

Copyright Licensing NZ

Submission to Foreign Affairs, Defence and Trade Committee

11 March 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, newspapers, journals and other periodicals. Centralised licensing makes it easier for users of copyright works to legally reproduce material from published works, while generating a valuable revenue stream for content creators.

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 has copyright licenses with all of the universities and polytechnic institutions and wananga in New Zealand as well as schools, businesses and government agencies.

CLNZ provides the following comments in relation to:

- International treaty examination of the Berne Convention for the Protection of Literary and Artistic Works
 - International treaty examination of the Trans Pacific Partnership Agreement (TPPA)
 - International treaty examination of the WIPO Copyright Treaty
 - International treaty examination of the WIPO Performances and Phonograms Treaty
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1. We congratulate the Government on taking proactive steps to grow New Zealand's future trade opportunities and to align New Zealand's legal framework for copyright with those of our trading partners and international conventions.
 2. We acknowledge the investment the Government has made into New Zealand's internet connectivity and the opportunity this provides to sell digital content to overseas markets.
 3. We are excited at the opportunity to engage with the Government during its Creative Sector Study and the Digital Convergence Review.
 4. We emphasize that the New Zealand publishing industry, along with other creative industries that monetize intellectual property, enable the Government to diversify the economy's reliance

on primary products. This is already acknowledged in the Government's Business Growth Agenda¹ that states:

"The creative industries have become a core part of New Zealand's economy. According to research commissioned by industry group WeCreate, the film and television, book and music industries alone contribute \$3.5 billion to New Zealand's GDP"

5. The \$3.5 billion figure comes from 2013. The 2014 figure is \$3.848 billion. The economic value of the publishing industry that is included in this number is \$324m.
6. These figures include both trade (fiction, non-fiction etc) and education publishing revenue
7. The value of a strong local publishing industry is not purely economic. It is difficult to imagine how New Zealand schools could effectively teach our children about their own country and culture without access to content that is written and published here.
8. From the very first mention of Intellectual Property in the National Interest Analysis (NIA) both content owners and copyright are portrayed negatively. This seems totally at odds with the potential of the sector as outlined in the Business Growth Agenda and with the time and investment the Government is making in the Creative Sector Study.
9. It appears that the basis for some of this thinking comes from assumptions made in the 2009 Ministry of Foreign Affairs and Trade report² that calculated a cost of \$55 million to the country for extending the term of copyright.
10. Regardless of the fact that the authors of the report noted *"that estimating the costs and benefits of a copyright term extension with precision is difficult given the large number of variables, the limited data available and the effect of changing technology and consumer trends over the very long time frames involved"*, in 2016 when the Agreement was signed – seven years after the report was written – the same numbers were still being quoted.
11. One of CLNZ's shareholder organisations – Publishers Association of NZ - recently provided the Government with data that clearly demonstrates significant errors in the 2009 calculations. We expect that this data – which, in part, comes directly from the owners of New Zealand's publishing businesses–will be used for any future economic assessments.

¹ <http://www.mbie.govt.nz/info-services/business/business-growth-agenda/pdf-and-image-library/towards-2025/bga-report-02-innovation.pdf>

² Jennifer Orr, Jason Soon, Henry Ergas. "Economic Impact of Potential Changes to New Zealand's IP Laws as a Result of Trade Negotiations", September 2009 (copyright term extension results available at www.tpp.mfat.govt.nz).

12. We encourage the Government to undertake a comprehensive economic impact analysis of the current and future value of the creative industries using a robust methodology such as that advocated by WIPO (World Intellectual Property Organisation).
13. We advise that the publishing industry will repeat its own economic valuation report for the 2015 year.
14. We observe that the NIA takes a legalistic view of the creative industries that is at odds with how the market for creative content operates.
15. We advise that there are other areas of the NIA where statements are made in relation to content owners, copyright and licensing that are, at best, inaccurate.
16. *“Works protected by copyright are generally priced higher than works not protected by copyright”* is a sweeping generalization not reflected in how books are priced in New Zealand. The royalty cost component of a book has almost no bearing on the recommended retail price.
17. *“Extending the copyright term would mean New Zealanders forgo savings they otherwise would have made if the books and music they purchase had fallen into the public domain earlier”*. This is also inaccurate. As explained in Para 15, the price of a book being sold by a retailer is not determined by the status of the copyright in the book. This is explained more fully in a recent article by New Zealand IP Law Firm AJ Park ³
18. The New Zealand consumers that the NIA states will incur costs for longer due to the term extension are said to include universities and schools. CLNZ has vast experience in licensing content into the New Zealand education sector. The licence fees paid are based on what is known as “blanket licenses”. That is they cover a range of copyright materials and contain no limit as to the number of works that can be copied from under licence. They are a fixed cost per student (e.g the current fee for a secondary school student is \$3.20 per pupil per year) which is unrelated to the duration of copyright and a term extension will have no bearing on the fees charged.
19. Statements on page 86 of the NIA relating to *“second generation creators”* and the imposition of additional administrative costs ignore the fact that licensing content for “second generation use” is a revenue stream to the original creator. New Zealand publishers, particularly publishers of non-fiction, frequently pay licence fees so that they can incorporate other creator’s content in their new works. This is a fair and reasonable way to reward the original creator.

³ http://www.lexology.com/library/detail.aspx?g=7d44f3ea-d341-4f20-9cd3-6a85014facb8&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email+-+Body+-+General+section&utm_campaign=Lexology+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2016-03-10&utm_term=

20. Licensing as a revenue stream is growing in importance for content creators. Most digital services and platforms that provide access to mass content for consumers pay licence fees to rights holders. (e.g. Spotify for music)
21. We believe the notion that New Zealand has an “orphan works problem” is over-stated. We are aware of a concern that New Zealand photographers have with orphan works, but compared with older countries (e.g those in Europe), identifying the content creator or copyright owner in a New Zealand work is not as difficult.
22. We cannot understand the need to transition the term extension into New Zealand law. This creates administrative burden for both content owners and the Government, for no economic gain.
23. We note with serious concern the suggestion that the New Zealand government would seek to exclude overseas rights holders from any compulsory licence scheme (National Treatment page 187). CLNZ’s licensing schemes, and those of our international counterparts, are all based on the principal of reciprocity. We receive revenue for New Zealand publishers and authors from other countries where their works have been copied, the majority of which comes from Australia where a statutory (compulsory) education licence scheme is in place.
24. Statutory schemes enable equitable access to content for education establishments, while ensuring a fair return to content creators for the copying of their materials.
25. We encourage the members of the Select Committee to focus on the future economic potential of the New Zealand creative sector, what the sector also provides in a cultural sense, and to ensure that Government assessment of this potential is evidence-based and not opinion-based.

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