

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

## Your name and organisation

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<b>Organisation</b>	SPADA (Screen Production and Development Association)

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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?  <i>[Insert response here]</i>
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?  The ability of the Legislature to keep up with technology is limited. Adaptability or resilience to future technology change is a desirable objective. Statements of principle have worked reasonably well in the Privacy Act for example. The Courts have been able to apply them effectively.  <i>[Insert response here]</i>
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.

	<i>[Insert response here]</i>
4	What weighting (if any) should be given to each objective?
	<i>[Insert response here]</i>

### 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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
8	What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?
	<p>Ownership will provide context in which Directors views on authorial rights or moral rights might be considered. Clarity of control is important in the screen business. Writers often direct the resultant film in New Zealand. The producers negotiate with funders to secure cash flow to make the work. Most involved prioritise that something will be brought to the screen without disabling dispute. This requires the ability to acquire and aggregate rights so as to provide security against which advances are made and to remove conflicts of interest. This is why the Producer usually holds the intellectual property rights for the financiers according to their respective arrangements. It is also the explanation for the film work definition of author. Spada members would not support a limitation on contracting out of the Act as discussed at Question 58 of the Issues Paper. We support consideration of Commissioned Works as to the utility of the use of the word ‘commissioned’ without further definition as to what this comprises. See <i>Pacific Software Technology Ltd v Perry Group Ltd</i> [2004] 1 NZLR 164(CA) at 174 and <i>Sealegs International Ltd v Zhang and others</i> [2018] NZHC 1724 [229]. This is important as the default first owner is that person. Consideration might be given to aligning literary works and musical compositions with other works in terms of the default first owner.</p> <p>Another aspect of commissioning that is sometimes troubling is the inclusion of “...or agrees to pay for...” in s21(3)(a) of the Act. This sometimes effectively substitutes a debt for copyright ownership. The balance between a commissioning producer having funded a production facing reversion of copyright ownership in the work compared to the creative left only with a right of action in debt is difficult. The UK and United States position does not vest ownership in the commissioner and may be more workable although any change in the definition of author would require discussion. The UK’s presumed joint authorship of producer and principal director could likely be addressed contractually.</p>
	<i>[Insert response here]</i>

9	<p>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?</p>
	<p><i>[Insert response here]</i></p>
10	<p>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?</p>
	<p><i>[Insert response here]</i></p>
11	<p>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?</p>
	<p>Historically films have been locked into arrangements with entities such as sales agents when the agent either ceases to function or ceases exploitation of the work. Often, they have granted security over their inventory which can be impracticable or uneconomic to unravel. It seems more sophisticated contractual arrangements have reduced reports of this occurring.</p>
12	<p>What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?</p>
	<p><i>[Insert response here]</i></p>
13	<p>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?</p>
	<p><i>[Insert response here]</i></p>
14	<p>Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?</p>
	<p><i>[Insert response here]</i></p>

## Other comments

*[Insert response here]*

### **Rights: What actions does copyright reserve for copyright owners?**

15	<p>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?</p>
	<p><i>[Insert response here]</i></p>

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?

The problem arising from an offshore authorisation is evident from the case cited in your footnote 91 *Inverness Medical Innovations Inc v MDS Diagnostics Ltd* 93 IPR 14 at 250. The websites are volunteers to the activities in a way similar to banks. Regulators and enforcement bodies have seen the need to engage with banks in relation to financial transactions where the bank could argue for a passive role similar to some websites. If a legal wrong is causing damage there should be a remedy.

## Other comments

*[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.

We support the notion of data being property as found by the Supreme Court in *Dixon v R*. Much of what is used in the making of a film is data for much of its existence. Many films are shot in digitally rendered in a site distant from others who work on or approve it. The additional rights are welcome.

22	<p>What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
23	<p>What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
24	<p>Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.</p> <p><i>[Insert response here]</i></p>

## Other comments

*[Insert response here]*

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

25	<p>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?</p> <p><i>[Insert response here]</i></p>
26	<p>What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?</p> <p>Performers rights might give rise to similar issues of control becoming blurred. There is thus a cost to such rights. At present, any recording or transmission of a performance requires the consent of performer. That in practice would also provide an opportunity to obtain rights in relation to any resultant recording. The issue is whether a performer should also be able to assert moral rights (attribution and non-derogation) and be granted the right to authorise reproduction, and distribution of their performance. It is not clear why the CPTPP rights only apply to sound recordings and not AV. The Screen Industry implications may be an extension of the required consent process to include potential waiver of moral rights (or credit clause) in return for a negotiated payment for performance?</p> <p><i>[Insert response here]</i></p>
27	<p>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?</p> <p><i>[Insert response here]</i></p>

28	What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?
	<i>[Insert response here]</i>
29	Is it clear what the TPMs regime allows and what it does not allow? Why/why not?
	<i>[Insert response here]</i>

## Other comments

*[Insert response here]*

### 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?
	<i>[Insert response here]</i>
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?
	<p>Our consultation has not revealed sufficient particular difficulties with the statutory exceptions which facilitate research or private study, news reporting or criticism to support a move to fair use. Documentary films drawing heavily from copyright works have been made or shown in New Zealand. A relevant example of a documentary shown in New Zealand is 'Going Clear: Scientology and the Prison of Belief' by Alex Gibney in 2015. Interestingly this film was not shown in England reportedly<sup>1</sup> because Sky Atlantic, the rights holder, could not exclude Northern Ireland from its broadcast footprint. This was important as defamation claims in Northern Ireland did not require proof of substantial harm whereas the 2013 Defamation Act in England did.</p> <p>This practical experience supports the contention that fair use defences in the style of those developed in the USA are unnecessary in addition to the uncertainty and other arguments made elsewhere. Some in the industry point to a loss of control and fair revenue distribution by virtue of the effect of fair use provisions and power imbalances between content creators and large internet providers <i>[Insert response here]</i></p>
32	What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?
	<i>[Insert response here]</i>

<sup>1</sup> <https://www.theguardian.com/film/2015/apr/28/going-clear-the-film-scientologists-dont-want-you-to-see>

33	<p>What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
34	<p>What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?</p> <p>Examination of the incidental use permission found in s41 of the Act is useful. Lawyers in the screen industry report difficulty in advising on this<sup>2</sup>. Paragraph 284 of the Issues paper seems inconsistent with paragraph 6.2 of Frankel.</p> <p>Exceptions for data recovery purposes, non-commercial private use and where included in professional advice have been suggested as warranting consideration.</p> <p><i>[Insert response here]</i></p>
35	<p>What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
36	<p>What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
37	<p>Are there any other current or emerging technological processes we should be considering for the purposes of the review?</p> <p><i>[Insert response here]</i></p>
38	<p>What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?</p> <p><i>[Insert response here]</i></p>
39	<p>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?</p> <p>Parody and satire of copyright works are accepted as being difficult areas. Paragraphs 307 – 320 of the Issues Paper discuss a lot of them. We offer a cautious answer to question 39 of the Issues Paper. They are sometimes framed as freedom of speech issues but can amount to a substantial adaptation of the source work. They should not be conflated with criticism and review. Having regard to the competing interests, complexity is to be expected and accepted. There is not always a simple answer. Parody and satire are a class of copyright monopoly exceptions in some other jurisdictions as discussed in the Issues Paper. This has not proved as precise as intended. Consideration could be given to adding the word comment to s42(1) so it read “...purposes of criticism, comment or review...” with other additions to more closely align to s30 CPDA UK. This would more tightly align the new work to the freedom of speech objective whilst allowing for the possibility of caricature and pastiche.</p>
40	<p>What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?</p> <p><i>[Insert response here]</i></p>

<sup>2</sup> Intellectual Property in New Zealand 2011 Susy Frankel 6.2; *New Zealand Rugby Football Union v Saint Publishing Limited* 2001 WL 1407665

## Other comments

*[Insert response here]*

### 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.
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>

## 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?
	<i>[Insert response here]</i>
48	Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	<i>[Insert response here]</i>
49	Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	<i>[Insert response here]</i>
50	Is copyright well understood in the education sector? What problems does this create (if any)?
	<i>[Insert response here]</i>

## 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?
	<i>[Insert response here]</i>
52	What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?
	<i>[Insert response here]</i>
53	What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?
	<i>[Insert response here]</i>

54	<p>What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
55	<p>What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
56	<p>Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?</p> <p><i>[Insert response here]</i></p>
57	<p>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?</p> <p><i>[Insert response here]</i></p>

## Other comments

*[Insert response here]*

### Exceptions and Limitations: Contracting out of exceptions

58	<p>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?</p>
	<p>SPADA members would not support any restriction on contracting out from the Act.</p> <p><i>[Insert response here]</i></p>

### Exceptions and Limitations: Internet service provider liability

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

60	<p>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?</p>
	<p>We read the response to the terms of reference submitted by Recorded Music New Zealand Limited dated 27 November 2017; particularly the 4<sup>th</sup> schedule. We agree with and support those submissions. In particular we support measures that cause ISPs to assume greater responsibility and pay for use of copyright works. The decision in <i>Sky Network Television Ltd v My Box NZ Ltd and another</i> [2018] NZHC 2768 provides a more recent useful objective discussion of some new technology complexities by a judge with a strong IP background. Interestingly on 26 March 2019<sup>3</sup> the European Parliament passed two intensely debated measures. One requires websites to actively monitor uploaded copyright materials while the other obliged those linking to copyright material, such as news aggregators, to pay. The recent Christchurch tragedy underlines the desirability of ISPs to assume and be held to acceptable levels of responsibility.</p>
61	<p>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.</p>
	<p><i>[Insert response here]</i></p>
62	<p>What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?</p>
	<p><i>[Insert response here]</i></p>

## Transactions

63	<p>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?</p>
	<p><i>[Insert response here]</i></p>
64	<p>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.</p>
	<p><i>[Insert response here]</i></p>
65	<p>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.</p>
	<p><i>[Insert response here]</i></p>

<sup>3</sup> [https://www.theguardian.com/media/2019/mar/26/meps-approve-sweeping-changes-to-copyright-law-european-copyright-directive?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/media/2019/mar/26/meps-approve-sweeping-changes-to-copyright-law-european-copyright-directive?CMP=Share_iOSApp_Other)  
[https://www.theguardian.com/technology/2019/mar/26/what-do-major-copyright-changes-mean-for-internet-freedom?CMP=Share\\_iOSApp\\_Other](https://www.theguardian.com/technology/2019/mar/26/what-do-major-copyright-changes-mean-for-internet-freedom?CMP=Share_iOSApp_Other)

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?

*Sky Network Television Limited v Campbell* [2018] NZDC 12918 is a first instance decision which illustrates a workaround arising from the creaking enforcement issues of the current legislation. It is relevant to Issues Paper question 77. Sky was presumably a nonexclusive Licencee of multiple copyright works currently and in the future. This has led to the use of the FTA to enforce legal rights arising from misrepresentations as to the legality of accessing copyright works using set top box software. The Judge applied European, English and Canadian decisions. The defendants were New Zealand domiciled. The judges reasoning process involved a finding of breach of copyright. There has been no appeal. It is not justifiable for a copyright Licencee to be unable to enforce its valuable copyrights. Section 101A of the CPDA UK or similar would assist.

[Insert response here]

78

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

Question 78 attracts a affirmative response. The cost of enforcement, the disclosure required to prove title coupled with elusive and often impecunious defendants makes litigation by a participant in New Zealand's screen industry to enforce copyright unlikely. It is often seemingly minor infractions of copyright that put the owner to an election as to whether to incur the costs and reputational risk of enforcement or allow the gradual erosion of their rights. A common feature of problems with the Act is the cost of enforcement.

Taonga works are a valuable asset which often contribute to distinctive copyright works. Spada members value the current system of attachment of Kuia and Kaumatua to projects. The process proposed would appear to offer a constructive forum in which to resolve issues associated with the use of such symbolic works.

[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	<p>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?</p>
	<p><i>[Insert response here]</i></p>
81	<p>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.</p>
	<p><i>[Insert response here]</i></p>
82	<p>Are peer-to-peer file sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?</p>
	<p><i>[Insert response here]</i></p>
83	<p>Why do you think the infringing file sharing regime is not being used to address copyright infringements that occur over peer-to-peer file sharing technologies?</p>
	<p><i>[Insert response here]</i></p>
84	<p>What are the problems (or advantages) with the infringing file sharing regime? What changes or alternatives to the infringing file sharing regime (if any) should be considered?</p>
	<p><i>[Insert response here]</i></p>
85	<p>What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?</p>
	<p><i>[Insert response here]</i></p>
86	<p>Should ISPs be required to assist copyright owners enforce their rights? Why / why not?</p>
	<p><i>[Insert response here]</i></p>
87	<p>Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?</p>
	<p><i>[Insert response here]</i></p>
88	<p>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?</p>
	<p><i>[Insert response here]</i></p>

## 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?
	<i>[Insert response here]</i>
90	Have you experienced any problems when seeking protection for an industrial design, especially overseas?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
92	Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?
	<i>[Insert response here]</i>

## 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.
	Taonga works are a valuable asset which often contribute to distinctive copyright works. Spada members value the current system of attachment of Kuia and Kaumatua to projects. The process proposed would appear to offer a constructive forum in which to resolve issues associated with the use of such symbolic works.
94	Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?
	<i>[Insert response here]</i>

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?
	<i>[Insert response here]</i>
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?
	<i>[Insert response here]</i>
97	How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?
	<i>[Insert response here]</i>

## Other comments

Screen Production and Development Association of New Zealand response to Ministry of Business Innovation and MBIE Review of the Copyright Act 1994 Issues Paper November 2018. We welcome the opportunity to participate in this review and anticipate further involvement with interest. Our responses are confined to aspects of particular importance to the screen industry. Discussion with members as to their practical experiences continues.

SPADA

The Screen Production and Development Association of New Zealand (SPADA) is a voluntary advocacy group representing the domestic screen industry in New Zealand. We have regularly contributed to relevant reviews and inquiries. An example is ‘Balancing Copyright in New Zealand’ of October 2016. This was a joint submission regarding implications of the TPPA and copyright review dealing with technological protection measures, safe harbours and fair use while recommending the examples available in the United Kingdom.

SPADA members make screen works which include all forms of copyright and other intellectual property. Projects usually take many years from inception to publication let alone recovery of investment. Seven years for a feature films journey to commencement of principal photography is common. This means predictability and clarity are valuable in every sense.

SPADA shares the Government’s aim to “help ensure a screen industry that is more sustainable, (and) brings greater long-term economic benefits to New Zealand. As we stated in the introduction to our paper responding to the New Zealand Screen Production Grant consultation on 4 March 2014 SPADA fully concurs with Government that this will only be achieved by “*building a strong base of local New Zealand screen companies and talented individuals developing unique IP*”. Furthermore, SPADA believes it is vital that the ownership of this IP is retained in New Zealand, by New Zealand residents or domiciled companies to ensure that success is reinvested into the New Zealand economy. Retention and protection of intellectual property remains a key aspect.

SPADA members screen productions are often financed internationally with complex mixtures of sales advances appropriated to geographic territories and loans of various kinds. Tranches further denominated by medium and time are everyday negotiations. Such arrangements are secured by various transfers and licences of copyright. The financiers often require suitable insurance cover known as errors and omissions and which includes defects in copyright chain of title. International



legal consistency is a key ingredient in making these kinds of arrangements in an economically efficient manner.

#### Screen Industry in New Zealand

The screen industry is generally accepted as valuable to New Zealand. The, 56 page, November 2017 New Zealand Institute of Economic Research report 'The economic contribution of the screen industry' reliably sets this out in detail including the following statements in the executive summary:

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#### **The screen industry makes a strong economic contribution**

The screen industry added \$1.015 billion to real GDP in 2016. Others state the 2017 figure at \$3.5 billion<sup>4</sup>.

The motion picture sub-industry, a component of the screen industry, is geared towards exporting and its estimated contribution to export volumes is around \$706 million annually. The motion picture sub-industry includes the production and distribution of film, television, commercials and videos.

#### **The screen industry has increased job stability, increased wages and well paid visual effects jobs**

There were 14,000 people working in the industry in 2015.

#### **The screen industry support New Zealand's attraction strategy**

Film tourism has shown strong growth. Total spending by international visitors in the Matamata-Piako District, where Hobbiton is located, increased from \$9million in 2010 to \$45 million in 2015.

*[Insert response here]*

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<sup>4</sup> Kiwi Creativity Doesn't Just Happen March 2019