

Issues relating to Part 6 of the Issues Paper (Transactions)

These conversations were an opportunity for participants to discuss any other issues or matters roughly relating to Part 6 of the Issues Paper.

Notes recorded by workshop groups

Theme/sub-topic	Comments recorded
<p>Licensing</p>	<ul style="list-style-type: none"> › Blockchain to assist in real-time decentralised licence application. › Resale royalties for visual artists: <ul style="list-style-type: none"> › Licence to display › High transaction costs › Tie in to moral rights and terminology. › Being able to ‘gift’ or transfer your copyright or donate any remuneration from copyright to a third party. › Is the bar for evidencing copyright chain of title too high? › No mechanism for creators to gift [their copyright] what they make to others. › Contracting out of exceptions. Important to have clarity in this, may be different for different exceptions. › Should allow freedom to contract out of exceptions.
<p>Copyright Tribunal and courts</p>	<ul style="list-style-type: none"> › Tribunal process is inefficient and has significant delays: both of the last two licensing disputes took years. › [there’s an] incentive for some parties to delay the process. › No rules to govern the process of the Tribunal. › Should the tribunal process move to the High Court – still needs speciality knowledge of copyright. › Current situation means negotiating position of copyright owners is diminished because they are not wanting to go to the Tribunal due to the costs and delays. › Do NZ judges import overseas law into NZ law by referring to overseas decisions in NZ judgements?



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CMOs	<ul style="list-style-type: none">› Commerce Act says CMOs should have non-exclusive licences but the Copyright Act says you must have an exclusive licence to sue.› Need to consider the market size in NZ when looking at efficiency vs monopoly.› CMOs appear to work well in NZ.› It is unfair that the royalties collected in New Zealand by Australian CMOs on behalf of New Zealand members must first be sent to Australia before being returned to New Zealand members. Royalties collected in New Zealand for New Zealand members should be paid direct to New Zealand members.
Commissioning Rule	<ul style="list-style-type: none">› Commissioning rule complicated – it limits downstream creation. Only applies to some works.› Harmonise the types of works covered?› Implied licence if creator retains ownership?› Ownership passes to the commissioner even when there is no payment for the design work.› Default rule is unfair for designs.› Don't own it until you actually pay for it.› Inconsistent with overseas.› Moral rights should not be waivable.› Commissioning rule unfair for architects and designers. They are forced by the commissioning rule to give up their copyright in their designs and plans where submitting them for tendering processes or competition and without receiving any compensation.