UNDER LICENCE - WHAT IS A COPYRIGHT LICENCE?

Because the limits on copying under the Copyright Act make it very difficult to provide students with the materials they need for their courses and place additional administrative requirements on staff, the University has agreed to purchase a number of licences to allow staff to copy and use copyright materials for the teaching purposes of the University. These licences include:

- the CLL licence. For more information on what the CLL licence provide consult the CLL website at: <http://www.copyright.co.nz/Info/>
- the Screenrights licence. Consult information sheet at: <http://www.screenrights.org/copyright/newzealand/infosheets-forms/nzuni.php>
- the PMCA licence. See brochure at: [http://www.aut.ac.nz/\\_data/assets/pdf\\_file/0003/89391/PrintMediaLicenceBrochure\\_1.pdf](http://www.aut.ac.nz/_data/assets/pdf_file/0003/89391/PrintMediaLicenceBrochure_1.pdf)
- the Music licence brochure which will be provided when it is finalised;
- subscription databases - see the individual database licences which are located in the "terms and conditions of use" or "copyright" links or **in the case of the library databases check with library staff**; and
- Creative Commons licences see <http://www.creativecommons.org.nz/>

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 University and to the staff member making or authorising the making of the copy.

Staff must ensure they are aware of the provisions of the relevant licences before relying upon them to make copies. Failure to comply with licence conditions can leave a staff member as well as the University open to the risk of being sued for breach of copyright.

### Copyright Warning Notice

When copyright materials are made available under a licence, recipients should be warned in writing that these materials should not be copied or made available to other persons. See a sample of a Copyright Warning Notice at paragraph 7.1.4 below.

## Participating in Copyright Surveys

It is a condition of the CLL, Music and Screenrights licences that, in exchange for the right to make copies of works in excess of the entitlements under the Act, surveys of copying by University staff is undertaken. It is also a condition of employment that staff use copyright materials in accordance with licence conditions. The terms of our licences ensure that:

- (1) The data collected during the survey is confidential to the licensing agency and the University. It cannot be used as the basis of an action for a breach of copying entitlements; and
- (2) The information gained from the surveys will be used to determine the distribution of the licence fee to rights owners.

Screenrights will continue to conduct surveys of the central copying units which copy broadcasts for teaching and research purposes.

## 7.1 Copyright Licensing Ltd (CLL) - Copying From “Hard Copy” Print Materials

### 7.1.1 Rights granted under the CLL licence

The University has a CLL Licence covering copying from **print originals** (i.e. copying from **hard copy books or periodicals/journals**).

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. Note that in this section “hard copy” print materials refers to:

- books,
- journals, or periodicals ;and
- overseas newspapers.

Hard copy works do not include “electronic” books or journals.

Copies may be made available to enrolled students either as:

- (1) photocopies (e.g. as lecture handouts, or in coursepacks, or compilations); or in
- (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.

Note that while copies may be distributed in hard copy or digital form only one copy may be provided to each student in the class.

As noted in clause 5.1 above, the fair dealing provisions of the Act allow a member of staff or a student 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 clause 5.1, normally only a small portion of a work should be copied if you rely on this provision.

**Note:** - the CLL licence does not permit copying from electronic books or electronic journals or New Zealand newspapers. These must be copied within the limited provisions of s 44 of the Act, or under the terms of the aggregator's or publisher's licence in the case of electronic originals, or under the PMCA licence (see 7.2) for New Zealand newspapers

Please see the CLL website for further information regarding this licence and the amount of copying permitted in particular circumstances.

<http://www.copyright.co.nz/Educational/>

### **7.1.2 Works excluded from the CLL licence**

Some printed 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 Act, or 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 in writing of the rights holder.**

Works which cannot be copied under the CLL licence include:

- Works available on or downloaded from the Internet;
- Printed music (including the words);
- Loose maps and charts;
- Unpublished religious orders of service;
- New Zealand newspapers (these can be copied under the PMCA licence);
- 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; and
- Theses, dissertations and student papers.

### **7.1.3 Permitted Limits of Multiple Copying**

The licence extends the limits of multiple copying from hard copy originals 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:

#### Books

Up to 10% or one chapter of a work, whichever is the larger?

#### Journal Articles

Up to one article from a periodical publication or additional articles from the same issue of a periodical publication where each of the articles copied is on the "same" subject matter e.g. a special edition devoted to a particular topic.

### Poems or Short Stories

Up to 15 pages of a single work in a collection of works even if the work is also published separately. This means that each work cannot be treated as a single work by copying 10%, unless you are copying from the separately published work.

### Diagrams and Illustrations

The whole diagram or illustration published in a literary work.

#### **7.1.4 Course Materials**

Staff must ensure that their coursepacks are fully compliant with the requirements of the CLL Licence. Ideally each coursepack should have an index or list of materials and each extract should be fully attributed with the following information:

- Title of publication;
- Date of publication;
- Publisher;
- Title of work/extract;
- Author of work;
- ISBN/ISSN; and
- Pages copied (specify the page numbers copied e.g. pp52-61 or specify the number of pages where there are no page numbers).

Because staff are copying materials from a number of different sources not covered by the CLL licence it would assist the survey if those works copied under the CLL licence are marked CLL.

Where an extract is handed out as a photocopy to a lecture or tutorial group, the attribution information must 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, which pages are 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.

Feedback from CLL following the last copyright survey indicated that a number of staff did not include either page numbers or the number of pages copied in their returns or in their coursepacks. Providing a chapter number was not sufficient for CLL to determine the number of pages copied and the correct payment to rights owners. This is because chapters in different editions vary and the diagrams included in copied works need to be determined as they typically have different rights owners. Please ensure that you include the page number(s) of each of the pages copied in your coursepack.

### **7.1.5 Copyright Warning Notice**

When print materials are made available, particularly in course packs or compilations (either electronically or hardcopy), the following warning should be prominently displayed with those materials. **NB:** Due to the various licences relied on to produce a coursepack the requirements for a copyright warning notice have been updated: The updated wording is set out below and should replace the previous Warning Notice:

#### **COPYRIGHT WARNING NOTICE**

"This material is protected by copyright and has been copied by and solely for the educational purposes of the University under licence. You may not sell, alter or further reproduce or distribute any part of this coursepack/material to any other person. Where provided to you in electronic format, you may only print from it for your own private study and research. Failure to comply with the terms of this warning may expose you to legal action for copyright infringement and/or disciplinary action by the University."

### **7.1.6 CLL Copyright Surveys**

Under the terms of the CLL Licence copyright surveys are restricted to course packs only.

Under the current arrangements, CLL will conduct a survey of copyright material contained in course packs or compilations once in the term of the licence 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 most recent University CLL survey was held in 2010. CLL surveys will normally take place once every five years.

### **7.1.7 Out of Print Copyright Material**

Unless copyright has expired, as described above in clause 3 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 CLL licence without express permission of CLL.

The CLL licence permits the photocopying of out of print works provided CLL has previously confirmed that the work is unavailable in sufficient quantity within a reasonable time at the normal price.

Requests to copy out of print works should be made to directly to CLL at [cll@copyright.co.nz](mailto:cll@copyright.co.nz) detailing the:

- number of copies required (students enrolled in the course);
- page numbers to be copied (if only part of book to be copied) and number of pages in the book;
- full title, author, date of publication, publisher, ISBN and other publication details; and
- letter or email string from the bookshop or publisher notifying that the work is out of print.

Any other communications with CLL should be directed through Michael Bondesio at [mike.bondesio@aut.ac.nz](mailto:mike.bondesio@aut.ac.nz). Note that where a bookseller has not been given sufficient time to obtain the required copies CLL may require payment for copying over the one chapter limit.

For further details, consult the CLL Website at <http://www.copyright.co.nz/Info/>

### **7.1.8 Library electronic copies for course materials**

Electronic Copies of materials for courses may be made accessible in the Library button of AUTonline, providing the copies are made in accordance with sections 44(3), 54 or 55 of the Act. See: <https://autonline.aut.ac.nz>

To take advantage of the extended copying available under the CLL licence, the materials copied under this Licence must normally be distributed either by providing copies for everyone in the class, or by including the work in an electronic coursepack on a learning management system such as Blackboard. A copy of **a work copied under the CLL Licence and made available to students electronically by way of Library Search must be included in the CLL copyright survey return** for that particular course.

## **7.2 Print Media Copyright Agency (PMCA) Licence - Copying from NZ Newspapers**

The University has a licence to copy from New Zealand newspapers and some local magazines with the Print Media Copyright Agency (PMCA). Staff can copy articles from Print Media Publications for the educational purposes of the University under the terms of the licence. Note that magazines (such as the *Listener*, *North and South*, and *Metro*) are part of the CLL licence and not the PMCA licence and the only copying permitted is from the hard copy original. Staff sourcing newspaper articles from the library databases must comply with the database licence when copying. Staff must contact the Library of AUT University to check whether or not these can be included in coursebooks.

Articles can be photocopied or copied electronically and communicated to students by means of:

- Storage on a Secure Network i.e. a learning management system such as Blackboard;
- Email;
- CD/DVD;
- Facsimile.

The licence permits staff to copy no more than 5 articles from any single edition of a PMCA publication for each course they teach. Note that each newspaper published is a “new” edition so the limit is effectively five articles per class per day.

**Note:** PMCA have been unable to grant us the right to copy newspaper advertisements.

As with material copied under the CLL licence all materials distributed under the licence must carry a copyright warning notice stating that they have been reproduced under a copyright licence agreement. (See clause 7.1.5 above)

Unlike the CLL licence there is no requirement for a copyright survey.

The brochure “Copying from New Zealand Newspapers” is available on the Copyright webpage at <http://www.aut.ac.nz/copyright> or directly through this link:

[http://www.aut.ac.nz/\\_data/assets/pdf\\_file/0003/89391/PrintMediaLicenceBrochure\\_1.pdf](http://www.aut.ac.nz/_data/assets/pdf_file/0003/89391/PrintMediaLicenceBrochure_1.pdf)

Any copying of international newspapers takes place under the CLL Licence and must be done from the hardcopy original. However, following recent amendments to the Act you can now copy and store pages from overseas newspapers that are published on the internet under s 44A of the Copyright Act (see clause 5.1.3 above). Note this does not cover copying from the library databases which are made available under individual licences with the database aggregators.

### **7.3 Screenrights Licence - Copying Film TV & Radio**

The University holds a licence with Screenrights, which enables staff to copy radio and television broadcasts and cable programmes in New Zealand and to make these available to students for the University's educational purposes. These copies may be made in any format, including a digital format.

Every copy made under the licence must be labelled with the following information:

- Made for AUT University's educational purposes;
- Title of programme; and
- Date copy was made.

This label should be placed on each copy made under the Screenrights licence. If it is a digital copy, the information on the label should be embedded in the copy.

Staff can now also copy films lawfully posted on the Internet under the Screenrights licence. Staff must take care to ensure that the films they are copying are posted with the permission of the rights owners, for example, film trailers on YouTube and on demand television programmes posted on the Internet by the broadcaster. The licence does not permit the copying of pirated movies. There are a number of sites on the internet offering access to works which are either in the public domain or posted with permission of the copyright owners, for example:

[http://www.moviesfoundonline.com/public\\_domain.php](http://www.moviesfoundonline.com/public_domain.php) which links to films and documentaries held on sites such as Google Video, YouTube and ABS.

If you require further information about the Screenrights' Licence, particularly the labelling requirements, please read the brochure "Screenrights Tertiary Licence Copying from Television and Radio" for further information regarding this licence. An electronic copy is available from:

<http://www.screenrights.org/copyright/newzealand/infosheets-forms/nzuni.php>

### **7.4 APRA/AMCOS and PPNZ Music Licence**

The University has recently entered into a licence for music with the Australasian Performing Right Association (APRA), the Australasian Mechanical Copyright Owners Association (AMCOS) and Phonographic Performances New Zealand Ltd (PPNZ) representing music and performance rights owners. The licence took effect from 1 December 2010. While the licence does not allow unlimited copying of all musical works, it does allow staff and students to perform, copy, and communicate those musical works, for which APRA, AMCOS and PPNZ hold the rights to licence, by means of the University's intranet. In particular:



- APRA is an association of composers, lyricists and their publishers that administers the public performance and broadcast rights of copyright music;
- PPNZ administers the rights of local and international record labels and producers within the New Zealand territory and is responsible for licensing and collecting income from the broadcasting and public performance of sound and video recordings; and
- AMCOS collects and distributes mechanical royalties for the reproduction of its members' musical works. The licensors do not hold the rights to license sheet music or the grand right works (defined in the licence as "operas, operettas, musical plays, ballets, revues, or pantomimes which consist of words, music and directions written expressly for it"), which must be separately licensed.

Performing, copying and communicating musical works must be solely for the University's educational purposes: this means the teaching and research of the University and matters arising from those activities and includes activities relating to the administration of the University, keeping archives and undertaking a University event, providing the only charges made are on a cost recovery basis. In particular the music licence allows:

- Staff and students to perform and "communicate" works which are licensed to APRA and to communicate PPNZ sound recordings ("communicate" means posting on the University's intranet);
- Staff and students to make copies of AMCOS works and PPNZ sound recordings;
- Staff and students to make copies of University performances or University events at which AMCOS works and PPNZ sound recordings are played for its educational purposes (a University Event is one organised or authorised by the University which includes live musical performances by students or staff or groups which include students or staff).
- Recordings to be made for archival purposes or for a staff member and student's own private use.
- Staff and students to combine AMCOS works and PPNZ sound recordings with video or digital recordings;
- Staff and students to copy APRA, AMCOS and PPNZ sound recordings from the internet providing those works are legally posted on the internet; and
- The University to allow staff and students access, via its intranets, to copies made under the licence, providing those copies are displayed with a copyright warning notice. See clause 7.1.5 above for details of the warning.

The music licence does not permit the:

- Copying of print (sheet) music including the lyrics;
- Copying of works which have been copied without the copyright owners permission, for example copies made from infringing copies of commercial CDs;
- Posting of a copy of any musical work or recording of a musical work on a website to which the public has access;
- Making of unauthorised audio or video recordings of performances;
- Making of a video copy of a performance of a grand right work, or excerpts of the performance of that work;
- Performance in public of APRA Works and PPNZ Sound Recordings at any event or occasion where the University's premises have been let for hire or otherwise made available to a third party (including a Student) other than

for the Educational Purposes of the University (**Note:** in such a case, a separate public performance licence will be required by the operator/business premises owner);

- Performance of an opera, operetta, musical play, ballet, revue, or pantomime in its entirety;
- Performance in whole or in part any musical work in conjunction with acting, costumes, scenic accessories and scripted dialogue or other dramatic effects;
- Performance in whole or in part any music and associated words composed or used for a ballet if accompanied by a visual representation of that ballet;
- Performance of any Choral Work of more than 20 minutes' duration in its entirety;
- Performance of any music and associated words so as to burlesque or parody the work; or
- Performance of any musical work with new or substituted lyrics.

#### **7.4.1 Public Performances**

APRA works and PPNZ Sound recordings can be performed in public for the educational purposes of the University provided there is no charge for the function, other than on a cost recovery basis. This means, for example, that a public performance of music at Graduation or one of our open days is permitted under the new music licence.

Where music is performed at a University event or examination, the performance may be recorded and copies may be provided to staff and students and their immediate families for their personal use, but cannot be subsequently sold or hired out unless the music is out of copyright or the composer or rights owner has consented to the sale. These copies cannot be made available to the public, so cannot be posted in the publicly available digital repository for PhDs. Copies made under the music licence must display the copyright warning referred to in clause 7.1.5 above and cannot be sold.

#### **7.4.2 Surveys**

While there is provision for a survey under the terms of the music licence, the form of the survey is still to be negotiated between the parties. It is unlikely to take the form of individual staff surveys and will in all probability take the form of a survey of music held on University servers.

### **7.5 University Databases**

The Library and various departments within the University purchase the right to use certain copyrighted materials contained in electronic journals and databases. The terms under which these materials are subscribed to or purchased determine the uses the University can make of the materials they contain. Therefore the right of staff and students to copy and use this material will vary according to those terms. Many licences do not permit multiple copies of the database materials to be made and distributed to students (for example in coursepacks or lecture handouts), though some do. 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 (URL) 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.

## 7.6 Creative Commons Licences

The Creative Commons website provides access to music, photography, literary works, films and education materials, which can be copied under certain conditions without a fee. See <http://creativecommons.org>

Not all material is freely available for copying. While a number of databases can be accessed from the Creative Commons website you must check that the work you wish to copy is licenced under a creative commons licence. In some instances, certain elements (selected photos, graphs, text quotes) have been licensed separately from other elements on the same site. You must get permission from the copyright owner to copy, distribute, display, or perform any element that is accompanied by this notation: ‡ Restricted Use.

New Zealand has drafted Creative Commons licences tailored to New Zealand law. The New Zealand Creative Commons site notes:

“Creative Commons aims to establish a fair middle way between the extremes of copyright control and the uncontrolled uses of intellectual property. It provides a range of copyright licences, freely available to the public, which allow those creating intellectual property – including authors, artists, educators and scientists – to mark their work with the freedoms they want it to carry.”

See: <http://www.creativecommons.org.nz/>

If staff are making their own work publicly available on the Internet a Creative Commons licence sets out for users how the work may be used. In this way copyright in the work is retained, but staff can ensure the work is attributed to them and control the way in which work is used.

### 7.6.1 Copying from Crown publications

Works which are protected by Crown copyright are subject to the New Zealand Government Open Access and Licensing framework (NZGOAL). NZGOAL was approved by Cabinet on 5 July 2010 as government guidance for State Services agencies to follow when releasing copyright works and non-copyright material for re-use by third parties. State Service Agencies consist of a range of organisations that serve as instruments of the Crown, in particular: all Public Service Departments, other departments that are not part of the Public Service; all Crown entities except tertiary education institutions; organisations listed in the Fourth Schedule of the Public Finance Act 1989; and the Reserve Bank of New Zealand.

State Services Agencies are strongly encouraged to license their copyright works for re-use, under creative commons licences, but it is not mandatory.

Staff wanting to copy State Services Agency publications and unsure as to whether or not a Creative Commons licence applies should check the website for the department. If there is nothing on the website which indicates it is released under a Creative Commons licence then contact the department directly. It is highly likely given the Ministerial directive that it will be made available unless the Agency does not own copyright in the work.

For further information see: <http://www.e.govt.nz/policy/nzgoal>

## 8 OTHER PROVISIONS IN THE ACT WHICH MAY AFFECT STAFF

There have been a number of changes and proposed changes to the Act which may impact on staff of the University.

### 8.1 Format shifting

Section 81A of the Act is a new section dealing with format shifting for **personal use**. It applies only to a sound recording and not to a film (so would not for example allow the conversion of an old VHS tape of a film to a CD/DVD). The requirements to fall within the permitted format shifting are restrictive and only apply in a private or domestic context.

For these reasons s.81A is of no use in a University context. It will assist staff who seek to transfer an old sound recording to a new format for their personal use.

### 8.2 Technological Protection Measures (TPMs)

Amendments to the Copyright Act mean that circumvention of a technological protection measure ("TPM") is prohibited. The definition of a TPM excludes devices which control "geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work". The prohibition does not apply to works which are legally bought overseas and which cannot be played in New Zealand because of our geographical location. These can be circumvented without seeking the permission of the rights owners.

Users' rights granted under the Act are protected. Staff of the University may circumvent TPMs in order to "unlock" a programme or software to enable a permitted act under the Fair Dealing Exemptions **but only** after the owner has either refused the user's request for assistance or failed to respond to the user's request within a reasonable time. Any charges made for a circumvention service can only be made on cost recovery basis (s 226-226E).

Staff and the University will be potentially liable if they are aware that in circumventing a TPM they will infringe copyright.

### 8.3 ISP Safe Harbour Provisions

Changes to the Act in 2007 have defined internet service providers (ISPs) very broadly. Any party that provides any connection for digital online communications or hosts websites or other electronic retrieval systems falls under the definition. This means that the University falls under a definition of an ISP. A number of agencies such as research institutes or Faculties within the University may also fall under the definition of an ISP.

ISPs do not infringe copyright by the mere fact of having infringing material on their systems so long as the ISP has no knowledge that the material is infringing. Once they become aware of the infringing material and do not remove it they become liable. Where a staff member posts infringing material on University websites with the knowledge that the material is infringing, that knowledge will be imputed to the University and the University will become liable.

### **8.3.1 File Sharing Applications**

#### Section 92A

The controversial s 92A which required ISPs to have in place policies for the termination of account for repeat offenders has not been implemented. In its place the Government has an amendment to the Copyright Act before Parliament, The Copyright (Infringing File Sharing) Bill, which is expected to be passed in February of this year.

While the University is excluded from the provisions of the Bill, the University will still be liable for the actions of its staff and will continue to monitor use of its networks. Disciplinary action may be taken against those who repeat offend.

While some P2P file sharing applications have non-infringing uses for the communication of materials which do not breach copyright, many of these applications (e.g. Kazaa, Gnutella, WinMX, eDonkey and the like) have been so widely used for illegal file sharing (particularly of music and movies) that major copyright owners scan systems looking for evidence that these applications are being used as an indication of illegal file sharing. For these reasons the University monitors the use of these applications on our systems.

### **8.3.2 Infringing Material on University Systems**

#### Section 92C

This section implemented in 2007 provides that where an ISP stores material which infringes copyright which is provided by a user of the service and the user of the service is acting on behalf of, or at the direction of the ISP then the ISP will be liable. This means that if staff or students post infringing materials on the University website or intranets the University could be

- (a) vicariously liable as the employer of staff; and also
- (b) liable as an ISP.

Staff must therefore ensure that the materials they post on the University's intranets, learning management systems and public websites do not infringe another person's copyright.

#### Section 92E

An ISP becomes liable for caching infringing material if the material is not deleted from its original source or access to the material has been prevented or is subject to a court order preventing access as soon as possible after the ISP becomes aware that the material is infringing.

This places an onus on the University to monitor the material it has cached or have robust systems in place to ensure access to material which is subsequently found to be unlawfully posted on the Internet is either disabled or the material is deleted from the system. Likewise it means staff must make the University aware if they find unlawfully posted internet materials on the University systems.

**If you require any further information please contact:**

**Michael Bondesio**     [mike.bondesio@aut.ac.nz](mailto:mike.bondesio@aut.ac.nz)     **Ext. 9797**

## QUICK GUIDE - COPYING FOR TEACHING

Please refer to relevant clauses in the staff guide as indicated below for further information on your entitlements to copy.

Type of Work	Teaching- One copy for teaching purposes	Course Materials in hard copy, CD or provided on-line via LMS (CECIL etc)
<b>Book (hard copy)</b>	Yes, Copyright Act: s 44(1)&(2) <b>Clause 5.1.3</b>	Yes, CLL: 10% or 1 chapter, whichever is greater <b>Clause 7.1</b>
<b>Book: Anthology of poems or short stories (hard copy)</b>	Yes, Copyright Act: s 44(1)&(2) <b>Clause 5.1.3</b>	Yes, CLL: Up to 15 pages of the whole or a part of the work <b>Clause 7.1</b>
<b>Book (Electronic database)</b>	Yes, Copyright Act: s 44(1)&(2) <b>Clause 5.1.3</b>	No, unless database licence: permits <b>Clause 7.5</b>
<b>Literary work on the Internet</b>	Yes, Copyright Act: s 44(1) & (2) <b>Clause 5.1.3</b>	Yes, s 44A Copyright Act: LMS (CECIL etc) only S 48 Copyright Act until offered a licence <b>Clause 5.1.3(ii)</b>
<b>Periodical Article &amp; Overseas Newspapers (hard copy)</b>	Yes, Copyright Act: s 44(1)&(2) <b>Clause 5.1.3</b>	Yes, CLL: 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 <b>Clause 7.1</b>
<b>NZ Newspaper</b>	Yes, Copyright Act: s 44(1)&(2) <b>Clause 5.1.3</b>	Yes, PMCA licence- 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 <b>Clause 7.2</b>
<b>NZ Acts, Bills, regulations and by-laws</b>	Yes, (no Copyright subsists in these works) <b>Clause 2.1</b>	Yes, (no Copyright subsists in these works) <b>Clause 2.1</b>
<b>Judgments of NZ courts – excluding headnotes</b>	Yes, (no Copyright subsists in these works) <b>Clause 2.1</b>	Yes, (no Copyright subsists in these works) <b>Clause 2.1</b>
<b>NZ Parliamentary debates, Select Committee Reports, Royal Commission,</b>	Yes, (no Copyright subsists in these works)	Yes, (no Copyright subsists in these works)

Type of Work	Teaching- One copy for teaching purposes	Course Materials in hard copy, CD or provided on-line via LMS (CECIL etc)
Commissions of Inquiry, Ministerial Inquiry, Statutory Inquiry reports	Clause 2.1	Clause 2.1
Unpublished literary works	Yes, Copyright Act: s 44(1)&(2) Clause 5.1.3	Yes Copyright Act: s 44((3) 3% or 3 pages, but not if that constitutes the “whole work in which case up to 50% rule applies – 14 day rule applies Clause 5.1.3
Periodical Articles: Library Databases	Yes, Copyright Act: s 44(1) & (2) Clause 5.1.3	Yes, with link only from LMS to article in database No otherwise, unless licence permits Clause 7.5
Diagrams & images from book or journal article (hard copy)	Yes, Copyright Act: s 44(1) & (2) Clause 5.1.3	Yes, CLL: The whole diagram or illustration published in a textual work unless it has been reproduced “with permission” Clause 7.1
Diagrams & images from commercial CDs	Yes, Copyright Act: s 44(1) & (2) Clause 5.1.3	No, unless terms and conditions permit
Diagrams & images from the Internet	Yes, Copyright Act: s 44(1) & (2) Clause 5.1.3	Yes, S 44A Copyright Act: LMS only S 48 Copyright Act for hard copy or CD until offered a licence Clause 5.1.3 Yes, if offered under a Creative Commons licence Clause 7.6
Diagrams & Images (subscribed databases)	Yes, Copyright Act: s 44(1) & (2) Clause 5.1.3	Yes if link only otherwise subject to terms and conditions of the database Clause 7.5
Film (Internet)	Yes, Screenrights Licence Clause 7.3	Yes, Screenrights: Must be on Internet with permission of copyright owners. If in doubt provide link only Clause 7.3
Film (Commercial DVD)	May show, but cannot make a copy unless exceptions in Copyright Act apply	No, unless exceptions under Copyright Act 1994 apply

Type of Work	Teaching- One copy for teaching purposes	Course Materials in hard copy, CD or provided on-line via LMS (CECIL etc)
	<b>Clause 5.1.3</b>	<b>Clause 5.1.3</b>
<b>Film (Broadcast)</b>	Yes, Screenrights licence  <div style="text-align: right;"><b>Clause 7.3</b></div>	Yes, Screenrights Licence – must be streamed  <div style="text-align: right;"><b>Clause 7.3</b></div>
<b>Video created by staff</b>	May show, but only with permission of any identifiable individuals. Copying must be with permission of copyright owner	Yes, with permission of copyright owner and any identifiable individuals
<b>Video created by staff containing 3<sup>rd</sup> party music</b>	Yes, Music licence if permissions of identifiable individuals obtained  <div style="text-align: right;"><b>Clause 7.4</b></div>	Yes, Music licence if permissions of identifiable individuals obtained.  <div style="text-align: right;"><b>Clause 7.4</b></div>
<b>Photographs: Unpublished</b>	No, unless copyright owner and identifiable individuals included in photographs have consented or photo taken in a public place where there is no reasonable expectation of privacy	No, unless copyright owner and identifiable individuals included in photographs have consented or photo taken in a public place where there is no reasonable expectation of privacy
<b>Music: Commercial CD</b>	Yes, Music Licence  <div style="text-align: right;"><b>Clause 7.4</b></div>	Yes, Music Licence but must be for University’s educational purposes  <div style="text-align: right;"><b>Clause 7.4</b></div>
<b>Music: on Internet</b>	Yes, Music Licence  <div style="text-align: right;"><b>Clause 7.4</b></div>	Music Licence: must be for Universities Educational Purposes  <div style="text-align: right;"><b>Clause 7.4</b></div>
<b>Music: Broadcast</b>	Yes, Screenrights licence <div style="text-align: right;"><b>Clause 7.3</b></div>	Yes, Screenrights Licence <div style="text-align: right;"><b>Clause 7.3</b></div>
<b>Music: Sheet</b>	Yes, Copyright Act: 1994  <div style="text-align: right;"><b>Clause 5.1.3</b></div>	Yes, 3% or 3 pages, but not if that constitutes the “whole work in which case up to 50% rule applies – 14 day rule also applies  <div style="text-align: right;"><b>Clause 5.1.3</b></div>
<b>Music: Library databases</b>	No copying unless the terms and conditions of the database permit copying for teaching purposes  <div style="text-align: right;"><b>Clause 7.5</b></div>	Yes, so long as only provide link. No copying unless terms and conditions of the database permit multiple copies  <div style="text-align: right;"><b>Clause 7.5</b></div>