Submission template

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***

Please direct any questions that you have in relation to the submissions process to ***CopyrightActReview@mbie.govt.nz***.

Submission on review of the Copyright Act 1994: Issues Paper

Your name and organisation

Name	Helen Thomas
Organisation	University of Canterbury Library

☐ 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***. 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.

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?
	Yes, though objectives 4 and 5 are already core to legislative and treaty obligations and do not need to be specifically highlighted. Highlighting them focuses the attention on these to the detriment of other legislation such as the New Zealand Bill of Rights. *With objective 2, it should be stated that is that net benefits should include the benefits which are delivered to the NZ economy by the tertiary education sector.*
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?
	No
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.
	No, clarity and brevity are key to making the Copyright Act useful.

4	What weighting (if any) should be given to each objective?
	Equal weighting to the first three objectives. As a university library, we see the 2nd objective as most important to our work but understand that the entire copyright system needs function well and to support all parties involved.

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?
	There is no issue with the current categorisation but a set list does not always capture everything. A broad general categorisation of the works without differentiation in accordance with our international treaties would be less confusing.
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?
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?
	A specific exception for text and data-mining would make it clear that where content is openly available or not protected by a paywall, it can be used for these purposes. This would support university researchers who want to make greater use of databases for research purposes, but face a number of challenges to making use of the content due to licence restrictions.
8	What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?
	We believe that the current system works well and supports academic staff who are the main creators of content in a university environment.
9	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?
	One change which would increase clarity of ownership could be that any copyright created due to software is granted to the operator of that software.
10	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?
	A major omission in our current copyright regime is that artists who wish to build upon, comment on, or otherwise incorporate the work of others into their own have no clear right to do so.
11	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?

	The drive for academic authors to publish outweighs concerns about ownership of copyright. In effect this means that many authors assign copyright to the publisher without thought for the consequences. The reversion of the copyright of this content to its creator is not simple so academics rarely pursue it. A revision clause in publishing contracts or the automatic reversion of copyright to its creation should the publisher go out of business would help.
12	What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?
	NZGOAL has been of tremendous benefit to universities, not only in clarifying government policy on reuse of its works, but also in increasing the number of works available for reuse.
13	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?
	There are problems with an extension of copyright term. The standardisation of copyright terms to meet international obligations makes it simpler for users of copyright materials to understand their obligations/the restrictions.
14	Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?
	Section 117 applies where an unpublished work has been transferred to an institution, with conditions restricting publication, those conditions restricting publication apply even if copyright has expired. Archival papers which are protected for 50 years beyond the death of the author should not continue to be protected because the depositor may not want what is in those papers to be published. The Act should not be used to facilitate censorship. *Where culturally sensitive works are deposited under an agreement, these terms and conditions are generally respected by institutions. In some instances it may be appropriate to not release certain works for other reasons. These works could be covered by the Films, Videos, and Publications Classifications Act 1993 and should not be treated separately under the Copyright Act.* *Australia has recently changed its law in this area and New Zealand should follow Australia's lead.*

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

17	What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?

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?
19	What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?
20	What are the problems (or benefits) with using 'object' in the Copyright Act? What changes (if any) should be considered?
21	Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.
22	What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?
23	What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?
	Educational institutions rely heavily on the use of content in the public domain or that have been made available under a Creative Commons CC0 licence. Often these works are incorporated in teaching materials or shared publicly. The revocation of a licence would be difficult if not impossible to implement.
24	Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.
	The length of protection is too long. With many works being protected for the life of the author plus 50 years, this can result in copyright protection for over 100 years.

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?
26	What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?
27	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?
28	What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?
29	Is it clear what the TPMs regime allows and what it does not allow? Why/why not?

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?

	We are aware that students have removed images from their theses before posting these on the institutional repositories where they are available to the public. Many of these images could have been included under the criticism and review provisions, but the risk averse approach of some institutions meant that these could not be included where there was any uncertainty. *We support a change such as that made by the UK Government who introduced a general quotation right in in Section 30(1ZA) of the Copyright Designs and Patents Act.*
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?
	The benefits of criticism and review is that it can be broadly interpreted to cover uses that are not envisaged under the Act. Because these are 'fair' dealing exceptions, application of the fairness factors set out in case law means that, in the absence of an open-ended exception such as fair use, new uses not envisaged in the previous review of the Act can be undertaken so long as the copying is fair. An example in the university sector is the use of the exception to review works submitted by researchers for assessment under the PBRF funding model.
32	What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?
33	What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?
34	What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?
	We believe that the Canadian Act provides greater clarity and should be considered for the New Zealand Act. Canada has clarified the incidental copying issue and section 30(7) of its Act provides that: *"Incidental use* *30.7 It is not an infringement of copyright to incidentally and not deliberately* *(a) include a work or other subject-matter in another work or other subject-matter; or* *(b) do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or other subject-matter.*
35	What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?

	The Act should make it clear that internet caching is expressly covered in transient reproduction of works. Also, if a person is to view a video streamed online, there will normally be a temporary copy made so that the person can view the video – this should not be infringing. *Section 43A has the potential to be beneficial where a new technology is developed. For example, under s 47 teachers can play or show for the purpose of instruction a sound recording, film or communication work, but they cannot copy that work in order to be able to play or show the work. DVDs have now replaced VHS and they cannot be cued to the particular clip to be played in class. This necessitates the copying of the clip on to a storage device in order to play it in class. Section 43A provides that of the reproduction is incidental and is an integral part of a technological process for enabling the lawful use of, or lawful dealing in, the work and has no independent economic significance it could be useful. This would require a broad interpretation. This Section could also be modified or extended to include copying to enable good practice continuity and disaster recovery. The important factor is that they do not have any independent economic significance.*
36	What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?
	The current transient exceptions are unlikely to apply to cloud computing. Educational establishments are using cloud storage and copying works which means they are infringing copyright. This exception should be extended to include cloud computing. *Another problem is that many servers that are used by New Zealand universities are based in the US or Australia and copyright law would apply to those jurisdictions. Again, this would mean we are currently infringing copyright by storing material on servers.* *This is in direct conflict with Objective 3 of respecting the law as universities currently cannot abide by the law in order to carry out their work.*
37	Are there any other current or emerging technological processes we should be considering for the purposes of the review?
	Makerspaces are an emerging trend in libraries within universities, tertiary institutions and schools. The technologies within Makerspaces can include anything from 3D scanning and printing, laser cutters, virtual reality, augmented reality headsets to low-tech technologies including sewing machines, fine art material and construction tools. *Wider exceptions that allow for these types of use of new technologies within educational and creative spaces would be welcome. This would enable further creativity providing net benefits to New Zealand (objective 2) and provide clarity and certainty (objective 3). The Canadian Copyright Act contains a Non-commercial User Generated Content exception (29. 21) legitimizes these types of activity and provides future proofing of the act as technologies change.*
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?
	While data itself is not protected by the Act, a compilation of data is. The lack of a specific exception makes it difficult for university researchers to use these new and emerging technologies and research techniques with any surety as to their legality, thus inhibiting innovation and beneficial research outputs. The UK now has a specific exception for text and data-mining for non-commercial research. We would suggest a similar exemption be brought in 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?
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?

	An exception allowing the 'right to quote' be considered for inclusion in New Zealand's Copyright Act. Under the Berne Convention, of which Aotearoa New Zealand is a part of, Article 10 states: *(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.*

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.
	Universities maintain libraries, archives, museums, galleries and other public facilities with valuable research collections. Works in these collections have been digitised to preserve them and can then be, where possible, made available internally to members of the university. Some collections can be made available to the public, particularly if the works are of little or no economic worth, but are still valuable research resources. In many instances the difficulties and cost of locating rights holders means these collections are made available with a notice to rights owners to contact the library or archive if they wish them to be removed from public availability. In addition to generating research, universities are often repositories of valuable local history. Taking these out of circulation, can constitute a significant loss to the community. *There are also issues in the teaching and research space since such works are subject to the same copyright rules as works where the publisher, author or creator is easily identifiable and contactable.* *University libraries have collections of out of print journals preserved electronically under one of the library exceptions in the Act. Universities, who are often the publishers, would now like to make them available publicly. The contributors to the journals, who are either dead or difficult to locate, generally retain copyright. This makes it almost impossible to obtain consent to re-publish these works on the Internet. Not only are contributors difficult to locate the numbers of contributors, sometimes in the thousands, may make it impractical in terms of both time and money, to contact them.* *UC relies heavily on sections 51 – 53 as they support our core work of digitisation and interloan supply. We, and our UC colleagues, digitise content repeatedly for use in learning management systems or for research projects. We scan theses for use by researchers and find it frustrating that due to the current system we have to repeatedly digitise this content due to the restrictions which stipulate any copy must be destroyed within a reasonable timeframe. A change to this would enable us to focus the resource on other digitisation work, which is currently taking up performing this task.*
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?

	There is a risk to making our collections available. In digitisation for the open web uncertainty around ownership of intellectual property is a big disincentive and a lot of our cultural and scientific heritage remains undigitised because of this. The time involved in obtaining permission, even if the rights owner could be found, makes a digitisation project unaffordable. *So there is another (and much bigger), set of unquantifiable opportunity costs arising from the inhibiting effect of copyright and uncertainty around copyright. These costs fall most directly in the areas of teaching and research but there is a wider deleterious effect on our national culture as a whole. This doesn't just relate to orphaned works but also a more important body of out of print works that will be protected by copyright for many years to come.* *UC supports LIANZA and The National Library of New Zealand's response to this question in their respective submissions.*
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?
	The Copyright Act does not provide flexibility for libraries and archives to facilitate mass digitisation projects. The absence of an ability for a rights owner to claim statutory damages is one factor which is considered in the risk assessment of whether or not to make collections available to the public. Any introduction of statutory damages without a safe harbour for cultural institutions and universities to safely digitise and make their content available would be a negative change.
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?
	No. *UC supports the LIANZA response to this question in their submission.*
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?
	UC supports the LIANZA response to this question in their submission.
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?
	UC supports LIANZA and Te Papa's response to this question in regards to broadening the library and archive exceptions to include museums and galleries. *This would ensure more content is in the public domain and in turn would benefit researchers and society as a whole.*

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?
	No. *The current educational exceptions do not allow students to interact with content eg to collaborate eg via email, online class networks, social media or video chat. The modern pedagogical approaches such as the flipped classroom, where students learn through collaborating with their peers, is limited by this restriction.* *The current exceptions lead to a complicated system where academics shy away from using useful content because of the complexity in ascertaining whether they have been compliant with copyright law. For example, we regularly remove and amend content from our Learning Management System. This prevents content from being accessed and used by students because it did not comply with copyright law. An example of amending content is where we remove images due to an inability to gain copyright permission, thus reducing the value of content which provide valuable context to the text within a publication.* *UC supports the adoption of further, open-ended exceptions for education and research. A possible approach could follow the example of Canada, adding 'education' to one of the types of fair dealing allowed under s 29 of their Copyright Act. This would allow us to do things that we are currently not able to do but that would fall under the 'reasonable' criterion set out in the second objective in the issues paper.*
48	Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	No.
49	Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

Yes.

The impacts of the current limits to educational exceptions on lecturers' slides, recordings of lectures, provision of online exam papers and digital theses directly impacts on students' ability to have access to and use basic educational content.

The impact on libraries abilities to manage format migration, grey literature and 3D printing is less of a problem than the issues highlighted above but will grow over time and again impinges on the ability for students and researchers to access important education content.

Specific gaps for universities under the current regime:

- *Making available printed sheet music to students is problematic. Copyright Licensing Limited (CLL) and APRA/AMCOS have been unable to secure the rights to provide the universities with a licence covering this. As such, the universities are only able to copy printed sheet music within the very restricted limits of s 44(3)-(7) exception. The 'no more than 50% of the whole work' limitation means that only half a music score can be copied, unless only a single copy is required (s 44(1)). The limitation on repeat copying under this exception by anyone else in the University from the same sheet music book/score within 14 days is impossible to monitor/control in an organisation with hundreds or thousands of teaching staff spread across multiple locations which means no copying can take place.*
- *Increasingly some content is produced and available only on commercial streaming services. We can copy broadcast media under the Screenrights licence and we have licences for video services through our libraries like Kanopy. But new delivery mechanisms, such as streaming services like Lightbox or Netflix may not be able to be copied under these licences or subscriptions. It is uncertain whether we could apply 44A to copy something from a website (i.e. directly from the service) and the terms of use for these services are individual and cannot be purchased for institutional access. We might be able to rely on fair dealing for excerpts that were being specifically critiqued but this would be limited in scope.*
- *Illustrative uses are not covered by fair dealing and it is uncertain whether this could be classified as 'review' under s 42. For example, in lecture slides a physiology lecturer might include a picture of a lung next to some information about lungs. The use is not research/private study; it is not criticism or review. 44 (1) would cover the use in the slide as a single copy for use in the course of instruction. But now students expect that we will make the slides available in the Learning Management System, where the fair dealing argument becomes problematic.*
- *Materials available in electronic form only (whether ebooks or just online PDF documents). Some of this has no option for licensing and we have no print to copy from. Some are available for purchase in electronic form but only on the basis of an individual licence. Thus the only exception that would allow us to copy any part of such a work for teaching purposes is 44(3), thus limiting us to 3%/3 pages.*
- *Film clips: the universities' Screenrights licence does not cover copying from commercial DVDs. The Act permits the playing of films and sound recordings in class, however, the lecturer usually only wants to play a short clip. It would take too much class time to find the relevant place on a DVD to play, so the clip needs to be copied in advance. None of the educational exceptions have kept pace with this change in technology and do not allow copying for this purpose. S 47 could be amended to state say, 'streamed in an online classroom environment' or something similar. The current difficulty is that s47 doesn't mention "copying", only performing/showing, while section 45 unfortunately mentions only "copying" for educational purposes when those films are copied for purposes which "consists of or includes the making of a film or film soundtrack".*

50	Is copyright well understood in the education sector? What problems does this create (if any)?
	No. *The complexity of different formats and different permissible volumes and different permissions via licence, law and other means are very difficult to understand even for experts and very confusing to the average person. Library staff at UC spend significant time explaining copyright to academics and creating guides and information for academic staff and students.*

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?
	UC has an archive of communication works and films that have been recorded from Aotearoa New Zealand television over many years and preserved under and exception in the Act or under the Screenrights licence. Getting permission to play these works in public or share them with members of the public and researchers from other institutions in New Zealand and overseas is impossible as the original producer or director may no longer hold all the rights or these may be orphan works. If these exceptions could be extended to include the underlying works in the sound recordings, films and communication works these works could be used to provide insight and understanding of a particular era.
52	What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?
	Format shifting is particularly problematic. The Library holds content on audio and video tapes, which has been relied on in the past for teaching purposes. Lecture theatres are no longer capable of playing these and many staff and students no longer have access to video players or even DVD players. Many of these works are also no longer available for purchase in the new formats. Transposing these works to more up to date formats would enable their use. *We suggest the following changes to s 81A, that the works that can be format shifted be extended to include films. That the copying in s 81A(1)(d) of the film or sound recording is extended to anyone acting on behalf of the owner. We also suggest that in s 81A(1)(f) the reference to personal be removed. We also believe that s 81A(2) be removed as this section is already very restrictive and would be negated if the rights owner restricted all copying of the work.*
53	What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?

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

Other comments

[Insert response here]

Exceptions and Limitations: Contracting out of exceptions

58	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?

	It is common for many subscription licences for digital access to academic journals to prohibit electronic copies to be supplied to users of other libraries. s 53 permits what is termed Inter-Library Loan (ILL), where a library to supply a 'reasonable proportion' of a work to another library for the use of a patron of that other library, including the right to provide this digitally (s 53 (5)). There is no stipulation as to the nature of the source of the copy, other than that it is from a 'published edition.' Is, say, a single article from a massive database of electronic works constitute a 'reasonable proportion' of a 'published edition'? *Due to the risk-averse nature of libraries and the lack of certainty about whether the right has been 'contracted out of' the practice has been to follow the terms of the contract rather than rely on the statutory provision. ILL is relied upon heavily by universities. Even though our collections are very large, and considerable resources are spent on acquisitions each year, due to the nature of research it is impossible for our libraries' collections to provide access to everything that our researchers may need. At the time the 1994 Act commenced, this copying would only have been done from physical copies of works in our collections and, where a subscription agreement prohibits ILL, this is still the practice today, despite the sums spent on access and the technologies available for delivery. Like the Australian Productivity Commission itself concluded, UC believes that contract arrangements should not be able to override exceptions provided by the Act. Clarity on this point would be welcome.* *Additionally, many DVDs purchased by libraries for use in lectures have a licence which stipulate they are provided for individual or personal use only. The library wants to provide wider access than this such as for educational use. There is intent in the Act to allow for educational use – S47 is around performing, playing or showing a work for educational purposes, but if there is a licence or statement attached to the film it would trump the Copyright Act. There is currently uncertainty so again clarity on whether the Act does allows this use could enable existing DVDs to be used in a teaching environment.*

Exceptions and Limitations: Internet service provider liability

59	What are problems (or benefits) with the ISP definition? What changes, if any should be considered?
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?
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.
62	What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?

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?
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.
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.
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?
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?
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.
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?
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?

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.
	Projects using this type of material are not even considered due to the level of additional work which obtaining copyright would involve.
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?
	Generally UC does not use orphan works. We do not have the resources to identify and contact copyright owners of orphan works.
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?
	No.
74	What were the problems or benefits of the system of using an overseas regime for orphan works?
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?

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

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

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?
90	Have you experienced any problems when seeking protection for an industrial design, especially overseas?
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?
92	Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?

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.

	The following section from the Waitangi Tribunal report clearly defines the relationship between mātauranga Māori and the kaitiakitanga of traditional communities and places a conceptual limit on the definition of taonga works – *"We do not recommend that all mātauranga Māori should be protected, but only those aspects of it so personally held by traditional Māori communities that a kaitiakitanga relationship arises in respect of it. Thus, it is the proximity of the mātauranga and the community that is the core defining factor, not the broad category of mātauranga Māori itself."* *This section should have been included.*
94	Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?
	Yes.
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?
	We agree with the proposal to create a new legal regime and to recognise that the concept of law does not fit particularly well with a Māori worldview. *UC researchers seek to engage with Māori communities and to recognise and respect the unique status of mātauranga and taonga. It is not unusual, for example, for theses to contain material that has been conveyed to the student under the condition that it is not to enter the public domain.* *It will be important to include a definition of taonga works within the Copyright Act in order to ensure an easy "handover" to the proposed mātauranga Māori regime, and the section from Wai 262 quoted above may be appropriate. More thought needs to be given to circumstances in which works that fall within the scope of Copyright Act may contain mātauranga Māori – for example a published book may contain whakapapa material with a kaitiakitanga relationship that would need to be protected separately from the rest of the book in order to prevent it from entering the public domain at the expiry of the copyright. It is possible for parts of the publication to be separately copyrighted – for example, graphs in a journal article that are derived from another source – and some means of applying a separate protection for mātauranga Māori within the copyright works may need to be included within the Act.*
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?
	If this work stream is to embody the Treaty principles of partnership, participation and rangatiratanga, then Māori communities need to be engaged in all roles throughout the process from the very beginning, including decision-making.
97	How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?
	The consultation must be full and extensive. *Maori researchers should be consulted. We would suggest MBIE engage with stakeholders, through hui, and use of online feedback channels, connecting with Māori organisations such as the Iwi Chairs Forum and Te Mana Raraunga.*

Other comments

[Insert response here]