

Submission on review of the Copyright Act 1994: Issues Paper

Your name and organisation

Name	Christopher Cookson
Organisation	

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Responses to Issues Paper questions

Objectives

1	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?
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The objects are generally appropriate, however with regard to meeting New Zealand's international obligations, there are potential conflicts of interest between providing a means for copyright holders to make a reasonable return on their works, and reasonable rights for the public to access those works, for example extending the copyright duration as proposed in the TPPA agreement, and any restrictions on format shifting including circumventing encryption, when a work is otherwise legally licensed. Meeting objective 4 also potentially conflicts with objective 1 where international copyright restrictions may be unduly restrictive.

With regard to objective 1, it is important to consider that for many works 'incentive for the creation and dissemination of works' will take an explicitly financial form, and rights holders should not be denied the right to receive compensation, while also recognising that some rights holders gain sufficient incentive to create works without financial compensation, and copyright should be flexible enough so that both those who require financial compensation as an incentive and those who don't can be accommodated. There also needs to be provision for those who may desire financial compensation only under certain usage scenarios, (eg release works under various CC licenses that impose restrictions).

Vague language about 'incentives' is not enough without explicit mention regarding financial reward as one possible incentive. One of the reasons this is important is for example, photographers are often asked to create works in return for 'exposure', with the suggestion that this is sufficient incentive to create a work, and in some cases, some people may be satisfied with exposure as compensation, however this must not become a precedent that deems all creative works have received sufficient incentive if they've merely received exposure.

For many creatives, copyright provides a means whereby they provide for themselves and their families,

2

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?

Copyright should provide a framework that encourages and supports economic activity based on the creation and dissemination of works.

(This is an important objective, in that production of intellectual property can often be of high value, but low environmental impact. Copyright is often a better mechanism than for example patents, especially in regard to software, where malicious patents can obstruct innovation, while cost of patent application can be beyond the reach of small developers, and may not be relevant in any case.)

3

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.

[Insert response here]

4

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

[Insert response here]

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

5

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

	<i>[Insert response here]</i>
6	Is it clear what 'skill, effort and judgement' 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?
	<i>[Insert response here]</i>
7	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?
	<i>[Insert response here]</i>
8	What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?
	<i>[Insert response here]</i>
9	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?
	<i>In the case of computer generated work, a person or organisation will need to have executed the computer program that generated the work. An allowance with regard to the definition of 'author' needs to include a programmer, their employer, or some other person who commissions a computer program to run. There is already a precedent with commissioned works where the person commissioning the work is by default the copyright holder unless explicitly contracted out of.</i>
10	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?
	<i>A significant problem with visual art (including photographs) is the perception that a copy has no value as it is easy to reproduce. Music and literature face this same issue in the digital age, however a number of digital platforms now exist which enable subscriptions that can help compensate rights holders. Fairly well established digital fingerprinting systems also exist which enable easy identification of counterfeit or pirated copies, whereas with images, while this can be done, it can be reasonably easy to manipulate an image to create a variation.</i>
	<i>Search engines such as Google provide an image search functionality which allows viewing of images without ever leaving the search engine, which limits the ability of rights holders to achieve monetisation through advertising for example, or offers to purchase copies of the work, while large numbers of visual works can be freely browsed. Although Google does indicate that images may be subject to copyright, the images are displayed at a reasonable size within the search engine itself. When considering exceptions, it might be useful to specify the size that third parties such as Google can display images without infringing copyright. (For example, displaying a thumbnail image is likely to be useful to a rights holder in that it is not large enough to be useful in itself, but does provide enough information to direct a user to the rights holder's website.)</i>
	<i>It would appear that Google currently breaches the current Copyright Act in that the way it displays images via its image search is not covered by exceptions, however New Zealanders who created similar functionality to Google would be liable for infringement, whereas Google is apparently able to act with impunity.</i>

11	<p>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?</p>
	<p><i>[Insert response here]</i></p>
12	<p>What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?</p>
	<p><i>Given that the public has already paid for the creation of Crown Copyright works, it seems unfair to restrict public reuse, however on the other hand, private organisations republishing and selling Crown Copyright material unmodified would seem to be unfairly profiting from public money.</i></p> <p><i>CC licenses provide options to prevent modification, but not to require it.</i></p> <p><i>A fair model for Crown Copyright might be to adopt something similar to CC-NC-By attribution but with the requirement to create a derivative work where the Crown Copyrighted work is not the main component (eg greater than 50%) of the derivative work if the derivative is to be used commercially.</i></p> <p><i>This provides reasonable public access to publicly funded works for incorporation in new works, but also retains the ability to generate revenue from Crown Copyright works themselves.</i></p> <p><i>(eg, NZ topomaps are produced under Crown Copyright and can be both purchased and downloaded. Under a CC-by license, any third party could download, print, and sell maps with no modification, directly in competition with officially printed maps, with little contribution to the cost of production as production costs would be distributed amongst all taxpayers. This directly negates the 'user-pays' model whereby those who most benefit from government services should contribute. By requiring a derivative work in the case of commercial use, this ensures any third party adds significant value rather than directly profiting from work paid for by all taxpayers.)</i></p>
13	<p>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?</p>
	<p><i>Extending the copyright term</i></p>
14	<p>Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?</p>
	<p><i>[Insert response here]</i></p>

Other comments

[Insert response here]

Rights: What actions does copyright reserve for copyright owners?

15	<p>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?</p>
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	<i>[Insert response here]</i>
16	Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?
	<i>[Insert response here]</i>
17	What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?
	<i>[Insert response here]</i>

Other comments

[Insert response here]

Rights: Specific issues with the current rights

18	What are the problems (or advantages) with the way the right of communication to the public operates? What changes, if any, might be needed?
	<i>[Insert response here]</i>
19	What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?
	<i>[Insert response here]</i>
20	What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered?
	<i>[Insert response here]</i>
21	Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.
	<i>[Insert response here]</i>
22	What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?

User generated content should fall under the same rules as other works. There is enough competition in terms of source material that users can find background images for memes for example that can be copied without infringing copyright. It is easy enough for users to indicate on their social media posts that they intend their content to be shared.

Most social media platforms specifically grant themselves the right in their terms and conditions to a non-exclusive right to distribute within their platform, so if a user posts a meme on Facebook for example, and other Facebook users share that meme, then because it is staying within the platform, then it is complying with Facebook's usage rights, however if someone chooses to copy that same content off Facebook and post on a private website, they are no longer using the Facebook license to the work.

While this is reasonably clear if anyone reads the user agreements for social media platforms, many users, including commercial users such as new media, don't always follow the rules.

Where there is a grey area is when social media platforms provide embedding tools so that their content can be embedded in a third party site. Generally, their license agreements do allow for sub-licensing, and if display on a third party site is within the context of an embeddable 'widget', in a sense the content is still controlled by the license of the social platform. By using a platform provided widget, there will generally be a link provided back to the original user on the social platform, so in effect attribution is provided.

The Copyright Act could explicitly recognise the potential for sharing, but also require sharing to remain in such a form that it remains within the context of the platform it was originally shared on.

23

What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?

CCO is useful, however the ability for it to be revoked is an issue. There should be a specific provision to enable complete revocation of copyright prior to the normal expiry.

Identifying that works have in fact been released to the public domain may provide issues, so there needs to be provision to explicitly require the rights holder to identify themselves as having the rights to a work in the first place which they may then revoke.

24

Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.

[Insert response here]

Other comments

[Insert response here]

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

25

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>Moral rights are necessary, for example to prevent counterfeit artwork. The right to deny public display of commissioned film or photographs also has implications with regard to privacy, and may bear relationship to legislation regarding intimate visual recordings. (for example it's possible a model might commission some nude images for a portfolio, but later decide they don't feel comfortable displaying nude images, and don't want a photographer (or artist) to display these images in their own portfolio. Whether this is an issue for copyright, or is already covered by other legislation regarding intimate visual recordings is debatable.)</i>
26	What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects? <i>[Insert response here]</i>
27	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? <i>[Insert response here]</i>
28	What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered? <i>[Insert response here]</i>
29	Is it clear what the TPMs regime allows and what it does not allow? Why/why not? <i>[Insert response here]</i>

Other comments

[Insert response here]

Exceptions and Limitations: Exceptions that facilitate particular desirable uses

30	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? <i>[Insert response here]</i>
31	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? <i>[Insert response here]</i>

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

The exception for photographs makes sense, because a photograph is a complete creative work in its own right. While technically it is possible to create an excerpt of a photograph by cropping, it is still essentially the same work.

I had a personal experience where I published a photograph on a website that I pay to maintain that was downloaded, cropped and used in a print publication without authorisation to illustrate a news story. I was able to negotiate a fee and exercise of moral right to be identified as the creator of the photograph, however if the exception did not exist, they would be able to claim rights to use my photograph as fair use for news reporting. Under such circumstances, I would most likely remove my website from the internet, as I also use my photographs to create artworks and literary publications, however there can be a considerable expenditure of time and money before I see any return on my work, yet if other commercial publications would be able to use them in the meantime, without permission, on the grounds of news reporting, it would dilute the potential value of the images, and encourage me to keep them from public display until such time (if at all), as I'm able to generate a return on them myself. Removing an exception for photographs could potentially destroy the stock photography industry, which is already highly competitive, if news media organisations have the right to use any photographs without compensation to the rights holders on the grounds of reporting current events.

The suggestion of including photographs in the exception for news reporting seems to come from the idea that photographs are easy to produce, and that professional photographers will have already been paid for their work, however, in spite of the proliferation of smartphones with cameras, there are still instances where a person may capture a unique representation of something newsworthy, without having been compensated, which has involved considerable time and effort, that cannot be readily reproduced by another photographer. While smartphones are widespread, technologically there are limits due to physics as to the kind of images they can capture well, and there are situations where expensive specialised photography equipment is required to capture certain types of images, and to encourage the ongoing production of such images, there should be a means whereby photographers can receive financial compensation if they so desire. There are other situations, even when a relatively cheap smartphone has been used to capture a unique image, where the photographer has incurred time and expense to be able to capture the image. Because a photograph is a finished work in its own right, adding it to the exception for news reporting could remove much of the ongoing potential for an image to earn a return. While the Copyright Act does not guarantee any financial return on a creative work, neither should it operate in such a way as to guarantee the inability to make any financial return on a creative work.

With respect to other media formats, the proliferation of short video clips means that possibly video should be considered as an exception as well, or at least a clear definition in terms of what percentage of a video may be used under the news reporting exception.

There is also an anomaly in that photographs are not included in the exception, but other static, two dimensional visual works are, for example if an artist scans a copy of a painting or illustration and publishes it on their website, a third party could reproduce it at will if they otherwise meet the rules for exceptions.

Although the media landscape and profitability has changed as a result of dominant social media and search platforms, the media still operates as a commercial enterprise, and will charge accordingly for usage of their media assets, so the same right to compensation should apply to content generated by individuals and non-commercial entities.

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

	<i>[Insert response here]</i>
34	What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?
	<i>[Insert response here]</i>
35	What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?
	<i>[Insert response here]</i>
36	What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?
	<i>Cloud computing should be considered as simply a different format or device, with simultaneous execution or access to a copyrighted work limited to the user or users licensed to access the work.</i>
	<i>Eg, someone who has purchased a music recording should be able to store it in the cloud, and access it from a single device at a time for the purpose of reproduction.</i>
	<i>In the case of a copyrighted computer program, a person should be able to execute a program anywhere, whether in the cloud or on a local device, up to the number of simultaneous users or devices they have a license for. In the case of cloud computing, users need to be identifiable if required by the copyright holder, so that a single license can't be distributed amongst a large number of users who take turns to use the copyrighted content.</i>
37	Are there any other current or emerging technological processes we should be considering for the purposes of the review?
	<i>[Insert response here]</i>
38	What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?
	<i>[Insert response here]</i>
39	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?
	<i>[Insert response here]</i>
40	What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?
	<i>[Insert response here]</i>

Other comments

[Insert response here]

Exceptions and Limitations: Exceptions for libraries and archives

41	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.
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	<i>[Insert response here]</i>
42	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?
	<i>[Insert response here]</i>
43	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?
	<i>[Insert response here]</i>
44	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?
	<i>[Insert response here]</i>
45	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?
	<i>[Insert response here]</i>
46	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?
	<i>[Insert response here]</i>

Other comments

[Insert response here]

Exceptions and Limitations: Exceptions for education

47	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?
	<i>[Insert response here]</i>
48	Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	<i>[Insert response here]</i>

49

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

[Insert response here]

50

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

It appears not to be. I had a book of original poetry borrowed by a school, which made multiple copies of multiple poems from the book and electronically distributed the material, without authorisation and then wanted to return the original without paying for it or anything for the copies.

Subsequently the issue was resolved by another member of staff who understood copyright, but it appears teachers may not be adequately informed.

If teachers don't understand responsibilities in regards to copyright, it is unlikely students are ever likely to learn. The creative sector is a legitimate part of the economy, but if students are not lead by their teachers to understand the pros and cons of copyright, then there is a potential to significantly negatively impact potential economic value of this sector of the economy.

Other comments

[Insert response here]

Exceptions and Limitations: Exceptions relating to the use of particular categories of works

51

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?

The current exceptions are impractical in that if a license is required for lyrics and score, then effectively this makes applying the exception difficult or impossible. A license for the recording itself might be easier to obtain than separate licenses for lyrics and score, which may well be beyond the practical means for some organisations.

Separate licenses for lyrics and score still need to apply when they are used separately to the sound recording, for example a church using sheet music, however if the intent of the exception is to allow performance of a copyrighted sound recording, then the exception should also cover any copyrighted material contained in the recording.

With regard to admission charges, they should not be dependent on the use of the sound recording, ie the primary purpose of admission should not be to hear the sound recording(s), and the playing of sound recordings should not be done as a revenue generating exercise. If playing of the sound recordings is primarily for the purpose of a revenue generating activity, then no exception should apply.

52

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

Format shifting should be permitted for any type of recording, not limited to audio, and should also include video and e-books, however if cloud storage is used, a restriction should apply that users may not provide access to any third party to perform the recording. Cloud storage services can perform transparent encryption and digital fingerprinting of recordings in order to ensure that no one other than the intended user is able to perform a recording.

53

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

[Insert response here]

54

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

55

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

[Insert response here]

56

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

[Insert response here]

57

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?

'Premises open to the public' should be defined as areas the public can enter without being required to pay an admission fee.

The exception should apply to underlying works, provided that the copyright holder of both is the same. (eg if a work incorporates underlying work of a third party who did not agree to the public display, then they have may not be aware of or have granted consent to the exception.)

Other comments

[Insert response here]

Exceptions and Limitations: Contracting out of exceptions

58

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?

[Insert response here]

Exceptions and Limitations: Internet service provider liability

59

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

[Insert response here]

60

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?

Hyperlinks are the foundation of the world wide web, however nearly all content on the web is copyrighted, so linking in itself should be an explicit exception, however links to infringing content should be required to be removed as soon as they are identified as such.

Where things get more complicated, particularly with respect to search engines, is whether other content from a destination site, other than destination article titles and links are used.

There is already an exception for news reporting, however it's questionable whether news aggregation is actually reporting (ie the collection of a large number of link titles, descriptions and in some cases, images for the purposes of summarising news).

A definition of what constitutes news reporting perhaps might be useful, to distinguish it from news aggregation, eg news reporting or commentary must include some original content about the topic being reported on.

News aggregation can serve a useful purpose though, as it can drive traffic to sites. An explicit exception for metadata should be included, as content owners have the ability to control what metadata they generate, so for example if they provide description metadata for a webpage, this should be an indication that the rights holder permits this description be used by third parties, as it serves essentially no other purpose, and it is possible for the rights holder to amend or withhold this metadata if they don't want to provide it.

By providing an exception for metadata, news aggregators, which may not meet the definition of reporting on the news, can continue to operate, however there is a clear method by which publishers can indicate what content aggregators may use.

This exception also deals with the issue of embedded links on social media, as there are clearly defined metadata descriptions that publishers can provide that social platforms can read.

Where there may be a grey area, is metadata for images, which may indicate that the publisher is happy for an image to be used in association with a link, however doesn't automatically want to grant the right to use the original image independent of a link.

By making it clear that metadata may only be used in association with links back to the rights holder's site, and maintaining the status quo with photographs (or other static images) generally not included in the exception, except for the case where they are provided in metadata for the purpose of linking, this provides flexibility in terms of linking, but also grants some control to rights holders.

61

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.

[Insert response here]

62

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

[Insert response here]

Transactions

63

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?

[Insert response here]

64

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.

[Insert response here]

65

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.

[Insert response here]

66

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?

[Insert response here]

67

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?

[Insert response here]

68

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.

Social media platforms in general have a negative impact on monetising content in that most provide no form of compensation to content creators, but provide means for rapid dissemination of data which can readily erode any potential for monetisation.

In a recent court case in the USA a judge ruled against a photographer who argued that a third party had infringed the photographer's copyright by copying an image they had posted to Facebook giving the argument that by posting to Facebook, the photographer was effectively indicating they had no further expectation of compensation. (This ruling actually contradicts Facebook's terms and conditions which state that a copyright holder retains all rights to their content, but grants Facebook a license. While technically, Facebook does grant itself the right to sublicense at no cost, in practice, this is generally limited to providing its service, and nowhere in its agreement does it grant users a license to use other users' content off the platform.)

Some platforms such as Youtube provide a revenue sharing model, however the entry level to achieving monetisation is quite high. Platforms such as Vimeo provide a paid video platform that allows users to set their own pay per view options to monetise video, while Google provides bloggers and website operators the option of revenue sharing through their AdSense programme, however currently Facebook, Instagram, and Twitter provide no revenue sharing opportunities for content creators.

69

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?

Social media platforms are useful for dissemination of creative works but very poor in terms of monetisation, and indeed some such as Facebook and increasingly Facebook owned Instagram inhibit the distribution of work unless an owner pays a fee to reach a wider audience, and then as a result of the content being disseminated via social media, members of the public and media organisations assume the right to copy content.

It would be useful if the Copyright Act makes it explicitly clear that posting to social media does not void a copyright holder's rights (any more than an artist exhibiting in a gallery or performing in a theatre would void their copyright). Social media needs to be explicitly treated as a platform or medium in the same way as a gallery or theatre. (Facebook even originally used the term 'wall', for the area users post content, so there is a good analogy with a public gallery.)

70

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?

Blockchain technology is a highly risky technology in that it has extremely high energy requirements, and if adopted on a large scale could become environmentally unsustainable, however it might prove useful for situations where the number of transactions remain low.

71

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.

I've had old photographs where I haven't been sure whether the person in possession of the photograph is indeed the copyright holder as there was no identification of who took the photo, so although I've been granted the right to use the images, I can't be sure the person in possession of the images has that right to grant. This has resulted in failing to publish historical images online.

72	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?
	<i>[Insert response here]</i>
73	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?
	<i>[Insert response here]</i>
74	What were the problems or benefits of the system of using an overseas regime for orphan works?
	<i>[Insert response here]</i>
75	<p>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?</p> <p><i>I haven't had any specific issue with CC-By licenses, however can see how numerous changes could lead to unwieldy referencing. On one hand this is inconvenient, but it also maintains a trail of modification.</i></p> <p><i>Given that CC-By is a license, the Copyright Act shouldn't seek to override it, however for Crown released content, perhaps a license similar to the BSD software license could be considered which simply requires a reference to the license and the original copyright holder to remain intact.</i></p>

Other comments

[Insert response here]

Enforcement of Copyright

76	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?
	<i>[Insert response here]</i>
77	What are the problems (or advantages) with reserving legal action to copyright owners and their exclusive licensees? What changes (if any) should be considered?
	<i>[Insert response here]</i>
78	Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?

Yes, but only if the copyright holder has explicitly assigned them the right to do so. This gives the copyright holder the ability to manage any legal action themselves if they choose to do so where they have granted non-exclusive rights, but there may be situations where they lack the desire or resources to take legal action directly, even though the rights they have granted to a CMO are non-exclusive.

79

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?

As a semi-professional photographer, and website publisher, I have experienced several cases of copyright infringement, however the value is less than the cost of legal action, and I've resolved the cases by private negotiation and settlement. Rather than a full court process for dealing with infringement, a lower cost option like the Disputes Tribunal or Tenancy Tribunal, established specifically to deal with copyright could be an option, with standardised applicant and respondent processes.

80

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?

81

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.

[Insert response here]

82

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

Peer-to-peer file sharing is just one of many technological solutions to infringe copyright, however peer-to-peer technology also has legitimate uses, including speeding the download of legitimately licensed content.

83

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

For all but the largest copyright holders, the infringing file sharing regime is likely too expensive for most rights holders, and the uncertainty over outcomes, and the only partial compensation for the cost of filing notices is likely to make the scheme uneconomical for many rights holders.

84

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

[Insert response here]

85

What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?

Currently, all but the largest rights holders are likely to have difficulty finding the resources to address online infringement. While there are concerns around the New Zealand Bill of Rights Act with regard to blocking, this does not prevent blocking of other illegal material such as objectionable material both by ISPs and search engines, so there is in effect a precedent allowing for blocking.

Blocking should be relatively quick and inexpensive for ISPs to implement, however the use of VPNs provides a technological means to circumvent this blocking.

Using an analogy, a firearms owner is required to take reasonable measures to secure their weapons, however if a determined criminal uses heavy equipment to circumvent the security in place, the owner is not liable, however if they take no action to provide security, then they are liable. A similar principle should apply to ISP, search engines, and social media services that are accessible in New Zealand, in that they should be required to take measures to prevent direct access on or via their services to copyrighted content.

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

See answer to question 85 above. In the case of taking action against infringers other than simply blocking, ISPs should be able to assist copyright owners, however the costs are likely to be non-negligible, so that is reasonable that ISPs should have some mechanism to recover costs.

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

[Insert response here]

88 Are there any problems with the types of criminal offences or the size of the penalties under the Copyright Act? What changes (if any) should be considered?

[Insert response here]

Other comments

[Insert response here]

Other issues: Relationship between copyright and registered design protection

89 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?

[Insert response here]

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

[Insert response here]

91

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?

[Insert response here]

92

Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?

[Insert response here]

Other comments

[Insert response here]

Other issues: Copyright and the Wai 262 inquiry

93

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.

[Insert response here]

94

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

[Insert response here]

95

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?

[Insert response here]

96

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?

[Insert response here]

97

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

[Insert response here]

Other comments

[Insert response here]