IPA
international
publishers
association

4 April 2019

Ministry of Business, Innovation and Employment, NEW ZEALAND
By email only to **CopyrightActReview@mbie.govt.nz**

Review of the Copyright Act 1994: Submission by the International Publishers Association

The International Publishers Association (IPA) is the world's largest federation of national, regional and specialist book publishers associations. Established in 1896, our membership comprises 81 organizations from 69 countries around the world, including the Publishers Association of New Zealand (PANZ).

We are pleased at the opportunity to respond to the review of the Copyright Act, 1994. The IPA's responses to the questions raised in the consultation appear in the Word document that accompanies this covering letter.

From the outset, we want to express appreciation for the Government's consensus-building approach to this consultation and welcome the even-handed nature of the Issues Paper. Publishers support an efficient marketplace for intellectual property goods, which we believe will support more creation of copyright works as well as more consumption of and access to those works. We understand that there are areas that need updating — like improving exceptions for quotation giving broader scope for parody and satire — but these need to be carefully thought out so that the ecosystem can be made even more efficient for creators and consumers.

Accompanying this letter are the IPA's responses to the questions in the Review, in the Word template document made available on the Review website. We only comment on those aspects of the Draft Report that affect copyright, and specifically, copyright in the publishing industry. We also support the detailed submission made by our New Zealand member, PANZ.

We are available to support the Government with its revision of New Zealand's copyright laws and to elaborate on our submission if needed.

Yours sincerely,

José Borghino

Secretary General

Submission on review of the Copyright Act 1994: Issues Paper

Your name and organisation

Name	José Borghino
Organisation	International Publishers Association, Geneva, Switzerland

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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?

*1.1 The IPA agrees in principle with the **first proposed objective** set out in the Review, 'Provide incentives for the creation and dissemination of works, where copyright is the most efficient mechanism to do so', and suggests that this statement could be improved, to recognise that copyright is the principal, underlying basis for this incentive.*

In this regard, we point you to the following extracts from public statement by our New Zealand member PANZ of 26 November 2018 welcoming the review, and which supports this objective:

> *'[I]nvestment by New Zealand publishers is only possible with a robust copyright framework that allows creativity to flourish. Good copyright law enables authors and publishers to be rewarded for their hard work, and underpins a healthy intellectual property marketplace.*
>
> *'We need copyright law that gives New Zealand creators control over their global aspirations, that is effective in digital as well as in print, that uses licensing and exceptions to minimise transaction costs when required, that offers affordable means for enforcement, and that harmonises our law with those of our key trading partners.'*

We therefore suggest that this objective could be reformulated as:

> *'Supporting copyright as the basis of the incentive for the creation and dissemination of works.'*

1.2 *In respect of the **second proposed objective**, 'Permit reasonable access to works for use, adaption and consumption, where exceptions to exclusive rights are likely to have net benefits for New Zealand', we have the following comments:*

1.2.1 *The IPA is of the respectful view that an objective of crafting copyright exceptions on the basis of their being 'likely to have net benefits for New Zealand' is in conflict with all the other objectives, and should not appear in the Options Paper.*

The international treaties governing copyright, namely the Berne Convention, the WIPO Copyright Treaty and TRIPS, allow their member states a certain measure of flexibility in devising exceptions to copyright to cater for their local circumstances, yet place certain boundaries on them to ensure that all copyright owners, local and foreign, are treated equally (as is recognised in paras 88, 93, 94 and 260 of the Issues Paper).

In the copyright framework established by these treaties, notably in their obligations of National Treatment and the Three-Step Test for exceptions, the balance of interests to be taken into account in devising exceptions is the balance between creators of copyright goods and the publishers and producers who invest in them, on the one hand, and consumers of those goods on the other. With the exception of the position of developing countries (such as those included under the Berne Convention Appendix), the national interest of a member state vis-a-vis *other member states does not come into play.*

1.2.2 *The IPA disputes that exceptions are the only way for access to copyright works. To the extent that 'access to knowledge' means the public's right to know, publishers are in agreement: publishers support the unrestricted flow of information as being in the public interest.*

The public interest does not, however, equate to the entitlement to gratis and permission-free reproduction or adaptation of copyright-protected works. Put differently, 'access' in the public interest does not mean an entitlement by third parties to exercise the rights that would otherwise have been exclusively granted by law to the copyright owner.

The true question for policy consideration lies in the availability of copyright works, not only in their use, but also in their development and production.

1.2.3 *We therefore recommend that the second proposed objective should be rephrased as:*

'Support legislative mechanisms that support reproduction and adaptation of copyright works, whether with the authorisation of the rightsholder or, if not, in special cases where this has been found to be necessary in circumstances that do not conflict with the normal exploitation of the copyright work or unreasonably prejudice the interests of the copyright owner.'

1.3 *The IPA agrees with the **third proposed objective**, 'Ensure that the copyright regime is effective and efficient, including providing clarity and certainty, facilitating competitive markets, minimising transaction costs, and maintaining integrity and respect for the law' and **the fourth proposed objective**, 'Meet New Zealand's international obligations.' As an international association, the IPA is not in a position to comment on a national law requirement such as **the fifth proposed objective**, 'Ensure that the copyright system is consistent with the Crown's obligations under the Treaty of Waitangi', but observes that this creates the kind of local circumstance for which the international treaties, the Berne Convention, WCT and TRIPS, create flexibilities for member states in devising their respective copyright laws.*

	General comment *IPA does not agree with the conclusions under the heading 'The Copyright Paradox' in para 55 of the Issues Paper. Although the tools of copyright are exclusive rights, it does not follow that those exclusive rights limit the distribution of creative works. As pointed out in para 60, copyright does not guarantee an income, but the ability to derive an income from the public's demand for the work. Therein lies the copyright owner's incentive to distribute their works, which is a task that lies at the heart of publishing.*
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?
	[Insert response here]
3	Should sub-objectives or different objectives for any parts of the Act be considered (eg for moral rights or performers' rights)? Please be specific in your answer.
	[Insert response here]
4	What weighting (if any) should be given to each objective?
	[Insert response here]

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

5	What are the problems (or advantages) with the way the Copyright Act categorises works?
	[Insert response here]
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?
	[Insert response here]
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?
	[Insert response here]

8	What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?
	It appears that no case is made out to change to the default rules for copyright ownership in relation to literary works and published editions, or in relation to the commissioning of works (specifically the specific kinds of artistic works listed in Section 21(3)(a) of the Copyright Act 1994) that appear in published editions. *The IPA therefore asks that if the default rules for copyright ownership are changed, they are carefully crafted to impact only those kinds of works where a case for the need for change has been convincingly made; put differently, that any change is not made to apply across the board to all works. Such an approach would be consistent with the detailed approach to these rules that already appears in Section 21(3).*
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?
	We submit that it is premature to deal with the concept of computer-generated works in the current Review. The topic of the protection of works made by artificial intelligence is still being debated internationally. Indeed, the Copyright Act may well not be the place to deal with the protection of such works.
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?
	[Insert response here]
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?
	This issue is primarily one of a contractual relationship, not a copyright issue. The IPA supports contractual freedom for both authors and publishers.
12	What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?
	[Insert response here]
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?
	[Insert response here]
14	Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?
	[Insert response here]

Other comments

[Insert response here]

Rights: What actions does copyright reserve for copyright owners?

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?
	The exclusive rights under the Copyright Act 1994 are in line with the Berne Convention, the WIPO Copyright Treaty and TRIPS and we do not propose any changes.
16	Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?
	The secondary liability provisions under the Copyright Act 1994 are in line with the Berne Convention, the WIPO Copyright Treaty and TRIPS (specifically their requirement for an exclusive right of distribution) and we do not propose any changes.
17	What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?
	The IPA, like other organisations representing creators, publishers and producers of copyright works, are extremely concerned by the proliferation of infringement of all kinds of copyright works on the internet, often by persons operating from jurisdictions outside the reach of national law. Whereas an expansion of the 'authorisation' liability to extend to acts covered by the exclusive rights to outside New Zealand would be welcome, we would advocate additional practical measures to prevent infringements being disseminated online, such as Section 97A of the UK Copyright Patents and Designs Act 1988 and Section 115A of the Australian Copyright Act 1968.

Other comments

***Exhaustion of rights and parallel imports**: Although the Review has no question on the topic of exhaustion of rights and parallel imports, it is raised in paras 192-194, and it is a topic we would like to address.*

Publishers invest in creative content to make it available to readers in general and discoverable for its market in particular. In this context, it comes down to investment choices, with a wide range of options available in the globalised economy. Our experience is that a general prohibition on parallel importation coupled with well-designed exceptions, such as in Australia, has actually kept costs for books affordable. PANZ will show how the cost of books in New Zealand, where the parallel importation of books was allowed from 1998, has increased and sales have reduced. We also note that a proposal made in India in 2012 to legitimize parallel importation of books without any rules was not adopted, for fear of interfering with the local publishing industry and bookselling market.

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?
	[Insert response here]
19	What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?
	[Insert response here]
20	What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered?
	The IPA supports the use of technology-neutral language, and would therefore support the replacement of the term 'object' 'by language that removes any suggestion that some copies do not infringe copyright merely because of the format or medium in which they exist or the way they are accessed' (as per para 212 of the Issues Paper).
21	Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.
	[Insert response here]
22	What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?
	The labelling of the reproduction of copyright content as 'user-generated content' should not detract from what it is. In order to be considered as activities falling under an exception or limitation, they need to have a clearly delineated public purpose.
23	What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?
	We submit that the idea of the renunciation of copyright should be considered with great care, especially in relation to cases where the works concerned have already been published before renunciation, which includes a situation where prior rights, such as a licence or an exclusive licence, could have been granted to a third party, such as a publisher, where renunciation should never be possible. *The implications of a renunciation of an open licence, such as the CC0 licence referred to in para 223, also needs further consideration. We submit that the consequences, especially in relation to third parties who have already acted on a CCO licence, are more complex than described in para 223.*
24	Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.
	[Insert response here]

Other comments

[Insert response here]

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

25	What are the problems (or benefits) with the way the moral rights are formulated under the Copyright Act? What changes to the rights (if any) should be considered?
	[Insert response here]
26	What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?
	[Insert response here]
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?
	[Insert response here]
28	What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?
	[Insert response here]
29	Is it clear what the TPMs regime allows and what it does not allow? Why/why not?
	[Insert response here]

Other comments

Exceptions and Limitations: Exceptions that facilitate particular desirable uses

30	Do you have examples of activities or uses that have been impeded by the current framing and interpretation of the exceptions for criticism, review, news reporting and research or study? Is it because of a lack of certainty? How do you assess any risk relating to the use? Have you ever been threatened with, or involved in, legal action? Are there any other barriers?
	[Insert response here]

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?
	[Insert response here]
32	What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?
	[Insert response here]
33	What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?
	[Insert response here]
34	What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?
	[Insert response here]
35	What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?
	[Insert response here]
36	What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?
	[Insert response here]
37	Are there any other current or emerging technological processes we should be considering for the purposes of the review?
	[Insert response here]

38	What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?
	Publishers maximise the dissemination of knowledge through self-sustaining business models. That has always been their mission. They are at the cutting edge of intelligent innovation, embracing the opportunities and disruption that the digital era has brought. Like the authors they serve, publishers want their works to be universally accessible, globally available and readable across all platforms. *Science publishers already make their published content available for text and data mining, the requirements not only being access to the copyright work, but also access to a format which is useful for this purpose. In responding to the actual demand for such a service, science publishers have invested in ways to make text and data mining possible for subscribers of the material they publish. Licensed solutions are available for mining across the corpus of works owned by various science publishers, both directly from publishers and indirectly through vendors.* *IPA therefore does not agree with the description of data mining of copyright material as a 'non-expressive use' that should therefore be allowed under an exception without restriction or qualification. The IPA submits that defining the intended use for the purpose of devising a policy on data-mining (in this case, described as a 'non-expressive use') is not the only factor that has to be taken into account, but that the nature of the work and the user's lawful ownership of a copy of that work are also key factors.* *IPA submits that copyright works that will be made subject to legislative provisions for the benefit of data-mining must be clearly defined, so that they do not encapsulate the kinds of works that are designed to be made available for data mining, such as databases and copyright material for scientific, technical and medical purposes, without there being some form of licensing for such a purpose, whether from the rightsholder direct or through collective licensing. A too-broad application of such legislative provisions could prejudice rightsholders of those works in their reasonable and legitimate exploitation of such works by way of new technologies, thereby even coming into conflict with the Three-Step Test.* *Factors to be taken into account when considering legislation must include that:* • *the beneficiary of the exception has subscribed to the content he or she is mining;* • *the beneficiary is a not-for-profit entity;* • *the mining operation is carried out for a not-for-profit purpose;* • *a licence for the reproduction of the source material is not available;* • *right of access to publishers' platforms is preserved, for the sake of the integrity of those platforms;* • *all source material reproduced in the mining operation is deleted after the operation is complete;* • *results may only contain short extracts that do not substitute or replicate the source material, and which must acknowledge the sources and include copyright notices as they appear on source material from which any extracts emanate.*
39	What do problems (or benefits) arising from the Copyright Act not having an express exception for parody and satire? What about the absence of an exception for caricature and pastiche?
	[Insert response here]
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?
	[Insert response here]

Other comments

IPA welcomes the approach in the Review to focus on the problems or benefits with the current situation, rather than on the reasons why New Zealand should incorporate a 'fair use' exception, and agrees that this is the correct approach.

One of our greatest concerns with 'fair use' is that, over recent years, 'fair use' in the United States has mutated from a defence for 'follow-on creators' to a sanctioning, in the words of noted American copyright lawyer Jon Baumgarten, of 'regular, concerted, systematic, commercially purposed, 100% complete, uncompensated, copying, without permission, day in-day out, of millions of copyrighted books'. This has intensified following the decisions in the Google Books *and* Hathi Trust *cases – a necessary implication of 'fair use' now being that it allows an 'Internet search engine [to publish] thumbnail images of websites in its search results' . This mutation of 'fair use' in the United States illustrates that its application is not just a case of 'Courts interpret[ing] the application of legislative principles', but rather a case of the Courts taking over the legislative role from Parliament.*

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?
	See the answer to Question 44.
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?
	See the answer to Question 44.

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?
	Publishers recognise and value the key role that libraries play in the books ecosystem—providing access to knowledge in ways that enhance democracy and preserving that knowledge for centuries to come. *Whereas the IPA supports the ability of libraries and archives to make preservation and archival copies and to shift the format of items forming part of the library's or archive's permanent collection for these purposes where it is not reasonably practical to buy a replacement copy, it opposes the view that preservation copies may be used as 'master copies' to serve beneficiaries of fair dealing exceptions or under any other exception, or to permit access on an insecure online platform. Such practices could well distort the legitimate markets for these works. For preservation and archival copies to retain their specificity and legitimacy they must not become the source of further uses other than on-site consultation and/or inspection.*
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?
	[Insert response here]
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?
	IPA does not in principle oppose copyright exceptions that meet the requirements of the Three-Step Test to benefit museums and galleries, provided that the beneficiaries of these exceptions are public institutions, ie accessible to the public and publicly funded.

Other comments

[Insert response here]

Exceptions and Limitations: Exceptions for education

47	Does the Copyright Act provide enough flexibility to enable teachers, pupils and educational institutions to benefit from new technologies? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?
	See the answers to Questions 48 and 49.

48	Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	Section 44(1) allows the making of a single copy by teachers of the 'whole' of a literary work or a published edition. This means that the exception allows the copying of a whole book. In our experience, an exception allowing the copying of a whole book without remuneration is rare internationally. The Appendix to the Berne Convention does allow the reprographic reproduction of an entire book for educational purposes, but this flexibility is only available for developing countries and is couched in the form of a statutory licence or a remunerated limitation on the rights of copyright. Publishers produce and supply books to the market, including the educational market, precisely so that they can be purchased. We therefore respectfully submit that Section 44(1) is too broad, certainly to the extent that it allows the copying of an entire book, and needs to be recrafted, if not repealed. *Section 49, in its use of the term 'anything done', is also too broad and potentially open to abuse, and should rather, as the corresponding exception in the UK Copyright Patent and Designs Act, be a 'fair dealing' exception.*
49	Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	Whereas the simplification and rationalisation of exceptions for the benefit of legal clarity and practical implementation is supported as a matter of principle, the IPA considers that copyright policy must have, as a fundamental objective, the support of sustainable, high-quality educational content, sourced locally or serving localized content needs, and adapted to different local requirements. Exceptions for education must recognise that educational publishers are the primary source of high-quality educational content.
50	Is copyright well understood in the education sector? What problems does this create (if any)?
	[Insert response here]

Other comments

[Insert response here]

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

51	What are the problems (or advantages) with the free public playing exceptions in sections 81, 87 and 87 A of the Copyright Act? What changes (if any) should be considered?
	[Insert response here]
52	What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?
	[Insert response here]

53	What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?
	[Insert response here]
54	What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?
	[Insert response here]
55	What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?
	[Insert response here]
56	Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?
	[Insert response here]
57	Do you think that section 73 should be amended to make it clear that the exception applies to the works underlying the works specified in section 73(1)? And should the exception be limited to copies made for personal and private use, with copies made for commercial gain being excluded? Why?
	[Insert response here]

Other comments

[Insert response here]

Exceptions and Limitations: Contracting out of exceptions

58	What problems (or benefits) are there in allowing copyright owners to limit or modify a person's ability to use the existing exceptions through contract? What changes (if any) should be considered?
	The IPA supports the ability to deal with copyright by way of contract, and, since override of contractual arrangements by legislation will necessarily create uncertainty (as demonstrated below), provisions in exceptions which override contracts must only be applied to very specific cases where such an approach is absolutely warranted. In this regard, we observe that publishers do not habitually override all copyright exceptions in their agreements with their customers. *This point is extremely important in the digital context, since publishers' electronic products are generally made available by licensing. As a vehicle for trading published literary works, licensing is enormously flexible and able to accommodate all kinds of business models — from outright purchase to rental, whether itemized or as either collections, databases, or tailor-made for all shapes and sizes of users. More and more technical solutions are being devised to allow for frictionless access to increasingly granular content.* *Conflict between licensing terms and the scope and reach of exceptions which override contracts will create uncertainty for business and therefore a risk to investment. If copyright exceptions were allowed to overrule commercial terms, it is quite probable that this will lead to cases where there are disagreements between users and rightsholders over the scope and reach of exceptions. For instance, in a given case, a licensee might feel that a contractual provision limits an exception, when the rightsholder/licensor believes the use does not fall within the scope of an exception. In such a case, a contract would actually reduce the risk of misunderstanding and provide legal certainty where an exception could not.* *A blanket contract override provision would not only affect licences, which give access to copyright works, but also other contracts where copyright is the subject, such as settlement agreements concluded to resolve disputes concerning copyright infringement. It is not uncommon that, in a dispute as to whether the exclusive rights of copyright apply or not in the light of an exception, the parties, for the purpose of settlement, agree to disagree on the applicability of the exception. Statutory override of all contractual terms will make such settlements impossible due to key clauses, if not the whole agreement, being made unenforceable, thereby compelling the parties to proceed with costly, lengthy, and uncertain litigation.* *A case could be made for specific exceptions to provide that unfair contract terms were unenforceable. Such specific exceptions would be for circumstances where a contractual relationship between the rightsholder and the copyright owner is foreseen. As mentioned before, this should be carefully evaluated, exception by exception.*

Exceptions and Limitations: Internet service provider liability

59	What are problems (or benefits) with the ISP definition? What changes, if any should be considered?
	[Insert response here]

60	Are there any problems (or benefit) with the absence of an explicit exception for linking to copyright material and not having a safe harbour for providers of search tools (eg search engines)? What changes (if any) should be considered?
	[Insert response here]
61	Do the safe harbour provisions in the Copyright Act affect the commercial relationship between online platforms and copyright owners? Please be specific about who is, and how they are, affected.
	[Insert response here]
62	What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?
	[Insert response here]

Transactions

63	Is there a sufficient number and variety of CMOs in New Zealand? If not, which type copyright works do you think would benefit from the formation of CMOs in New Zealand?
	[Insert response here]
64	If you are a member of a CMO, have you experienced problems with the way they operate in New Zealand? Please give examples of any problems experienced.
	[Insert response here]
65	If you are a user of copyright works, have you experienced problems trying to obtain a licence from a CMO? Please give examples of any problems experienced.
	[Insert response here]
66	What are the problems (or advantages) with the way the Copyright Tribunal operates? Why do you think so few applications are being made to the Copyright Tribunal? What changes (if any) to the way the Copyright Tribunal regime should be considered?
	[Insert response here]
67	Which CMOs offer an alternative dispute resolution service? How frequently are they used? What are the benefits (or disadvantages) with these services when compared to the Copyright Tribunal?
	[Insert response here]
68	Has a social media platform or other communication tool that you have used to upload, modify or create content undermined your ability to monetise that content? Please provide details.
	[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.
	[Insert response here]
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?
	[Insert response here]
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?
	[Insert response here]
74	What were the problems or benefits of the system of using an overseas regime for orphan works?
	[Insert response here]
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?
	[Insert response here]

Other comments

[Insert response here]

Enforcement of Copyright

76	How difficult is it for copyright owners to establish before the courts that copyright exists in a work and they are the copyright owners? What changes (if any) should be considered to help copyright owners take legal action to enforce their copyright?
	[Insert response here]
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?
	[Insert response here]
78	Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?
	[Insert response here]
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?
	[Insert response here]
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 the 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 filing sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?
	[Insert response here]
83	Why do you think the infringing filing 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 filing share regime (if any) should be considered?
	[Insert response here]

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

[Insert response here]

Other issues: Relationship between copyright and registered design protection

89	Do you think there are any problems with (or benefits from) having an overlap between copyright and industrial design protection. What changes (if any) should be considered?
	[Insert response here]
90	Have you experienced any problems when seeking protection for an industrial design, especially overseas?
	[Insert response here]
91	We are interested in further information on the use of digital 3-D printer files to distribute industrial designs. For those that produce such files, how do you protect your designs? Have you faced any issues with the current provisions of the Copyright Act?
	[Insert response here]
92	Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?
	[Insert response here]

Other comments

[Insert response here]

Other issues: Copyright and the Wai 262 inquiry

93	Have we accurately characterised the Waitangi Tribunal's analysis of the problems with the current protections provided for taonga works and mātauranga Māori? If not, please explain the inaccuracies.
	[Insert response here]
94	Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?
	[Insert response here]
95	The Waitangi Tribunal did not recommend any changes to the copyright regime, and instead recommended a new legal regime for taonga works and mātauranga Māori. Are there ways in which the copyright regime might conflict with any new protection of taonga works and mātauranga Māori?
	[Insert response here]
96	Do you agree with our proposed process to launch a new work stream on taonga works alongside the Copyright Act review? Are there any other Treaty of Waitangi considerations we should be aware of in the Copyright Act review?
	[Insert response here]
97	How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?
	[Insert response here]

Other comments

[Insert response here]