



HQ Infoline
A Service From
New Zealand Association of
Radio Transmitters



NZART Headquarters Infoline Special Issue 39s

7 May 2013

NZART Website: www.nzart.org.nz

Dear Members,

Over the last year there has been an on-going difference of opinion between the majority of members of NZART Council and Fred Johnson ZL2AMJ over the copyright of the NZART examination question bank and Study Guide.

Your Council has been trying for some time to update the existing examination material on the NZART web site and has made some changes to examination questions (16 out of the 600), reflecting feedback from Branch examiners.

Fred Johnson ZL2AMJ initially agreed to work towards updating the whole examination package but subsequently decided not to do so, instead insisting that his "new" package should be adopted as the NZART examination system. Council had some reservations about adopting this package as ZL2AMJ insisted on having total control and also that it would not be hosted on the NZART web site.

I have received a letter from NZART Councillor Fred Johnson ZL2AMJ, along with a legal opinion that he has sought. The letter from Fred Johnson, and the legal opinion that he has sought are both attached. (Appendix 3 and 4 respectively). Members should note that we have only received part of the legal opinion and do not know what ZL2AMJ originally wrote, nor do we have the full text of the reply from Baldwins Law. A request for this information has been ignored by ZL2AMJ.

Fred is demanding that the NZART examination question bank have his copyright acknowledged. He is also demanding that we cease using what he asserts is his copyrighted title "The New Zealand Amateur Radio Study Guide" and the shorter "Amateur Radio Study Guide".

In the letter from Baldwins Law Limited you will see a reference to an email from me dated 9 August 2012. In this email I said that I had received advice on the question of copyright and the essence of that advice was that we (NZART) did not hold copyright, that it resided with the owners of the intellectual property rights.

Subsequent to this email, other information has come to hand in the form of notes prepared by Fred Johnson in 2006 in which he clearly states that the question bank is the intellectual property of NZART, and details its complex origins and lists many of the contributors. I have also attached an e-mail from Fred to the then MED where the same position is taken. (appendix 1 and 2 respectively)

On the introduction page of the amateur radio study guide there is the following paragraph:

Please note: Every effort has been taken to make this ***STUDY GUIDE*** as accurate and as complete as possible. We're still working on it! The information is provided on a free *as is* basis. The compilers have prepared this information in good faith and accept no responsibility to any person or entity for any outcomes. Your feedback will help us to improve it.

There is no mention of copyright being attributed to any person or organisation and you can see from the wording above that input from multiple people is acknowledged.

NZART relies on the voluntary work of officers to prepare a variety of material that is used in its day to day operations. I am sure you share the same concerns that I have over the correspondence that NZART has received from Fred Johnson.

It is the intention of NZART council not to follow the demands of Fred Johnson. This infoline release has the majority support of your Council.

Vaughan Henderson ZL1TGC
NZART President

Appendix 1:

The Amateur Radio Examination and NZART's part in it

Background to the amateur radio examination:

- a. The present 600-question question-bank lineage can be traced back to questions brought forward from the NZPO in 1990 and revised and updated many times since. It has been developed by volunteers with professional experience in examination work and in multiple-choice questioning in technical institutes and universities. Countless voluntary man-hours have been invested by many individuals. The present questions bear little resemblance to the handed-on 1990 questions.
- b. The examination question-selection and examination paper preparation software has been written and developed by a volunteer with very specialist skills. Many precautions have been built-in to the examination software to ensure the security and integrity of the question-bank.
- c. A 60-question examination paper is produced by a controlled random-selection from brackets of question-bank questions covering the approved examination syllabus. Each examination paper is unique, no two examination papers are the same. Each examination paper is given a printed-on examination number to identify the paper, the candidate's answer sheet and the correct-answer sheet.
- d. The syllabus, question-bank and the examination preparation procedure have been submitted to and have received the approval of the Ministry.
- e. The NZART examination paper preparation and testing system is used nationwide, examinations being arranged as-and-when-required.
- f. Each actual examination is supervised by two Examination Supervisors arranged with the candidate(s) at a suitable and mutually convenient agreed time and place.
- g. Examination Supervisors are experienced radio amateurs generally nominated by NZART Branches on a local basis and the names submitted to the NZART Examination Coordinator who can make further enquiries and can accept or reject a nominee, deciding on persons with integrity.
- h. As arranged in 1990, a representative from the Ministry is welcome to sit in and observe any examination.
- i. The requirements when selecting a room for an examination and the examination room procedures to be followed are well documented and details can be provided.
- j. Examination and contact information is provided on the NZART web site inviting potential candidates to arrange an examination when they consider themselves to be ready.
- k. The software used for generating and printing each examination paper also prints a correct-answer sheet which is held confidential by the Supervisors and used after the candidate has completed the examination for "marking" a candidate's answer sheet. The printed examination paper numbers identify the documents.
- l. Immediately following an examination, both Supervisors in private check the candidate's completed answer sheet against the confidential correct answer sheet and work out the candidate's result.

- m. The examination result and the pass/fail decision are notified to the candidate on a specially-prepared notification form. If the result is a pass, the result form is used by the candidate to support an application for a callsign. Various precautions have been used to ensure the security and integrity of the result form.
- n. The question-bank and the examination-paper preparation software are in the public domain, freely available for downloading from the NZART web site. Candidates are welcome to use the examination-paper generating process for generating “real” examination papers for self-testing as a part of their preparatory studies.
- o. The standard of the examination has been firmly established and continues from its NZPO origin as the sole New Zealand qualifying examination to become a radio amateur.
- p. NZART has continued the running of this nation-wide standardised examination system with a successful 16-year service record. Any difficulties experienced have been rare and minor and promptly and satisfactorily fixed.
- q. On accepting the national examination task, NZART recognises that the approval of the syllabus and the question-bank have remained with the Ministry.
- r. The Ministry is regarded as “the examiner”, NZART being an agency running the examination on the Ministry’s behalf.
- s. The examination-room “Supervisors” are administrators/invigilators of prepared examination material and by using a “correct answer sheet” for each candidate’s unique examination they are not “examiners” and do not themselves make pass/fail judgements on the correctness of the technical content of candidates’ answers.
- t. NZART has appointed an “Examinations Coordinator” with facilities to handle the examination process.

Policy considerations:

1. Anyone or any organisation aspiring to set up a rival and parallel examination system is welcome to do so.
2. The parallel system is expected to be in the public domain and freely available to all.
3. The expectation is that the Ministry will approve and monitor the standard of the intended syllabus, the questions and the examination procedures.
4. NZART by its long involvement with the NZART examination question-bank and the examining process asserts intellectual property claims on the NZART website examination material.
5. An “MED-approved examining body” and “MED-approved examiners” outside the NZART system are welcome to negotiate an arrangement leading to using the examining material that can be downloaded from the NZART website and on payment to NZART of a licence fee to do so. A fee of \$150 per attempting candidate to be paid in advance of the examination is the expectation. This fee includes a component for maintaining the website material.
6. If the NZART Examinations Coordinator is to process the examination results of successful candidates originating from outside the NZART examination system, further charges will be necessary based on the time and work involved.

(Prepared by ZL2AMJ, cleared by ZL2WP and others, 27 July 2006)

Appendix 2: e-mail from Fred Johnson ZL2AMJ to NZART council

Subject: FW: Examiner Approval for Amateur Operator Certificates

Date: Wed, 06 Dec 2006 10:42:30 +1300

From: Fred

To: Council

Greetings All!

From time-to-time someone, somewhere, with no NZART affiliation, seems to want to run exams for the Amateur Ticket using the NZART material from the web-site. The last time is documented below and in the document attached. Again, as is usual, nothing further has been heard!

This matter is being raised because, in checking a copy of the "New Rules Explained" booklet, the MED RSM has suggested that an entry could be included:

"Can I suggest a comment here along the lines that "The question bank is the intellectual property of NZART and can only be used within NZART systems and procedures to ensure the integrity of the examination process is maintained".

This will avoid non NZART examiners claiming rights to use the NZART question bank as per earlier emails."

A good idea, and I have now included those words into the Introduction part of the booklet, on page 2. However, it should also be included into the Question-Bank book. Please see the latest attached – with the words included.

For your information and for any consideration needed.

73,
Fred ZL2AMJ

Appendix 3: Letter from Fred Johnson ZL2AMJ

18 March 2013

The President and Council,
The New Zealand Association of Radio Transmitters Inc.,
P.O. Box 40 525
UPPER HUTT 5140

Dear President and Council,

Copyright of Question Bank and training material

I have received legal advice on this matter from Messrs. Baldwin Son & Carey, Solicitors specializing in Intellectual Property. The relevant section of their advice is attached.

In view of this I assert my rights as Author of the Original Question Bank and Study Guide (2006), and the title "The New Zealand Amateur Radio Study Guide". Further, I request that you identify and attribute me as the Author in any publication of this copyright material, whether electronic or paper based.

The major proportion of the question bank published by you remains in original form, with only a minor proportion amended by you.

I request that a notice along the following lines be stated:

All original work Copyright J F C Johnson, 2006.

Derivative work Copyright New Zealand Association of Radio Transmitters Inc.

I do not give my permission for you to use my copyrighted title "The New Zealand Amateur Radio Study Guide" or the shorter "Amateur Radio Study Guide" for your derivative work.

Yours Sincerely,

Fred Johnson, MNZM, FIPENZ, CEng, MIET, ZL2AMJ

J.F.C. Johnson, 15 Field Street, Upper Hutt 5019, NEW ZEALAND

[Attachment: Baldwins statement.] 2

Appendix 4: Legal Opinion sought by Fred Johnson

[Attachment to the letter of 18 March 2013 from ZL2AMJ to the NZART President and Council.]

15 February 2013

Copyright — authorship

By way of introduction, copyright is a property right that arises or "subsists" automatically in an original piece of literary or artistic work. Unlike some other intellectual property rights there is no need in New Zealand for copyright to be registered. In our opinion, the compilation of the original Question Bank qualifies as a literary work; although in general compilations are not considered to have a high level of originality.

The Copyright Act 1994 defines a person who creates a literary work as the "author" of that work and accords that author with certain rights.

You have never been an employee of NZART or been commissioned by NZART to produce the original Question Bank. You have explained that the compilation and editing of the original Question Bank was conducted by you as a voluntary contributor of NZART. You therefore fall within the definition of an "author" of this work. Also supporting this position is an email from Vaughn Henderson, the President of NZART, to you dated 9 August 2012.

The Copyright Act incorporates a number of distinct "moral" rights directed at the author of a piece of copyright work — for example, where a literary work is placed into an online repository. It follows that as the author of the work, the author can require that his or her details are acknowledged. You are empowered by section 94 of the Copyright Act to assert this moral right, to be identified as the author of the copyright work.

You are in a position to require NZART to identify and attribute your authorship in all formats of the Original Question Bank, whether electronic or paper based.

Baldwins Law Limited