

## **C.L 1739 Answers to Questionnaire on Copyright Registration and Deposit Systems**

### **Copyright Registration**

- A1 New Zealand does not have a registration body for copyrights or related rights. Section 14 of the New Zealand Copyright Act 1994 provides that copyright exists in original works.
- A12 New Zealand is a party to the Berne Convention. We expect New Zealand Courts would recognize copyrights that exist under the domestic legislation of other member states, in accordance with this convention. Where registration is a requirement for copyright to exist under a party's domestic legislation, we would expect our courts to impliedly recognise those registrations.
- A21 New Zealand does not have specific orphan works legislation.
- A22 We are not aware of any industry practices aimed at identifying or locating the copyright owner of orphan works.
- A24 New Zealand has no system for identifying or listing copyright works or objects of related rights in the public domain.

### **Legal Deposit**

- B27 New Zealand has a legal deposit system.
- B28 The relevant legislation for this system is the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003.
- B29 Section 31 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 provides that the responsible Minister may, by notice in the *Gazette*, require publishers to deposit two copies of a publication with the National Library within 20 working days of that publication being made available to the public. This requirement applies to hard copy and electronic documents, depending on the nature of publication.

Where a publisher is required to make a deposit, this requirement is mandatory under section 39 of the Act. Under section 40 of the Act a Publisher who does not comply commits an offence and is liable for a fine up to \$5,000 if convicted summarily.

- B30 The stated purpose of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 is to provide for the preservation, protection, development, and accessibility, as appropriate, for all the people of New Zealand, of the collections of the National Library. The legal deposit requirements in the Act facilitate this purpose by ensuring new written works are included in the library and made available to the public.

Section 30 of the New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 also states that the purpose of the legal deposit provisions is to assist in preserving New Zealand's documentary heritage so that it is available, subject to any applicable terms or conditions, for the benefit of New Zealanders.

- B31 There is no direct link between legal deposit and copyright protection in New Zealand. However, under both pieces of legislation, prescribed libraries qualify for exceptions to copyright in a work in certain circumstances, for similar policy reasons (i.e. access to knowledge for the public, preservation of culture).
- B32 The Copyright Act 1994 provides that the librarian of a prescribed library may make a digital copy of a deposited work without breaching copyright, provided the copy is replacing an original, the original is in danger of being lost, damaged or destroyed, the digital copy is not available for purchase, and the original is not made accessible to members of the public after the copy is made. The National Library (to which the legal deposit system applies) is a prescribed library under the Copyright Act 1994.

B33 Printed publications covered by Legal Deposit include:

- almanacs, calendars and diaries that have text, not just dates
- annual reports
- books and booklets
- brochures, pamphlets and leaflets
- calendars of tertiary institutions
- company profiles
- conference papers and proceedings
- directories
- discussion documents
- guidebooks
- histories of families, groups, districts and organisations
- kits containing printed text
- loose-leaf publications and all updates
- magazines, journals and ongoing publications (serials)
- maps, charts, plans and tables
- microfiche and microfilm
- newsletters of all kinds
- newspapers
- prospectuses
- reports
- sheet music
- supplements
- working papers
- yearbooks

Electronic documents covered by Legal Deposit include:

- any off-line or Internet equivalent of any document covered by Legal Deposit for printed materials

- any off-line or Internet version of any document covered by Legal Deposit for printed materials
- multi-media CD ROMS
- resources on CD/DVD
- navigational maps
- music sound recordings
- talking books

This list is not exhaustive. Section 29 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 defines the term “public document” fairly broadly, and therefore could extend to other documents.

B34 Legal deposit applies to documents that are:

- issued to the public; or
- available to the public upon request; or
- available to the public on the Internet; and
- printed or produced by any other means in New Zealand, or is commissioned to be printed or otherwise produced outside New Zealand by a person who is resident in New Zealand or whose principal place of business is in New Zealand; and
- In which copyright exists (including certain works that such as legislation that copyright does not exist in, defined in section 27(1) of the Copyright Act 1994)

We consider these provisions would apply to works printed in New Zealand but distributed abroad.

B35 Legal deposit does not apply to public records (defined under section 4 of the Public Records Act 2005), or internet documents.

B36 The legal deposit system does not apply to “Internet Documents”, which are defined under Section 29 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 as a “public document that is published on the Internet, whether or not there is any restriction on access to the document; and includes the whole or part of a website”. Legal deposit does apply to electronic documents made available offline.

B37 Publishers are required to deposit at least two copies of each work at their own expense. If the price of the work exceeds \$1000 or if fewer than 100 copies are published, only one copy is required to be deposited. Only the hardback copy of a work is required to be deposited where both hardback and paperback copies are published. If a work is published in more than one language, at least two copies of each language must be deposited (except where the above conditions apply).

B38 The Publisher is responsible for delivering the deposit to the Library at the publisher’s expense.

B39 Deposits must be made within 20 days of the work being first published.

B40 No.

B41 The depositories are the National Library of New Zealand Te Puna Mātauranga o Aotearoa, and the Alexander Turnbull Library, which is a sub-library of the National Library.

B42 The National Librarian may provide not more than 3 copies of a deposited document for use by members of the public (whether at the premises of the National Library or elsewhere) but must not make the document available on the Internet without the publisher's agreement.

However if a deposited document is made publicly available on the Internet by the publisher without restriction on its access or use by members of the public, the National Librarian may make the document available for access and use by members of the public on the Internet.

Prescribed libraries (of which the National Library is one) also have a range of exceptions to copyright in sections 50 to 57 of the Copyright Act 1994, for example, the right to communicate a digital copy of a work to authenticated users under certain conditions.

B43 Both the National Library and the Alexander Turnbull Library provide publicly available search facilities. The National Library provides search facilities online, the Alexander Turnbull Library allows an internet user to browse their catalogues online.

B44 Both the National Library and Alexander Turnbull library are linked to both of these numbering systems.

B45 The Legal Deposit has advised us these statistics are available, however will take some further time to access than given for the completion of the survey. Could you please advise a further contact email where we could send them subsequently.