

Business Law Team

Building, Resources and Markets

Ministry of Business, Innovation and Employment

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Submission on Review of the Copyright Act 1994 : Issues Paper

The Council of The Archives and Records Association of New Zealand (ARANZ), on behalf of its members, appreciates the opportunity to comment on the review of the Copyright Act 1994: issues paper and looks forward to working with the Ministry of Business, Innovation and Employment throughout this consultation process. We offer our support in providing feedback on the future options paper and draft legislation.

ARANZ is an incorporated society, established in 1976, with the aim of promoting the understanding and importance of records and archives in New Zealand. We currently have branches in Auckland, Central Districts, Otago/Southland, Waikato/Bay of Plenty, and Wellington, although our membership covers the entire country.

Our members include:

Archivists; record managers; librarians; and other information managers; genealogists; historians; teachers; museum and art gallery curators; religious groups; professional associations; historical societies; businesses; local and central government agencies; and many other interested in the preservation and use of archives and records.

ARANZ fully supports a review of the Copyright Act, particularly as the GLAM community, of which many of our members are associated with, provides more and more access to their collections in a digital format. Researchers and members of the public now expect to have access to the holdings of such institutions and an improved Act will make this a much easier activity.

One way in which those working with collections, or accessing them would benefit is the rewording of the Act, so it is easily understood. There needs to be an explanation of the steps to be taken to ascertain copyright holders and once those steps have been followed the same guidelines as Creative Commons be adhered to eg a statement such as 'No known copyright restrictions' be added to the credit line. Many of our members, as professionals in the GLAM sector have, as a key role in their activities, a directive to provide access and information. This task is often made extremely difficult by the current Act – both in its wording as well as its lack of clarity. The new Act should facilitate research and enjoyment of our collections, not act as a barrier.

Also, the Act has exemptions for libraries and archives, but it is unclear whether museums and galleries are covered by the same criteria. This makes it very difficult as many archive collections are housed within Museums. Therefore an anomaly may arise where an archivist has less stringent restrictions providing access to an item than their museum colleague wishing to use the same item.

We request that all not for profit GLAM institutions have a 'safe harbour clause' for the use or dissemination of material, providing appropriate crediting of all works, if known, or if reasonable effort to ascertain the copyright status or holder is undertaken.

The Act should make more provision for providing access to material digitally. This means scanning of material, for example photographs, to provide access as well as preserve the originals. Presently, the implication is that one scans only to replace the original. In the area of digital copying this is not feasible as scanning methods and capacities will change over time. The digital image cannot replace the original object, instead it makes the content more accessible. The question of who holds the copyright of a scanned image (whether or not enhanced in any way, eg cropping) also needs to be made clear.

The duration of copyright should not be extended to material of an archival nature. Fifty years is too long for such socially important material. We suggest a separate clause to allow making copyrighted material that fits such criteria restricted for a shorter period. Lengthy periods of restrictions due to copyright is frustrating, but also risks the loss of knowledge as the people associated with the image or other archive may have died before the collection becomes available.

Often copyright of a collection, such as photographs can be bequeathed to the creator's descendants, which further extends the period of restriction. Institutions that wish to make use of the collection have a choice of not using the collection at all, spending hours researching the family of the original creator, or risking censure by just ignoring the Act, which sets a poor example for others.

The duration of copyright also needs to make provision for 'orphan' collection of individual items. 50 years since publically exhibited or created is difficult to discern if no date attached to the item. Also in negative collections only 1 item may be copied, so what date should be attached to the non-copied negatives? All these questions need clear advice in the new Act.

The whole area of how to deal with 'orphan' material needs to be made clear. Whole collections of potential useful and valuable material may be restricted to the public if no information about copyright owner or date of creation / use can be ascertained. The new Act should make clear the extent of inquiry institutions should undertake on orphan collections. This may require a tiered approach; time and effort associated with the size, content etc of the collection, for example.

Similarly, the new Act should address the situation where one collection has multiple copyright holders. For example, a collection of a photographer will have numerous copyright holders as the images taken by the photographer were commissioned. Although in some cases the copyright holder will be known (if only by the inclusion of a name and date in an index) it would be a massive undertaking to locate and content every owner from a sitting that may be forty years ago. In this case it could be classified as an 'orphan collection' but there needs to be a ruling on this.

Without clear advice, and an understanding of what in the GLAM sector do, we are faced with ignoring interesting and valuable collections (neither scanning nor making accessible) or spend all our time researching copyright holders.

We fully support the work the Business Law Team are doing with regard to the investigation of the Copyright Act 1994 and agree that copyright is an important issue for a number of interest groups and businesses. We forward these suggestions and comments to assist you team formulate an easy to understand and workable Act which will enable access and use of our collections, which is a prime motivator of our members.

Thank you

Kathleen Stringer, on behalf of ARANZ