

Submission on review of the Copyright Act 1994: Issues Paper

Your name and organisation

Name Katherine McRae
Organisation Member of the Directors and Editors Guild

The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE’s website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE’s website because... [Insert text]

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

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?
	<p>The lack of copyright for screen directors affects our ability to recoup a fair return on our work. If we were seen as authors of our work we would then receive a portion of royalties. These royalties would help fund our research and development time for our next projects. Unlike crew members, it is often difficult for directors to hop from one project to the next as we need time to develop our next project.</p> <p>While writers and composers benefit from the resale of their works, as a screen director, I don’t benefit from the ongoing sale of works that I have created beyond my initial fee. I need to take on other work and plan my next project in my spare time. My output would be much greater if I was earning royalties. I need to be able to assert my copyright to a producer in order to gain rights to any royalties.</p>
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?

The screen director's work needs to be acknowledged. The Issues paper states "audio-visual works (movies, documentaries or series etc.) are made up of different copyright works that can include, for example, literary works (the lyrics of the sound track), musical works (the musical score of the sound track), dramatic work (the script), artistic works (designs, photographs, etc.), a sound recording (the accompanying audio sound track) and a film (the series of visual images)."

The director works with every department on a film therefore their work is partly reflected in the script (e.g. they would have asked for rewrites from the writer), they work with the composer (e.g. giving them a brief and then working on changes), they work with all the designers (e.g. they work closely with production designers, art directors, costume designers, hair and makeup artists, guiding their choices along the way including details like the colour of costumes, sets and props – even the choice of lipstick!), they guide the shot choices – what is shot and how the shots are framed and if and how the camera moves. Every part of a film is guided by the director so that everything fits the director's vision for the project.

If you gave a script to two directors, the outcome would look very different. Each director creates their own film that reflects their creativity, imagination, life and work experience, their cultural and social background, their taste and their intelligence. In other words, they bring all of their personality to their work and the work is a reflection of this. They are *creating* the work – it wouldn't exist without their input. The script would exist – but there would be nothing to see or hear – the FILM would not exist. Therefore the director needs to be given copyright alongside the other artists. The director's work is inextricably embedded in the work of all the artists involved in the film. Why do they deserve copyright when the director doesn't? They are receiving copyright for work that is, in part, the director's work.

6

Is it clear what 'skill, effort and judgement' means as a test as to whether a work is protected by

	<p>copyright? Does this test make copyright protection apply too widely? If it does, what are the implications, and what changes should be considered?</p>
	<p>A work is defined as original if “creating the work involved sufficient skill, judgement and labour.”</p> <p>Screen directors use significant skill, judgement and labour in their projects as well as a lot of ‘creative spark’ (used in the United States definition of originality needed in order to receive copyright protection)</p> <p>Our work also has a HIGH level of creativity and exhibits ‘independent intellectual effort’ and yet we are not seen as authors of our work.</p> <p>A good example of a director’s authorship is the creation of a documentary. Without my guidance, the footage is a mass of unrelated shots. Unless a writer has been employed, it is the director (and sometimes the editor) who ‘writes’ a documentary – they are the person who forms these shots and sounds into a narrative that an audience can digest and appreciate.</p>
7	<p>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?</p>
	<p><i>[Insert response here]</i></p>
8	<p>What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?</p>
	<p>New Zealand should align itself with other countries that acknowledge screen directors as joint owners of the work. If they were, producers would need to acknowledge this in our contract negotiations and this would improve our financial return for our work.</p> <p>I have heard at least one New Zealand producer argue that as he has taken the risk in getting the production up and running, his company should reap all the profits. And yet what risk did he really take? In New Zealand, producers are often given a huge amount of their budget from government agencies. If the project goes into profit, then the creative members of the team should benefit from the success of the work – not just the producer. This would help fund the times that creative people are between jobs, busy dreaming up new projects. The payment of royalties would help fund their continued work in the industry – in a similar way to a business that uses the profit from one successful product to help fund the research and development process of their next product.</p> <p>Copyright would ensure that directors had the ability to negotiate better contracts in order to recoup a portion of the royalties and this in turn would help fund the creation of new work.</p> <p>New Zealand would have more works in development if the directors received a share of the</p>

	profits from their endeavours. At the moment, they have to go cap-in-hand to companies and government agencies to beg for development funding. If they don't succeed, they have to take other work in order to survive. This severely impacts their ability to create their next original work.
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 support an 'artist's resale right' as a visual artist deserves to receive a fair return when their works are re-sold - a portion of the profit from the sale. Without this, the art market is a playground for the people who can afford to buy and sell work as opposed to a place where artists can earn the money to continue to work and produce. It is wrong that someone who made a simple choice to buy a work can benefit when they resell, whereas the artist who made many complicated decisions, did the labour and spent time on the work, only receives the original price (which they share with their dealer).
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	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?
	<i>[Insert response here]</i>
14	Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?
	<i>[Insert response here]</i>

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?
----	---

I am also a theatre director. If theatre directors had copyright over their work, it would prevent their actors (who have been cast and directed by them in a theatre production) being cast in a version of the play for radio. At the moment there is nothing to prevent this and it has been done. This means that another director benefits from the work of the original director without that person being credited nor recompensed.

The radio director must create their own version of the story but if they cast all the actors from the stage version, they are piggy-backing on another director's work.

16 Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?

[Insert response here]

17 What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?

[Insert response here]

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?

[Insert response here]

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?

[Insert response here]

23 What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?

[Insert response here]

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]

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?

If I can be treated as an author for moral purposes alongside many other types of authors (painters, musicians, writers) then I should also be grouped with them as holding an economic right over my part in creating the final work which is a reflection of my unique vision.