

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

## Your name and organisation

|              |                         |
|--------------|-------------------------|
| Name         |                         |
| Organisation | ESA Publications NZ Ltd |

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# Responses to Issues Paper questions

## Objectives

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| 1 | <p>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?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|   | <p>The implications of some aspects of the objectives are not defined clearly enough, and this raises questions that are not dealt with, as set out below.</p> <p><b>Objective 1:</b> What is the implication of the proviso, ‘where copyright is the most efficient mechanism to do so’? What other mechanisms might be used as incentives? How would the relative efficiency of different mechanisms be measured?<br/><u>Conclusion:</u> The proviso is meaningless and should be removed from the text.</p> <p><b>Objective 2:</b> This objective is problematic. Is ‘reasonable access’ going to be clearly defined in the revised Act? If it is not delineated very clearly, the objective will, in fact, be a negation of copyright. In addition, how might ‘net benefits for New Zealand’ be measured?</p> <p><b>Objective 3:</b> What is meant by ‘facilitating competitive markets’ in the context of copyright?</p> <p><b>Objective 4:</b> How will the revised Act deal with the possibility that ‘New Zealand’s international obligations’ might change over time? Will safeguards be built into the Act to ensure that proposed changes in such obligations will not override the carefully established principles of the Copyright Act?</p> |
| 2 | <p>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?</p> <p>‘Adaptability to future technological change’ would indeed be a laudable objective – but is likely to be an unachievable one. Attempts to make the legislation ‘future-proof’ would probably be counterproductive.<br/><u>Conclusion:</u> For these reasons ‘adaptability to future technological change’ should <b>not</b> be added as an objective.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 3 | <p>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.</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 4 | <p>What weighting (if any) should be given to each objective?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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

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| 5  | What are the problems (or advantages) with the way the Copyright Act categorises works?<br>—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 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?<br><br>The application of ‘skill, judgement and labour’ is a good criterion for determining whether a work should be protected by copyright, and therefore this test should be retained. However, for copyright protection to apply, <i>all three</i> the elements (skill and judgement and labour) should demonstrably have been applied in the creation of the work, not just one or two of them.                                                                                                                                                                                                                                                                                                                                                                                  |
| 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?<br>—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 8  | What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?<br>—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 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?<br>—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 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?<br>—                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 11 | 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?<br><br>From the point of view of would-be users of older published works – that is, publishers wishing to reproduce images or text from such works – the major issues are (a) identifying the copyright holder and (b) obtaining contact details. Whether the author retains copyright on publication or transfers it to the publisher is generally a contractual matter, and so the would-be user’s first port of call is the publisher. If the publisher is no longer trading, this is particularly problematic for the party seeking a copyright licence. (A problem that is akin to the issue of ‘orphan’ works discussed below, Questions 71–73.)<br>Might provision be made for copyright to revert automatically to authors/creators when publishing companies cease to trade? |

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| 12 | What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?                                                                                                                                                                                                                                                                      |
|    | The benefit of the ‘opt-in’ model of protection described in section 163 is that it makes the process of including Crown copyright material in textbooks much simpler for educational (and other) publishers.                                                                                                                                                                                             |
| 13 | 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?                                                                                                                                                                                                                           |
| 14 | Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?                                                                                                                                                                                                                                                                          |
|    | <p>A problem is that granting an indefinite copyright term to any work creates uncertainty and inconsistency, contrary to the proposed objective (3) of the Act.</p> <p>However, since Section 117 of the current Act applies only to a very specific category of ‘unpublished’ works, it is beneficial in that it may encourage bequests of such works to institutions, which is to the public good.</p> |

## Other comments

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### Rights: What actions does copyright reserve for copyright owners?

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| 15 | 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? |
| 16 | Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?                                       |
| 17 | What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?         |

## Other comments

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## Rights: Specific issues with the current rights

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| 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?     | —                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 19 | What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered? | —                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 20 | What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered?                        | The fact that the term 'object' is not defined in the current Act is an inherent problem. Yes, it would be a good idea to revise the definition of 'infringing copy' to include copies made in intangible formats.                                                                                                                                                                                                                                            |
| 21 | Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.                                    | —                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 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, like other works, should be subject to copyright rules.                                                                                                                                                                                                                                                                                                                                                                               |
| 23 | What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?                   | Renouncing copyright creates the problem of distinguishing between works which are subject to copyright and works in which the copyright has been permanently renounced.<br>The current mechanism whereby a creator/author/artist can allow free usage of works under a Creative Commons (CC0) licence is the better option – but this should be subject to the proviso that <b>only</b> the original copyright owner has the right to revoke such a licence. |
| 24 | Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.                            | —                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## Other comments

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

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| 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?                                                                      |
|    | —                                                                                                                                                                                                                                        |
| 26 | What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?                                                                                  |
|    | —                                                                                                                                                                                                                                        |
| 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? |
|    | —                                                                                                                                                                                                                                        |
| 28 | What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?                                                                                                                               |
|    | —                                                                                                                                                                                                                                        |
| 29 | Is it clear what the TPMs regime allows and what it does not allow? Why/why not?                                                                                                                                                         |
|    | —                                                                                                                                                                                                                                        |

## Other comments

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

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| 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? |
|    | —                                                                                                                                                                                                                                                                                                                                                                                |
| 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?                                                                           |
|    | —                                                                                                                                                                                                                                                                                                                                                                                |

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| 32 | <p>What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                        |
| 33 | <p>What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                  |
| 34 | <p>What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                                 |
| 35 | <p>What are the problems (or benefits) with the exception for transient reproduction of works? What changes (if any) should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                                       |
| 36 | <p>What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                               |
| 37 | <p>Are there any other current or emerging technological processes we should be considering for the purposes of the review?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                                                      |
| 38 | <p>What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                                                             |
| 39 | <p>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?</p> <p>—</p>                                                                                                                                                                                                                                                                                                                      |
| 40 | <p>What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?</p> <p>From the perspective of a publisher of school textbooks, the ability to use short quotations/extracts responsibly (and with clear limitations) but without having to clear copyright is beneficial – and results in ‘net benefits for New Zealand’ in the form of better-informed students.</p> <p><u>Conclusion</u>: No changes to these rules are needed.</p> |

## Other comments

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## Exceptions and Limitations: Exceptions for libraries and archives

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| 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.                                                                                                                        |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |
| 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?                                                     |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |
| 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?                  |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |
| 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? |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |
| 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?                                                                                                                                                                     |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |
| 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?                                                                                                                                                                                              |
|    | —                                                                                                                                                                                                                                                                                                                                                                          |

## Other comments

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## Exceptions and Limitations: Exceptions for education

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| 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? |
|    | —                                                                                                                                                                                                                                                                                      |



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| 48 | Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|    | <p>Yes, the educational exception allowing copying of a whole work is much too wide.</p> <p>In addition, even in the case of the exceptions that are perhaps not too wide <i>per se</i> (that is, the 3% or 3-page rule) it is unclear to what extent the restrictions imposed are adhered to in practice. This, and the fact that it is difficult – if not impossible – to monitor the implementation of these exceptions create a disincentive for the creation of educational resources by authors and publishers.</p>                                                                                                                                                                                                                                              |
| 49 | Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|    | <p>No, the educational exceptions are certainly not too narrow.</p> <p>Consideration could be given to a rule governing ‘maximum per term/year’ copying for educational purposes, to replace the current 3% or 3-page copying rule.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 50 | Is copyright well understood in the education sector? What problems does this create (if any)?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|    | <p>Copyright is not understood well enough in the education sector.</p> <p>There is a risk that the education exceptions set out in the Copyright Act may be read out of context and without a clear understanding of the basic purpose and long-term advantages of copyright rules. These exceptions may then be used as an ‘umbrella’ by teachers and students to infringe copyright provisions. This undermines the incentive for authors and publishers to create New Zealand-based educational material.</p> <p>Government (through IPONZ) should be devoting more resources to educating the general public – and those in the education sector in particular – about copyright law and the long-term common benefits of respecting and abiding by that law.</p> |

## Other comments

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

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| 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? |
|    | —                                                                                                                                                                           |
| 52 | What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?                            |
|    | —                                                                                                                                                                           |

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| 53 | <p>What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?</p> <hr/> <p>—</p>                                                                                                                                                                |
| 54 | <p>What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?</p> <hr/> <p>—</p>                                                                                                                                                             |
| 55 | <p>What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?</p> <hr/> <p>—</p>                                                                                                                                                     |
| 56 | <p>Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?</p> <hr/> <p>—</p>                                                                                                                   |
| 57 | <p>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?</p> <hr/> <p>—</p> |

## Other comments

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### Exceptions and Limitations: Contracting out of exceptions

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| 58 | <p>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?</p> <hr/> <p>—</p> |
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### Exceptions and Limitations: Internet service provider liability

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| 59 | <p>What are problems (or benefits) with the ISP definition? What changes, if any should be considered?</p> <hr/> <p>—</p> |
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| 60 | <p>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?</p> <p>—</p> |
| 61 | <p>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.</p> <p>—</p>                                           |
| 62 | <p>What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?</p> <p>—</p>                                                                                         |

## Transactions

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| 63 | <p>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?</p> <p>—</p>                                                                               |
| 64 | <p>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.</p> <p>—</p>                                                                                                 |
| 65 | <p>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.</p> <p>—</p>                                                                                            |
| 66 | <p>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?</p> <p>—</p> |
| 67 | <p>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?</p> <p>—</p>                                                         |

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.

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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?

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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?

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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.

Yes. Authors of school textbooks generally present a publisher with a list of third-party items that they would like to include in their books. The publisher spends time and resources on trying to identify the copyright holder of those items. If the list includes items from ‘orphan works’, such identification may well prove to be impossible, in which case the section of text or illustrative material has to be removed from the manuscript and an alternative has to be found. This process is both time consuming and expensive, and can delay the publication of the title, sometimes with disastrous commercial results.

A further problem is that if an educational publisher cannot reproduce an item because the copyright status of that item cannot be determined, this potentially deprives the end-users (that is, students) of access to material that would have enriched their education.

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?

As stated in the answer to Q. 71 above, if the copyright holders of items from ‘orphan works’ cannot be identified despite diligent efforts to do so, such items are removed from the manuscript.

As an example of diligent effort, here is an account from a Contract Editor:

“I am involved in a seemingly fruitless attempt at copyright clearance at the moment. The author wants to use images of the characters from a TV show on [a New Zealand topic] that is freely available all over the internet – but the production company no longer exists. I have sent several emails to [the US corporation] that bought out the company, and have had zero response. NZ on Screen even gave me the email address of an actual person at [the US corporation] – but the person has not replied to my emails. In the meantime the author wants those images specifically as the whole activity is based around that resource.”

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| 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?                                   |
|    | <a href="#">No, to the best of our knowledge.</a>                                                                                                                                         |
| 74 | What were the problems or benefits of the system of using an overseas regime for orphan works?                                                                                            |
|    | —                                                                                                                                                                                         |
| 75 | 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? |
|    | —                                                                                                                                                                                         |

## Other comments

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## Enforcement of Copyright

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| 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? |
|    | —                                                                                                                                                                                                                                                            |
| 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?                                                                                             |
|    | —                                                                                                                                                                                                                                                            |
| 78 | Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?                                                                                                                                                              |
|    | <a href="#">Publishers should be able to authorise CMOs to take legal action on their behalf against those who infringe copyright rules.</a>                                                                                                                 |
| 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?                                   |
|    | —                                                                                                                                                                                                                                                            |
| 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?                     |
|    | —                                                                                                                                                                                                                                                            |

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| 81 | <p>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.</p> |
|    | —                                                                                                                                                                                                                                                                                                                |
| 82 | <p>Are peer-to-peer file sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?</p>                                                                                                                                                                  |
|    | —                                                                                                                                                                                                                                                                                                                |
| 83 | <p>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?</p>                                                                                                                                          |
|    | —                                                                                                                                                                                                                                                                                                                |
| 84 | <p>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?</p>                                                                                                                          |
|    | —                                                                                                                                                                                                                                                                                                                |
| 85 | <p>What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?</p>                                                                                                                                       |
|    | —                                                                                                                                                                                                                                                                                                                |
| 86 | <p>Should ISPs be required to assist copyright owners enforce their rights? Why / why not?</p>                                                                                                                                                                                                                   |
|    | —                                                                                                                                                                                                                                                                                                                |
| 87 | <p>Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?</p>                                                                                                                                                                                 |
|    | —                                                                                                                                                                                                                                                                                                                |
| 88 | <p>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?</p>                                                                                                                                              |
|    | —                                                                                                                                                                                                                                                                                                                |

## Other comments

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**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?                                                                                      |
|    | —]                                                                                                                                                                                                                                                                 |
| 90 | Have you experienced any problems when seeking protection for an industrial design, especially overseas?                                                                                                                                                           |
|    | —                                                                                                                                                                                                                                                                  |
| 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? |
|    | —                                                                                                                                                                                                                                                                  |
| 92 | Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?                                                                                                                                                 |
|    | —                                                                                                                                                                                                                                                                  |

**Other comments**

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**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.                                                                                  |
|    | —                                                                                                                                                                                                                                                                                        |
| 94 | Do you agree with the Waitangi Tribunal’s use of the concepts ‘taonga works’ and ‘taonga-derived works’? If not, why not?                                                                                                                                                                |
|    | —                                                                                                                                                                                                                                                                                        |
| 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? |
|    | —                                                                                                                                                                                                                                                                                        |

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?

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97

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

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## Other comments

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