

# Submission template

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## Review of the Copyright Act 1994: Issues Paper

### Instructions

The Ministry of Business, Innovation and Employment (MBIE) is reviewing copyright law. This specifically includes a review of whether Directors should be categorised as “authors” and entitled to economic rights over their work.

This is the result of our advocacy to date. Now we need your help to capitalise on it.

The Ministry discussion paper says copyright is not intended to provide authors an income stream, but to incentivise them to create works. What they therefore need to hear is your testimony about how the absence of an economic right has affected your output. This might be due to lack of income, but you need to show how and why.

We have cut down the Ministry’s own submission template to a simple one that allows you to submit on these economic rights issues. You shouldn’t need to refer to the Discussion Paper that sparks these questions, but if you’d like to, it’s here: <https://www.mbie.govt.nz/dmsdocument/3441-review-of-copyright-act-1994-issues-paper-pdf>

The numbers in the left column refer to the number of the question in the full submission template. You’re welcome to submit on other matters. If so, use the full template: <https://www.mbie.govt.nz/assets/b8564c9221/review-of-copyright-act-1994-submission-template.doc>

You don’t have to write a lot. You just need to provide hard evidence – real life examples – of how your creative output is affected. Please highlight for the Ministry where any information you provide is commercially sensitive, to exclude that information when submissions are made public.

Send your submissions by 5pm on Friday 5 April 2019 as a Microsoft Word document to [CopyrightActReview@mbie.govt.nz](mailto:CopyrightActReview@mbie.govt.nz)

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

## Your name and organisation

<b>Name</b>	Paolo Rotondo
<b>Organisation</b>	Individual ,Writer, Director

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](http://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.

## 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

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?

#### **Main points**

1. *The current system is not meeting Objective #1 [incentivising new works] in respect of film, because the absence of economic copyright of Directors is discouraging the production of creative work.*
2. *In my own case, with over twenty years of experience in the industry and with International recognition of my work it is very difficult if not economically impossible to create new work. The first part of our journey in creating new work is 'always' unpaid before it can reach producers and the market. Receiving our fair share of the copyrights of projects can assist directors and writers to create new work. Furthermore if we recognise that sometimes important, cultural content is absolutely necessary for the identity of our nation but it is not always commercial, we value the role directors and would create the conditions to generate more New Zealand work. The objective of New Zealand copyright is to incentivise works that would not otherwise be produced. The regime is not achieving this objective. It is my experience that works are NOT being created in New Zealand, people are NOT becoming Directors, and those that do must leave New Zealand to pursue their art.*

#### *In my case*

1. *An example is my feature film <https://orphansandkingdoms.com/> International sales and critical acclaim do not equate to remuneration. The Producer holds the copyright rights in this instance.*
- *I am currently developing work with interest by Netflix to be shot in NZ. But I cannot afford to do much of the work and international travel from my own earnings. Should the project stall and we miss another opportunity for investment into NZ the screen industry?*

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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?

### **Main points**

- 1. The test is clear; when it is applied to Film Directors it broadly describes the skills and effort they apply to produce copyrightable work.**
- 2. The test should remain as it clearly has not yet been applied too widely given that despite meeting the test, the 100-year profession of Screen Directing is still not regarded as an author with a share in the economic copyright.**

*These tests are a fair description of the work undertaken by Directors but we are still not able to claim authorship. So the test could not be said to be too wide.*

*As it is, this test gives no sense of the complexity, risks and sophistication of the tasks that go into the final screen work of Directors.*

*Films are a visual medium that incorporate art forms and technical skills from a wide variety of disciplines. From writing, to cinematography, to working with actors, costume design, set design, music scoring to audio capturing and marketing the Director is the ONLY person that influences every single step in a profound way. What more level of skill authorship, influence can there be in a finished production than that of a Director. This must be recognised in the fair share of rights.*

*As a writer/Director I will begin and work on project years before it reaches productions for no return. The camera is a profoundly subjective tool and coupled with editing it represents on screen a unique perspective. No two films can be made the same and each Director's vision is completely embedded in the final material. The Director has a huge influence on any project they direct, a recognition in rights and or authorship is fair and essential.*

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What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?

### **Main points**

- The default rules do not assign Film Directors authorship of what they create, for the purposes of economic copyright.**
- This creates a problem when negotiating commission or employment terms, because they have no rights which need to be purchased by producers. This reduces the Director to the role of a professional employee, in contrast to other copyright holders within the same screen production, such as script writers.**

*As Director's we find ourselves often being paid less than contractors who come and work for us. Our fees are often set or are a percentage of the budget, and no matter how long the project runs, or the hours we put in the fee remains the same. A recognition of our role through rights, would at least show good faith and establish a good will and address our challenge.*

*Working with contracts that are 'industry standard' have often meant we are treated as merely another contractor, yet we assume a much larger responsibility. In my experience, if I had received my fair share of copyright allocation as an author, I would certainly have been able to generate more work.*

## Other comments

[personal testimony and any specific issues you would like to raise]

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

- 2 What are the problems (or benefits) with the way the moral rights are formulated under the  
5 Copyright Act? What changes to the rights (if any) should be considered?

#### **Main points**

- ***The benefit of moral rights is that my unique work is attributed to me.***
- ***Treating me morally as the author should lead to treating me economically as the author of my unique contribution to the work.***

*Recognition of the Director's authorship would give dignity and integrity to the work. Director's tend to shoulder such a huge responsibility creatively, professionally and commercially that it simply is the moral, correct and respectful approach.*

*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.*