

Copyright (New Technologies And Performers' Rights) Amendment Bill 2005

21 June 2005

Attorney-General

LEGAL ADVICE

CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990:

COPYRIGHT (NEW TECHNOLOGIES AND PERFORMERS' RIGHTS) AMENDMENT BILL 2005

1. We have considered the Copyright (New Technologies and Performers' Rights) Amendment Bill 2005 (the Bill) for consistency with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). We understand that the Bill is to be considered by the Cabinet Legislation Committee at its meeting on 23 June 2005.
2. The Copyright Act 1994 gives exclusive rights to copyright owners while allowing limited exceptions for others to use those works. The objective is to ensure the creation, production and distribution of those works in a way that meets society's needs. The purpose of the Bill is to clarify the application of existing rights and exceptions in the digital environment (taking account of international developments) without changing the existing balance between protection and access.
3. We consider that the Bill appears to be consistent with the Bill of Rights Act. The Courts have recognised that copyright laws do place constraints on the right to freedom of expression contained in section 14 of the Bill of Rights Act.^[1] The right to freedom of expression extends to the freedom to seek, receive, and impart information and opinions of *any* kind and in *any* form. Copyright does not protect ideas but rather the form in which they are expressed.
4. Copyright laws recognise that it is acceptable to appropriate ideas provided it is not done by simply copying the words of someone else.^[2] To this extent, if the provisions of the Bill are prima facie inconsistent with the Bill of Rights Act we consider that the limits placed on the right to freedom of expression are reasonable and justified in terms of section 5 of the Bill of Rights Act.
5. We consider that the provisions of this Bill appear to be consistent with the scope and intent of the Copyright Act 1994. It extends protection of legitimate commercial interests of copyrights owners to new technologies, and in this way, continues to meet the objectives of the Copyright Act 1994, while allowing for "fair dealing" (research/education etc). For example, clause 24 of the Bill includes digital copies in certain exceptions for educational purposes. Similarly, clauses 29 to 37 of the Bill include digital copies in certain exceptions created for librarians.
6. We also note that in applying the provisions of copyright legislation, a Court is bound (to the extent possible) to apply those provisions in a manner which is consistent with freedom of expression and this requires it to look closely at the facts of individual cases.^[3]

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Footnotes

1 *Copyright Licensing Ltd v University of Auckland* [2002] 3 NZLR 76

2 *Television New Zealand Ltd v Newsmonitor Services Ltd* [1994] 2 NZLR 91

3 Section 6 of the Bill of Rights Act. See *Sullivan v Ministry of Fisheries* [2002] 3 NZLR 721 (CA) at paragraphs 58 and 61 and *Ashdown v Telegraph Group Ltd* [2001] 4 All ER 666, 677

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