



5 April 2019

Ministry of Business, Innovation & Employment
15 Stout Street
PO Box 1473
WELLINGTON 6140

By email to: CopyrightActReview@mbie.govt.nz

E ngā mana, e ngā reo, tēnā koutou katoa

Submission to: Ministry of Business, Innovation & Employment
Subject: Copyright Act Review
From: Huia (NZ) Ltd (Huia Publishers)

Ngā mihi ki a koutou i runga i ngā tini āhuatanga o te wā.

BACKGROUND

1. Huia Publishers (HUIA) is an independent Māori publishing company based in Wellington. Our vision is to share the stories and aspirations of Aotearoa. Since 1991, we have worked to produce beautiful books and resources that share diverse Māori perspectives, voices, realities and aspirations. We aim to provide a mirror for Māori to reflect and interpret our experiences and to open a fascinating window to te ao Māori for the rest of the world.
2. Much of the mahi we do involves working closely with whānau, hapū, iwi, and other Māori organisations and individuals to help them share their stories and mātauranga Māori – with our own people, Aotearoa whānui and with global audiences. In undertaking this work we are guided by our Māori values. We work to build strong, genuine and meaningful relationships with Māori and to publish their stories with the respect, reverence and mana that they deserve.
3. As a Māori publisher, it is our view that HUIA has a responsibility and duty of care to the Māori groups, organisations and individuals that we engage with through our work: to protect the

integrity of the mātauranga Māori and stories that belong to them and that we are privileged to publish; and to protect their rights as creators or custodians of these stories. In this sense HUIA's role is one of kaitiakitanga – we are responsible for safeguarding not only the works that we publish, but the mana and rights of the people who choose to publish with HUIA. It is because of this responsibility that we feel compelled to offer this submission in relation to the Copyright Act Review.

4. This submission is therefore presented by HUIA with the endorsement of Te Waka Taki Kōrero – the Māori Literature Trust. It should be noted that HUIA has contributed to and supports the submission tendered by the Publishers Association of New Zealand (PANZ). HUIA has also endorsed the submission presented by Creative New Zealand (CNZ). However as a Māori publishing company that has worked in the publishing industry for nearly three decades, we believe we have a unique and important perspective to contribute to this review. There are a number of issues relating to the Copyright Act that we grapple with on a regular basis in our day-to-day business. These issues relate specifically to the protection of mātauranga Māori and the creators and kaitiaki of indigenous knowledge.
5. In offering this written submission for deliberation, HUIA requests the opportunity to also present this submission orally within the rollout of the review process. In the meantime if you have any questions regarding this submission we would be happy to discuss these with you further. Our key contact person for matters relating to this submission is:

Name: Eboni Waitere

Position: Executive Director

SUBMISSION

6. This submission focuses on four key issues:
 - protection of mātauranga Māori
 - protection of Māori creators and kaitiaki of mātauranga Māori
 - monitoring and enforcement of the Copyright Act
 - due diligence in relation to the use of mātauranga Māori.
7. We also offer some responses to the questions posed in the Issues Paper Review of the Copyright Act 1994 relating to the protection of taonga works and mātauranga Māori.

ISSUE 1: Protection of Mātauranga Māori

8. The issue: The current Copyright Act fails to adequately protect mātauranga Māori.
9. It is our belief that cultural misappropriation, theft, misuse and abuse of mātauranga Māori occurs far too often – not only in the publishing industry, but across the creative sector.
10. A recent example of such abuse involved one of our Māori authors who published a book with HUIA. The contents of the book were grounded in mātauranga Māori – indigenous knowledge that had been passed down from generation to generation of his tīpuna, before it was finally gifted to him by his grandfather. The author was contacted by a government organisation to discuss the possibility of using content from his book to name some meeting rooms in their new offices. The author agreed to meet to discuss the idea, but was mortified to learn that the organisation had already gone ahead and used content from his book without his or HUIA's permission. The use included taking direct quotes from the book and printing the information on plaques that were installed in the new meeting rooms, with no attribution or reference to the author or publisher. What is even more disturbing is that when HUIA raised the issue with the organisation, their response was a letter that effectively dismissed our concerns saying that the information they had used was widely available anyway and therefore they were free to use it as they wished. As the publisher, we pursued the matter further because we felt it was important enough to warrant planting a proverbial stake in the ground: the protection of mātauranga Māori. And while we were satisfied with the resulting outcome, it took legal representation and significant time, money and energy on our part to see the matter through to a resolution that both HUIA and the author were satisfied with.
11. This issue highlights the conceptual divide that exists between the way Māori view the world and current national and international intellectual property law. As a Māori publisher, HUIA works at the interface of this dichotomy. The Waitangi Tribunal's Wai 262 Report¹ on the protection of Māori interests in relation to indigenous flora and fauna, as well as a wide range of cultural knowledge and practices, has not yet been addressed by government. More problems are emerging now in the absence of any policy around it.
12. The current Copyright Act ignores the intrinsic link that exists between Māori and our mātauranga – the knowledge that we create, retain and protect. In contrast, western thinking accepts as a convenient truth that knowledge can be separated from its originator or custodian. This makes the compartmentalisation and commodification of knowledge for commercial purposes acceptable and achievable. But for Māori there exists an inextricable bond between mātauranga Māori and its creator or kaitiaki. It is a bond that is imbued with mana and that cannot be severed. In no way whatsoever does the current Copyright Act reflect this cultural perspective or understanding. And therein lies a key reason as to why the current Act fails to adequately protect mātauranga Māori.

¹ The Waitangi Tribunal. (2011). *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity – Wai 262*. Wellington, New Zealand: Legislation Direct.

13. Consideration must also be given to the fact that, under the current Copyright Act, there is no practical or effective course of action available to Māori creators or kaitiaki to protect our mātauranga in the international arena. Once our knowledge is published there is very little that we can do to protect our works from abuse, misuse or theft by parties who operate beyond the boundaries of our domestic territory. To see mātauranga Māori that has been protected for centuries through uniquely Māori processes of intergenerational transmission of knowledge, printed on cheap tea towels or undergarments is an affront to our identity as Māori – and yet it is one that we must endure in the absence of any international legal instruments, systems or arenas to protect mātauranga Māori.
14. This issue impacts all Māori because mātauranga Māori lies at the heart of our identity, language, culture, heritage and forms of cultural expression. So stolen indigenous knowledge and items taken without consent are deeply emotional for us as Māori. In addition, there are significant moral and economic rights that have to be considered with regards to the protection of mātauranga Māori, as well as abuse and misuse of that mātauranga.

ISSUE 2: Protection of Māori Creators and Kaitiaki of Mātauranga Māori

15. The issue: The current Copyright Act fails to adequately protect Māori creators and kaitiaki of mātauranga Māori.
16. Every time a Māori artist or kaitiaki experiences theft or abuse of their knowledge, or their creative works are used without their permission, a risk emerges. The risk is that in the wake of the abuse, the artist may refuse to share their knowledge or creative expression again in the future. And that is a reality in which we all lose out.
17. We know that our literary landscape in New Zealand is lacking in diverse voices. We know that the international literary scene is bereft of the wealth of indigenous perspectives and stories that we strive to profile and promote. Our Māori voices on these landscapes are few and far between. This is the reason that HUIA exists. We invest significant time and energy in trying to grow the small pool of Māori writers that we have on our author list. We administer several initiatives in an attempt to increase the number of works we publish that share mātauranga Māori. So every time there is an abuse of Māori artists' rights through the misuse or abuse of their knowledge or creative works, we know that this threatens our vision: to share the stories and aspirations of Aotearoa including diverse Māori perspectives, voices, realities and aspirations.
18. This issue arises because:
 - a. there is a general lack of understanding around copyright law and intellectual property law in New Zealand
 - b. there is a general lack of understanding around mātauranga Māori and the protections afforded to Māori under the Treaty of Waitangi
 - c. there is a conceptual divide that exists between the way Māori view the world and current national and international intellectual property law

- d. there is an absence of policy around the recommendations detailed in the Waitangi Tribunal’s Wai 262 Report on the protection of Māori interests in relation to mātauranga Māori and cultural practices
 - e. there is systemic and institutional racism that exists in our legal system and society that enables the ongoing abuse of our Māori artists and kaitiaki of mātauranga Māori, and theft of their creative works without fear of reprimand or, in many cases, even acknowledgement that it occurs.
19. This issue impacts everyone. If we cannot protect our Māori creatives and kaitiaki of mātauranga Māori, how can we reasonably expect them to share their knowledge with others? If we cannot take reasonable action to enforce their moral and economic rights as creators or protectors of their indigenous knowledge, how can we realistically ask them to continue contributing to our literary landscape so that it continues to evolve as a rich and diverse environment? And if our indigenous voices fall silent in this landscape, how can we expect our society to be diverse, inclusive and understanding – the society we aspire to be? How do we maintain our humanity if there are minority voices lost from that landscape? It is a precarious reality that we should spurn at all cost.

ISSUE 3: Monitoring and Enforcement

20. The issue: The current systems, instruments and arenas that are available to enforce the Copyright Act and monitor breaches of intellectual property in relation to mātauranga Māori are inadequate.
21. In HUIA’s experience, monitoring copyright breaches and enforcing the Copyright Act are almost impossible to achieve. Most publishers in New Zealand are small or medium-sized businesses that operate with minimal staff. We know that there are powerful organisations that have significant economic interests in issues relating to the protection of traditional indigenous knowledge and cultural expression, and they have lots of money at their disposal to defend their use of mātauranga Māori. As a small or medium-sized business, it is often impossible for a publisher to even consider pursuing legal action against such bodies for breaches of copyright. The amount of time, money and energy that would be required to seek any kind of remedy through the current legal arenas and processes makes the task extremely onerous for many publishers to pursue.
22. This issue arises because the current Copyright Act does not provide for sufficient and appropriate systems, instruments and arenas that would enable small to medium-sized publishers to monitor and enforce copyright legislation easily. In the absence of such avenues and tools, publishers are hindered from pursuing legal action to clamp down on breaches of copyright.
23. This issue impacts the publishing industry on a wide scale. It impacts publishers’ abilities to enforce copyright legislation and monitor copyright breaches. It leaves artists exposed to having their works misused and abused without being able to pursue action easily and reasonably against the alleged offenders. And it affects our iwi, hapū and other repositories of mātauranga

Māori who may be discouraged from sharing their indigenous knowledge because of concerns that they will have little control over what people will do with it once it is public.

ISSUE 4: Due Diligence in Relation to the Use of Mātauranga Māori

24. The issue: There is no legal requirement for people or organisations wanting to use mātauranga Māori to do their due diligence to: engage in genuine, open and honest discussions with the creators or kaitiaki of that mātauranga; or to develop an ongoing relationship with the whānau, hapū, iwi or individual to whom that mātauranga belongs.
25. In the absence of any policy or legislative guidelines, people who may want to use mātauranga Māori often end up just taking what they want and using it how they want to without going through the correct processes to secure rights of use. Sometimes this is through lack of understanding and awareness or ignorance. But at other times it is through a conscious and unapologetic act of wilful theft, abuse or misuse.
26. People or organisations that want to use mātauranga Māori need to do their due diligence – they need to put effort into:
- a. engaging in genuine, open and honest discussion
 - b. developing an ongoing relationship with the iwi, hapū, marae, whānau or individual from whom they seek use of their mātauranga.
27. This issue arises because there are no policy or legal requirements that place a duty of care on people who are wanting to use mātauranga Māori to do their due diligence. Without any policy or legislative guidelines to help people learn and understand appropriate protocols for acquiring rights of use from the creator or kaitiaki of mātauranga Māori, the door is left wide open for abuse, misuse and theft of mātauranga Māori.
28. This issue impacts people who genuinely want to engage with Māori to secure rights of use of their mātauranga Māori but may be unsure how to do so. It also impacts Māori artists and kaitiaki of indigenous knowledge who, in the absence of any such policy or legislation, are bereft of any real protection from abuse or misuse of their works.

SUMMARY

29. The issues we have identified in this submission relate specifically to the protection of mātauranga Māori and the creators and kaitiaki of indigenous knowledge in Aotearoa. These are issues that we believe are of significant importance and should be afforded due consideration in this review of the Copyright Act.
30. The failure of successive governments to address the recommendations from the Waitangi Tribunal's Wai 262 Report has resulted in the emergence of significant problems around the protection of mātauranga Māori. We urge the Ministry of Business, Innovation & Employment to

hasten efforts to address these recommendations to ensure the protection of our mātauranga Māori and its creators and kaitiaki.

QUESTIONS RELATING TO THE PROTECTION OF TAONGA WORKS AND MĀTAURANGA MĀORI

31. The following are our responses to the questions posed in the Issues Paper Review of the Copyright Act 1994 relating to the protection of taonga works and mātauranga Māori.

32. *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.*

- a. It is our opinion that, in the absence of any real opportunity to discuss the Waitangi Tribunal's analysis of the problems with the current protections provided for taonga works and mātauranga Māori with other Māori individuals and organisations, we are not in a position to respond to this question with any real certainty. Our preference would be to have an opportunity to participate in a wānanga with other Māori individuals and organisations, facilitated by Māori experts and advisors with specialist knowledge in this area, to help us formulate an informed response to this question. We would like to encourage the Ministry of Business, Innovation & Employment to consider including such a wānanga or series of wānanga as part of the ongoing review process for the Copyright Act.

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

- a. Please note our response above in para. 30a.

34. *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*

- a. Please note our response above in para. 30a.

35. *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?*

- a. Yes, we agree that there should be a new work stream on taonga works alongside the Copyright Act review. In particular, we believe the new work stream should include consideration of the issues highlighted in this submission:
 - protection of mātauranga Māori
 - protection of Māori creators and kaitiaki of mātauranga Māori

- monitoring and enforcement of the Copyright Act
- due diligence in relation to the use of mātauranga Māori.

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

- As noted above, HUIA suggests a series of wānanga for Māori individuals and organisations, facilitated by Māori experts and advisors with specialist knowledge in this area. In addition, MBIE could look to run additional workshops or hui for the wider community on the proposed work stream on taonga works. But we feel that the opportunity for Māori organisations and individuals to come together and wānanga this kaupapa together will be key to providing opportunities for genuine engagement and contribution from Māori as Treaty partners to this review process.

CONCLUSION

37. We would like to thank you for the opportunity to contribute to this review process. We look forward to participating in further discussion around the proposed new work stream on taonga works and seeing policy and legislative reform take place that gives life to the Waitangi Tribunal's recommendations in the Wai 262 Report as a result of this review process.

Ngā mihi me ngā whakaaro pai,

Nā



EBONI WAITERE
EXECUTIVE DIRECTOR
HUIA PUBLISHERS



BRIAN MORRIS
EXECUTIVE DIRECTOR
HUIA PUBLISHERS