

# Your guide to NZ Copyright



*Let's do the right thing*

## Copyright (New Technologies) Amendment Act 2008

### Introduction

The Copyright (New Technologies) Amendment Act 2008 amended the Copyright Act 1994 to bring the law into step with technological advances. The new legislation provides a more technology-neutral framework for existing copyright law and introduces some new copyright concepts. The text of the Act can be found on the New Zealand parliament website [www.legislation.govt.nz](http://www.legislation.govt.nz).

### When did the new law come into effect?

The Act came into force on 31 October 2008, except for a provision relating to internet service providers which comes into effect on 28 February 2009.

### What copyright law changes does the Amendment Act effect?

Key changes made by the Act are summarised below.

### Definition of “copying” extends to digital works

The exclusive right to copy is one of the most important copyright rights for copyright owners. The definition of the term “copying” and “copy” is amended so that it clearly covers digital copying of works in all forms.

### New exception for transient copying

The Act introduces a limited exception from infringement for transient or incidental copying (for example by computers or communication networks), that has no independent economic significance.

### New right of communication to the public

Previously, copyright owners had the exclusive right to broadcast most forms of copyright material, or to include it in a cable programme. The right to communicate material in other ways, such as on websites, was not clear.

The Act removes the broadcast and cable programme rights and replaces them with a technology-neutral right of “communication to the public”. This right covers the previous rights of broadcast and inclusion in cable programmes, as well as communication to the public via other technologies.

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## **New category of work - “communication work”**

The Act extends protection given to the signals that carry programme content in broadcasts and cable programmes to a new, broader category of “communication works”.

## **Permitted acts**

The Copyright Act contains several “permitted acts” (exceptions to the exclusive rights of copyright owners). The Act makes changes to many of these, including:

- clarifying that digital copies made under the Act’s educational copying provisions can be communicated to authenticated users;
- clarifying that prescribed libraries and archives can communicate digital copies to authenticated users, provided that the copy has been obtained lawfully and subject to certain conditions; and
- allowing educational establishments, libraries and archives to create and store works made available on websites or other electronic retrieval systems, subject to certain conditions.

The Act provides a new limited exception to copyright infringement for non-profit educational resource suppliers, in relation to the copying and supply of audio-visual copyright material.

## **Internet service provider liability**

The Act introduces provisions which clarify the extent to which internet service providers (ISPs) may be liable for copyright infringement. It introduces provisions that limit ISP liability in the following circumstances:

- where an ISP is merely providing the physical facilities to enable a communication to take place; and
- in respect of storing and caching of infringing material, where the ISP does not know or have reason to believe that the material is infringing, and acts as soon as possible to delete or prevent access to it upon becoming aware of it.

To facilitate ISPs becoming aware of infringing material, the Act provides for a form to be used by copyright owners to notify ISPs about infringing material they may be storing or hosting. The form of notice is outlined in regulations.

ISPs are required to have a policy for terminating the accounts of people who repeatedly infringe copyright in a work by using internet services. This provision came into force on 28 February 2009.

## **Technological protection measures (TPMs)**

Copyright owners often use technologies to control certain uses of their material, including access to the material. Previously, copyright owners had legal protection against devices, means or information that circumvent copy-protection.

The Act extends the protection, so that copyright owners may take action in respect of devices, means or information that circumvent technological protection measures (TPMs) that protect *any* of the copyright owner’s exclusive rights.

Actual circumvention of TPMs by individuals is not prohibited. The provision focuses on commercial dealing in TPMs and introduces criminal liability for such dealing (attracting fines of up to \$150,000 or imprisonment of up to five years, or both).

The Act provides a process to enable the exercise of permitted acts where TPMs have been applied.

### **Copyright management information**

The Act introduces a new provision to protect against the intentional removal or alteration of copyright management information (CMI) and commercial dealing in copyright material where the dealer knows that CMI has been removed or altered.

The CMI provisions introduce criminal liability for infringers.

### **Format-shifting of sound recordings**

The Act makes it legal to format-shift sound recordings onto digital playback devices, such as iPods and mp3 players as long as:

- the sound recording is not a communication work or part of a communication work;
- the copy is made from a legitimate copy, by the owner of the sound recording;
- the owner acquired the sound recording legitimately;
- the copy is used only for the personal use of the owner (or a member of their household);
- no more than one copy is made for each type of playing device that is owned by that person; and
- that person retains ownership of both the sound recording and any copy made.

### **Decompilation and error correction of software**

The Act introduces new limited exceptions for decompilation and error correction of software. It also provides that a lawful user of a computer program does not infringe copyright in it by observing, studying or testing the functions of the program in order to determine the ideas and principles that underlie the program.

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