



THE NEW ZEALAND  
SOCIETY OF AUTHORS

(PEN NEW ZEALAND INC) TE PUNI KAITUHI O AOTEAROA

February 8, 2019

**SUBMISSION FROM NEW ZEALAND SOCIETY OF AUTHORS**

**Re: COPYRIGHT (Marrakesh Treaty Implementation)  
Amendment Bill**

**Background on NZSA:**

The New Zealand Society of Authors (PEN NZ Inc.) Te Puni Kaituhi o Aotearoa was established in 1934 and is the principal organisation representing and supporting New Zealand writers. We are a membership-based organisation, representing over 1,550 writers through eight regional branches and many hubs. Our branch meets and hubs are open to non-members so the reach of events and workshops around the country services more writers than membership suggests. Our membership is at an all-time high.

The NZSA is an effective and active advocate and supporter for writers and the literary arts sector and engages with government and organisations on behalf of all writers and creators, on wider issues such as copyright, PLR expansion to include digital forms, library closures, school library closures and lack of funding for school libraries, falling literacy rates, promotion of NZ literature internationally, the creation of a NZ ELR scheme and wider industry issues such as the promotion of children's literacy and literature through the creation of a children's laureate. We are affiliated to International PEN and are active with programmes such as Writers in Prisons NZ and international campaigns to protect freedom of speech for writers and journalists around the globe.

The NZSA works closely with other literary arts organisations, government and Creative New Zealand to ensure that the professional interests of writers are strongly represented and that early, mid-career and experienced writers receive support and opportunities to further their craft. Other primary functions are professional development through conferences, workshops, manuscript assessments and mentorship programmes and the administration of prizes and awards for writers. We have representatives on a range of boards, committees and steering groups such as: PLR, CLNZ, Northtec, Whitireia, PEN International, the Burns Fellowship Trust, the Book Awards Management Trust, Writers in Prisons, NZ Book Council sector steering group and We Create.

We attended the first meeting of the Accessible Formats Forum and have met with the Blind Foundation, PANZ and Copyright Licensing NZ to discuss issues around access to work for the disability sector. We work alongside CLNZ, Booksellers NZ, Booksellers NZ, Library organisations, The NZ Poetry Society, The New Zealand Book Council, Writers Festivals and the Publishers Association of NZ to promote the literary sector, events and marketing.

NZSA is a 50 % co-owner of Copyright Licensing NZ Ltd along with the Publishers Association of NZ and one of the stakeholders of The New Zealand Book Awards Trust.

**Current situation and state of the market:**

The NZ book market suffered contraction over the last 10-15 years due to digital sales, a reduction in book retail space and the reduction of local publishing in NZ- although a vacuum produces opportunity with new independent and collective boutique publishers springing up We believe the book market is starting to recover but generally first print runs are very small in NZ with often 1000 (or even 500 and 750) copies being produced of more literary and children's works.

The CLNZ 2018 Horizon Research survey, reports writer's incomes at \$13,000 pa. Many writers employ a cocktail of journalism, PLR payments and royalties to cobble together this meagre income. In an age where digitisation means it is so easy to copy and infringe copyright law, NZSA and authors must remain vigilante and defend the right to acknowledgement and fair reward for their intellectual and moral property rights.

Our 1550 membership spans children's, adult and educational authors through to bloggers, journalists and script-writers so our advocacy spans the literary and media sectors. Writers are crucial for all arts sectors across theatre, film, software games, the music industry, the fourth estate, poetry, flash fiction, journalism, children's books and all aspects of the literary arts.

Our members are involved in a multiplicity of writing opportunities, mentorships, editing and assessment jobs and our organisation does all it can to protect the right to income from the work they do. The book industry accounts for nearly 2300 jobs and has a direct GDP of \$128 million (PWC 2015 report). We believe more economic value is created for the literary arts sector through jobs in education, libraries, retail, reviewing, export, as well as the cultural importance and the well-being of our society who can experience high quality arts. But well-being and being able to sustain a career as a writer should also be considered for the content creators.

- We acknowledge the importance of this legislation for the disability sector but hope that the final bill will contain strict guidelines for Marrakesh that offer protection to our writers, small presses and self-publishers as well as protection for those converting works into accessible formats.
- NZ writers and publishers historically waived copyright and gave permission to the Blind Foundation to make accessible formats of work for their members, long before the 2012 mandate obtained by CLNZ. Authors have traditionally felt this was the reasonable, honourable and right thing to do. Now it is the turn of legislators to consider the impact of this Bill on writers' incomes and moral and intellectual property rights by protecting this process.
- NZSA supports the submissions by the Publishers Association of NZ and Copyright Licensing New Zealand.
- NZSA supports the work being done by the Accessible Formats Forum (AFFNZ) to instigate born-accessible standards, an on-line international meta-data repository, clear guidelines for authorised entities and appropriate training and support.

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The New Zealand Society of Authors (Pen NZ Inc) Te Puni Kaituhi o Aotearoa supports this Bill, but has reservations on particular sections of the Copyright (Marrakesh Amendment Bill) and its application to the NZ environment. We note that none of the comments and concerns submitted to the exposure draft appear to be addressed in this Amendment Bill.

We note the Marrakesh Amendment Bill Draft has chosen not to exercise the provision in the Treaty to provide compensation to content creators.

We acknowledge that it is best for works to be 'Born accessible' but this is not always practical for NZ produced works, given the small size of the print run and costs (and risks) involved.

While E Pub 3 e-books are convenient versions and born accessible, we also point out through the experience of our members that the most often infringed and illegally-shared works, championed by unregulated ISP's, are usually in e-book form. This makes the file security a crucial issue.

We acknowledge the Government's Goals are threefold:

1. More timely access to a greater variety of accessible format works for New Zealanders with a print disability. You anticipate this will improve access to education and employment, lift overall wellbeing and allow more opportunities for New Zealanders with a print disability to contribute to the economy.
2. To get better value for money from existing MOE resources, as schools and libraries and prescribed bodies provide accessible format works for disabled New Zealanders, reducing the need for costly local production by accessing works across borders.
3. Adhere to our international obligations under the UN convention on the Rights of Persons with Disabilities and the UN Conventions of the Rights of the Child.

We make the following notes on the Government's 3 goals:

Goal Number 1:

We have no doubt that an increased variety of accessible works should lift achievement and well-being to New Zealanders with a disability:

- The question is one of scale. This bill widens the right to an accessible format works, free to anyone with a disability.
- In the last census 24% of the NZ population identified as having 'some kind of disability'. This will increase, potentially, the claim to free content by one quarter (24%) of our population. We are told by the Accessible Forum that the increase in those who can claim free product will increase from 100,000 NZ'ers currently to over 400,000 now being eligible and we have huge concerns about this increase, which is hugely significant in a market the size of NZ.

- This will have an impact on the market for NZ books. While this may not be significant in a country like the USA where a first print run ranges from 10k – 100k – this will have a definite impact on the ability for NZ writers to sell through a meagre 1000 print run.
- We assert this will have a negative effect on writers' incomes and writers' well-being. While this may lift up outcomes for those with a disability, and rightly so, we are offsetting that with a lack of respect to the moral and intellectual property rights of content creators.
- We cannot think of a comparable product where the government would legislate that a product creator give away 24% of their product, for free. This would not apply to NZ wine, fashion or food producers – although one could argue that a large proportion of those in need would also attain improved outcomes if they had access to proper nutrition and housing – but no-one is legislating to provide our poorest sector with free food and housing. The NZSA wonders why writers content can be appropriated by government decree and distributed free, when this applies to no other locally created product. The disability sector does not receive free equipment that aids their disability such as hearing aids, or wheelchairs – so we wonder why authors are the only ones who are to receive no compensation for their work and how that is deemed fair?
- NZSA believe this level of free access will damage the already small market for writers and therefore this exception, without any compensation mechanism fails to meet three point test in that it will affect the writers right to normal exploitation of their work. We purport this expansion of the eligible catchment will have a detrimental effect on authors earnings.

Goal Number 2: To get better value from MOE resources:

- It is easy to get better value when a product is free, with no compensation mechanism offered to creators.
- The NZSA acknowledges the industry around creating audio books and daisy formats for those with a disability to read. We acknowledge an actor will be paid \$1500 to record an audio book for the Blind Foundation, or it costs \$1000 to create a daisy format of the work – whereas nothing is paid to the person who created the work. As we represent the principal of fair reward as a basic tenet of our organisation, again we can see that the parameters of those entitled to free work has been greatly increased, with no corresponding compensation mechanism for the creators.
- We know The Blind Foundation 2017 Year in Review states “more than 560,000 talking books and magazines were delivered to Blind Foundation library members across New Zealand”. Including a PLR scheme for specialist libraries would recompense the writers who books are extensively lent by authorised entities. We note that the Blind Foundation must not commercially exploit their audio files, as per the rules the audio versions are created under the Marrakesh exception.
- Organisations will only be able to gain economies if they exchange and share works and those authorised entities are registered, checked, and all products created are recorded in a central database.

- While free content to Authorised Entities enhances the costs of accessible products, it reduces the right to recompense for the content creator and NZSA argues this has a negative impact on the wellbeing of writers. Writers can see no equivalent where goods are legislated to be taken, to be given free to potentially 24% of the population and we wonder why we have been singled out?
- While we had made suggestions that private and specialist libraries be included into PLR as a compensation mechanism, this provision in the Treaty has not been explored. Neither has the PLR Board adopted digital editions or been approached about the impact of this legislation and possible remedies via the inclusion of specialist libraries with a corresponding increase in the fund - so no compensation has been signalled.

From the writers' point of view, the government already has legislation that negatively effects writers' incomes in the following ways:

1. Marrakesh – free product to 24% of NZer's (120k visually impaired/168K with a print disability plus 266k with a physical disability) – Ministry 2013 figures.
2. No ELR (other territories such as the UK and Australia have an Educational Lending Right – so no compensation mechanism for children's and educational authors for books used in school and classroom libraries).
3. Parallel importing: writers cannot uphold territorial copyright in NZ, even for the local edition of their own book.
4. PLR does not include e-books and does not include private, organisational and specialist libraries and the PLR fund has not been increased for a decade.
5. CLNZ licenses are not mandatory for all schools – so only 72% pay a licensing fee – the others infringe copyright daily. MOE should insist on licensing for all schools as an operational compliance cost.

With the above lack of remedies in place, it is no wonder our average writers' income is \$13,000pa and the increase in numbers of this legislation is alarming to us. As the government has the goal, as announced by the Prime Minister at the Prime Minister's Literary Awards, to provide sustainable incomes for writers. This legislation will further erode, not support writers' incomes.

### *Goal Number 3:*

In line with our international obligations under the Marrakesh Treaty:

- NZ writers have always given free permission to the Blind Society but are concerned at the number of people now eligible under the redrafting of the NZ law around this.
- We also have international obligations under the Berne Convention, the core of which is that 'the use of the work does not contravene the authors right to fair reward' and we believe that this bill, with its huge increase in reach across the population is contravening the Berne Convention.
- There is a provision for compensation in Marrakesh which has been disregarded.

The NZSA has some responses to other sections of the bill:

### Section 69 (1)

It is alarming to see the exception being extended from the 2 current prescribed bodies to 2878 entities plus individuals and overseas authorised entities. This means all schools will have a license to copy and this creates a huge risk to authors and publishers; that more works will be copied and that those copies will be extended to other groups in the learning environment.

### Section 69 (2)

We do not consider there is adequate regulation and compliance asked of authorised entities, other than 'notifying MBEI'. This gives not scope for training, recording copies and again, gives a false impression to all schools and individuals about the restrictions of use that should surround access to this content. We consider that these entities could easily infringe copyright and such a blanket entitlement will encourage this.

### Section 69 A

The Act should suggest that reasonable investigation is required to find an accessible version, before one is created, to ensure it is not already commercially available and there should also be strict procedures around creating a register of accessible works.

In your subsections you do not require evidence that an accessible work is needed, or to clarify the disability of the person being provided for.

1. NZSA calls for more clarity and regulation for authorised entities to ensure that the person meets the definition, that the commercial availability test is completed, and they show how it will be distributed. Authorised entities also need to understand the implications and law around infringement.
2. We also favour a central meta-data repository of all works in accessible formats and training for those who are creating and using these formats to avoid unnecessary duplication.
3. There is concern by NZSA that digital copies produced by the disability sector could become available and pirated on international free sites. Books can be shared electronically in vast numbers, very easily.

E-books are particularly susceptible to pirating. We would like to see Authorised Entities to have strict and documented procedures in place to ensure file security and that they be educated about responsibility to content under Copyright Law.

NZSA want assurance that digital forms of work created by authorised entities will be protected. We also require evidence of protection of these works if accessed by Authorised Entities in other countries.

There is a current example of this type of infringement by the Internet Archive Open Library being opposed by Author groups across the globe. They are infringing copyright and claiming safe harbour under the US Fair Use regime. They are distributing NZ authors, free, including Witi Ihimaera, Fiona Kidman and Eleanor Catton. This is the risk we are facing.

4. Authorised entities must ensure the integrity of the exception. If an Authorised Entity is identified as leaking or sharing work to wider platforms, we wish for remedy in the Act for that the authorised entity has its license withdrawn. We wish to ensure that copies are only supplied internationally to registered authorised entities under the operation of the Treaty, to protect the distribution of that work once it *leaves NZ*.
5. Authors must have a low-cost tribunal or access to remedy if a breach has taken place. The burden of cost should not be on the author to seek remedy.
6. Writers have reported they are seldom told their book has been made into an accessible format and wish for that to be a requirement.
7. An ongoing concern to writers is they have no say in the quality or integrity of the work that is produced or recorded. We believe writers have a moral right to have access to the interpretation of their work.

*In summation, NZSA has concern about the substantial increase of authorised entities and the fourfold increase in those who can claim free product.*

*We challenge MBEI to find a compensation mechanism for this, and exercise the provision in the Marrakesh Treaty for this. Otherwise, while are increasing the wellbeing of one sector of the population, we are adversely affecting the income and status of writers, who have no opportunity to gain compensation for the use of their work.*

*Authorised Entities under Marrakesh must understand their responsibility to help protect the livelihood of writers and regulations must reflect and uphold the integrity of the copyright and the moral and intellectual property of the author.*

*We were delighted the government has an aim for sustainable incomes for NZ writers and purport this legislation, as it currently stands, is at odds with supporting incomes and the wellbeing of our writers.*

*NZ Society of Authors  
Feb 2019*

