

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

## Your name and organisation

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<b>Organisation</b>	IAML (NZ) – International Association of Music Libraries – NZ branch

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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?  We feel that the current Copyright regime does a good job of balancing the conflicting needs and demands of creators, rights owners and consumers. We feel that as an organisation and as individuals we are in a unique situation in working day-to-day with all of the involved sectors, and while none of them find the current situation perfect, none of them are severely disadvantaged either.
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?  <i>[Insert response here]</i>
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.

	<i>[Insert response here]</i>
4	What weighting (if any) should be given to each objective?
	<i>[Insert response here]</i>

### **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>[Insert response here]</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>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
12	What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?
	<i>[Insert response here]</i>

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>[Insert response here]</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>If this protection is not offered to other unpublished works, it should not be available either to materials held by institutions; copyright should not be being used to tie institutions to agreements. This prohibition would presumably include descendants of the creator, who might otherwise have been considered as having rights. It might also cause problems in dealing with other exceptions, such as criticism and review or research and study.</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> <p><i>[Insert response here]</i></p>
16	<p>Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
17	<p>What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?</p> <p>It is often very hard to decide whether content is legitimate or not, and we benefit in many ways from materials being available. For instance, a YouTube video might be infringing, but the copyright owners have chosen not to remove it. A casual viewer might not be able to tell the difference. Or it might be a dance video using Justin Bieber or Drake songs, which has been tacitly allowed. And the benefit to our performers and students: not just in learning music or instruments, and in being able to access materials such as scores or recordings; but in being able to reach out to the world themselves. For instance, dance videos made by Paris Goebel when she was less famous got her seen by musicians and choreographers around the world; Sol3 Mio started their professional careers by uploading videos of their early performances, including in-copyright works such as <i>Yellow Bird</i>.</p>

## Other comments

## Exhaustion of rights and parallel importing

We strongly endorse the view that parallel importing provides a strong benefit to NZ. Libraries rely on being able to provide access to all of the world's resources, not just the small segment commercially available in NZ.

### 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?
	Benefit is that it reminds users that it is not just the underlying work, but the manifestation at hand. Equally, using the term 'work' reminds that there is not just the version at hand, such as a particular recording, but also the underlying song.
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?
	We would like as light as possible a hand on user-generated content, such as amateur versions of songs. We do realise there are further issues such as YouTube or Facebook effectively monetizing this content. However, the history of music is about working on previous models and ideas – for instance, Bach re-harmonizing Lutheran hymns, or transcribing Vivaldi's concertos.
23	What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?
	Also need a non-copyright category perhaps? A PD label would be useful – such as for national anthem.
24	Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.
	<i>[Insert response here]</i>

### Other comments

*[Insert response here]*

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

25	<p>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?</p> <p>We feel that the right to satirise would be very useful for composers and performers. For example, Gilbert &amp; Sullivan and Weird Al Yankovich (word crimes) couldn't have written such great music under NZ's existing copyright laws. A right to comment satirically would be a useful tool and bring New Zealand law more in line with other countries such as the U.S.A. and the UK. A great example is the law school revue version of Blurred Lines. On the other hand, we have to consider cases such as Sullivan's upset about parodies of his song The Lost Chord, "I wrote the Lost Chord in sorrow at my Brother Fred's death; please don't burlesque it," or Maori complaining about online haka performances with semi-naked women.</p>
26	<p>What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?</p> <p><i>[Insert response here]</i></p>
27	<p>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?</p> <p>Since performer's rights will not back-dated, there will be no effect on archival recordings, which is our biggest consideration.</p>
28	<p>What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
29	<p>Is it clear what the TPMs regime allows and what it does not allow? Why/why not?</p> <p><i>[Insert response here]</i></p>

## Other comments

### Technological protection measures

Has anyone ever had to crack a TPM for a patron?

We thought not, but then remembered that 2 or 3 times a year we get presented with old videos with copy control TPMs on them which patrons or staff need to be copied, so they can continue to be used and/or preserved– and with no way of easily tracing the original right's owners.

Again, it is important to be able to provide access to DVDs from all zones, esp. ballet, dance, opera and musicals. Music libraries import highly useful and necessary DVDs for students and musicians to study, many of which are not available in this region's code. Since we can't just wander down the street in NZ to see an opera or ballet when we are learning to be the next Sol3 Mio, it is very important that the libraries can have this material available. Equally you can't just go into a shop and buy most of this library material.

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

30	<p>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?</p>
	<p>We deal with much worry from students about whether they are allowed to use any quotations from copyrighted materials in their own research or publications.          Researchers also report that they are required by their publishers to get written permission for any quotations, including score excerpts, and to pay for using quotations of poetry, song lyrics or excerpts from other copyrighted material in published journal articles or academic books, even where it is clear that the purpose is for criticism or review or research.          To be fair, most academic publishers are overseas based, so they aren't concerned with NZ exceptions.</p>
31	<p>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?</p>
	<p><i>[Insert response here]</i></p>
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><i>[Insert response here]</i></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><i>[Insert response here]</i></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><i>[Insert response here]</i></p>
35	<p>What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?</p>
	<p><i>[Insert response here]</i></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><i>[Insert response here]</i></p>
37	<p>Are there any other current or emerging technological processes we should be considering for the purposes of the review?</p>
	<p><i>[Insert response here]</i></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><i>[Insert response here]</i></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><i>[Insert response here]</i></p>

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?

Students very concerned about quoting in theses and dissertations, especially musical quotations or extracts, especially when digitising or publishing later.

Also a concern for academics - questions about quoting from song lyrics (and song titles) come up quite a bit. Unclear if this covered by the exception if it is using a line of a song lyric as commentary, rather than straight 'criticism' of the song. An example this year was a graduate student who is writing a paper entitled "That's why I call it the Blues." The article is about definitions of music, so the title is pertinent, but not being criticized explicitly.

## 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.

*[Insert response here]*

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?

Exceptions allowing us to make digital copies – most often for preservation –

Much of the material that is truly vulnerable and fragile is Public domain – so a lot of our copying is always going to happen anyway without copyright constraints. Newer items can still be vulnerable, such as videos or cassettes, just by the nature of their construction, and will be copied under the preservation exceptions – and probably there would not be much complaint about that. However, the preservation exception does not necessarily allow us to make it available online, which our clients increasingly demand.

One large group of items are 78s (particularly in Christchurch with the RNZ Sound Archives ) where the underlying song may still be in copyright.

Again, LPs and singles may need to be copied where lending or indeed playing the disc may damage them.

Videos, as we mentioned before, either commercial or private recordings – are highly vulnerable when being played. Unique and/or important NZ dance performances are often held only on video formats – one library reported copying a dancer's own personal copies so they could use the materials in their teaching, and making copies for the library at the same time to preserve. The copyright ownership situation on the tapes was very dodgy – but the library decided it was more important that the material be preserved.

Copying from other collections

- Music libraries have issues where material needed for study or performance is out of copyright in NZ (a recent example – Ibert's flute concerto) but is still in copyright elsewhere. The score and parts have not been available for sale previously, since orchestral scores are often only rented, in order to control performance. The publisher in France refused to sell a copy, but neither was the orchestra able to rent (it seems that the publisher thought they would copy it, since that would be legal in NZ). In the end the library purchased a new edition from a Canadian re-publishing company.

A library also mentioned an incident 2 years ago where a university was charged by a publisher's agents in Australia for performance rights for 2 works for an opera performance. The library had bought the scores already for one of these works which was out of copyright. Because the 2<sup>nd</sup> work had to be hired, the agents charged for rights for both works, and were adamant the fees had to be paid.

43

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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?

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Mass digitisation projects - issues

Licensing agreements where they exist facilitate mass digitisation music projects for libraries. Where we are held up is primarily by costs.

Decisions are made about what to copy often based on importance and fragility, but also very often solely on copyright status – because it is difficult to be able to make copies of material and then not be able to share it. Our public expects us to share digitised materials now online, not to have to visit a library to use.

Large projects such as Real Groovy magazine digitisation – in such cases a library can have permission from the editor/copyright owners of journal material such as articles and reviews, but still have to go through painstaking, time-consuming work to secure permission to copy other materials in the issues such as ads. The only other option is to remove that material, but then we can lose context and much important historical information.



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?
	Legal deposit copying of online information is very important in terms of making sure the New Zealand content, especially music, doesn't disappear forever. A recent example is the mass disappearance of music loaded between 2005 and 2013 from Myspace accounts during recent data migration.
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	<p>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?</p> <ol style="list-style-type: none"> <li>1. Where DVDs and sheet music can't be shown in the digitised lecture recordings (not covered by any agreements) then often large amounts of music and dance lectures will have to be removed. This entails more work for the lecturers, either to remove the materials or more expense and time to obtain permission.</li> <li>2. Using PDAs and tablets for performance or study – this facility is designed for downloading individually purchased scores, and is very popular with both students and professional musicians. However only a few databases have digital copies of scores available for sale or lease to libraries.</li> </ol> <p>This facility makes it easier to share scores with accompanists and examiners. However it is very difficult to tell whether the musician is using a legitimate download or not.</p>
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>For exams music students are often required to supply copies of scores for multiple examiners and for any accompanying musicians. It is not appropriate often to purchase more than one copy of a score or set of parts and score. Some scores routinely used by university students can cost \$500-\$1,500 per copy, and might just be needed for 1 aria from an opera score. In these sorts of situations it seems perfectly acceptable to be able to supply photocopies or electronic copies, especially if the library or student has gone to the trouble and expense of securing an original item. We do not think the exception is too wide.</p>
49	<p>Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?</p> <hr/> <p>Where there are no licensing agreements, as for instance with sheet music, it would be very useful to have some way of licensing for class use or for individual copying of a larger portion than the current 3 %. There is often not enough time to arrange for licensing from a publisher – students choose a piece to perform at most a term ahead, and are often firming up their exam repertoire only a week or two before exam time.</p> <p>What happens now is that if exceptions for use are too narrow then educators are tempted to turn to using copies from online with dubious copyright status, or choosing older editions that are PD but that may be less helpful for their students learning.</p> <p>Making theses available online:  Because of unclearness about the status of music and dance examples (either scores or recordings) many of our universities refuse to make the music or performance files available at all online. This is the case even when the music or performance copyright would be owned by the student involved. The same problems happens with performance files for PBRF research. The Universities are very risk averse about copyright issues, especially with music where they perceive that CMOs are very active in pursuing possible breaches.</p>
50	<p>Is copyright well understood in the education sector? What problems does this create (if any)?</p> <hr/> <p>There is another education sector heavily involved with music education in NZ – private teaching organisations who run exams for music study, such as Royal Schools or Trinity College. They have attempted to clamp down on copyright issues by completely banning the use of reproductions of sheet music – even for items that are clearly Public Domain. Where students are not able to purchase copies in time of the required scores for their exams, or are unable to afford their own copy, they use library materials extensively, especially from public libraries. For copies of PD music for these private exams some libraries have had to resort to printing stickers to attach to copies explaining the legal status of the copy.</p> <p>This is an example of how copyright is not always understood clearly – to the extent where whole industry sectors are being overly cautious</p>

## Other comments

*[Insert response here]*

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

51	<p>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?</p>
	<p><i>[Insert response here]</i></p>
52	<p>What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?</p>
	<p><i>[Insert response here]</i></p>
53	<p>What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?</p>
	<p><i>[Insert response here]</i></p>
54	<p>What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?</p>
	<p><i>[Insert response here]</i></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>
	<p><i>[Insert response here]</i></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>
	<p><i>[Insert response here]</i></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>
	<p><i>[Insert response here]</i></p>

## Other comments

*[Insert response here]*

### Exceptions and Limitations: Contracting out of exceptions

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>
	<p><i>[Insert response here]</i></p>

## Exceptions and Limitations: Internet service provider liability

59	What are problems (or benefits) with the ISP definition? What changes, if any should be considered?
	<i>[Insert response here]</i>
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?
	Since it can often be very tricky to determine if some material is infringing or not, and of course rules can be different for different jurisdictions under where ISPs may be based, what we might lose by not having safe harbour provisions may outweigh any potential benefits to copyright owners in NZ. For instance, libraries and musicians in NZ rely heavily on sourcing material from score wiki sites such as IMSLP. Libraries also use these sites to share valuable NZ content such as Phillipot's songs, which may not be PD in other parts of the world. <b><u><a href="https://imslp.org/wiki/Maori_Songs_(Phillipot%2C_James_H.)">https://imslp.org/wiki/Maori_Songs_(Phillipot%2C_James_H.)</a></u></b>
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.
	<i>[Insert response here]</i>
62	What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?
	<i>[Insert response here]</i>

## 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?
	<i>[Insert response here]</i>
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.
	<i>[Insert response here]</i>
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.

*[Insert response here]*

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?

*[Insert response here]*

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?

*[Insert response here]*

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.

We have collected no anecdotal evidence of a copyright holder appearing to claim a work, but this may be because our institutions are so risk averse that we never tackle anything without reasonable certainty.

On the whole libraries have concentrated on only digitising items where copyright is clearly finished, as with the music libraries WW1 project. Even then where authorship is unclear it can hold up completion of important projects. Here is an example of an important world war one document where it was difficult to ascertain the copyright status, since there is no author statement.

**<https://archive.org/stream/SongsHakaAndRuri?ui=embed#mode/2up>**

Also, as we said previously, most of the problems with large music digitisation projects arise from the cost of handling all the material, including staffing. The costs of paying for licensing can also be a hinderance.

A problem with orphan works occurs more often for music libraries where copies of works have been requested by individual users – there can be a serious delay while requesting permission, as well as covering costs involved, and all of this is magnified many times over when no owners of copyright can be identified easily, if at all.

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?
	Any of the overseas regimes would be useful. We also understand that the Treasury may have some facility for holding and collecting funds for defunct companies, as per <b>Section 324</b> of the Companies Act 1993, which would also be useful to consider for an orphan works regime.
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?
	<i>[Insert response here]</i>

## Other comments

### 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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?

*[Insert response here]*

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?

We were contemplating whether anyone uses P2P technology anymore – it's been suggested that it might be used more now for games than for music or films. Of course, in a sense that's Facebook and YouTube, and yes they are used to share music a lot. Our feeling is that P2P is waning as an issue, and that streaming is so inbred now and data so comparatively cheap that sharing files of music at least is not an issue - diving into actual recent US data we found that more music users aged 25-34 now bought an LP than shared p2p.

<https://www.riaa.com/wp-content/uploads/2018/05/MusicWatch-Consumer-Profile-2017.pdf>

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?

*[Insert response here]*

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?

Documenting usage and taking cases to the Tribunal is clearly not worth it for copyright owners, considering that they've only ever caught individual infringers with very small numbers of music files. For instance in one of its last cases in 2014 the Tribunal awarded costs of \$617.17 for the illegal downloading of Eminem's Bezerk.

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?

*[Insert response here]*

86

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

*[Insert response here]*

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

[Issues with the Copyright Tribunal

We feel that there has been little use of the Tribunal in recent years because the large uptake and easy availability of streaming services for sound recordings (and of course films and TV programmes) has moved users away from the sort of downloading and streaming issues that were seen to be a major problem in the past.

### 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?
	<i>[Insert response here]</i>
90	Have you experienced any problems when seeking protection for an industrial design, especially overseas?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
92	Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?
	<i>[Insert response here]</i>

## 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.
	<i>[Insert response here]</i>
94	Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?
	<i>[Insert response here]</i>



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?

We would be particularly concerned with how a new regime for taonga works etc. might conflict with provisions under the copyright regime. Where music works are widely available now because they are considered out of copyright, such as the Pokarekare Ana or anything published in Ngā Mōteatea, it will be difficult to change the availability or status of these items post hoc.

Another difficulty which we envisage day-to-day is identifying and agreeing on what are Maori taonga – for instance classic songs written in Maori which may have composed by Pakeha musicians, or where kupu have been set to a pre-existing melody.

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]*