

Donation Deed

DATE

PARTIES

(1) The Sovereign in right of New Zealand, acting by and through the Chief Executive of the Department of Internal Affairs ("National Library") ("Donor")

(2) Internet Archive of 9(2)(a) United States ("Internet Archive")

BACKGROUND

- A. National Library of New Zealand currently manages the Overseas Published Collection (as defined below).
- B. National Library wishes to donate the Overseas Published Collection to the Internet Archive subject to the terms and conditions set out in this Deed, to digitise the Overseas Published Collection and make it publicly available through its Open Library Service (as defined below).
- C. A Certificate for Permanent Export of the Overseas Published Collection has been granted to the National Library (Certificate number: 2112 Issued 10/05/2021). This certificate provides permission to export a protected New Zealand object under section 7 of the Protected Objects Act 1975.

SIGNED AND DELIVERED as a DEED for)
NATIONAL LIBRARY)
by:)

9(2)(a)

National Librarian

Director Content Services

National Library of New Zealand

National Library of New Zealand

Print full name Rachel Esson

Print full name Steve Knight

SIGNED AND DELIVERED as a DEED by)
INTERNET ARCHIVE)
in the presence of:)

9(2)(a)

Brewster Kahle

Internet Archive

Signature of witness

[Insert name- Internet Archive]

Digital Librarian

Occupation of witness

9(2)(a)

Address of witness

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Terms of this Deed

1. Interpretation

1.1. **Definitions:** In this Deed the following words have the following meanings:

Definition	Meaning
Deed	this Deed, including its Schedule.
Effective Date	the date of this Deed
Force Majeure Event	has the meaning given in clause 6 (Force Majeure).
Intellectual Property	includes all right, title and interest in and to copyright (including copyright), rights in databases, registered and unregistered trademarks, registered and unregistered designs, trade names, business names, and domain names and like rights associated with the Overseas Published Collection as set out in Schedule 1.
Open Library Service	service hosted by Internet Archive at openlibrary.org and archive.org;
Overseas Published Collections	the description of the Overseas Published Collection set out in Schedule 1.

2. Licence

2.1. Donor hereby irrevocably gives, donates and assigns to Internet Archive full ownership of the books (subject to clause 2.2) in the Overseas Published Collection ("OPC") or parts thereof. As a result of this Deed, the OPC will become the property of Internet Archive.

2.2. The donation of the OPC is subject to the following conditions:

2.2.1. Internet Archive agrees to accept the OPC and to arrange (at its own cost) for packaging and transport to its digitisation facility at Cebu, the Philippines;

2.2.2. Internet Archive agrees to digitise the OPC (at its own cost) within two years of receipt at its digitisation facility at Cebu, the Philippines. Internet Archive is to notify the Donor if it is unable to meet this time frame and, in that case, both parties are to act in accordance with clause 5.1.

2.2.3. Following digitisation of the OPC, Internet Archive agrees to transfer the OPC (at its own cost) from its digitisation facility at Cebu, the Philippines, to its physical archive facilities in the United States for long-term storage and preservation;

2.2.4. Internet Archive agrees to do all things necessary so that all digitised material will be made publicly available through its Open Library Service (at its own cost);

2.2.5. Internet Archive agrees to remove any OPC material from its Open Library Service at the request of the rightsholder of any given item.

3. Responsibilities

3.1. Donor represents and warrants, to the best of its knowledge and in good faith, that it owns the OPC, has good and complete right, title, and interest in all such materials and property, and has the unrestricted authority to give, donate, and assign the OPC in the manner set forth in this Deed.

3.2. Donor understands that Internet Archive cannot provide valuations for donated property, and that the location, retention, cataloguing, preservation, and exhibition of the OPC, shall be according to the conditions of this Deed and in all other instances at the sole discretion of Internet Archive.

3.3. The Donor retains ownership and rights in the metadata that it has created in association with the OPC.

3.4. Internet Archive agrees to honour (in accordance with clause 4.1) the provenance in the OPC and individual books within the OPC in keeping with the good reputation of the Donor including in relation to previous owners that might be identified through distinguishing markings with the OPC.

4. Confidentiality

4.1. The parties will keep this Deed (including its terms) and information they receive about the other party, the Intellectual Property, and all information relating to the OPC (including distinguishing marks and lending scripts which contain personally identifiable information), (**Confidential Information**) confidential, and must not use or disclose that Confidential Information without the prior written consent of the National Library except to the extent that:

4.1.1. disclosure is required by law (including under the New Zealand Official Information Act 1982), Ministers, parliamentary convention or any other regulation, rules or policy that is binding on the party;

4.1.2. the relevant information is already in the public domain not through a breach of this Deed; or

4.1.3. disclosure is reasonably required to obtain professional advice and the party receiving the Confidential Information has entered into confidentiality undertakings substantially the same as those set out in this clause.

5. Disputes

5.1. The parties agree that they will use good faith efforts to resolve any delay or dispute regarding this Deed by negotiation.

6. Force Majeure

6.1. Force majeure event means an event or circumstance which is beyond a party or parties' reasonable control and not reasonably foreseeable when entering into this Deed, including (without limitation): any act of God, fire, flood, earthquake, pandemic, military action, state or government act or direction, change in any law or regulation, war, riot or act of terrorism, natural disaster, industrial or national labour strikes or other labour disputes (other than labour disputes directly affecting one of the parties), or any other cause beyond the affected party's reasonable control (**Force Majeure Event**).

6.2. A party (**the affected party**) shall not be liable for any failure or delay in performance of any obligations under this Deed to the extent such failure or delay is due to a Force Majeure Event, provided that it:

6.2.1. notifies the other party (**non-affected party**) as soon as practicable of the nature and expected duration of the Force Majeure Event and keeps the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;

6.2.2. uses reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Deed to the extent reasonably practicable; and

6.2.3. resumes full performance as soon as reasonably practicable.

6.3. In the event of the Force Majeure Event which prevents Internet Archive from meeting the conditions set out under clauses 2 for a continuous period of more than 30 business days, Internet Archive will consult with the Donor as soon as practicable following the event to decide subsequent actions.

6.4. In the event no further actions can be taken and all steps have been attempted above following the Force Majeure event the parties can agree to terminate the Deed, via written notice.

7. Duration and Termination

7.1. This Deed shall commence on the Effective Date and shall continue until all OPC material is digitised and made publicly available through the Internet Archive's Open Library Service or for a period of 12 years, unless terminated earlier following a Force Majeure Event. This Deed shall automatically extend for a period of 12 years (extended term) and at the end of this extended term, not later than 10 weeks before the extended term ends, both parties can agree in writing to either an additional extension or termination of the Deed.

7.2. On termination of this Deed and subject to any express provisions set out elsewhere in this Deed:

7.2.1. all Rights and licences granted pursuant to this Deed shall cease;

7.2.2. Internet Archive shall cease the digitisation of the OPC;

7.2.3. Internet Archive shall continue to hold the OPC and will not return the OPC to the Donor.

7.2.4. Internet Archive will consult with Donor in deciding subsequent actions.

- 7.2.5. Internet Archive shall provide the Donor with the option to have a digital copy of the OPC to ensure that it continues to be available to the New Zealand public.
- 7.2.6. Any provision of this Deed that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Deed shall remain in full force and effect.

8. General

- 8.1. Internet Archive is a non-profit Section 501(c)(3) organization under Title 26 of the United States Code, and all donations made to Internet Archive are tax deductible to the extent allowed by applicable law.
- 8.2. This Deed shall be enforced and construed under the Federal Common Law of Government Contracts (United States of America), applicable to Deeds fully made and performed therein.
- 8.3. Despite clause 8.2 above, section 9 of the New Zealand Property Law Act 2007 applies to this Deed. Without limiting other delivery modes, this Deed is delivered by each party on the earlier of:
 - 8.3.1. physical delivery of an original (or counterpart) of the Deed properly executed by that party, to each other party (or its solicitors); and
 - 8.3.2. transmission by email or scanned copy of an original (or counterpart) of the Deed properly executed by that party, to each other party.
- 8.4. This Deed constitutes the entire Deed and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral, agreements, representations and understandings between the parties.
- 8.5. This Deed may only be amended by agreement of the parties in writing.
- 8.6. No exercise or failure to exercise or delay in exercising any right or remedy will constitute a waiver by that party of that or any other right or remedy available to it.
- 8.7. This Deed may be signed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same Deed.

Schedule 1

A. Description of Overseas Published Collection

- Deaccessioned books from the Overseas Published Collections (OPC). The OPC is an assemblage of library collections of up to 625,000 overseas published books which originated in the Country Library Service in 1939. The OPC became the property of the National Library when it was formed in 1965 and formed part of the National Library's General Collections.

The OPC was actively developed until 1996 after which the focus for the collection was confined to targeted areas – business information, family history, music, and library and information science. Approximately 225,000 of the books were published prior to 1971. In 1992 the median date of publication for books in the collection fell between 1965 and 1969 across most subjects.

- A multi-step review process was used to determine which books would be deaccessioned from the OPC. The process included publishing lists on the National Library's website of all books flagged for deaccessioning. The process served to test the assumption that the books were no longer needed by the New Zealand and Pacific library network and allowed for the books to be rehomed in other libraries if they were needed.
- Books from the OPC that have been transferred to libraries in the New Zealand and Pacific library network, so they continue to be accessible via interloan are excluded from this donation deed.
- Books from the OPC that fit the following criteria are retained by the National Library and are excluded from this donation deed. Books that are –
 - within the National Library's collecting priorities as set out in the 2015 Collections Policy and Collecting Plan; or
 - less than 20 years old.