

16th March 2019

The Ministry of Business, Innovation and Employment
WELLINGTON

Dear Minister

Review of the Copyright Act 1994, Issues Paper

1. I refer to the *Issues Paper – Review of the Copyright Act 1994* (Issues Paper) released by the Ministry of Business, Innovation & Employment in November 2018.
2. I am particularly interested in the issue of moral rights and have particular experience with the way the moral rights regime works in New Zealand. The Ministry asks for input and comments on the moral rights regime and asks 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?
3. Before answering that question, a bit of background. I am Tainui – Ngati Hine, Ngati Mahunga. I am a commercial artist based in Tutukaka, Northland. I started my career as a self-taught fashion designer, setting up my own label at the age of 19. I then worked for well-known companies such as Canterbury International and Town & Country Surf Designs. From an early stage in my career I started using flowing lines and tactile textures, and this became a feature of my earlier work.
4. This developed over time into what has become one of my signature features, the use of strong clean lines. Most of my creations come from a world of bold colours and optimistic clarity. In a way this is a type of pop-art invitation to a feel-good New Zealand celebration.
5. I am of Maori, Chinese, Danish and Scottish descent. This is reflected in my art, which reflects my navigation on a journey of cultural discovery and importantly from a personal perspective, self-acceptance. In a way, my artwork is a sort of personal therapy, kai for the mind and soul.
6. My mahi is my way of connecting with those around me. I am lifted by the positivity that comes from people I meet, wanting to connect with me and my mahi. It is important to me as an artist that people engage with my work on several levels. I want them to touch, smell and view it, in other words to feel it in a number of ways. I always try to get people to connect with my art and become familiar with it in all these ways.
7. I work in a number of mediums, not just fine art. These other mediums include wood, glass and metal. This allows me to reflect my multi-cultural make-up. In terms of artworks I usually paint on plywood. I do this because I like to emphasise the different grains, knots and blemishes, all of which have a history and tell a story. They also bring a depth to my work and provide a theme which runs through the works.

8. My style has been characterised by the particular way in which the flora and fauna is represented. Central to this is the effort to achieve natural flow in the works and by the use of vibrant, uplifting colours. As far as I'm concerned, my style is unique. It is also closely associated with him personally and I take a lot of personal pride in this.
9. I like to think that the detail of my mahi is in its simplicity. I try to achieve this by keeping details to a minimum. This allows me to achieve an image of high impact, depth and meaning. It's a challenge to achieve this but I feel that over the years I have developed my style to allow me to achieve works which are stronger because of it. I try to employ the motto - less is more. I also like to think that with my work it doesn't mean it is less meaningful.
10. I believe my style and philosophy have struck a note and been accepted in the contemporary New Zealand art scene. For example, in 2010 I was selected along with 5 other Maori artists to provide authentic Maori designs to be used for the Rugby World Cup 2011. As part of this selection, my designs were marketed and sold worldwide in the build-up to and during the RWC 2011. I was proud to be associated with this, because it allowed me to help promote Aotearoa and my Maori heritage to a global audience.
11. As an artist I have taken a number of years to get to where I am. I love doing what I do, I love being who I am. My family is my life and so is my art. As an artist, my work is a piece of me. Each piece is personally connected to my being, you could say they are my tamariki. I haven't 'chosen' to be an artist, I 'have' to be one as it's who I am. I need to expand. The main reason I became an artist in the first place was because I needed to save myself from depression. It was about 9 years ago when I hit a wall and was pretty suicidal. I had to stop work for a few months and get myself out of a really dark patch.
12. Through medication, therapy and the love of my whanau, I took time out to heal. During this healing time I started painting and from that I created my first piece 'Whanau'. Something clicked for me and I realized that if I was going to get well and love life, I needed to do my art. My art was ultimately the thing that saved me.
13. Since that point I had to set some very clear values for myself and how I wanted to be treated. I have worked hard to be true to myself and take control of my depression.
14. I am a director of a company Pillay-Hansen Limited, with the registered office address of 26 Tutukaka Block Road, RD3 Tutukaka, Whangarei. The company enters into commercial arrangements. I am however the author of all the copyright works that are create and I retain copyright in my own name as the author. That is, for paintings, prints and other secondary uses such as designer products, printed stationery and for any three-dimensional objects such as sculptures.
15. Apart from prints I don't like to sign the front. I do however always sign the back of my works. This is done with my name "Shane" alongside the title of the work. By signing each of my artworks in this way, I identify myself as the author of the artwork and assert my right of authorship.

16. I have exhibited in a number of galleries in New Zealand. I have strong relationships with galleries that represent my work. Over the years I have worked with a number of corporate companies and created specific art pieces for them. With these companies it works on a project by project basis and they had certain budgets based on what they wanted and felt they wanted to spend. Examples of work done on this basis included:
 - (a) New Zealand Olympic Committee;
 - (b) Air New Zealand projects;
 - (c) Different BMW projects.
17. I have had royalty agreements with a few companies. I have partnered with a number of strong New Zealand brands/organisations/government departments and have been commissioned by them over the last 9 years. These are brands that align with my own and it has been a positive commercial relationship. Also, I have supported fundraising efforts for many charities, including Forest & Bird and the Cancer Society.
18. I have been interviewed and had my work showcased on Maori Television, The NZ Herald and Air NZ In-flight magazine to name but a few. 2018 saw me present and host 'Design Junkies', a very popular design series on TVNZ 1. The second series is set to air in April 2019.
19. In 2017 and 2018 I was involved in litigation with a company Escape Rentals for breach of copyright and of my moral rights. The first indication I got of the existence of the infringing copyright works was on rental vans with my artwork on them. This was in March 2017 when I saw an Escape Rentals van go past with my HANSEN - KOTUKU artwork painted on the side. I was shocked. I remember the incident well because one of my children said words to the effect of: "Dad, that van's got one of your paintings on the side. My kids were right, it did. These are referred to in the statement of claim as the "HANSEN-'design' Campervans". As far as I'm concerned, they were blatant and cheap copies. I immediately sought legal advice but was worried about getting into litigation because of the cost. Eventually I decided I had no choice but to bite the bullet.
20. On 13 April 2017 my lawyers Haig Lyon wrote to Escape Rentals Limited alleging infringement of copyright, breach of my moral rights and breach of the Fair Trading Act. Legal proceedings were then filed. On 26 June a statement of defence was filed. Eventually, after extensive without prejudice discussions a settlement was reached.
21. In terms of the copying of my art, three vans are involved. To me it's a straightforward case of copying. My customers and the public who know my unique style, would notice the breach in an instant. This incident was really upsetting and made me determined to take action. I was hurt about this whole episode. To me it was like an identity theft.
22. I was seriously upset about the lack of judgement, brand awareness, respect and copyright knowledge, that Escape Rentals had shown. They had been blatant with the misuse of my artwork, going so far as to name the vans with 'Hansen' in the title.
23. I felt angry, disrespected and hurt. My mana and integrity as an individual and Maori artist is paramount and Escape Rentals had trampled all over it. They

had shown contempt and arrogance, not even consulting me before doing this. They had also disrespected the Maori culture by using someone who I believe is a non-Maori artist to do 'Maori Designs' for their vans.

24. I was particularly offended when someone like Escape Rentals refused to back down and tried to tell me how I should feel about my own artwork. I felt it was unacceptable to me that they felt they could determine my feelings regarding their treatment of me and my culture. They failed to understand that there are many levels of 'mauri' (life emotion, life force), respect, mana that they simply do not appreciate. As far as I'm concerned, not asking permission to use my work, then chucking cheap copies on a van, disrespected me, me and my work and my mauri.
25. I have always asserted my rights in the Copyright Works by making it clear that I am the author and that I do not relinquish any of my legal or moral rights.
26. I feel very strongly that Escape Rentals had distorted and mutilated the Copyright Works and prejudiced my reputation and honour. I say so for a number of reasons. First, my basic artistic integrity and reputation had been questioned. This is by being associated with a cheap, inferior copy placed on second-rate campervan. It is not the type of association I would have agreed to. It is contrary to all my principles and instincts as an artist.
27. My integrity and reputation had been damaged as a result, as had my personal integrity and the value and esteem that I believe I am held in. That is why it was important to me to assert my rights and make sure that this did not happen again. I also felt that this was a type of identity theft. I felt that my identity and mana had been stolen and plastered on a van as a cheap and inferior copy.
28. I regarded the copying exercise as derogatory treatment in the sense that the copied works had been subject to treatment by addition to, deletion or alteration or adaption of the copyright works or all of these. In particular, the person painting the vans had "mixed and matched" different parts of my works and combined them in ways that I never intended.
29. The copied works are hybrid concoctions which use different parts of my work in ways which I don't approve. They are effectively inferior variations. I considered that my honour and mana had been harmed and the distinctiveness and exclusivity of my art and my artistic efforts undermined. That is because the works had been mutilated and my overall message changed.
30. Another aspect that is difficult to explain or quantify is the copied works had created a false association between the defendant and me, and I have no doubt that many people would assume that the artist Shane or Shane Hansen identified on the Escape vans has received some sort of money from Escape to allow them to pedal his wares.
31. I firmly believed that Escape Rentals had quite deliberately attributed the copied works to me. This was made all the worse because the copied vans and the images on Escape Rental's website and Facebook page contained references to the "HANSEN - "design". By using the byline or slogan "*The*

World is Your Canvas”, Escape Rentals was in my view dishonestly piggybacking on my reputation and making money from it.

32. In relation to damages for breach of moral rights, the advice I received was even if I was successful with a moral rights claim that traditionally the courts have awarded very modest damages and that I would be fortunate if I received more than \$10,000 and more likely \$5000. That is on the basis that there was no real case law in New Zealand and Australian case law was not helpful, see *Meskenas v ACP Publishing Pty Ltd* [2006] FMCA 1136 (14 August 2006) and *Fernandez v Perez* [2012] NSWSC 1242 and *Corby v Allen & Unwin Pty Limited* [2013] FCA 370.
33. My understanding is that the moral rights provision has not been relied on very often in New Zealand and it is not generally regarded as a viable option for an artist in situations such as the one I faced. In particular, there is very limited authority in New Zealand on breach of moral rights for derogatory treatment of an artistic work and the argument was made that this type of claim is designed to protect an author who is not the owner of the copyright works or alternatively, where there was no serious allegation of copyright infringement. In other words, the position was taken that the provision is directed to situations where ownership has passed and derogatory treatment is alleged.
34. Further, in this particular case Escape Rentals contended that no distortion or mutilation of the work had occurred as my works it not actually been touched. In other words, the argument was that these were new works and not a mutilation of existing works. Further, in this particular case Escape Rentals contended that no distortion or mutilation of the work had occurred as my works it not actually been touched. In other words, the argument was that these were new works and not a mutilation of existing works.
35. Finally, an issue arose as to whether the use of my name on the vans genuinely amounted to false attribution or whether the painter of the vans was simply saying he was inspired by my works and was paying homage to me. Further, the argument was raised that artist had simply been inspired having seen my works on the Internet.
36. Whether these arguments were well made a matter which I not know the answer to given the matter was settled. However, they did raise doubts in my mind particularly given the likelihood that even if successful, the damages would be very low. All in all, the exercise was simply not worth the effort.
37. For these reasons I would very much like to see the whole more rights regime reviewed and strengthened so that artists like me are not on the back foot from the word go and where they can obtain decent damages for the true loss suffered, rather than some token sum awarded by the Court, almost as a gesture.

Yours faithfully,

Shane Hansen

