

# Submission on review of the Copyright Act 1994: Issues Paper

## Your name and 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?**

A well-functioning copyright system enables *reward* to those whose creative outputs benefit society, irrespective of their motivation to create. The Committee whose report preceded Australia’s current Copyright Act expressed this as follows:

*The primary end of the law on this subject is to give to the author of a creative work his just reward for the benefit he has bestowed on the community and also to encourage the making of further creative works.<sup>1</sup>*

This statement reflects the over-arching goal of a copyright system to ensure long-term sustainability for creative outputs that benefit society as a whole. The copyright system – which includes legislation, business practices, creative practices and consumer behaviour – is very complex, and proposed changes must take account of the entire ‘ecosystem’, for both the short and long term.

Any consideration of copyright exceptions needs to take account of the sustainability of quality content for the future. This includes contribution by online platforms to the content that underpins their business models. It also includes encouraging licensing solutions where possible – as recognised in the EU Digital Single Market Directive – and compensation to content creators in appropriate cases where an exception removes a rightsholder’s opportunity to negotiate a licence.

- 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?**

Not apart from those outlined in our response to (1). The objectives of a copyright system apply irrespective of the mechanisms or technology used to achieve them. Matters such as technological neutrality and the levels of specificity in the legislation relate to implementation, not objectives.

<sup>1</sup> Report of the Committee Appointed by the Attorney-General of the Commonwealth to Consider what Alterations are Desirable in the Copyright Law of the Commonwealth (1959), known as the Spicer Report

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

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

The 'commissioning rule' can operate unfairly for artists, including photographers, who are unaware of it or who are in an inferior bargaining position. As noted in the Issues Paper, the Australian Copyright Act was amended in 1998 with the effect that commissioned photographers are now the 'default' first owners of copyright (except for photographs commissioned for private or domestic purposes, or portraits). This has provided photographers with an opportunity to be remunerated for secondary uses of their photographs and has not, as far as we are aware, been detrimental to photographers' clients.

**8 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?**

As noted in the Issues Paper, Australia introduced an artists' resale royalty scheme in 2010. One of the reasons was that artists who create and sell original versions of their works tend not to benefit from the copyright system as much as people who create works to be reproduced and communicated, such as writers and songwriters. Another reason was the inherent unfairness of many people benefitting from the resales of artworks, but not the artists themselves. The Australian scheme has operated successfully since 2010, and is supported by Australian artists.