

**CLNZ Presentation to
Select Committee re TPP
11 August 2016**

Good morning and thank you for allowing me to speak with you this morning on behalf of both Copyright Licensing New Zealand (or CLNZ) and PANZ - the Publishers Association of New Zealand. CLNZ is the licensing agency for the New Zealand publishing industry. We licence the universities, polytechs, schools and businesses so that they can copy books, journals, and newspapers for their use in education and in commerce. PANZ, along with the New Zealand Society of Authors, are the owners of CLNZ. One of the reasons that publishers and authors invest in a licensing agency is because licence revenue is a key income stream for them and is becoming even more significant in areas like education where written content is now being used and consumed in bite-sized amounts rather than using an entire work.

New Zealand publishing is a trade success story. The industry generates \$330 million per year with a direct impact on GDP of \$128m. These are just the dollars of course; the cultural value of our publishing industry is irreplaceable. We need New Zealand authors to tell New Zealand stories which our publishers then take to New Zealand and international audiences. In the education sector we need New Zealand content and context to ensure that our children are learning with materials that, as stated in the New Zealand curriculum, reflect our cultural diversity and that have meaning which connects with the student's wider lives.

Similar to other creative industries, the export of the digital goods produced by the publishing industry is overlooked. If you search Statistic New Zealand's export data, the value of digital creative product exports are buried somewhere in the export services figures. This means the value of deals like Dame Wendy Pye's recent agreement with a Chinese publisher for education books to go into 200 junior high schools in China, is swamped, as was the value of the rights sales that Victoria University Press achieved with Eleanor Catton when she won the Man Booker prize. We don't currently measure the value of trade in digital creative products so how do we know what the growth opportunity for future trade from creative industries looks like?

When I spoke to this committee earlier this year, I asked you for 3 things. Number One was to move on from the miscalculation of a 55 million dollar cost for copyright term extension. Number Two was to not make content licensing more complicated in New Zealand by implementing the term extension with a phase-in period. And Number Three was a plea for you to gain a better understanding of how creative industries work from the industries themselves.

It has been encouraging to work with the MBIE team that is managing the creative sector study initiated by Minister Goldsmith. This consultation is a step in the right direction to engaging with the creative industries to understand what they need for growth. So we're on track to make some progress on my Number Three.

However, the reason that I'm here today is because there's been no movement on my Numbers One and Two and we've added a Number four. The basis for phasing in the term extension is the miscalculated cost of term extension, so these two are inter-linked. The draft legislation takes two full pages to explain how the term extension will work and includes examples. We're making this process so complicated that we need examples to show how it will work when we could have simply said that from the date of commencement of the legislation an author's right to earn from and manage their work moves from life plus 50 to life plus 70 years.

Back in 2015, when the government first started consulting on the TPP, a stated aim of the legislation was to provide certainty. Certainty in copyright legislation is an admirable goal. It lets copyright owners know what rights they have with the content they create, and it lets those who want to use other people's material know what the terms of engagement are. In comparison with many countries, New Zealand's current Act is fairly black and white. Unlike what happened in the UK in 1995, we're not asking for work that has already gone out of copyright to get a second life, all we're asking is that we don't drag out implementing something so simple for a period of 8 years. The impact of this on the publishing industry is significant. Publishers are prolific users of other people's material – whether that's images, text or designs – they are constantly asking, and being asked for, permissions. As their licensing agency, CLNZ's role is to remunerate publishers and authors when their work is copied. If the work is out of copyright then it's free to copy and we wouldn't be paying the copyright owner for that copying. The same determinative process is undertaken by people and organisations that use copyright material. At the moment a simple calculation is all that's required to work out if they need permission to use someone else's content – but if this legislation is implemented in the way it's been drafted, we'll all be running around with calendars and calculators for the next 8 years. It will probably take 10 minutes to change the draft legislation and this small change will make content creators, content users and licensing agencies jobs a whole lot easier while at the same time allowing our authors to earn from their work.

While we're talking about certainty in legislation let's look at Number Four on my list which is an example of how to make something that's already fairly complicated by its nature, even more

complicated. TPM's – that's technological protection measures – are the way that digital content distributors get creative content to customers. In the book world, the best known distributor is Amazon. If you go to Amazon and buy the e-version of the latest thriller by my favourite Christchurch crime writer Paul Cleave you can read it on a Kindle e-reader, on your phone or tablet via an app or on your desktop computer by logging into your Amazon account. All of these options rely on TPM's to give you the content that you paid for in a simple but safe way.

Digital sales now account for up to 20% of the revenue from a New Zealand book. But the value of those sales can easily head downwards if an illegal copy of the ebook finds its way online. Allowing TPM's to be broken is the first step on a slippery slope to reduced revenue for authors and publishers and the draft legislation significantly expands the ability of New Zealanders to break TPM's. But does it do so in accordance with the TPP agreement? It would seem not. The legislation as drafted amalgamates the issues of circumvention and copyright infringement which is contrary to Article 18.68.3 of the agreement. Further, the requirement in Sec 226AB that a person must know or have reason to believe that a service will be used to circumvent a TPM, contravenes Article 18.68.1(b). It seems we have not only have a problem with certainty, but also with complying with the TPP. If you allow TPM's to be cracked for – and I quote from the legislation – “anything that does not otherwise infringe copyright” – you're opening up a major problem for digital content distributors and therefore, for content owners.

I know you have heard from lobby groups who would have this committee believe that our current copyright law isn't fair. The next time you hear someone use the term “fair use” take a moment to consider whether what they actually mean is “free use”. Almost without exception, those advocating for so-called fair use are simply seeking access to other people's work for free. They also claim that the balance in copyright has shifted and I agree with them - it has. Advancements in technology mean the ability to copy someone else's material is now easier and cheaper than at any other time since the concept of copyright was established. With a simple tap on a smartphone I can copy and share someone else's work with the world – whether they want me to or not. When copying is so simple it follows that copyright law needs to be effective in ensuring that those who make the content get to say how it is used and have access to law that supports and helps enforcement of their rights.

The New Zealand publishing industry is underpinned by copyright. We need certainty in our copyright law to ensure that our publishing industry can continue to grow. The reason why our New

Zealand author's manuscripts get to be published as books (either in print, in digital, or both) is because we have copyright law. It's the law that enables investment in books and authors and underpins the business end of publishing. Of course this is not the only avenue to be published in 2016. Some authors and publishers may choose not to manage their work with copyright. They may choose to give their material away or allow others to freely use their work via open access academic publishing, open education resources or via creative commons licenses – all of this happens WITH copyright law in place – it's not a case of only being able to have one or the other. The key word is CHOOSE and if you remember only one thing about what I say to you here today – please remember that copyright law gives the person who created the content the CHOICE as to how and where their material is made available to others.