



Submission to Ministry of Law, Singapore & Intellectual Property Office Singapore

Singapore's Copyright Regime

October 2016

Copyright Licensing Limited (CLNZ) is a not-for-profit company owned by New Zealand authors and publishers through representative organisations, NZ Society of Authors and Publishers Association of NZ.

CLNZ is part of a global network of copyright collectives that provide centralised licensing services for the reproduction of extracts from books, magazines, journals and other periodicals. Centralised licensing makes it easier for users of copyright works to legally reproduce material from published works. CLNZ also works to protect the rights of creators to ensure that they receive a fair reward for the use of their works.

The recognised RRO (Reproduction Rights Organisation) in New Zealand and a member of IFRRO (International Federation of Reproduction Rights Organisations), CLNZ has non-exclusive mandates to represent authors and publishers from throughout the world in offering licensing services in New Zealand. CLNZ is the New Zealand equivalent to Copyright Licensing and Administration Society of Singapore. CLNZ has copyright licenses with all of the universities and polytechnic institutions in New Zealand as well as schools, businesses and government agencies.

The objective of the consultation is stated as being to **"ensure a copyright regime where rights are reasonable, clear and efficiently transacted"** is in place in Singapore. If this can be achieved then other goals of effective copyright frameworks such as encouraging creativity, enabling access to creative works and providing greater certainty for creators and consumers could also, reasonably, be expected to be achieved.

On 3 October 2016 we wrote to Minister Shanmugam and Minister Rajah to attempt to clarify aspects of the consultation paper that referenced the copyright situation in New Zealand. This submission expands on the matters referred to in that letter.

CLNZ supports and commends the submissions of:

- Copyright Agency| Viscopy
- International Publishers Association (IPA)
- International Federation of Reproduction Rights Organisations (IFRRO)
- Singapore Book Publishers Association
- CLASS – Copyright Licensing and Administration Society of Singapore

**Paula Browning
Chief Executive**

Submission

Fair Use

In any legislative framework a goal of **certainty** is laudable. In copyright legislation, where the law establishes the scope of the market for creators and the scope of access for consumers, the need for certainty is paramount.

It is difficult to see how certainty is achieved with fair use exceptions. Singapore is one of only 4 of the 189 WIPO Member States to have a form of a fair use regime. By its nature, fair use is uncertain as it requires a case-by-case assessment of whether a use of someone else's copyright work is fair. The assessment is unilateral i.e it is undertaken by the person wanting to use the copyright material with no input from the copyright owner. A simple human-nature understanding of this scenario would determine that the person wanting to use material will be more inclined to think their use is fair than the person whose work is being used. And once the work has been used, the copyright owner's only recourse is legal action which itself, as readily demonstrated by the US legal system, is fraught with uncertainty.

Contrast this with the certainty provided by quantified fair dealing exceptions such as the New Zealand exception for education use. Education institutions know that they can use 3% or 3 pages from a work without either permission or a licence. There is no assessment to be made; they can simply get on with using that quantity of the work.

Balance

Many commentaries on copyright refer to "balance". Most of these suggest that the balance in copyright is weighted too far towards content creators and that content creators have not kept up with the development of new technologies. However, what is conveniently over-looked is that new technologies have made the ability to copy and disseminate works on a mass scale more easily than at any other time in history. In times when copying is so easy, limits on that copying need to be stronger – not weaker – to ensure that the creator of the content, the one who had the idea and invested in putting it into a tangible form, gets to manage how it is distributed, copied, sold or otherwise used. While copyright is, by its nature, about rights it is also about choice – it gives the creator of the content the *choice* as to how their work can be used. Copyright is what lets them give it away, licence it, or otherwise monetize it.

Education Licensing

Paragraph 2.8 of the consultation document states the basis of copyright regimes.

"A well-functioning copyright regime has to balance between providing rights to creators and producers as an incentive to create and disseminate new creative works, and providing increased access to, and use of, those works to benefit society at large."

Following the sale of an original work, the most useful and effective form of providing access to creative work is via licensing. Licensing can take many forms including a licence direct from the content creator or, in circumstances where multiple creators' materials are being copied by institutions such as schools, universities and libraries, via agreements with collective management organisations (CMO's).

Singapore's CMO for text-based works is CLASS – Copyright Licensing and Administration Society Singapore. CLASS has been licensing the copying of copyright materials in Singapore education institutions for many years. This has ensured that Singapore students have access to teaching resources while the creators of those resources are receiving remuneration for that copying. CLASS is a member of IFRRO, along with CLNZ. A reciprocal agreement is in place between CLASS and CLNZ that enables the copying of New Zealand content by Singapore education institutions while paying New Zealand publishers and authors and vice versa – when Singaporean content is copied in New Zealand education institutions, funds are remitted to Singapore publishers and authors.

Proposal 10 of the consultation document outlines the importance of education institutions and points to the digital environment in which they operate. The use of online portals and learning management systems referred to on page 36 are also prevalent in New Zealand but occur in a context where education institutions purchase and licence the commercial resources they share for teaching their students. Teacher's and student's own work is also shared, often with the use of creative commons licenses. All of this takes place while respecting and paying for original content. It does not require education institutions, as recommended in Proposal 10, to have free, unmitigated sharing of author's and publisher's materials.

As submitted to you in our letter of 3 October 2016, the proposed exception for "giving and receiving instruction" is not the same as the New Zealand exception for research and private study. The New Zealand exception is for individuals, not for education institutions wanting to copy for teaching purposes. These uses, in New Zealand, are covered by various education exceptions (refer Secs 44 – 49 of [Copyright Act 1994](#)), separate from the research and private study exception provided in Sec 43 of the New Zealand Act.

If the example given on page 37 were to occur in the New Zealand education environment, the copying of newspaper articles would be covered by the licence offered by CLNZ and the presentation of the students own work would be covered by the Sec 43 exception. The example also refers to the students' work being shared with other classes. This raises a wider issue of whether a school should be able , without direct permission, to use a student's work for a purpose other than that for which the student prepared the work – ie. their own learning. There may also be pedagogical and privacy considerations to take into account in this scenario.

We draw your attention to the benefits of the license schemes operated by the collective management organisations in the New Zealand education market. These provide:

1. Certainty for teaching staff in what they can copy from and what quantity they can copy
2. Significantly reduced administration costs where rights clearance is given in advance via the license rather than being required for each piece of copying the institution / staff member wishes to complete
3. The ability to deliver copies in either paper or electronic formats to suit the needs of the institution and/or teacher and/or student
4. A reasonable return to the copyright owner that compensates for the revenue lost from a work being copied rather than purchased
5. An income stream for the copyright owner that enables investment into new works and new technologies

New Zealand Schools are offered licenses for the use of text, music and audiovisual materials via a one-stop-shop licence offering via www.getlicensed.co.nz .The administration of the system is handled by

the NZ School Trustees Association (NZSTA) which is the agency that provides NZ schools with governance support and advice. Schools take out licenses on an annual basis. New Zealand tertiary institutions operate with CLNZ licensing schemes in place and are currently implementing technologies that enable the full reporting of their content usage under the licence for accurate distribution of licence fees to authors and publishers.

Licensing as a source of revenue is increasingly important for all publishers but especially for small publishers – many of whom will come from your local market. The New Zealand experience shows that licensing revenue is used to invest in developing new content and services for students, teachers and schools. This ability for smaller publishers to reinvest ensures that teachers will have access in future to a wide range of materials for their teaching and not just the materials created by the larger, multinational publishers. The publication of content for the local market has significant educational benefits for Singaporean students as the majority of materials contain local content and local context – essential to providing students with cultural and social meaning that is relevant to their world.

Copying Thresholds

Para 37 discusses a current “grey” area in the legislation. We submit that the area may appear to be grey but is, in fact, where the CLASS licence offering fills a gap. The licensing of quantities above a free legislated threshold but below an international standard licence limit of 10% is recognised collective management practice.

In New Zealand the legislated threshold is 3%. For use of quantities between 3% and 10% schools pay CLNZ \$1.60 per primary student and \$3.20 per secondary student.

If the proposed exception for giving and receiving instruction is clarified as being for an individual’s content usage and the free copying of up to 5% of a work in multiple copies for sharing with students is defined in the Act, the CLASS licence – which we note has one of the lowest fees per student in the Asia Pacific Region – will enable access up to 10% of a work, while providing a small but vital revenue stream to authors and publishers.

Conclusion

Educational resources made in Singapore, for Singapore’s children, have a special part to play in supporting student success and developing confident, connected, lifelong learners. While some of these resources may be produced by teachers and international companies, local content producers who understand and are fully engaged with the local education system are in the best place to serve Singapore’s students and teachers. The provision of exceptionally broad and free exceptions for the use of copyright materials by Singapore education institutions will discourage investment in exactly the range of resources that these institutions need to educate students to contribute to a 21st century economy.