

#35

COMPLETE

Collector: Web Link 1 (Web Link)

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Page 2: A bit about you and your submission

**Q1** Your name

Richard Foy

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**Q2** Your email address

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**Q3** Please briefly tell us why copyright law interests you

Head of an organisation that holds archival records, and manages current government information, with a range of copyright applications.

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**Q4** For the purpose of MBIE publishing the information you provide in this submission, do you wish to remain anonymous? **No**

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**Q5** Do you object to your submission being published (anonymously if you have requested that) in whole or in part by MBIE on its website? Note: if you answer Yes to this question, when you reach the end of this survey, you will be asked to specify which parts of your submission (or all of it) you do not wish MBIE to publish and help us understand your concerns so that we can consider them in the event of a request under the Official Information Act. **No**

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Page 3: Question navigation

**Q6** Which of the following subjects in the Issues Paper do you wish to answer questions on?

**Part 3 (Objectives),**

**Part 4 (Rights) Section 1 - what does copyright protect and who gets the rights?**

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**Part 5 (Exceptions and Limitations) Section 1 - exceptions that facilitate particular desirable uses**

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**Part 5, (Exceptions and Limitations) Section 2 - exceptions for libraries and archives**

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**Part 6 (Transactions),**

**Part 8, (Other issues) Section 2 - copyright and the Wai 262 inquiry**

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Page 4: Objectives

**Q7 Q1** 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?

The objectives of the review are sound.

The present copyright system is too complicated to administer effectively in an archival setting, and the rules around orphan works and digital works of any kind require entrenchment and clarification.

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**Q8 Q2** 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?

Firstly, a bit of background. We operate under the Public Records Act 2005 (the PRA), section 44 of which outlines the basis for determining the access status of public records: records should be classified as open, unless there is good reason to restrict public access; and further, any restrictions on public access should be for a specified period only.

Our long-term strategy, Archives 2057, emphasises the importance of access to the public record with a central strategic focus of “taking archives to the people”. This concept incorporates both enabling people to “discover, use, celebrate and connect with the growing scale of the record of government” through new channels, particularly online (including digitisation); and an underpinning principle that there are “few occasions that justify information being restricted or classified indefinitely.” While this applies in the first instance to record content and descriptive metadata it can also be seen as relevant to copyright provisions.

The future would therefore involve all open access records, whether digitised or born digital, being online with clear copyright arrangements in place.

This would also include a clear and easily decipherable alignment between NZGoal/Open Data/Creative Commons/individual copyright, including charging (or not); cost recovery or free access, and definition of the circumstances in which these would apply.

The future state would therefore also support Archives in advising other public offices (we regulate some 3,000 of these) on the creation of born-digital records, with access conditions, including any relevant copyright provisions, in place at the point of creation. This may be a point of interaction between the PRA and the Copyright Act.

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**Q9 Q3** 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.

We would seek to have the rules for orphan works entrenched and further clarified in the Act, including being extended to photographs.

In terms of determining access, orphan works are our chief concern. These comprise mainly photographic and moving image collections (including the audio soundtracks to moving image holdings). There are issues with mixed copyright, inability to determine the copyright holders of individual components of the works, and third-party copyright holders where the record is held by the Crown at Archives for legitimate reasons.

A creative work may become a public record, but it is difficult to determine which trumps which when it comes to determining access and copyright status. It is probably not a matter for the legislation to define ‘reasonable inquiry’ when discussing determining copyright status on an orphan work, but this is also an issue.

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**Q10 Q4** What weighting (if any) should be given to each objective? **Respondent skipped this question**

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Page 5: Rights: What does copyright protect and who gets the rights?

**Q11 Q5**What are the problems (or advantages) with the way the Copyright Act categorises works?

We require further definitions around digital records including a distinction between digitised surrogates of physical items, born-digital records and datasets.

As noted, a creative work may be part of the public record, and so we would seek a hierarchy of application particularly for orphan works.

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**Q12 Q6**Is it clear what 'skill, judgement and labour' 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?

**Respondent skipped this question**

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**Q13 Q7**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?

The present provisions of the Act are insufficient for determining copyright on data and digitised and born-digital datasets.

A particular issue relating to data is determining copyright on datasets created by data mining or scraping existing works. These should be clearly articulated.

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**Q14 Q8**What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?

**Respondent skipped this question**

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**Q15 Q9**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?

**Respondent skipped this question**

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**Q16 Q10**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?

**Respondent skipped this question**

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**Q17 Q11**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?

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**Respondent skipped this question**

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**Q18 Q12** What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?

Where the copyright is known, we have no problem with administering Crown copyright. However, as most of the works we spend time dealing with are orphan works, Crown copyright is not helpful in this respect. We would prefer, and recommend, that agencies move to Creative Commons in lieu of applying Crown copyright, particularly to open data. This has been happening steadily, but we would prefer to see it become the default.

A further issue is in the conflict between NZGoal, Creative Commons and the application of Crown copyright by default. Archives and libraries hold vast amounts of materials in many formats which they make available in reading rooms and increasingly online. In the Reading Room, users either copy material themselves or pay (at cost recovery) for copies of the material. Currently our online material is available to be downloaded for free. If the majority of material is to be online, this would be unsustainable within current funding.

One of the online options being investigated across many GLAM institutions, including Archives, is free to view/pay to download at low resolution. High resolution copies provided at higher cost. This is in conflict with NZGOAL and Creative Commons, however. If a reduction in Crown copyright limits any ability for cost recovery, then there is a practical concern.

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**Q19 Q13** 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?

Respondent skipped this question

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**Q20 Q14** Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?

We do not see any benefits in an indefinite copyright term. It would encourage breaches. It would make data-mining, APIs and AI use difficult, if not impossible.

However, some taonga may effectively have an indefinite copyright depending on the kaitiaki's wishes, and that is a separate matter that we are awaiting advice on from the government response to the WAI 262 enquiry.

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**Q21** Any other comments on Rights: what does copyright protect and who gets the rights?

Respondent skipped this question

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Page 6: Rights: What actions does copyright reserve for copyright owners?

**Q22 Q15** 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?

Respondent skipped this question

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**Q23 Q16** Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?

Respondent skipped this question

**Q24 Q17** What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered? Respondent skipped this question

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**Q25** Any other comments on Rights: what actions does copyright reserve for copyright owners? Respondent skipped this question

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Page 7: Rights: Specific issues with the current rights

**Q26 Q18** What are the problems (or advantages) with the way the right of communication to the public operates? What changes, if any, might be needed? Respondent skipped this question

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**Q27 Q19** What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered? Respondent skipped this question

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**Q28 Q20** What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered? Respondent skipped this question

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**Q29 Q21** Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain. Respondent skipped this question

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**Q30 Q22** What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered? Respondent skipped this question

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**Q31 Q23** What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered? Respondent skipped this question

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**Q32 Q24** Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe. Respondent skipped this question

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**Q33** Any other comments on Rights: specific issues with the current rights Respondent skipped this question

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Page 8: Rights: Moral rights, performers' rights and technological protection measures

**Q34 Q25** 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?

Respondent skipped this question

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**Q35 Q26** What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?

Respondent skipped this question

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**Q36 Q27** 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?

Respondent skipped this question

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**Q37 Q28** What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?

Respondent skipped this question

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**Q38 Q29** Is it clear what the TPMs regime allows and what it does not allow? Why/why not?

Respondent skipped this question

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**Q39** Any other comments on Rights: moral rights, performers' rights and technological protection measures

Respondent skipped this question

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Page 9: Exceptions and Limitations: Exceptions that facilitate particular desirable uses

**Q40 Q30** 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?

Respondent skipped this question

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**Q41 Q31** 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?

Respondent skipped this question

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**Q42 Q32** What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?

Respondent skipped this question

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**Q43 Q33**What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?

Respondent skipped this question

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**Q44 Q34**What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?

Respondent skipped this question

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**Q45 Q35**What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?

Respondent skipped this question

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**Q46 Q36**What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?

Cloud storage and cloud back-up are merely containers. Whatever copyright applies to the data stored in the cloud should still apply and should be reflected in the terms of use of the website/provider.

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**Q47 Q37**Are there any other current or emerging technological processes we should be considering for the purposes of the review?

Respondent skipped this question

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**Q48 Q38**What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?

Basic data-mining is a legitimate research tool. If the researcher has lawful access to the works being mined, then there is no problem for non-commercial purposes.

Commercial purposes are slightly trickier. If for example person A gains access to material under copyright, produces a work and then refuses access to that work to person B while the work is under A's copyright? This is likely if R&D money is involved.

This is particularly relevant in terms of Crown copyright. If the government is to grant commercial data-mining rights to material under Crown copyright, would it grant them to everybody? Just to NZ researchers/companies?

The use of AI is slightly more complex if it is used to produce an expressive work from other copyrighted works. Permission from the copyright holders would be essential, as well as clear indication of the purpose. Archives New Zealand holds images which for example may have cultural significance where the use of AI may be totally inappropriate e.g. Treaty of Waitangi images showing the signatures of ancestors.

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**Q49 Q39**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?

Respondent skipped this question

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**Q50** Q40 What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?

Respondent skipped this question

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**Q51** Any other comments on Exceptions and Limitations: exceptions that facilitate particular desirable uses

Respondent skipped this question

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Page 10: Exceptions and limitations: Exceptions for libraries and archives

**Q52** Q41 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.

The provisions of the Act do not extend to playing or showing sound recordings or films held by Archives NZ, where it does specify holdings of the New Zealand Film Archive and Television New Zealand.

Archives New Zealand has come across some instances of mixed copyright where access has proved extremely troublesome. An example is a set of audio cassette tapes deposited with Archives New Zealand as part of the collection of a former Prime Minister. They comprise sound recordings which cover a variety of different situations such as press conferences, office meetings, personal commentary, and also recordings of commercial broadcasts of interest to and featuring interviews with the politician – some apparently from state broadcasters, others not state-controlled. Foreign press may also be involved. On the death of the politician, administrative control for the collection passed to the Chief Archivist, and records now undergo a vetting process to determine content and when it may be released for public access, taking into account legislation such as the OIA and the Privacy Act.

In the case of the audio tapes, in the majority of instances the recording were found not to require content-based restrictions and so digital copies were made and uploaded to Archway, our online finding aid. However, in order to make these records available it was also necessary to make some practical decisions concerning copyright provisions. We opted to leave out those sections of the records which reproduced broadcasts where copyright was an issue or could not be clearly determined, and the material was general in nature and did not pertain directly to or feature the politician. This ensured that the majority content did not remain unnecessarily restricted from public access, but it also required an intensive vetting process and careful monitoring of the copying process that is too resource intensive for us to sustain on a case by case basis as we move to predominantly digital access.

This also creates an issue that is crucial for us and the underpinning of open government, transparency of information and democracy, and that is incomplete access to the public record.

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**Q53** Q42 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?

In the instance of historical collections with mixed copyright provisions, such as the one described in question 41, there is insufficient guidance in the Act.

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**Q54 Q43** 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?

Our digitisation efforts have focused mainly on records that are out of copyright or in which we clearly administer copyright. However, we have run into trouble in assuming, after reasonable inquiry, that Crown copyright applies, later to discover that there is a mixed copyright situation. The potential for wasting resources and impacting programmes of work is significant. This is an instance where it would be helpful for exemptions for GLAM institutions to be clearly articulated.

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**Q55 Q44** 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?

This is an instance where we are seeking a safe harbour provision. There is a significant public good in making heritage collections available, and the complexity of the regime and resourcing constraints mean that collections are effectively being locked down indefinitely without their benefit being made available to the nation. This is not solely a copyright issue, but the complexity of the copyright regime is a very significant contributor to the issue.

An example of this is the Te Ao Hou and Tū Tangata photograph collections. These were magazines published in the 20th century with a Māori world focus. The photographic component includes a large number of uncaptioned, unidentified images, and copyright is therefore unknown in many cases. While Crown copyright may be assumed in some instances, this is not universal. If it is confirmed that copyright is held by a third party – for instance the photographer Ans Westra – researchers must seek and confirm they have copyright clearance before items may be copied. These are a significant collection of mid-20th century photographs that is extremely resource-intensive to administer both for the researcher and for the archivist and so are not being accessed and reproduced.

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**Q56 Q45** 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?

**Respondent skipped this question**

**Q57 Q46** 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?

Our colleagues in these institutions will be able to speak for themselves on this matter, but we know that the activities we undertake across the GLAM sector to provide access are similar. It would approve efficiency in the administration of the regime for libraries, archives, galleries and museums to have the same, or similar, exceptions. This will benefit both institutions and users and increase compliance with the law.

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**Q58** Any other comments on Exceptions and Limitations: exceptions for libraries and archives

I have touched on the issues inherent with exceptions for libraries and archives, but this seems like an appropriate place to give you an idea of the scale of the issue for Archives New Zealand.

Archives New Zealand currently holds over 7 million records, as documented in our online finding aid Archway. Some of the most common records formats held by Archives include:

- Text-based (e.g. files)
- Photographic images (including negatives and prints)
- Maps and plans
- Moving image
- Sound recordings
- Artworks

Many of these are covered by Crown copyright, but others have mixed and private copyright. Qualifying and navigating ownership provisions is complex, particularly because we are dealing primarily with historic collections, which may not have been transferred with good accompanying metadata to help us identify the rights owner, or any consideration of copyright.

If only 1-5% of the listed holdings of our special format records were subject to the more difficult qualification and ownership provisions that we deal with, then Archives would potentially be faced with difficulty in establishing correct application and interpretation of copyright provisions, and facilitating access, to the following:

Record type Number listed in Archway 1-5% affected by copyright issues  
Photographic images (negatives and prints) 212,448 2,124-10,622 images  
Maps and plans 411,032 4,110-20,552 maps and plans (multiple pages in each record)  
Moving image 48,851 489-2,443 moving images  
Sound recordings 6,364 64-318 sound recordings  
Artworks 9,878 99-494 artworks

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Page 11: Exceptions and limitations: Exceptions for education

**Q59** Q47 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?

**Respondent skipped this question**

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**Q60** Q48 Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

**Respondent skipped this question**

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**Q61** Q49 Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

**Respondent skipped this question**

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**Q62** Q50 Is copyright well understood in the education sector? What problems does this create (if any)?

**Respondent skipped this question**

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**Q63** Any other comments on Exceptions and Limitations: exceptions for education **Respondent skipped this question**

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Page 12: Exceptions and limitations: Exceptions relating to the use of particular categories of works

**Q64** Q51 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? **Respondent skipped this question**

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**Q65** Q52 What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered? **Respondent skipped this question**

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**Q66** Q53 What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered? **Respondent skipped this question**

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**Q67** Q54 What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered? **Respondent skipped this question**

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**Q68** Q55 What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered? **Respondent skipped this question**

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**Q69** Q56 Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs? **Respondent skipped this question**

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**Q70** Q57 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? **Respondent skipped this question**

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**Q71** Any other comments on Exceptions and limitations: exceptions relating to the use of particular categories of works **Respondent skipped this question**

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Page 13: Exceptions and limitations: Contracting out of the exceptions

**Q72 Q58** 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?

Respondent skipped this question

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Page 14: Exceptions and limitations: Internet service provider liability

**Q73 Q59** What are problems (or benefits) with the ISP definition? What changes, if any should be considered?

Respondent skipped this question

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**Q74 Q60** 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?

Respondent skipped this question

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**Q75 Q61** 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.

Respondent skipped this question

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**Q76 Q62** What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?

Respondent skipped this question

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Page 15: Transactions

**Q77 Q63** 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?

We support the idea of exploring the creation of a CMO for taonga and taonga-derived works, or perhaps wider mātauranga Māori, in accordance with the recommendations of the Waitangi Tribunal in WAI 262.

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**Q78 Q64** 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.

Respondent skipped this question

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**Q79 Q65** 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.

Respondent skipped this question

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**Q80 Q66**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?

Respondent skipped this question

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**Q81 Q67**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?

Respondent skipped this question

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**Q82 Q68**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.

Respondent skipped this question

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**Q83 Q69**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?

Respondent skipped this question

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**Q84 Q70**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?

Respondent skipped this question

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**Q85 Q71**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.

An example – provided above but provided here again - of this is the Te Ao Hou and Tū Tangata photograph collections. These were magazines published in the 20th century with a Māori world focus. The photographic component includes a large number of uncaptioned, unidentified images, and copyright is therefore unknown in many cases. While Crown copyright may be assumed in some instances, this is not universal. If it is confirmed that copyright is held by a third party – for instance the photographer Ans Westra – researchers must seek and confirm they have copyright clearance before items may be copied. These are a significant collection of mid-20th century photographs that is extremely resource-intensive to administer both for the researcher and for the archivist and so are not being accessed and reproduced.

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**Q86 Q72** 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?

We deal with access and reproduction requests on an ad hoc basis, but we lack the resourcing to embark on a systematic register of orphan works, or a strategy for dealing with them. We recognise the inherent copyright issues with orphan works as one of the major barriers to their access by the public. We estimate that about 0.33 FTE per annum is spent administering, or checking for, orphan works.

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**Q87 Q73** 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?

Respondent skipped this question

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**Q88 Q74** What were the problems or benefits of the system of using an overseas regime for orphan works?

Respondent skipped this question

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**Q89 Q75** 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?

Respondent skipped this question

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**Q90** Any other comments on Transactions

Respondent skipped this question

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## Page 16: Enforcement of Copyright

**Q91 Q76** 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?

Respondent skipped this question

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**Q92 Q77** What are the problems (or advantages) with reserving legal action to copyright owners and their exclusive licensees? What changes (if any) should be considered?

Respondent skipped this question

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**Q93 Q78** Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?

Respondent skipped this question

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**Q94 Q79** 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?

Respondent skipped this question

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**Q95** Q80 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?

Respondent skipped this question

**Q96** Q81 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.

Respondent skipped this question

**Q97** Q82 Are peer-to-peer filing sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?

Respondent skipped this question

**Q98** Q83 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?

Respondent skipped this question

**Q99** Q84 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?

Respondent skipped this question

**Q100** Q85 What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?

Respondent skipped this question

**Q101** Q86 Should ISPs be required to assist copyright owners enforce their rights? Why / why not?

Respondent skipped this question

**Q102** Q87 Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?

Respondent skipped this question

**Q103** Q88 Are there any problems with the types of criminal offences or the size of the penalties available under the Copyright Act? What changes (if any) should be considered?

Respondent skipped this question

**Q104** Any other comments on Enforcement of copyright

Respondent skipped this question



Page 17: Other Issues: Relationship between copyright and registered design protection

**Q105** Q89 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?

Respondent skipped this question

**Q106** Q90 Have you experienced any problems when seeking protection for an industrial design, especially overseas?

Respondent skipped this question

**Q107** Q91 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?

Respondent skipped this question

**Q108** Q92 Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?

Respondent skipped this question

**Q109** Any other comments on Other Issues: Relationship between copyright and registered design protection

Respondent skipped this question

Page 18: Other issues: Copyright and the Wai 262 inquiry

**Q110** Q93 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.

The analysis of problems is accurate for the purposes of reviewing this piece of legislation. What we are awaiting currently is the government's decision on responding to WAI 262, and how the various pieces of legislation will intersect. We will be very interested in working on this in detail once we get to an options stage for legislative amendment.

**Q111** Q94 Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?

We agree with the Tribunal's use of the concepts and are poised to respond based on the government's response to WAI 262. We hold significant amounts of mātauranga Māori and items that could be considered taonga works and taonga-derived works. The policy implications of the response will be significant.

**Q112** Q95 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 can see that there will be points of confluence between the Copyright Act and the legislation that directs the conditions for use and treatment of taonga works and mātauranga Māori. We will be watching these developments closely and as noted, will seek to be involved in the co-design of these protection mechanisms.

**Q113 Q96** 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?

We support the exploration of such a workstream, and are eager to be involved in this exploration and implementation should a workstream eventuate. Our Kaitohutohu Mātāmua, Principal Advisor Ratonga Māori, has significant expertise in this area.

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**Q114 Q97** How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?

We recommend a co-decision model, not a consultation model, in which tangata whenua are joint creators and decision-makers on the policy and process of the workstream. This is in keeping with the Tribunal's recommendations on how public offices should proceed when dealing with Maori intellectual property. Ensuring that Treaty of Waitangi principles and considerations are centred at each step of the process will result in the most effective co-design of the workstream.

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**Q115** Any other comments on Other Issues: copyright and the Wai 262 inquiry

Respondent skipped this question

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Page 20: Information you've provided that should not be publicly available

**Q116** Please specify (by question number) which of your answers you object to being published by MBIE

Respondent skipped this question

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**Q117** Please specify (by question number) which of your answers contain information that MBIE should consider withholding if requested under the Official Information Act. For each question number, please tell us which information in your answer you believe would need to be withheld and why (preferably by referring to the relevant ground in the Official Information Act).

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Respondent skipped this question