

COPYRIGHT LICENSING LIMITED COPYRIGHT INFRINGEMENT POLICY

1. POLICY OBJECTIVES

- 1.1 The objective of this Copyright Infringement Policy is to set out CLNZ's approach to copyright compliance and infringement and to provide guidance on how CLNZ will respond to allegations and evidence of copyright infringement.

2. GENERAL

- 2.1 CLNZ promotes copyright compliance through education and by encouraging licensing that enables the legal use of copyright works.
- 2.2 CLNZ recognises that improving awareness of and respect for copyright is generally more effective in promoting copyright compliance than intimidatory action.
- 2.3 CLNZ will conduct its own investigation following reports of unauthorised use of copyright works, prior to determining the best course of action in the particular circumstances.
- 2.4 CLNZ will take action in a matter of alleged copyright infringement where, on balance, the benefits of doing so outweigh any potential negative outcomes.
- 2.5 In all activities, CLNZ:
 - Maintains fair, equitable, impartial, honest and non-discriminatory relationships with rightsholders, licence-holders and other parties;
 - Acts according to its governing rules, Code of Conduct, and constitution as well as applicable national and international laws;
 - Acts with integrity in the collection of information about copyright infringement; and
 - Deals with confidential and personal information appropriately and respects the privacy rights of rightsholders, licence-holders and others.

3. COMPLIANCE MONITORING

- 3.1 In monitoring copyright compliance by a licensed institution, CLNZ will abide by the terms of its licence agreement with that institution, as well as any other relevant agreements (e.g. Bilateral Agreements with overseas RROs)
- 3.2 CLNZ does not offer rewards for information about copyright infringement.
- 3.3 CLNZ does not advertise for informants to gather information about copyright infringement.
- 3.4 CLNZ does not employ methods of surveillance that may bring the company into disrepute.
- 3.5 CLNZ may use an employee, a private investigator or other trusted third party to gather evidence of copyright infringement. Evidence of infringement may be gathered, for example, by following an online infringer on various social media platforms.
- 3.6 CLNZ will cover all reasonable expenses incurred in gathering evidence of infringement.
- 3.7 CLNZ will ensure that it is a condition of the instruction to an informant that such person be able to give evidence in Court.

4. RESPONDING TO INFRINGEMENT ALLEGATIONS

- 4.1 CLNZ relies on voluntary reporting of copyright infringement from publishers, authors, teachers, students or other parties.
- 4.2 Reports of suspected copyright infringement must be made to CLNZ in writing (including via email) so as to ensure a clear understanding of the issues raised.
- 4.3 If the particular circumstances of the alleged infringement warrant it, a person may report an infringement orally. The CLNZ staff member who receives an oral report of copyright infringement will record all relevant details straight during the interview or conversation and sign and date their notes.
- 4.4 In all reports of alleged copyright infringement, the person making the report must be asked if they are able to provide documentary evidence of the infringement and/or would be willing to give evidence in Court.
- 4.5 Reports of suspected copyright infringement are taken to be being made on a confidential basis, to an extent reasonably possible, unless otherwise stated. The person making the report will be advised that his or her identity and other information may need to be disclosed during the investigation process or where a case proceeds to legal action.
- 4.6 Reports of suspected copyright infringement may be made on an anonymous basis, however anonymous reports may impede further investigations of the complaint due to the inability to ask further questions to clarify issues. Evidence from anonymous sources may also preclude CLNZ from being able to take action, including court action.

5. TAKING ACTION AGAINST INFRINGEMENT

- 5.1 If CLNZ becomes aware of any serious infringement of copyright in regard to one or more rightsholder's work/s, CLNZ will, as soon as possible:
 - inform the rightsholder of all relevant details; or
 - where the infringement relates to the work of a rightsholder based overseas, inform the RRO, if any, in the rightsholder's territory.CLNZ will consult with the rightsholder/s regarding the proposed course of action.
- 5.2 CLNZ may take the following steps against copyright infringement:
 - If the alleged infringer is a licence-holder, arrange to meet with a member of the Senior Management Team to gather / confirm evidence and/or negotiate a suitable outcome. Where the suspected infringement relates to a known rightsholder's work, CLNZ may invite the rightsholder/s to be involved; and/or
 - Issue a cease and desist letter to the alleged infringer, on a 'without prejudice' basis.
- 5.3 CLNZ will ensure it has reliable evidence of copyright infringement before issuing a cease and desist letter.
- 5.4 CLNZ will consider legal proceedings against an infringer if there has been no satisfactory outcome from attempts at direct negotiation.

6. LEGAL PROCEEDINGS

- 6.1 CLNZ initiates legal proceedings in circumstances that are likely to:
 - assist in CLNZ's licensing efforts;

- raise awareness of copyright and encourage copyright compliance;
 - be of strategic benefit to the interests of the rightsholders CLNZ represents; and/or
 - deal with flagrant infringement of copyright
- 6.2 The decision to initiate legal proceedings will be made at the discretion of the Board.
- 6.3 Legal proceedings may only be brought in the name of and with authority of the copyright owner of the works infringed.
- 6.4 Application to the court may be made for relief by way of injunction (if there is threatened ongoing infringement), order for delivery up of infringing copies, damages, account of profits or other appropriate relief.
- 6.5 The following factors will be considered by the Board in determining whether to initiate legal proceedings in any case:
- Ease of establishing standing to sue with copyright owner;
 - Proposed involvement and cooperation by copyright owner;
 - Practical ability to deal with copyright owner – whether New Zealand or overseas;
 - Severity of infringement:
 - If depriving publisher of substantial sales, then legal action more likely;
 - If the issue is relatively immaterial and could be resolved via licensing, then no legal action;
 - Status of the infringer;
 - Circumstances of unauthorised activity;
 - Reliability of evidence and witness/es;
 - Likelihood of any defences being raised;
 - Probability of success;
 - Value of the publicity from the action;
 - Costs of taking action; and
 - Where a particular point of principle is at stake.
- 6.6 CLNZ will fund the costs of any litigation from the CLNZ Legal Reserve Fund. In the event of a successful infringement action, the proceeds of the action shall be applied first towards reimbursing CLNZ's legal and other costs before being paid to the copyright owner.

7. PUBLICITY

- 7.1 CLNZ recognises that publicity of copyright infringement cases can be an effective deterrent for those who engage in infringing activities.
- 7.2 CLNZ will, at the discretion of management, endeavour to publicise all serious cases of copyright infringement and/or settlements reached with infringing parties.
- 7.3 In no event will CLNZ publicise copyright infringement by an identifiable infringer before a settlement is reached or whilst legal proceedings are pending or in progress.
- 7.4 Publication of copyright infringement cases must be authorised in writing by the publisher/s of the relevant work/s.