

# Submission template

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## Review of the Copyright Act 1994: Issues Paper

### Instructions

This is the template for those wanting to submit by Word document a response to the review of the Copyright Act 1994: Issues Paper.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the potential issues explored in the Issues Paper by 5pm on Friday 5 April 2019. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your responses to the Issues Paper questions in the table, “Responses to Issues Paper questions”. Your submission may respond to any or all of the questions in the Issues Paper. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues not mentioned in the Issues Paper in the “Other comments” sections.
4. When sending your submission:
  - a. Delete this first page of instructions.
  - b. Include your e-mail address and telephone number in the e-mail accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
  - c. If your submission contains any confidential information:
    - i. Please state this in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
    - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 1993 also applies.

5. Send your submission as a Microsoft Word document to [CopyrightActReview@mbie.govt.nz](mailto:CopyrightActReview@mbie.govt.nz)

Please direct any questions that you have in relation to the submissions process to [CopyrightActReview@mbie.govt.nz](mailto:CopyrightActReview@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Susan Battye
<b>Organisation</b>	Drama Magic Ltd

The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

## Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

**FROM SUSAN BATTYE  
APRIL 2019**

**The Susan Battye submission in response to the Issues Paper for the Review of the Copyright Act prepared by the Ministry of Business, Innovation and Employment.**

**Background on Susan Battye  
Susan Battye**

Susan Battye is a writer, playwright, and teacher. She was born in Christchurch, and has lived in Greymouth (NZ), Newcastle Upon Tyne (UK), and Auckland (NZ). Susan Battye has a BA from the University of Canterbury; a Diploma of Teaching from Christchurch College of Education 1976; a Diploma in Drama in Education from the University of Newcastle Upon Tyne 1979; and an MA from Loughborough University of Technology 1993.

She is the Managing Director of Drama Magic Ltd; former head of Drama at Epsom Girls Grammar School, and former Programme Manager for the Bachelor of Māori Performing Arts, Te Wānanga O Aotearoa Mangere campus. She was the founding president of Drama New Zealand (formerly the New Zealand Association for Drama in Education) and has fulfilled many roles including that of

editor of the Drama New Zealand website and founding editor of an ejournal, *The New Zealand Journal of Research in Performing Arts and Education: Ngā Mahi a Rēhia*.

Together with Thelma Eakin she wrote and directed *The Shadow of the Valley* in 1977, a play about New Zealand's biggest industrial accident, the Brunner Mine disaster of 1896. The play was subsequently published by Oxford University Press under the same name in 1980, and it has since been performed throughout New Zealand. West Coast writer Peter Hooper reviewed it as 'our own history transmitted into an art form'.

Her published works include: 'Living In', in *On Stage One*, ed. David Dowling (Longman Paul, 1983); 'Easy As Pie', in *On Stage Three* (Longman Paul, 1984); 'The Singing Lesson', in *Choices* (Longman Paul, 1992); 'Radio Waves' in *Production Works Book A.; The Plays* (1996), together with *The Exam* (1996) by Emma Norris, and *Paranoia Dementia or How to Tell if Your Head's about to Blow Up* by Sophie Findlay (User Friendly Resource Enterprises Ltd, 1996).

She is the author of 'Back Where You Belong,' in *International Plays for Young Audiences, Vol II*. ed Dr. Roger Ellis (Contemporary Drama Service/Meriwether Publishing, U.S.A., 2002); *Jigsaw* (Reed Publishing/Harcourt Education, 2002); *Finding Your Way with Plays* (User Friendly Resources Ltd, 2004); *Finding Your Way with Drama* (User Friendly Resources Ltd, 2004); 'No Pain Gain' and 'Tagged' in *Scenes and Monologs From The Best New International Plays* ed., Roger Ellis (Colorado Springs: Meriwether, U.S.A, 2005); *The Man and His Donkey* (South Pacific Press Ltd, 2007); *Telling Tales, Books A and B*, (User Friendly Resources Ltd, 2008); and *Exam Blues* (Rainbow Reading Programme Ltd, 2009). She continues to write plays which are made available on line via Playmarket NZ.

She edited *Drama Cuts* and wrote the *Drama Cuts Teacher's Resource Book* (Phoenix Education, 2010).

Battye co-wrote *Pōwhiri in Action - He Kete o Te Reo Pōwhiri* (User Friendly Resources 2011) and *The Treaty in Action – Ngā Mahi Tiriti* (User Friendly Resources 2014) with Kiri Waitai. In 2015 she co-wrote *Working With Treaty Principles at School - Ngā Tikanga o Te Tiriti hei Mahi i te Kura* with Edith Chaney.

Battye co-authored *'The Mine's Afire!'*, *The Journal of Tommy Carter, Brunner, 1896*, with Thelma Eakin (Scholastic, 2009) which was a finalist in the 2010 New Zealand Book Awards for Children and Young Adults. Christine Hurst reviewed the book in KidsBooksNZ, '...this story isn't just about the true life disaster. It's a tale of how a young boy copes with life in the late 1800's and it's a great snapshot of childhoods from a day gone by. With a three page glossary to explain the many obsolete terms used in the book it's an interesting read.'

*My Story New Zealand Cup Magic - Auckland and San Diego 1995* was published by Scholastic NZ in 2013. Elizabeth Gardner reviewed the book in *Your Weekend*, writing that 'this well-told tale, written in diary format, brings to life the excitement and joy that New Zealanders put behind Black Magic and the America's Cup. It provides education in this historic event and sailing terminology for older primary students and above'.

Other non-book significant publications include: *Once Were Warriors On Stage*, with CD Rom designer, Ian Allan, (ARTCO, 2004); *Dance and Drama in Uganda: The Pearl of Africa* with CD Rom designer, Ian Allan and Dr Mercy Mirembe Ntangaare (Drama Magic Ltd, 2005); and *South Pacific Pictures: The Inside Story* DVDROM (Drama Magic Ltd and South Pacific Pictures Ltd, 2009).

Susan Battye has co-written a series of eleven NCEA Level 1 English workbooks with David Wort (Sigma Publications, 2014-2015).

Susan Battye is a current board member representing Auckland, Northland and Waikato districts of NZSA, The New Zealand Society of Authors (PEN NZ Inc) and a former President of Drama New Zealand. She is the managing director of her company, Drama Magic Ltd ([www.dramamagic.com](http://www.dramamagic.com)) is devoted to the production of stage technology for use in schools and writing related activity which includes, researching and writing, as well as editing.

## 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 agree that the law need to keep pace with new technologies and that a review is relevant. I also agree that copyright seeks to incentivise the creation of original works and support the idea that the exclusive property and moral rights of the author or content creator is paramount.

As an author I hope to sell and licence my work and without adequate protection, unlawful copyright infringement will be robust on file-sharing sites, and there will be no incentive for me to produce my works. My rights and moral ownership of my work as the author, the creator of the content, should be paramount.

A third party has no 'right' to take my work and use it without my permission; anywhere else in our society, that would be called 'theft'.

I understand that some balance is needed but take issue with your statement in the terms of reference *"that over-protective copyright settings can inhibit the creation and dissemination of copyright works by inhibiting competition and 'follow-on' creation, or that it can "inhibit important cultural activities such as those of education, library and archival organisations"*.

As a writer I am a practised user of copyright. To quote or reference another work, I must seek permission and acknowledge it in the new work. Often that permission comes at a cost to either the publisher or the author who must find a way to 'get permission'. I have experienced this process first hand as an editor / writer of a book called Drama Cuts. It is a nerve racking process and not for the faint hearted! Publishers and writers have always paid for the use of copyrighted material in a new work and I see no reason why other industries should claim this is unfair, or why they would be deserving of 'some over-riding right' to 'use it for free', just because they want it.

I reject the inference that obtaining permissions is just too hard and 'stifles creativity'. I have heard about the need for free content for new technologies like 'data-mining and artificial intelligence'. This data is used for targeting advertising and influencing public opinion and sold to third party marketers, so it has a high commercial value. The concept of 'data mining' my work is an anathema to me.

Google has publicly stated its aim to upload every book title in the world to their site so they can give it away for free – and earn profits from the advertising on these sites, while citing noble intentions like 'democratisation of content'. They want free content to make more money. This directly impacts on my ability to even approach a New Zealand publisher with a proposal to publish, let alone get it published. Self-publishing is a nightmare in this climate.

The Terms of Reference also hopes to *'balance the copyright law to benefit New Zealander's as a whole -and considers the impact on creators, users and consumers.*

I believe that my created content is my property and the law should protect my right to earn from my work and choose what happens to it. The government should be upholding my rights as an author to my property ownership in law as it does for all other property.

There are already extensive 'Fair Dealing' exceptions which undermine my authorial rights to decide the fate of my work and give others 'free access' to my content. The existing exemptions already affect my rights to earn from my writing, with scant compensation. To extend these further is unconscionable.

My work as an author has already been given away by government under our extensive 'Fair Dealing' exceptions and the Marrakesh Treaty under Section 69.

In the 'Terms of Reference' you site the Amendment Act of 2008 which introduced new exceptions and limitation of liability of ISP's.

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?

*I believe that copyright needs to incentivise the creation of original works for cultural and national good and wellbeing. I believe that my writers' content is my property and the law should protect my right to earn from the work and choose what happens to it. The Copyright regime should uphold my property owner's rights of ownership. The current law should provide protection but competing legislation negates copyright protection for a number of exclusive rights listed in the Act. Strong IP protection is crucial for me to incentivise my creation of more books and writing.*

*I disagree that rights of the consumer or user or adapter should outweigh those of the copyright holder; IP is personal property and should be treated as such in the Act. I do not think the current legislation is able to protect NZ works effectively from piracy and the current extensive Fair Dealing exceptions erode both the rights and incomes of writers.*

*The current law is not protecting IP when it allows ISP's to operate with limited liability. It is impossible to control my intellectual property when there is no cost-effective mechanism to uphold this right. ISP's are lawless.*

*I believe that the extent of current Fair Dealing exceptions is not effectively compensated:*

- *PLR is outdated (no increase for 10 years), does not include private libraries or digital lending. This negatively impacts on my earnings.*
- *ELR – does not exist in NZ .This negatively impacts on my earnings.*
- *Copyright licences – are not mandatory for all schools. This negatively impacts directly on my earnings.*
- *Parallel importing legislation had a measurable and devastating effect on local publishing and the promotion of books and reading*
- *Marrakesh – proposed bill increases those entitled to 'free content' from 100,000 to 400,000 or 23% of the population that identifies as having a disability. This impacts directly on my earnings.*

*This lack of compensation affects my earning capacity as an author and my ability to earn from their work. Therefore, I believe the current exceptions are in danger of contravening the Berne convention, due to ineffective compensation and the inability to get action from ISP's who infringe my authored work.*

*I believe that point 69, page 16 – “that the Act provides creators with moral rights” is overturned by the extensive exceptions that the government currently allows.*

*I also want effective protection mechanisms:*

*Your point 69 (p15) in the issues paper: says “it enables owner to prevent people from importing their works into NZ or possessing an infringing copy” – this is untrue - as any exclusive right was overturned by your parallel importing legislation.*

*Ditto to your claim point 69 P 16; that the Act “enables copyright owners to prevent people from providing devices or services that help other people get around technological protection measures to prevent infringement.” – I believe that the Marrakesh amendment bill to allow 3000 schools and libraries to create copies with no regulation will actively encourage illegal file sharing and that the 2004 digital amendment that allows ISP's to escape accountability has removed the rights of myself as the owner of my work to uphold IP via any technological solution.*

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 believe the Act should reflect the three-step test of the Berne Convention in considering exceptions. The Berne Convention says exceptions are:*

- 1. Certain special cases*
- 2. That does not conflict with the normal exploitation of the work*
- 3. Does not unreasonable prejudice the legitimate rights and interests of the author.*

*I suggest current exceptions, in a market the size of NZ, prejudice these rights. Marrakesh gives anyone with a disability (23% of the population in the last census) free content on top of exceptions to education and libraries.*

*As a children's author, Marrakesh gives the file free to 3500 schools and libraries (all perscribed entities), I receive no ELR, DLR or PLR to compensate and I will not be able to sell many books to my target market.*

*This exception alone has prejudiced my legitimate right under the Berne Convention and fails to incentivise the creation of more work.*

4

What weighting (if any) should be given to each objective?

*I believe that it is paramount for the government to incentivise the creation of original works and to uphold the IP and moral rights of myself and other authors as the content creators.*

*International obligations under CPTPP, Marrakesh and the Berne Convention must be balanced and upheld so they create no economic disadvantage for content creators.*

*Reasonable access to work should only be permitted if the creator, in my case the author, is not disadvantaged. Otherwise there is no 'net benefit'. New Zealand's cultural works are taonga and cannot be treated as if they have no value to the creator. An economic model cannot be applied to measure cultural works in this way.*

### **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?

*The categorisation of literary works is adequate.*

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?

*The definition suffices for work created by writers and authors in NZ.*

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?

	<p><i>Data should be protected: code, databases all have some value. I am aware that ISP's and Bigtech want access to this kind of information for free under data mining – which they intend to on-sell – often to marketers, political campaigners and influencers and to other tech companies. This data can be bought by those who seek to gather and monetise it and should not be freely given.</i></p>
8	<p>What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?</p>
	<p><i>This is straightforward in the publishing and writing sector. Academic work is usually owned by the institution and they are paid a salary to produce it. Authors such as myself, have to monetise our work from its sale and are not paid salaries to write.</i></p> <p><i>However I believe that in the example 142 that the person who commissions the work should not be the owner of the work e.g. photographers, ghost writers. The copyright should go to the author and could be assigned to a commissioning entity by contract, if the author chose to do that.</i></p>
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>My original work should be protected. The cultural works I create reflect, enhance and document the human experience. Copyright should stay with myself as the content creator.</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>I support the 'artist re-sale right' Bill and believe this 2008 draft should be re-enacted to compensate visual artists.</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><i>Authors such as myself need support to insist on rights reversion clauses in a publishing contracts. The New Zealand Society of Authors can offer advice on such matters but a naïve first time writer doesn't know what they don't know! I believe that that if a book has been out of print for 12 months, with no plans for reprint then the rights should legitimately return to the author. Then I would have the ability to self-publish in print or digital form and make the book available once again – or choose to put the work in the creative commons. As the author I should be the one to make that choice as it is my IP.</i></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>It is odd that the government should put twice the copyright protection for the Crown in years (100) than the Act is willing to give authors such as myself. Crown works should be in the public domain. I disagree that the Crown could monetise some of its work, like Standards, to provide a return to taxpayers, as taxpayers have already paid for its creation. It is also puzzling that there are no exceptions for Crown copyright, when such extensive, uncompensated exceptions have been applied to works by New Zealand writers such as myself.</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>



	<i>I support harmonisation of copyright terms with our major trading partners in the English speaking world. This would deliver savings in international collective management agreements and payments across territories.</i>
14	Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?
	<i>I believe there is an unfairness regarding hereditary wealth: if someone forms a successful business, their children and descendants benefit for generations. If I make a success of writing my descendants can only benefit from my legacy for 50 years from my death. This does not encourage or incentivise me to establish a career in the creative sector and this restriction seems to penalise creative career choices. If the PM wants sustainable career paths to exist in the creative sector this is one issue that needs to be considered. There should be no term on Wai 262.</i>

## Other comments

*[Insert response here]*

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

15	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?
	<i>I believe there is no problem with exclusive rights, except that they are undermined by the extent of the exceptions in New Zealand, and these affect the ability to monetise my work.</i>
16	Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?
	<p><i>Secondary infringement is a problem due to our parallel importing law which overrides territorial copyright licence. NZ authors such as myself and publishers should be able to enforce this, but they can't.</i></p> <p><i>ISP's collect advertising revenue off sites that give away book files and their limited liability means that I as an author am powerless. Take down notices issued by publishers are ignored by ISP's (who are literally lawless). I am aware that overseas sites are infringing the rights of my fellow NZ authors, in NZ, as they give away books by NZ authors, free to any global territory. I disagree with your point 190 as the infringement activity is happening in this territory.</i></p>
17	What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?

*As a playwright and a teacher I am particularly aware that there are examples of this happening in the education sector, between teachers, schools, those in resource rooms being asked to copy works to use in class. Teachers say they would love to use my plays if they were 'copyright free'. There is very little incentive to publish volumes of plays because they are invariably photocopied. This means that a whole genre of writing i.e. plays is under threat in the New Zealand literary canon in New Zealand English and Drama classrooms. The result is that libraries throughout New Zealand purchase few plays. Remedy would be a mandatory copyright license for all schools and an ELR scheme that would provide some compensation.*

*Copyright protection and rights are not encouraged or enforced by MOE.*

## Other comments

*In the past I and my co-author Thelma Eakin experienced a breach of copyright concerning our play, *The Shadow of the Valley* which formed a significant part of a television series screened in more than one country. People even congratulated us on seeing our script 'brought to life' on screen. Unfortunately we were not able to gain any monetary benefit from this series. Despite engaging a lawyer at great personal expense who definitely identified a serious breach of copyright, we were unable to proceed because of a weakness in the Act governing copyright at the time. One of the actors in the TV series had a daughter who took part in my production of the play at Auckland Grammar School. He showed me a copy of a script for an episode that clearly indicated a breach of the published text had occurred. In the end I would have had to lodge the case in the High Court in London for the cost of a thousand pounds. This event created a serious setback for myself as a writer and a loss of possible earnings for ourselves as authors and the publisher, Oxford University Press. Hence my considerable interest in making sure this current Act is 'fit for purpose' and author friendly.*

|

## 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?

*ISP's that "communicate pdf's free to anyone and the transmission of that work" over the internet must be stopped to protect the rights of copyright owners.*

19

What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?

*I cannot understand why is MBEI wanting to future-proof a law for technologies which don't yet exist? Surely one would need to define parameters for new technologies and do a risk assessment for protecting the rights of copyright holders, rather than give blanket rights to something currently unknown?*

20

What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered?

	<i>A website giving away free books by NZ'ers in digital form is 'communicating' this work. This needs to be acknowledged and prohibited. This directly impacts on my ability to earn a living from my writing.</i>
21	Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.
	<i>Sites like oceanofpdf and bookebook.bike that give away free files of books and the ISP's that host them and collect advertising from these sites should be prosecuted under the Crimes Act – this is theft but the limited liability of ISPs in the 2004 amendment overrides our copyright law.</i>
22	What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?
	<i>Ditto above – we cannot enforce the law following the digital amendment and it takes away the rights of copyright owners, such as myself in favour of ISP's – this transfer of value has been allowed to happen and I as an author do not have the funds to pursue cases under international law.</i>
23	What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?
	<i>As an author I should be able to choose what happens to my work and be allowed to licence my material into the Creative Commons if I choose to do so, or not as the case may be. Many academics and some writers choose to do this.</i>
24	Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.
	<i>My main concerns is around the inability to counter infringement: through the cost of court and the limited liability of ISP's. I would like to see a low-cost tribunal to hear cases of infringement: from education or websites that host infringers into this market. I want to be able to enact site blocking via ISP's into this market to protect my copyright.</i>

## Other comments

*[Insert response here]*

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

25	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?
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	<p><i>I believe that the Wai262 consideration should mirror any amendments here to restrict culturally inappropriate use of material.</i></p> <p><i>Under the PEN International charter the NZSA supports freedom of speech, but demands self-regulation regarding hate speech, terrorist manifestos and fake news. We have no mechanism to remove to signal fake news.</i></p> <p><i>However, I do believe there should be limited exceptions for the use of part of a work for the purposes of parody and satire for the benefit of social comment and entertainment.</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> <hr/> <p><i>I see a problem with this regarding Marrakesh. I was requested by my Scholastic publisher offer one of my books to the Blind Foundation for publication. Th Blind Foundation paid someone to read my book to audio and now say they are the publisher of that new form of the work! Does this mean that they have the right to gain economic rights taken under exceptions? Please note that I as the author received <u>nothing</u> but the person who read the book was paid \$1500 by the BF. I believe this would contravene copyright exceptions but demands clarity.</i></p> <p><i>Does this new ‘performance of the work’ override authorship? Would I as an author be told if an audio is made by the BF of my work? Unlikely.</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> <hr/> <p><i>See above concerns re audio recording.</i></p>
28	<p>What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?</p> <hr/> <p><i>I believe we need to establish controls for TPM’s in NZ – ISP’s should be legally obliged to block sites that infringe copyright. File security is a major issue for writers, especially with e-book formats that have never been so easy to copy and share.</i></p> <p><i>TPM’s should be part of the requirement of digital files requisitioned under Marrakesh, so authors such as myself, can be assured that the prescribed entity produce this ONLY for the student or citizen with the disability – and not put the digital version into their school or classroom libraries or intranets.</i></p>
29	<p>Is it clear what the TPMs regime allows and what it does not allow? Why/why not?</p> <hr/> <p><i>My fellow authors have not experienced TPM’s – but widespread infringement.</i></p>

## Other comments

*[Insert response here]*

## Exceptions and Limitations: Exceptions that facilitate particular desirable uses

30	<p>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?</p>
	<p><i>No – in the literary sector book reviewing and criticism has always been a part of the eco-system and widely referred to by consumers, libraries and educators to make purchasing decisions.</i></p>
31	<p>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>
	<p><i>I am aware that public and school libraries in NZ ask individual publishers for blanket permission to reproduce book jackets with the purpose of advertising and promoting the work to their clients.</i></p> <p><i>I have not heard of any legal action around this type of use.</i></p>
32	<p>What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?</p>
	<p><i>Photographs should be an exception unless the outlet gains permission.</i></p>
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>None</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>

*As an authors I know that the book industry deals with widespread infringement both from the public and the education system.*

*When only 70% of our schools hold a copyright licence and MOE do not require this to be a normal cost of business, we know 30% infringe daily. This means that no income can be paid back to writers such as myself through collective management agencies that collect this data and apportion some compensation for authors whose books are used in schools.*

*Teachers misunderstand the 3% rule – for example a poem is an entire work and may be copied for use in class. Teachers (as we watch on teacher noticeboards) breach copyright by sharing digital files of books and resources.*

*Under the proposed Marrakesh Bill Amendment the government is proposing giving free content under exceptions to 23% of the population who identify with having a disability. MBEI said the increased number of users demanding free content will move from 100,000 to 400,000 – a huge increase in a market this size of NZ. At the same time all libraries and schools will be given the right to copy. No central repository, information on the user, or central database is proposed and no regulations for file security. The extent of this amendment will destroy the incomes for many writers such as myself in NZ. We know underfunded school libraries will not buy a book if their library has a digital edition. This Amendment Bill, we believe will severely damage already-meagre author incomes, who will not be able to afford costly court cases to remedy breach. There is no compensation on offer to authors such as myself for the increase in this exception, which is a disgrace and devalues the cultural contribution of our writers. There is no other product where the government legislates that the creator must give-away so many copies it destroys the potential to earn from the work – and in addition to library and education exceptions, Marrakesh is contravening the Berne Convention.*

35

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

*Transient reproduction should not apply to the literary sector – reading a transient copy of a book is still full use of the work and would negate any economic return for the writer.*

36

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

37

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

*[Insert response here]*

38

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

*[Insert response here]*

39

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?

*[Insert response here]*

40

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

*[Insert response here]*

## Other comments

[Insert response here]

### Exceptions and Limitations: Exceptions for libraries and archives

41	<p>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.</p>
	<p><i>I do not believe tech companies should argue for exceptions for data mining and AI. If they want to access content for these purposes, they should pay for it. They will only be monetising the content at the other end – so they get the money and not the content creator.</i></p> <p><i>Content in cloud computing and other sites is still protected by IP.</i></p>
42	<p>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?</p>
	<p><i>We should have clarity around technologies and include amendments to the Act when we know what technologies we are dealing with. We should not give exceptions for untested and unknown technologies as we have no way of proving they would protect the integrity of IP for copyright holders</i></p>
43	<p>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?</p>
	<p><i>I do not believe tech companies should argue for exceptions for data mining and AI. If they want to access content for these purposes, they should pay for it. They will only be monetising the content at the other end – so they get the money and not the content creator.</i></p> <p><i>Data mining is used extensively in marketing and media companies like Cambridge Analytica and Facebook have already shown they have breached privacy and IP laws by harvesting and manipulating data and then selling it – to advertisers, political parties and all. This is a very dangerous area and requires regulation and protection.</i></p> <p><i>The idea of giving tech-giants freer access to data is chilling. This should not be allowed to fall under the category of research.</i></p>
44	<p>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?</p>
	<p><i>There is an argument to allow the use of a work for parody and satire and I would argue in support of this exception. This use usually creates new work for the purpose of social comment or education. There should be limitations around cultural appropriateness. I note exceptions for this purpose have been adopted into other copyright regimes in Australia, Canada and the UK and parts of the EU. Social media use of memes and mash-up technologies means this exception is already in use - widely.</i></p>

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?

*Why do libraries need to make copies for collection management without permission? Replacement copies can be purchased. If they can't be purchased they could be copied but supporting the economic imperative to replace or extend the collection should come first to incentivise and support our writers. Librarians want to serve the public but should realise that libraries depend on books and authors for their existence, and if the amount of the exceptions destroy any incentive to write, it will have a narrowing and reductive effect on our wellbeing, national identity and unique NZ voice.*

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?

*If libraries copy and make content available on line they will damage an authors market. Libraries have limited budgets, but writers more-so and deserve fair compensation for work that the public wants to read under library exceptions. Authors receive no compensation for digital lending and this must be remedied without delay.*

## 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?

*Museums and galleries should have the same exceptions as libraries and archives to manage, promote and preserve their collections. More so, as often the objects are irreplaceable.*

48

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



**Notes:**

- **Authors receive no compensation under PLR for digital lending as current PLR legislation does not include e-books. Given the extent of digital lending by public and private libraries this is an outrage and the government has let authors down by not updating the law to include compensation for e-lending.**
- **Authors receive no compensation under ELR for the same use of their work in schools and school libraries as there is no ELR scheme in NZ (unlike Canada, the UK and Australia).**
- **At the same time the library sector is pushing for increased exceptions.**

*The exceptions need a compensation mechanism. It would be less galling if NZ had an ELR Educational Lending Right scheme to compensate our children's and NF writers for books in school libraries and ELR that included digital lending would also capture Marrakesh exceptions and compensate for that.*

*There is widespread infringement in our schools – firstly with the 30% of schools with no copyright licence and secondly with teachers 'copying anyway' for use in the classroom.*

49

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

*The Copyright Act provides enormous flexibility for teachers and pupils and educational institutions. Again, authors receive not compensation through an ELR scheme, and the collection management for course materials through CLNZ is only paid for by 70% of schools who have a licence.*

50

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

*CLNZ have a great tutorial on their site to educate teachers about how the education exceptions work and have produced a lot of collateral for schools that explain this. Many teachers understand copyright but choose to ignore it. I have been in library and resource workrooms where teachers come in and copy widely. I have seen them brush aside librarians who try to caution them about copyright.*

*The establishment of an ELR scheme in NZ would provide compensation.*

*The MOE should make it compulsory for schools to have a copyright library. It should be a cost of business. That they sanction copying and do not call for an ELR is letting down the writers who they want to use in their courses, but don't want to pay to support their work.*

*Authors know their books are used in schools and feel let down by government who continue to widen exceptions without compensation*

## Other comments

*[Insert response here]*

**Exceptions and Limitations: Exceptions relating to the use of particular categories of works**

51	<p>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?</p> <p><i>[Insert response here]</i></p>
52	<p>What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
53	<p>What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?</p> <p><i>[Insert response here]</i></p>
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><i>[Insert response here]</i></p>
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## Exceptions and Limitations: Internet service provider liability

59	What are problems (or benefits) with the ISP definition? What changes, if any should be considered?
	<i>[Insert response here]</i>
60	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?
	<i>[Insert response here]</i>
61	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.
	<i>[Insert response here]</i>
62	What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?
	<i>[Insert response here]</i>

## Transactions

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

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?

*[Insert response here]*

78

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

*[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

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?

*[Insert response here]*

81

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.

*[Insert response here]*

82

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

*[Insert response here]*

83	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?
	<i>[Insert response here]</i>
84	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?
	<i>[Insert response here]</i>
85	What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?
	<i>[Insert response here]</i>
86	Should ISPs be required to assist copyright owners enforce their rights? Why / why not?
	<i>[Insert response here]</i>
87	Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?
	<i>[Insert response here]</i>
88	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?
	<i>[Insert response here]</i>

## 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?

*[Insert response here]*

92

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

*[Insert response here]*

## 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.

*[Insert response here]*

94

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

*[Insert response here]*

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?

*[Insert response here]*

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?

*[Insert response here]*

97

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

*[Insert response here]*

## Other comments

*I found it difficult to manipulate the form and ran out of time. My apologies.*

