

#12

COMPLETE

Page 2: A bit about you and your submission

Q1 Your name

Q2 Your email address

Q3 Please briefly tell us why copyright law interests you

I am a consumer of media and a strong supporter of free and open source software.

Q4 For the purpose of MBIE publishing the information you provide in this submission, do you wish to remain anonymous?

Yes, please withhold my identify when publishing any information I provide

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

Page 3: Question navigation

Q6 Which of the following subjects in the Issues Paper do you wish to answer questions on?

Part 3 (Objectives),

Part 4 (Rights) Section 1 - what does copyright protect and who gets the rights?

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Part 4, (Rights) Section 2 - what actions does copyright reserve for copyright owners?

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Part 4, (Rights) Section 3 - specific issues with the current rights

,

Part 4, (Rights) Section 4 - moral rights, performers' rights and technological protection measures

,

Part 5, (Exceptions and Limitations) Section 6 - internet service provider liability

,

Part 7 (Enforcement of Copyright)

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?

The objectives are good ones. The only objective the current law seems to be struggling with is 3.

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?

Lack of subservience to external political pressure to extend copyright duration would be nice to see (life of the author is plenty for the author to benefit from the work).

Still permitting consumers to physically purchase and own copies of media for private use would be desirable; despite the eagerness of industry to move away from that. The current user right to a physical backup is desirable, as is the ability to access media without an internet connection if legally obtained.

It is also important to realise that filesharing protocols are used for legal, quick and decentralised software distribution for open source and/or community projects. Blanket banning protocols or conglomeration sites is a crude solution that will do more harm than good. The internet doesn't need any more moral authorities.

Q9 Q3Should 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.

It is important that individual creators rights such that they have some advantage when negotiating in lopsided environments (eg with a publisher).

Q10 Q4What 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 Q5What are the problems (or advantages) with the way the Copyright Act categorises works?

Software is unfortunately categorised as literature. However, due to extant treaties, this cannot be changed.

Q12 Q6Is 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?

The terming is clear, though appropriateness depends on interpretation through case law, of which I am ignorant. Possibly "specifically relevant skill, judgement and labour" would better emphasize the importance of the holder not simply happening on the work passively.

Q13 Q7Are 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?

Passive work should not be considered under copyright, and neither should passive data collection. An active, purposed collection of data should be, but not exclusively; a census done twice should not hold the second one infringing.

Q14 Q8What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?

I would personally prefer default ownership to go to the author in all cases.

Q15 Q9What 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?

The level of skill, judgement and labour should weigh in on whether the result should be considered copyrightable. And again, a second group training the same sort of network with the same dataset should not be found infringing. At some point the product of an AI system should fall under patent, even if the software actually doing the learning is under copyright.

Q16 Q10What 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? **Respondent skipped this question**

Q17 Q11What 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

Q18 Q12What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?

Respondent skipped this question

Q19 Q13Are 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?

There is no public benefit to such an extension. Such extensions serve publishers in industries representing only some of the works protected by copyright; interactive video and other recent developments suggest that rapid iteration should be permitted.

Q20 Q14Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?

There is no benefit for such unpublished works to have copyright in perpetuity, and so why not make them available?

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

Respondent skipped this question

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

Q22 Q15Do 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

Q23 Q16Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?

Respondent skipped this question

Q24 Q17What 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

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**

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**

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**

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**

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?

Simple: the users should keep original rights to the content.

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**

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**

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

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?

I see no reason not to make all three rights indefinite; they are expressions of the truth more than rights. If a genuine representative wishes to protest >20 years after the author's death, so be it.

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**

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?

Minimal.

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

They are indefinite and tend to encourage piracy more than anything else.

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

Respondent skipped this question

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

Respondent skipped this question

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

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

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

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

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

Q45 Q35What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?

Respondent skipped this question

Q46 Q36What 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 Q37Are there any other current or emerging technological processes we should be considering for the purposes of the review?

Respondent skipped this question

Q48 Q38What 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 Q39What 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 Q40What 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

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 Q50Is 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

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

Q64 Q51What 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 Q52What 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 Q53What 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 Q54What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered? Respondent skipped this question

Q68 Q55What 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 Q56Are 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 Q57Do 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

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

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?

It is not technologically feasible for every repository or search engine to filter content; even large companies such Google and Youtube frequently make mistakes. The nature of digital information is that it is faster than humans. Since we are unable to make reliable bots to perform this task, and to even attempt it is incredibly expensive, it should not be made compulsory. The fault is with the user.

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

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**

Page 16: Enforcement of Copyright

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? **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? **Respondent skipped this question**

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

Mostly via online platforms, where such actions can be automated.

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. **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?

Yes. However, they are also being used to much positive effect in software that is used throughout the country. It is possible for video, music and software to be legally shared via these methods, and sometimes it is the ONLY practical way to do so. Since New Zealand is mostly a consumer of non-free entertainment media than we are free media, it would be a net negative to limit these protocols/technologies.

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?

The scale is small; streaming services have made convenient legally consuming media, at the cost of ever being able to own a private copy.

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?

If technology continues going the way it is, no changes need be made. This is one thing technology and the market seems to have sorted quite well.

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

Q101 Q86 Should ISPs be required to assist copyright owners enforce their rights? Why / why not?

No; the vast majority of the extra expenses the ISPs would face would be for the benefit of overseas producers. The net benefit to New Zealand would likely be very small.

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

No idea; it's not fair on anyone. Maybe just shouldn't be done?

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?

Given the effective value of something infinitely copyable is effectively zero, lighter punishments would almost be fairer, though the dissuasion factor might not be there?

Q104 Any other comments on Enforcement of copyright

Respondent skipped this question

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

Q106 Q90 Have you experienced any problems when seeking protection for an industrial design, especially overseas?

Respondent skipped this question

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

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

Q109 Any other comments on Other Issues: Relationship between copyright and registered design protection

Respondent skipped this question

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

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

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

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

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**

Q115 Any other comments on Other Issues: copyright and the Wai 262 inquiry **Respondent skipped this question**

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**

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**
