

## In Confidence

OFFICE OF THE MINISTER  
OF COMMERCE

The Chair  
Cabinet Economic Growth and Infrastructure Committee

### Delayed Review of the Copyright Act 1994

#### Proposal

- 1 I propose that the decision taken in CAB Min (05) 42/1 to review the Copyright Act 1994 (the Act) in 2013 be rescinded. I also propose that the Act be reviewed after the Trans-Pacific Partnership (TPP) negotiations have concluded.

#### Background

- 2 The Copyright (New Technologies) Amendment Act 2008 made a number of changes to the Act to update it for digital technologies. When the amendments were agreed to by the then government, Cabinet agreed "that the Act be reviewed again, to assess its effectiveness for digital technology, five years from the enactment of any amending legislation" (CAB Min (05) 42/1 refers). This decision requires the Ministry of Business, Innovation and Employment (MBIE) to review the Act this year.
- 3 There is significant public demand for a broad review of the Act. The demand is in part due to recent reviews of a similar nature being undertaken by the United Kingdom (UK) and Australia. There is also a public perception that New Zealand consumers suffer from a lack of access to copyright content and flexibility to use this content how they wish in the digital environment. Additionally, some in the technology sector (such as Google) are of the view that the Act should be reviewed because it may be impeding innovation and economic growth.

#### Comment

- 4 There may be a number of areas where the Act could be amended to make it more fit for purpose in light of digital technology. For example, it is likely that many of the provisions setting out exceptions to copyright are now out of date with current technology. This may cause higher transaction costs for both owners and users of works. Following its recent "Hargreaves" review, the UK government announced several amendments to its copyright exceptions to ensure they allow the full amount of flexibility possible under European Community law. The UK suggests a range of economic benefits are likely to result from the amendments (such as a £25 million per annum saving in transaction costs if libraries and archives are allowed to make more than one archival copy of a work). MBIE considers that the Act may suffer from similar issues, as it is largely modelled on the UK legislation.
- 5 It would be impractical, however, to undertake a review of the Act until the on-going TPP negotiations have concluded and the outcome made public. I therefore propose that the review is delayed. There are a number of reasons for this:
  - a. [Withheld under s6(a) and s9(2)(j) of the Official Information Act 1982]

b. [Withheld under s6(a) and s9(2)(j) of the Official Information Act 1982

c. under s6(a) of the Official Information Act 1982

]] Withheld

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### **Risks**

6 Delaying the review may cause concern from some stakeholders, and it is also possible that there will be suggestions that the delay is a result of pressure from US rights owners and TPP negotiators. MBIE Officials will highlight the limitations and practical difficulties around undertaking a review at this time to any concerned stakeholders, and reiterate that it is still the Government's intention to undertake a review. While I consider that this should mitigate such concerns in the short term, it is likely that on-going pressure for a broad review of the Act will remain.

### **Consultation**

7 The Treasury, the Ministry of Foreign Affairs and Trade, and the Ministry for Culture and Heritage were consulted on this paper. The Department of Prime Minister and Cabinet have been informed.

### **Financial Implications**

8 There are no financial implications resulting from this paper.

### **Human Rights**

9 The proposal in this paper appears consistent with the Human Rights Act 1993.

### **Legislative Implications**

10 There are no legislative implications resulting from this paper.

### **Regulatory Impact Analysis**

11 The RIA requirements do not apply to the proposal.

### **Publicity**

12 No publicity is proposed. MBIE officials will notify interested stakeholders informally if they seek an update on the review.

### **Recommendations**

It is recommended that the Committee:

- 1 **Note** that the Copyright (New Technologies) Amendment Act 2008 made a number amendments to the Copyright Act 1994 to update it for digital technologies;
- 2 **Note** that Cabinet agreed, when making policy decisions for the Copyright (New Technologies) Amendment Act 2008, that the Copyright Act 1994 be reviewed again, to assess its effectiveness for digital technology, five years from the enactment of any amending legislation (CAB Min (05) 42/1 refers);

- 3 **Note** that the decision in CAB Min (05) 42/1 would require a review to be undertaken in 2013;
- 4 **Note** that it would be impractical for a review of the Copyright Act 1994 to be undertaken before the conclusion of the Trans-Pacific Partnership negotiations;
- 5 **Rescind** the decision in CAB Min (05) 42/1 to review the Copyright Act 1994 in 2013, and instead;
- 6 **Agree** that the Copyright Act 1994 be reviewed, to assess its effectiveness for digital technology, after the Trans-Pacific Partnership negotiations have concluded.

Hon Craig Foss  
**Minister of Commerce**

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