

NEW ZEALAND COPYRIGHT ACT 1994

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Introduction

The Alliance of Independent Authors (ALLi) is a global nonprofit organization representing independent, self-publishing authors.

ALLi has a mission of ethics and excellence in self-publishing. Our organization advocates for the empowerment of authors, for a more author-centric publishing and self-publishing industry, and for the optimization of the value of the authors' moral and monetary rights and intellectual property.

As large competing interests of publishing platforms (Big Tech), global media corporations (Big Content) and legislating territories (Big Legal) stand up to each other across the world, and as jurisdictions work to update their copyright laws to keep pace with digital disruption, creative entrepreneurship and the knowledge economy, ALLi advocates for our members: individual, independent, self-publishing authors.

It is our responsibility, and our honor, to highlight the issues that independent and self-published authors face as creators, and as micro digital-businesses, and to make the case that author-publisher and content-creator interests be considered and weighed alongside those of larger entities.

ALLi supports all initiatives that help ensure authors receive appropriate pay for the sale and use of their copyrighted work. We are concerned that some changes, proposed and adopted internationally, purporting to be "updating and improving" copyright law for the digital age, have not considered the implications for the independent author.

We are author-publishers. On the one hand, we operate publishing businesses; on the other we are content creators (who may also license rights, particularly subsidiary rights, to other publishers).

Our consideration of copyright law extends beyond questions around legislation. Copyright law already offers much protection, incentive and reward to authors and publishers. Much as we wish to see the law updated to take account of the changing digital landscape in which we work, we also wish to highlight that, at the practical level, there is already much good law in place. The problems and shortfalls arise for authors in the execution, rather than the existence, of copyright law.

We also recognize that a safe and functioning copyright environment is not just about economics and that copyright must serve the public interest. As with any legislative framework, copyright policy makers must consider all interests, many of them competing.

The balance between creativity and culture, authors and readers, creator income and accessible information and education, has always been complex. These are hard questions and, as copyright activist Cory Doctorow has pointed out:



The Internet has made them harder still, because the thing that triggers copyright rules – copying – is an intrinsic part of the functioning of the Internet and computers. There’s really no such thing as “loading” a web-page – you make a copy of it. There’s really no such thing as “reading” a file off a hard-drive – you copy it into memory.

- Cory Doctorow, free Internet advocate and author

Copyright policy is increasingly Internet policy but if legislation focuses purely on policy, without a realistic assessment of how content – in this case, books and their associated products – are discovered, bought and read today, and how creators work and trade and

negotiate online, legislators may inadvertently harm the very population they are trying to help.

Our question in 2019 is: how can the provision and implementation of copyright law empower the average author, so they can a) understand and b) avail of rights in the rapidly changing, technologized and entrepreneurial environment within which we now work? We express our answer to these complex questions in the form of the *Independent Authors Bill of Rights (Copyright)*.

ALLi's Bill of Rights (Copyright) is a work in progress, currently at the feedback stage, exploring with members and associates how copyright would and should be framed if it is to provide true protection, incentive and reward to authors and other creators.

We release this first edition of the ALLi Bill of Rights (Copyright) for feedback from our members and other interested parties against the backdrop of a hotly contested copyright directive in the EU that has seen millions of Internet users, including authors, uniting online and on the streets to demand their right to be free of censorship, and free to communicate without algorithmic censors or arbitrary licensing requirements.

We submit it to the New Zealand government, by invitation, as input to its review of its Copyright Act of 1994.

We acknowledge the requested format for submissions. However, our contribution is less about specific clauses and sub-clauses and more about the big picture environment for independent authors, as influenced by copyright policy. Our objective is to help you understand the independent author better, and how this policy environment directly affects their ability to earn a living and contribute to the fabric of society.

Our submission focusses on the aspects of copyright that are most central to our members' ability to make a living from their work. Our deliberations to date reveal important issues

that are not currently being discussed by other interested parties, including other bodies representing authors.

We contend that understanding the experience of the new independent, entrepreneurial author is vital to creating an effective framework for the creation and use of copyright works in a rapidly changing digital environment.

We believe the *ALLi Independent Authors' Bill of Rights (Copyright)* provides a new and necessary viewpoint to be considered in your "reassessment of how well the copyright regime is performing" today.

We thank you in advance for taking the time to review our submission and for your consideration of the issues of importance to self-publishing authors who reside in New Zealand and sell their work at home and abroad.

Independent Authors and Copyright

The independent author movement was born out the digital technologies that emerged in the first decade of the 20th century. Authors had always self-published but digital and Internet publishing allowed us, for the first time, to inexpensively reach a global readership, without the need for an investing publisher.

The author-to-agent-to-publisher-to-distributor-to-bookstore-to-reader supply chain was replaced with one that was much shorter: author-to-distributor-to-reader.

Using digital tools and technology, and supporting each other closely, independent authors conduct business in new ways. As a result, much of the current discourse around rights and literary activity is irrelevant to us.

Crucially:

Independent Authors are Publishers with Full Creative Control and Responsibility: We are publishers, trading in our own publishing rights and making decisions not just as content creators (writers) but also as creative directors of each book through the seven stages of the publishing process (editorial, design, production, distribution, marketing, promotion and rights licensing). We are responsible for the exploitation of our own copyright and that of other creators with whom we work or collaborate, and from whom we quote.

Independent Authors Run Businesses: Author-publishers are creative *entrepreneurs*, running a variety of digital business models that trade in books and other creative content (see Appendix). Each of us is the creative director not just of the books but also of the business. This is in contrast to our exclusively trade-published (traditionally-published) colleagues, who are creative *professionals* licensing rights to other publishers and content corporations.

Independent Authors Think Globally: Copyright legislators, governments and most literary bodies think territorially, within legislative jurisdictions, but independent authors think globally. Thus, ALLi members who live, write, publish and claim copyright in a specific jurisdiction are selling to, and interacting with, readers and potential readers worldwide.

Independent Authors Hire Other Literary Businesses and Creators: Author-publishers hire writing, editorial, design, production, distribution, marketing and PR services (individuals or companies). In the course of pursuing their author business, we must consider four sectors of publishing service:

1. **Self-publishing Companies Favorable to Authors:** Production and distribution services like Amazon KDP, Apple Books, Google Play (books), IngramSpark, Kobo Writing Life, PublishDrive and others.
2. **Self-publishing Companies Exploitative to Authors:** Popularly known as “vanity publishers,” these companies dominate the digital advertising space where they trap new authors who are uninformed about how publishing and self-publishing works.
3. **Technology Companies:** Known as “Big Tech”, platforms like Facebook, YouTube, Google Search, Amazon, Apple and Kobo Retail, Bookbub are essential to author-publisher trading and book promotion
4. **Content Companies:** Corporate or independent trade-publishers and media like Random House, Faber & Faber, News International.

Within each of these sectors, services vary widely in their contractual terms and conditions for authors. All sectors have players who been cavalier in their treatment of authors, user data, IP, and copyright. All sectors have players who amass their profits with little consideration for author income.

The copyright needs of an Internet giant like Google, Facebook, or YouTube; a social media company like Twitter or LinkedIn, a news organization like The Guardian or New York Times, a traditional publishing house like Random House or Penguin, a literary agency, and even a traditionally published author may be at variance with the copyright needs of the independent author.

Thanks to copyright law, the right to decide when and how our work may be used by others, and the moral right to have our names connected to our work whenever it is used, is ours. But, assertion of these rights must happen within a hostile business environment.

Companies within all four publishing sectors issue unfair contracts that grab rights and omit author-protection clauses. Companies have forced authors to sign over all copyright, write for a one-off, minimal fixed fee rather than royalties, and forgo their rights to additional sources of income.

To publishing companies and Big Tech, authors are content providers, contributing to or creating the products upon which profits are built. More money for authors is believed to mean less profit for shareholders.



Authors can suffer from significant inequality of bargaining power and asymmetry of information in their dealings with cultural investors (such as publishers. That can mean they end up transferring all or most of their rights as condition of distribution or investment. What authors transfer can be disproportionate to what they get in return.

- Associate Professor Rebecca Giblin of Monash University and The Author's Interest

Neither Big Tech nor Big Content, corporate publishers nor indie publishers, chain book stores nor indie bookstores, have authors' interests at heart. Many have, undoubtedly, individual employees and even owners who care about writers and writing, creativity and culture. ALLi, and ALLi members, successfully and happily engage with such company representatives on a daily basis but within the knowledge that the companies, as companies, must act for their shareholders.

As entrepreneurially-minded business owners, independent authors are highly invested in improving technological and legal infrastructures to benefit authors, creators and micro-publishers.

Independent Authors and Copyright Debates

When an author writes a book, the right to sell and profit from the sale of that book, and to grant and license related rights, should belong to the author. In theory, it does. This theoretical right is protected in many jurisdictions by copyright law, the foundation on which author income rests.

The intention of copyright law is to provide protection, incentive, and reward to authors.

- As protection, it should discourage plagiarism and piracy with enforceable legal consequences.
- As incentive, it should encourage author-publishers to write and publish, and trade-publishers to invest in books, literature, and associated media services and merchandise.
- As reward, it should ensure authors are fairly recompensed for their contribution (labor, personal expression, ingenuity and enterprise).

In practice, copyright is a passive right that is difficult for the individual author to assert.

1. Piracy and Content Theft

Theft and piracy of content, aided by technology, are rampant. Author-publishers differ in their response to this. To some, piracy and plagiarism negatively impact on author earnings in an era where many authors are already fighting hard to earn a decent living from their work. They see music and movie industries aggressively pursuing those who are downloading music or movies in file sharing forums, with thousands of lawsuits being filed around the world and urge publishers to follow suit.

Others see piracy as far less a problem for authors than obscurity. Some have even used piracy as a marketing tool.

2. Digital Rights Management

Most of the eBook distributors such as Amazon offer some kind of digital rights management (DRM) to author-publishers.

DRM is a broad term describing many different technical formats, but always involves an encryption key (intricate mathematical code) that puts a digital “padlock” on the eBook that allegedly prevents copying of the file.

DRM is meant to lock an eBook file to a single user by the company they bought it from, in the hope is that this will prevent readers from uploading the book to file sharing websites. Many publishers and some authors argue strongly for DRM as the only defense against piracy, offering at least some ability to remote control how people can install, listen to, view, and duplicate digital files.

Others argue that even if its intention is to prevent piracy, DRM is dangerous, giving content creators rights that go far beyond those afforded by copyright law. The right to invent things that people aren't allowed to do – even though the law permits it – and to embed these prohibitions in code that is illegal to violate.

Again, there are practical considerations for the author-publisher, who will be asked by publishing platforms whether they wish to use DRM. ALLi’s recommendation is to tick “No DRM.” DRM does little to prevent piracy as it’s very easy to strip off a book, with free tools and free guides to how to do it widely available on the Internet.

DRM makes life more difficult for those readers who have paid for the book, as it prevents them from reading the book on another device or in another format. The book is locked to the store they bought it from. Should that store ever go out of business, the reader will no

longer be able to access the books they paid for.

Until a day that a new technology comes out that can properly prevent piracy, without compromising the reader's right to free and fair use, ALLi will continue to recommend that authors avoid putting DRM on their eBooks.

3. Control Over Rights

Compared to authors who publish only through trade publishing processes — who license their rights, are bound by exclusive, often needlessly circumscribed contracts, and have no control over their metadata or marketing — those who self-publish, or combine self-publishing and trade-publishing processes, are relatively autonomous.

If an author doesn't have control over their metadata, marketing, pricing, distribution network, or rights, they're not actually in business as an author at all. Another publisher has licensed their assets and the author is a freelance content provider.

If they have just one publisher, as most authors who trade-publish currently do, they are at the financial mercy of a system built around a minority of winners and a vast pool of losers (those who don't attract an investing publisher and those who do not sell in sufficient numbers to retain investment).

Authors who skill up to include self-published titles in their mix are greatly increasing their ability to build a profitable author business, one they can rely on into the future.

Understanding this changed landscape is challenging for authors and the government bodies that support them: ministries responsible for business, entrepreneurship, culture, intellectual property, the knowledge economy, and related industry organizations.

In late 2018, ten years after the widespread adoption of self-publishing by the author community, ALLi asked governments in six individual publishing territories – Australia, Canada, Ireland, New Zealand, UK and US – to recognize the entrepreneurial nature of the new, independent (“indie”) author, and to acknowledge the social, cultural and economic contribution of their work.

ALLi asked governments in these key territories to acknowledge the increasing business, knowledge, cultural and social contributions of independent author-publishers and called on creative industry leaders, at all levels, to step up and engage in global analysis and support of these pioneering, global author-businesses.

ALLi contends that the creative industry must get better at identifying, tracking, quantifying, and supporting independent authors as creative digital micro-businesses. This includes considering the economic status of and impact on the independent author when reviewing and updating policy and legislation around issues such as copyright.

The Independent Author's Bill of Rights (Copyright)

It is a fine line between a copyright system that helps ensure authors get credit and compensation for their work and a technical and legal infrastructure that suppresses free speech, tipping the scales even further toward Big Tech and Big Content.

The *Independent Authors' Bill of Rights (Copyright)* paints a picture of a healthy, supportive, and functioning environment that balances the benefits of copyright ownership with the flexibility to run online author businesses.

We believe you will find consideration of the seven following "rights" useful as you consider and draft amendments to your Copyright Act 1994.

1. The Right to Operate and Promote

Author independence, empowerment and advancement rests on a legal framework of copyright and intellectual property which:

- recognizes the business needs of authors and authorpreneurs and encourages self-investment
- enables operation and growth across a variety of micro-business models (see Appendix)
- protects against content theft (piracy and plagiarism) and author exploitation (contracts that fail to respect copyright law) while allowing for fair use/ dealing and creative commons contracts

The right to promote and link out is integral to the right to operate online author business, without treating creator content with suspicion unless proved legal and free from requirements to adopt expensive and restrictive “filters” that, in practice, work poorly and that, in any case, only deep-pocketed conglomerates can afford.

2. The Right to Fair Remuneration

Independent authors, like other creators, have the right to earn a reasonable income from their copyrighted work, through fair compensation when others use their creative content.

Failure to deliver on this right to fair compensation results in creators failing to make a living from their work, which discourages or prevents the creation of new works. The absence of fair compensation for creators therefore represents a threat to digital creativity and shared global learning. Everyone benefits from access to creative works of high standard and from an equitable copyright environment that protects IP.

Fair compensation is affected by many parts of the copyright puzzle, including piracy and fair use/fair dealing. Legislation and other factors are prompting governments and governing bodies to review and potentially update copyright laws to ensure relevance in the digital age. Provisions that provide for fair compensation should be paramount in any copyright review.

3. The Right to Defend Copyright

Copyright is a meaningless right without the means to challenge and prevent content theft (piracy and plagiarism), and to have adequate protection tools, safeguards, and penalties in place for those who exploit, steal, or break copyright law.

Currently, when a copyright owner discovers that a web-hosting company is housing unlawful material, a DMCA notice in writing is the method used to demand takedown

from the web-hosting company. Although technically a US law, the existence of the Digital Millennium Copyright Act (1998), DMCA allows similar action to be taken in all territories.

Individual takedown notices are largely ineffective. Authors and author representatives (e.g. ALLi's Watchdog desk), including societies, publishers, and literary agents may call out or confront rogue publishing and self-publishing companies, but such individual actions have little muscle.

Governments, working together with search engines and internet service providers, should establish an enforcement arm – or fund such a body within existing law enforcement agencies – to help investigate, police, and shut down the most blatant thefts, exploitative services, and publishers that issue contracts at variance with copyright law.

4. The Right to Balanced Fair Dealing/Fair Use Frameworks

Authors and other creators have the right to participate in a fair dealing/fair use framework that fairly balances economic rights with creator rights to free speech and reader rights to education. Fair use (US, Israel, Philippines) and fair dealing (Commonwealth countries like Canada, the UK, Australia) are similar, providing exceptions provisions to copyright that uphold this balance.

These exception provisions are about a user's right to access copyrighted material, and not the author's right to restrict sharing and distribution of his/her copyrighted work in cases deemed to support the public good (e.g. education, research).

Authors are not just creators and publishers. We are also content consumers, scholars, and citizens who acknowledge that public policy must consider and address these competing

interests and ensure the preservation of a fair use/dealing environment, as well as free speech, on the Internet.

5. The Right to Coherence in Copyright Law

The current technical and legal infrastructure around copyright is often incoherent and fails to consider properly the status of IP as personal property and the extent to which the rules governing IP are different from or the same as the rules governing other types of property, e.g. goods or land. This has allowed tech companies like Facebook to profit from personal data without recompense. There is also, in most jurisdictions, a failure to consider or properly clarify the different requirements of different kinds of IP (e.g. copyright versus patents) and related legal issues, including the consistency of treatment across different countries. ALLi urges legislators towards coherence in copyright law.

6. The Right to Copyright Education

In the digital age, when we are all creators, knowledge of copyright law and its implications become vital for all citizens. Authors, in particular, need to understand the value of intellectual copyright and how to exploit and protect our copyright.

We urge government, education bodies and creative industry representatives to do all possible to spread an understanding of copyright, its importance, and how to protect it. We believe national curricula should teach an understanding of the creative and commercial value of IP and that school pupils need to be educated on the implications of piracy and non-payment for information, inspiration and entertainment.

7. The Right to Recognition in Machine Generated Works

Artificial Intelligence (AI) systems are now being used to generate new works protectable by copyright. There are unanswered questions and contested disputes about copyright when AI is used to create new works, or when copyrighted works are used to ‘train’ artificial intelligence systems.

An AI system may act or operate autonomously in a manner that infringes third-party copyright. It is widely accepted that copyright currently protects technology code and data from unauthorized use and reproduction, but most copyright statutes do not yet clearly define who “owns” machine-generated works, or the role played by the humans in creation of the work. With regard to AI-generated works, ALLi recommends that agreements should be made in writing that clarify ownership, with all contributors identified, tracked and compensated. Technology like the Blockchain may facilitate such acknowledgement.

In Closing

We thank you for the opportunity to advocate on behalf of the global independent author and to consider our position as you look to update your Copyright Act 1994.

Should you have any questions, concerns, or matters to clarify, please do get in touch. We are only too happy to assist. Your work on copyright is important to us as an organization and to our members.

Sincerely,

Orna Ross

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Appendix: Author Business Models

The following eight business models are those most widely used by members of the Alliance of Independent Authors. Copyright is the foundation on which each of these business rests.

1. Books Only, One Outlet: Write Fast, Publish Often

Authors employing this business model are writing in a popular genre, usually fiction, writing fast, and publishing often. Many authors employing this model publish only in eBook and do not own their own ISBNs. Their focus is publishing in ways that are deemed favorable by the Amazon algorithm. This is a very visible publishing model, through Amazon's bestseller lists and promotion engine, so it can lead to misassumptions that this is the only way to succeed in self-publishing. It is the riskiest business model. A self-publishing author that relies on excessive distribution by one outlet is no more independent than a trade-published author bound by an exclusive contract.

2. Books Only, "Going Wide": Multiple Formats, Multiple Retailers

The indie author community refers to this model as "going wide," publishing directly through a variety of distributors e.g. Apple Books, Google Play, IngramSpark and Kobo in addition to Amazon KDP and ACX, as well as aggregator distributors like Draft2Digital, PublishDrive and StreetLib. They reach as many readers as possible by being available in as many places and formats as possible, and publishing in ways most likely to grow a readership steadily, over time.

3. Books Plus Speaking: Information Products

Publishing books plus speaking is the model often used by nonfiction writers, whereby books and products arising are supplemented by speaker income. Offline, this is done as back-of-the room-book sales at a speaking gig. Online, it is typically higher-margin information products connected to the book being sold after a free webinar. Sometimes supported by a Facebook group or other community forum.

4. Books Plus Teaching/Mentoring/Coaching/Consultancy: Supported Learning

This is active teaching in a learning-supported environment, not just an information product. The time-honored way is through an educational establishment, like a university or school, but now it happens online too.

This is different from the previous model (information products) because it involves the author (and/or their team) correcting modules and exercises and giving feedback in a pedagogic framework, as opposed to an information-plus-Facebook group.

5. Books Plus Reader Membership: Benefits for Close Readers

Authorpreneurs in this model invite keen readers to subscribe monthly or annually to a membership program that offers various benefits. Again, this works better for non-fiction authors, although some fiction authors too have achieved great success with this model.

6. Books Plus Sponsorship or Patronage: Support from Individuals or Businesses

Wealthy patrons have never been as generous to writers as they have been to fine artists, for some reason. These days, those offering patronage to an author are more likely to be a brand, arts council, or other sponsor offering money and wanting something in return for the investment — often exposure to and awareness from the author's fans or followers.

Another new opportunity for this model is crowdfunding, through [Patreon](#) or similar platform, or direct donations on our websites.

7. Books Plus Affiliate Income

Under this model, authors supplement their book income by recommending to their readership products and services the authors have used and believe in. The products are linked to the author's subject matter, theme, or world, and the author promotes them through blog posts, articles, videos and podcasts with affiliate links to the products.

8. Combination Model

The most common business model, and the safest for authorpreneurs, is to combine a number of the first seven models and enjoy multiple streams of income.