

Hi,

I fail to understand why the photographic area is treated differently than other creative works, surely we should have copyright on all works we create.

If an author writes a book or an artist paints a picture, why do they get automatic copyright, no matter who is funding them and photographers don't, beggars belief that we are so differently treated and so out of step with the rest of the world.

The commissioning rule should **only apply if a creator** is in the **FULL** time employment of an organization.

This rule is making it hard for photographers to get a decent return on their work and hampers any negotiation between parties.

Regards Alistair Boot

#6

COMPLETE

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Page 2: A bit about you and your submission

**Q1** Your name

Alistair Boot

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**Q2** Your email address

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**Q3** Please briefly tell us why copyright law interests you

I'm a commercial photographer and feel that the current commissioning rule disadvantages people who use their creative talents.

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**Q4** For the purpose of MBIE publishing the information you provide in this submission, do you wish to remain anonymous? **No**

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**Q5** Do you object to your submission being published (anonymously if you have requested that) in whole or in part by MBIE on its website? Note: if you answer Yes to this question, when you reach the end of this survey, you will be asked to specify which parts of your submission (or all of it) you do not wish MBIE to publish and help us understand your concerns so that we can consider them in the event of a request under the Official Information Act. **No**

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Page 3: Question navigation

**Q6** Which of the following subjects in the Issues Paper do you wish to answer questions on? **Part 4 (Rights) Section 1 - what does copyright protect and who gets the rights?**

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Page 4: Objectives

**Q7** Q1 Are the above objectives the right ones for New Zealand's copyright regime? How well do you think the copyright system is achieving these objectives? **Respondent skipped this question**

**Q8 Q2** Are there other objectives that we should be aiming to achieve? For example, do you think adaptability or resilience to future technological change should be included as an objective and, if so, do you think that would be achievable without reducing certainty and clarity?

Respondent skipped this question

**Q9 Q3** Should sub-objectives or different objectives for any parts of the Act be considered (eg for moral rights or performers' rights)? Please be specific in your answer.

Respondent skipped this question

**Q10 Q4** What weighting (if any) should be given to each objective?

Respondent skipped this question

Page 5: Rights: What does copyright protect and who gets the rights?

**Q11 Q5** What are the problems (or advantages) with the way the Copyright Act categorises works?

The commissioning rule is not fairly applied to all creators and New Zealand is currently out of step with other nations with regards this

**Q12 Q6** Is it clear what 'skill, judgement and labour' means as a test as to whether a work is protected by copyright? Does this test make copyright protection apply too widely? If it does, what are the implications, and what changes should be considered?

No... the originator of the work should automatically hold copyright, otherwise their style of work could be held as copyright to any other party.

**Q13 Q7** Are there any problems with (or benefits arising from) the treatment of data and compilations in the Copyright Act? What changes (if any) should be considered?

Respondent skipped this question

**Q14 Q8** What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?

The problem with the commissioning rule is that the originator does not hold copyright as a right, moral or otherwise. If the commissioning rule is to stay it needs to have 'agreed to pay' removed as some people will commission work and once received use it for commercial gain and not pay the photographer/artist without lengthy and costly court proceedings and sometimes not even then.

**Q15 Q9** What problems (or benefits) are there with the current rules related to computer-generated works, particularly in light of the development and application of new technologies like artificial intelligence to general works? What changes, if any, should be considered?

Respondent skipped this question

**Q16 Q10** What are the problems (or benefits) with the rights the Copyright Act gives visual artists (including painting, drawings, prints, sculptures etc.)? What changes (if any) should be considered?

Photographers like some other artists are disadvantaged by having to combat the use of the commissioning rule in negotiations with clients. It seems unfair that the author of a book automatically gets copyright despite often being commissioned by a publisher yet others are not treated similarly.

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**Q17 Q11** What are the problems creators and authors, who have previously transferred their copyright in a work to another person, experience in seeking to have the copyright in that work reassigned back to them? What changes (if any) should be considered?

Respondent skipped this question

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**Q18 Q12** What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?

Respondent skipped this question

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**Q19 Q13** Are there any problems (or benefits) in providing a copyright term for communication works that is longer than the minimum required by New Zealand's international obligations?

Respondent skipped this question

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**Q20 Q14** Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?

Respondent skipped this question

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**Q21** Any other comments on Rights: what does copyright protect and who gets the rights?

The originator should have both their moral and creative rights protected by copyright and they should have the rights to any production of theirs without having to negotiate this with another party.

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Page 6: Rights: What actions does copyright reserve for copyright owners?

**Q22 Q15** Do you think there are any problems with (or benefits arising from) the exclusive rights or how they are expressed? What changes (if any) should be considered?

Respondent skipped this question

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**Q23 Q16** Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?

Respondent skipped this question

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**Q24 Q17** What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?

Respondent skipped this question

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**Q25** Any other comments on Rights: what actions does copyright reserve for copyright owners?

Respondent skipped this question

Page 7: Rights: Specific issues with the current rights

**Q26 Q18** What are the problems (or advantages) with the way the right of communication to the public operates? What changes, if any, might be needed? **Respondent skipped this question**

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**Q27 Q19** What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered? **Respondent skipped this question**

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**Q28 Q20** What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered? **Respondent skipped this question**

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**Q29 Q21** Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain. **Respondent skipped this question**

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**Q30 Q22** What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered? **Respondent skipped this question**

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**Q31 Q23** What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered? **Respondent skipped this question**

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**Q32 Q24** Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe. **Respondent skipped this question**

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**Q33** Any other comments on Rights: specific issues with the current rights **Respondent skipped this question**

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Page 8: Rights: Moral rights, performers' rights and technological protection measures

**Q34 Q25** What are the problems (or benefits) with the way the moral rights are formulated under the Copyright Act? What changes to the rights (if any) should be considered? **Respondent skipped this question**

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**Q35 Q26** What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects? **Respondent skipped this question**

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**Q36 Q27** Will there be other problems (or benefits) with the performers' rights regime once the CPTPP changes come into effect? What changes to the performers' rights regime (if any) should be considered after those changes come into effect? **Respondent skipped this question**

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**Q37 Q28**What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?

Respondent skipped this question

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**Q38 Q29**Is it clear what the TPMs regime allows and what it does not allow? Why/why not?

Respondent skipped this question

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**Q39** Any other comments on Rights: moral rights, performers' rights and technological protection measures

Respondent skipped this question

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## Page 9: Exceptions and Limitations: Exceptions that facilitate particular desirable uses

**Q40 Q30**Do you have examples of activities or uses that have been impeded by the current framing and interpretation of the exceptions for criticism, review, news reporting and research or study? Is it because of a lack of certainty? How do you assess any risk relating to the use? Have you ever been threatened with, or involved in, legal action? Are there any other barriers?

Respondent skipped this question

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**Q41 Q31**What are the problems (or benefits) with how any of the criticism, review, news reporting and research or study exceptions operate in practice? Under what circumstances, if any, should someone be able to use these exceptions for a commercial outcome? What changes (if any) should be considered?

Respondent skipped this question

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**Q42 Q32**What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?

Respondent skipped this question

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**Q43 Q33**What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?

Respondent skipped this question

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**Q44 Q34**What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?

Respondent skipped this question

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**Q45 Q35**What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?

Respondent skipped this question

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**Q46 Q36**What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?

Respondent skipped this question

**Q47 Q37**Are there any other current or emerging technological processes we should be considering for the purposes of the review?

Respondent skipped this question

**Q48 Q38**What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?

Respondent skipped this question

**Q49 Q39**What do problems (or benefits) arising from the Copyright Act not having an express exception for parody and satire? What about the absence of an exception for caricature and pastiche?

Respondent skipped this question

**Q50 Q40**What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?

Respondent skipped this question

**Q51** Any other comments on Exceptions and Limitations: exceptions that facilitate particular desirable uses

Respondent skipped this question

Page 10: Exceptions and limitations: Exceptions for libraries and archives

**Q52 Q41** Do you have any specific examples of where the uncertainty about the exceptions for libraries and archives has resulted in undesirable outcomes? Please be specific about the situation, why this caused a problem and who it caused a problem for.

Respondent skipped this question

**Q53 Q42** Does the Copyright Act provide enough flexibility for libraries and archives to copy, archive and make available to the public digital content published over the internet? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

**Q54 Q43**Does the Copyright Act provide enough flexibility for libraries and archives to facilitate mass digitisation projects and make copies of physical works in digital format more widely available to the public? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

**Q55 Q44** Does the Copyright Act provide enough flexibility for libraries and archives to make copies of copyright works within their collections for collection management and administration without the copyright holder's permission? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

**Q56 Q45** What are the problems with (or benefits arising from) the flexibility given to libraries and archives to copy and make available content published online? What changes (if any) should be considered?

Respondent skipped this question

**Q57 Q46** What are the problems with (or benefits arising from) excluding museums and galleries from the libraries and archives exceptions? What changes (if any) should be considered?

Respondent skipped this question

**Q58** Any other comments on Exceptions and Limitations: exceptions for libraries and archives

Respondent skipped this question

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Page 11: Exceptions and limitations: Exceptions for education

**Q59 Q47** Does the Copyright Act provide enough flexibility to enable teachers, pupils and educational institutions to benefit from new technologies? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

**Q60 Q48** Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

Respondent skipped this question

**Q61 Q49** Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

Respondent skipped this question

**Q62 Q50** Is copyright well understood in the education sector? What problems does this create (if any)?

Respondent skipped this question

**Q63** Any other comments on Exceptions and Limitations: exceptions for education

Respondent skipped this question

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Page 12: Exceptions and limitations: Exceptions relating to the use of particular categories of works



**Q64 Q51**What are the problems (or advantages) with the free public playing exceptions in sections 81, 87 and 87 A of the Copyright Act? What changes (if any) should be considered?

Respondent skipped this question

**Q65 Q52**What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?

Respondent skipped this question

**Q66 Q53**What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?

Respondent skipped this question

**Q67 Q54**What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?

Respondent skipped this question

**Q68 Q55**What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?

Respondent skipped this question

**Q69 Q56**Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?

Respondent skipped this question

**Q70 Q57**Do you think that section 73 should be amended to make it clear that the exception applies to the works underlying the works specified in section 73(1)? And should the exception be limited to copies made for personal and private use, with copies made for commercial gain being excluded? Why?

Respondent skipped this question

**Q71** Any other comments on Exceptions and limitations: exceptions relating to the use of particular categories of works

Respondent skipped this question

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Page 13: Exceptions and limitations: Contracting out of the exceptions

**Q72 Q58**What problems (or benefits) are there in allowing copyright owners to limit or modify a person's ability to use the existing exceptions through contract? What changes (if any) should be considered?

Respondent skipped this question

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Page 14: Exceptions and limitations: Internet service provider liability

**Q73 Q59**What are problems (or benefits) with the ISP definition? What changes, if any should be considered?

Respondent skipped this question

**Q74 Q60**Are there any problems (or benefit) with the absence of an explicit exception for linking to copyright material and not having a safe harbour for providers of search tools (eg search engines)? What changes (if any) should be considered?

Respondent skipped this question

**Q75 Q61**Do the safe harbour provisions in the Copyright Act affect the commercial relationship between online platforms and copyright owners? Please be specific about who is, and how they are, affected.

Respondent skipped this question

**Q76 Q62**What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?

Respondent skipped this question

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Page 15: Transactions

**Q77 Q63**Is there a sufficient number and variety of CMOs in New Zealand? If not, which type copyright works do you think would benefit from the formation of CMOs in New Zealand?

Respondent skipped this question

**Q78 Q64**If you are a member of a CMO, have you experienced problems with the way they operate in New Zealand? Please give examples of any problems experienced.

Respondent skipped this question

**Q79 Q65**If you are a user of copyright works, have you experienced problems trying to obtain a licence from a CMO? Please give examples of any problems experienced.

Respondent skipped this question

**Q80 Q66**What are the problems (or advantages) with the way the Copyright Tribunal operates? Why do you think so few applications are being made to the Copyright Tribunal? What changes (if any) to the way the Copyright Tribunal regime should be considered?

Respondent skipped this question

**Q81 Q67**Which CMOs offer an alternative dispute resolution service? How frequently are they used? What are the benefits (or disadvantages) with these services when compared to the Copyright Tribunal?

Respondent skipped this question

**Q82 Q68** Has a social media platform or other communication tool that you have used to upload, modify or create content undermined your ability to monetise that content? Please provide details.

Respondent skipped this question

**Q83 Q69** What are the advantages of social media platforms or other communication tools to disseminate and monetise their works? What are the disadvantages? What changes to the Copyright Act (if any) should be considered?

Respondent skipped this question

**Q84 Q70** Do the transactions provisions of the Copyright Act support the development of new technologies like blockchain technology and other technologies that could provide new ways to disseminate and monetise copyright works? If not, in what way do the provisions hinder the development and use of new technologies?

Respondent skipped this question

**Q85 Q71** Have you ever been impeded using, preserving or making available copies of old works because you could not identify or contact the copyright? Please provide as much detail as you can about what the problem was and its impact.

Respondent skipped this question

**Q86 Q72** How do you or your organisation deal with orphan works (general approaches, specific policies etc.)? And can you describe the time and resources you routinely spend on identifying and contacting the copyright owners of orphan works?

Respondent skipped this question

**Q87 Q73** Has a copyright owner of an orphan work ever come forward to claim copyright after it had been used without authorisation? If so, what was the outcome?

Respondent skipped this question

**Q88 Q74** What were the problems or benefits of the system of using an overseas regime for orphan works?

Respondent skipped this question

**Q89 Q75** What problems do you or your organisation face when using open data released under an attribution only Creative Commons Licences? What changes to the Copyright Act should be considered?

Respondent skipped this question

**Q90** Any other comments on Transactions

Respondent skipped this question

**Q91 Q76**How difficult is it for copyright owners to establish before the courts that copyright exists in a work and they are the copyright owners? What changes (if any) should be considered to help copyright owners take legal action to enforce their copyright?

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Respondent skipped this question

**Q92 Q77**What are the problems (or advantages) with reserving legal action to copyright owners and their exclusive licensees? What changes (if any) should be considered?

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Respondent skipped this question

**Q93 Q78**Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?

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Respondent skipped this question

**Q94 Q79**Does the cost of enforcement have an impact on copyright owners' enforcement decisions? Please be specific about how decisions are affected and the impact of those decisions. What changes (if any) should be considered?

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Respondent skipped this question

**Q95 Q80**Are groundless threats of legal action for infringing copyright being made in New Zealand by copyright owners? If so, how wide spread do you think the practice is and what impact is the practice having on recipients of such threats?

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Respondent skipped this question

**Q96 Q81**Is the requirement to pay the \$5,000 bond to Customs deterring right holders from using the border protection measures to prevent the importation of infringing works? Are there any issues with the border protection measures that should be addressed? Please describe these issues and their impact.

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Respondent skipped this question

**Q97 Q82**Are peer-to-peer filing sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?

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Respondent skipped this question

**Q98 Q83**Why do you think the infringing filing sharing regime is not being used to address copyright infringements that occur over peer-to-peer file sharing technologies?

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Respondent skipped this question

**Q99 Q84**What are the problems (or advantages) with the infringing file sharing regime? What changes or alternatives to the infringing filing share regime (if any) should be considered?

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Respondent skipped this question

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**Q100** Q85 What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered? **Respondent skipped this question**

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**Q101** Q86 Should ISPs be required to assist copyright owners enforce their rights? Why / why not? **Respondent skipped this question**

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**Q102** Q87 Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements? **Respondent skipped this question**

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**Q103** Q88 Are there any problems with the types of criminal offences or the size of the penalties available under the Copyright Act? What changes (if any) should be considered? **Respondent skipped this question**

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**Q104** Any other comments on Enforcement of copyright **Respondent skipped this question**

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Page 17: Other Issues: Relationship between copyright and registered design protection

**Q105** Q89 Do you think there are any problems with (or benefits from) having an overlap between copyright and industrial design protection? What changes (if any) should be considered? **Respondent skipped this question**

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**Q106** Q90 Have you experienced any problems when seeking protection for an industrial design, especially overseas? **Respondent skipped this question**

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**Q107** Q91 We are interested in further information on the use of digital 3-D printer files to distribute industrial designs. For those that produce such files, how do you protect your designs? Have you faced any issues with the current provisions of the Copyright Act? **Respondent skipped this question**

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**Q108** Q92 Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement? **Respondent skipped this question**

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**Q109** Any other comments on Other Issues: Relationship between copyright and registered design protection **Respondent skipped this question**

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Page 18: Other issues: Copyright and the Wai 262 inquiry

**Q110** Q93 Have we accurately characterised the Waitangi Tribunal's analysis of the problems with the current protections provided for taonga works and mātauranga Māori? If not, please explain the inaccuracies.

Respondent skipped this question

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**Q111** Q94 Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?

Respondent skipped this question

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**Q112** Q95 The Waitangi Tribunal did not recommend any changes to the copyright regime, and instead recommended a new legal regime for taonga works and mātauranga Māori. Are there ways in which the copyright regime might conflict with any new protection of taonga works and mātauranga Māori?

Respondent skipped this question

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**Q113** Q96 Do you agree with our proposed process to launch a new work stream on taonga works alongside the Copyright Act review? Are there any other Treaty of Waitangi considerations we should be aware of in the Copyright Act review?

Respondent skipped this question

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**Q114** Q97 How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?

Respondent skipped this question

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**Q115** Any other comments on Other Issues: copyright and the Wai 262 inquiry

Respondent skipped this question

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Page 20: Information you've provided that should not be publicly available

**Q116** Please specify (by question number) which of your answers you object to being published by MBIE

Respondent skipped this question

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**Q117** Please specify (by question number) which of your answers contain information that MBIE should consider withholding if requested under the Official Information Act. For each question number, please tell us which information in your answer you believe would need to be withheld and why (preferably by referring to the relevant ground in the Official Information Act).

Respondent skipped this question

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