

UNESCO
WORLD ANTI PIRACY OBSERVATORY

NEW ZEALAND

| | |
|----------------------------------------------------------------------------------------------|----------|
| I. LEGISLATION | 3 |
| 1. Copyright laws | 3 |
| 2. Other laws/regulations | 3 |
| 3. Latest developments and perspectives | 3 |
| 4. Brief summary of New Zealand's copyright legislation | 3 |
| 5. International Treaties and Conventions | 4 |
| II. MEASURES AND REMEDIES | 5 |
| 1. Copyright infringement | 5 |
| 2. Remedies to protect copyright holders | 5 |
| 3. Provisional measures | 5 |
| 4. Penalties for copyright infringement | 5 |
| 5. Requirements for foreign persons | 6 |
| III. ENFORCEMENT | 6 |
| 1. Enforcement authorities..... | 6 |
| a) Authorities responsible for enforcing the copyright law..... | 6 |
| b) Enforcement bodies entitled to act <i>ex-officio</i> in copyright infringement cases..... | 6 |
| c) Courts dealing with copyright cases | 6 |
| 2. Enforcement at the border | 6 |
| IV. PUBLIC AWARENESS..... | 7 |
| 1. Awareness campaigns and actions | 7 |
| 2. Promotion of legal exploitation | 7 |
| 3. Associations and organizations with awareness-raising purpose..... | 7 |
| 4. Best practices..... | 7 |
| V. CAPACITY-BUILDING | 7 |
| 1. Trainings | 7 |
| 2. Specialized units | 7 |

| | |
|--------------------------------------------------|----------|
| 3. Best practices..... | 7 |
| VI. OTHER..... | 8 |
| 1. Technological Protection Measures (TPM) | 8 |
| 2. Licensing Schemes..... | 8 |
| 3. Optical Discs | 8 |
| 4. Hotlines | 8 |
| 5. Relevant links | 8 |

I. Legislation

1. Copyright laws

Copyright is protected in New Zealand through international Agreements, the [Copyright Act of 1994](#), as well as other legislation related to enforcement of copyright or affecting copyright protection.

The origins of this Act stem from the Copyright Act of 1962, which in turn was largely based on earlier United Kingdom copyright legislation.

2. Other laws / regulations

The [Trade Marks Act 2002](#) created new criminal offenses for counterfeiting trademarks and increased the penalties for pirating copyright goods.

3. Latest developments and perspectives

In October 2008, the New Zealand government amended its copyright legislation through the Copyright (New Technologies) Amendment Act 2008. This amendment updated New Zealand's copyright legislation to reflect developments in technology and take account of international developments. Key amendments included: the introduction of a technology-neutral right of communication to the public; the introduction of a notice-and-take down regime limiting the liability of internet service providers, a more comprehensive protection to technological protection measures, an update on the existing permitted acts, including for fair dealing, educational establishments, libraries and archives; and a new format shifting exception for copying sound recordings for personal use.

An additional amendment which will require internet service providers to have a policy to terminate the internet account of repeat copyright infringers is likely to come into force in February 2009.

The Trade Marks (International Treaties and Enforcement) Amendment Bill was introduced into Parliament on 8 September 2008. The purpose of this bill is to enhance the enforcement of the criminal offence provisions in the Trade Marks and Copyright Acts. It will also improve Customs' administration of the border protection measures in the Trade Marks and Copyright Acts against the importation of goods bearing an infringing sign and pirated copies of copyright protected works

4. Brief summary of New Zealand's copyright legislation

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Under [section 16](#) of the Copyright Act, the owner of copyright has the exclusive right to copy the work, issue copies of the work, perform, play or show the work in public, communicate the work to the public, or make an adaptation of the work. Sections 94 to 110 of the Copyright Act outline authors' moral rights these include the right to be identified as the author, object to derogatory treatment of their work, not be falsely attributed as the author. Sections 169 to 202 of the Copyright Act deal with performers' rights.

- *Allowed use of a work without the permission of the owner of the copyright*

The Copyright Act outlines in sections 40 to 92 fair dealing exceptions which, provided certain conditions are met, allow for the use of original works without the permission of the copyright owner. The most commonly employed fair dealing exceptions are section 42, for the purposes of criticism, review and news reporting, section 43, for the purposes of research or private study, sections 44 to 48, for educational purposes, sections 51 to 56, copying by librarians or archivists.

- *Protection of the foreign works*

Foreign works are protected in New Zealand under [section 230](#) of the Copyright Act.

- *Period of copyright protection*

The duration of copyright in New Zealand for literary, dramatic, musical and artistic works is 50 years from the end of the calendar year in which the author dies. In the case of sound recordings and films the duration of copyright is 50 years from the end of the calendar year in which the work was made (sections 22 to 25 of the Copyright Act).

The term of protection for performances is set forth in section 193 of the Copyright Act.

- *Registration*

There is no registration process for copyright to attach to original works in New Zealand.

5. International Treaties and Conventions:

New Zealand is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#) (only to the 1928 Rome reversion), in force since April 24, 1928.
- [Universal Copyright Convention](#), accession on June 11, 1964 to UCC of 1952.
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#), since January 1, 1995.
- [Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms](#), in force on August 13, 1976.

II. Measures and Remedies

1. Copyright infringement

Infringement of copyright is defined under section 29 of the Copyright Act. More provisions on the infringement are available under sections 30 to 39 of the Copyright Act. [Section 12](#) of the Copyright Act states the meaning of what constitutes an “infringing copy”. The definitions section also contains the meaning of “copying”. The Copyright Act is drafted in a technology neutral style and therefore there are no specific provisions concerning Internet copyright infringement.

2. Remedies to protect copyright holders

Remedies for infringement of copyright are provided under sections 120 to 134 of the Copyright Act. [Section 120](#) of the Copyright Act states that an infringement of copyright is actionable by the copyright owner. Relief is by way of damages, injunctions, accounts or any other remedy available in respect of infringement of any other property right.

Remedies for infringement of performers’ rights are available under sections [196](#) and [197](#) of the Copyright Act.

3. Provisional measures

Provisional measures are provided under the High Court Rules.

4. Penalties for copyright infringement

- *In civil cases*

There is no penalty in relation to civil enforcement; the courts can only award the copyright owner an amount for damages or for account of profits of the infringer (Sections 120 to 122 of the Copyright Act).

- *For criminal offence in copyright cases*

Sections 131 to 133A deal with offences in copyright infringement cases. Section 131 of the Copyright Act outlines the criminal offence provisions for breaches of copyright. Penalties consist of a fine not exceeding \$10 000 for each infringement up to a maximum of \$150 000 or imprisonment for a term not exceeding 5 years.

With regard to offences in Performers’ rights infringement cases, these are covered by sections 198 to 202 of the Copyright Act.

- *Seizure, confiscation, forfeiture and destruction of all infringing copies*

Section 134 of the Copyright Act gives the court power to forfeit to the copyright owner, destroy, or deal with infringing copies or other objects (such as devices used to manufacture infringing copies) as the court sees fit.

- *Publication of the judgment in newspapers or professional magazines*

The penalties do not include publication of the judgment in newspapers or professional magazines.

- *Damages*

The payment to the copyright holder of adequate damages to compensate the injury he/she suffered including appropriate attorney's fees and profits of which the copyright holder has been deprived are possible in relation to civil enforcement, but not in relation to criminal enforcement.

5. Requirements for foreign persons

There aren't any requirements for foreign persons in order to obtain enforcement of their copyright in New Zealand.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The competent authority in New Zealand's jurisdiction, responsible for enforcing the copyright law is the Police Force in relation to the criminal offences for copyright piracy. The responsibility for copyright enforcement also lies with the copyright owner.

b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

While the Police may act *ex-officio*, it would be unusual for them to do so in the absence of a compliant by, for example, the copyright owner.

c) Courts dealing with copyright cases

The Copyright Tribunal deals with copyright licensing disputes. The High Court has jurisdiction in relation to civil enforcement of copyright infringement. The District Court can have jurisdiction in relation to criminal offences for copyright piracy. There are no specialized courts or divisions of the court for intellectual property related issues.

2. Enforcement at the border

The Copyright provides for specific measures for enforcing copyright at the border (Sections 135 to 146):

- The competent authority responsible for administering applications for copyright infringements at borders is the New Zealand Customs.
- The competent authorities do not impose any security/equivalent assurance to protect the defendant and prevent abuse
- As mandated in the Copyright Act, the importer and the copyright holder are notified in a timely fashion of the suspension of the release of the goods by the customs
- The time limit for the suspension of the goods by customs authorities is of 10 days, extendable to 20 working days under certain conditions.

- [Section 142](#) of the Copyright Act states that the court may order the forfeiture of goods to the copyright owner, destruction or otherwise may be disposed of as the court thinks fit.
- Customs authorities are not entitled to act ex-officio in copyright infringement cases
- The law provides for a de minimis import exception, notably for goods imported for private and domestic use.

IV. Public Awareness

1. Awareness campaigns and actions

2. Promotion of legal exploitation

3. Associations and organizations with awareness-raising purpose

4. Best practices

V. Capacity-Building

1. Trainings

2. Specialized units

- NZFACT – New Zealand Federation Against Copyright Theft – is a private organization that works closely with industry, government, law enforcement authorities and educational institutions to protect the New Zealand film and television industry, retailers and consumers against copyright infringement. NZFACT provides education on copyright issues. Each year the Ministry of Economic Development runs a campaign of increasing understanding of intellectual property issues including copyright matters.

3. Best practices

Information not available

VI. Other

1. Technological Protection Measures (TPM)

The protection of technological protection measures and copyright management information is available under sections 226 to 228 of the Copyright Act.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Relevant links

<http://www.nzfact.co.nz/index.html> - NZFACT

<http://www.customs.govt.nz/default.htm> - NZ Customs

<http://www.police.govt.nz/> - NZ Police

<http://www.copyright.co.nz/> - Copyright Licensing Ltd

<http://www.copyright.org.nz/> - Copyright Council