

3 April 2019
Ministry of Business, Innovation & Employment
15 Stout Street
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Wellington 6140

By email to: CopyrightActReview@mbie.govt.nz

Submission to: Ministry of Business, Innovation & Employment
Subject: Copyright Act Review
From: Playmarket Incorporated

Playmarket is pleased to have the opportunity to respond to the Review of the Copyright Act 1994 (the Act) Issues Paper, published by the Ministry in November 2018. Policy that is clear, easily implemented and that provides protection for both creators and users is crucial to playwrights' and creators' livelihoods.

There are only a handful of playwrights whose income is fully derived from their playwriting or related screen and fiction works. Almost all writers have other income streams to allow them to survive. This fact adds to an overall low income and is detrimental to their wellbeing and their ability to contribute to the cultural landscape. See the report: *Horizon Research Writer's Earnings in New Zealand* November 2018.

Playmarket is deeply interested in the Act and the protection and incentives it includes for playwrights and theatre creators to earn a living from their creative work.

The key contact person for matters relating to this submission is:

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Position: Director
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1. The current definition of Dramatic Work in the Act specifies several forms of dramatic but it does not explicitly specify a script for a play or work for the theatre (theatrework is a term that includes non-scripted work). We understand that the term Dramatic Work is intended to be inclusive of plays and other theatreworks but each of the definitions for other forms defines in detail the types of work covered. This lack may lead a reader of the Act to believe that these works are not covered.
2. We believe a copyright regime must protect the rights of creators. This is essential for the health and success of the copyright ecosystem. Objectives must include the need to recognise and protect the rights of creators. A crucial element of the copyright Act is to protect the right of creators to earn revenue from their work.
3. The ability for creators to earn revenue from their work is too easily negated by illegal copying and we reject inclusion of exemptions which might allow copyright works to be provided to users without recompense to creators. Provisions which restrict and protect this activity must be included and should follow international precedents restricting safe harbour protection for creators from ISP providers who host illegally uploaded material. Take-down provisions must ensure that there are effective and affordable mechanisms in place to achieve this. Many writers' works are currently available online without the knowledge or permission of the creator thus restricting their ability to monetise their labours. This applies to recorded works and copies of literary/ dramatic works, many of which have been recorded illegally or copied illegally from published volumes.
4. We are aware of works regularly being used in educational institutions without recompense to the creators. The use of music and filmed/recorded works are permitted in a classroom under licence and we believe the Act should explicitly require that a licence also be required for the use of dramatic works where there is an audience present beyond those enrolled in that specific class. The wording of the Act is currently not clear, and institutions regularly read the exemptions to favour them rather than the creators of the work who often have no other avenue to gain recompense for their work when it is made for educational use. Educational institutions do not understand copyright. Copyright owners must be paid appropriately when complete works are copied and/or distributed. The Act therefore needs to be clear and comprehensible to all users and underline that compliance is not optional. Provision of a simple guide and education programme is essential for teachers in institutions and in private training situations.
5. We believe mechanisms such as 'fair use' is not an appropriate way to deal with exceptions. An Act that articulates in what circumstances an exception is

permitted is better than a system whereby the only recourse for a creator is to undergo legal action. Employing a process of the courts is not an option for the majority of our creators, and they will be unfairly disadvantaged.

6. Inclusions in the Act to allow exemptions for parody/satire and social/political commentary is appropriate and we see this as a necessary provision providing there is a defined extent and that use of the whole of a work or such substantial part of a work does not affect its creator's ability to derive recompense in future and the exemption does not remove the creator's ability to call out derogatory treatment and does not override defamation law.
7. The Act needs to provide clarity and certainty for the authorised use of copyright material and accessible and effective mechanisms for addressing unauthorised use. We suggest that a Small Claims type entity may be considered which could be quickly effective and inexpensive for creators.

Background: Playmarket

Playmarket was founded in 1973 to represent New Zealand playwrights and has made a significant impact on the local playwriting and theatrical landscape. We currently issue around 400 performance licences annually for our clients' plays to professional and community theatre companies, and schools or tertiary institutions; and we circulate over 2000 scripts annually nationally and internationally on behalf of clients.

We offer advice to playwrights; potential playwrights, and producers and run masterclasses and competitions, such as the Adam NZ Play Award, Playwrights b4 25, and Plays for the Young, these are all open to new as well as experienced playwrights.

We advise on and negotiate commission and collaboration agreements and maintain an archive of playwrights' work and materials related to it. We arrange and offer a raft of development resources, such as clinics (workshops), readings, masterclasses and events; disseminate industry knowledge, and develop partnerships and networks. Programmes we run include Brown Ink (Māori and Pasifika) and Asian Ink. We also run a biennial playwrights' retreat; national workshops; and a Playwrights in Schools programme in partnership with the NZ Book Council.

Playmarket issues monthly electronic bulletins, an education sector bulletin, and we publish the Playmarket Annual that is a record of the previous year's theatrical activity in New Zealand. We also publish scripts in our New Zealand Play Series and Guides to best practice for the theatre sector. Playmarket administers the Bruce

Mason Playwriting Award, the Playmarket Award, Robert Lord Cottage Residency, and Rebecca Mason Executive Coaching.

Other partners include Playwrights Studio Scotland, Playwrights Guild of Canada, Playwriting Australia, Robert Lord Writers Cottage Trust, Whitireia Publishing Course, Auckland Writers Festival, Drama New Zealand, Music Theatre NZ, Theatre Archives NZ, Massive Company, Auckland Live, Young & Hungry, Playwrights Association NZ, Tawata Productions, Agaram Productions, Oryza Foundation and Huia Publishers.

Further information can be found on our website: www.playmarket.org.nz