

#42

COMPLETE

Collector:

Web Link 1 (Web Link)

Page 2: A bit about you and your submission

Q1 Your name

Vanda Symon

Q2 Your email address

Q3 Please briefly tell us why copyright law interests you

I am the author of 5 novels and wish to ensure that I retain the right to earn from my work.

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

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

Page 3: Question navigation

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

Part 3 (Objectives),

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

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Part 4, (Rights) Section 2 - what actions does copyright reserve for copyright owners?

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Part 4, (Rights) Section 3 - specific issues with the current rights

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Part 4, (Rights) Section 4 - moral rights, performers' rights and technological protection measures

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

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

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Part 5, (Exceptions and Limitations) Section 3 - exceptions for education

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Part 5, (Exceptions and Limitations) Section 4 - exceptions relating to the use of particular categories of works

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Part 5, (Exceptions and Limitations) Section 5 - contracting out of the exceptions

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Part 5, (Exceptions and Limitations) Section 6 - internet service provider liability

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Part 6 (Transactions),

Part 7 (Enforcement of Copyright)

Part 8 (Other issues) Section 1 - relationship between copyright and registered design protection

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

Q7 Q1 Are the above objectives the right ones for New Zealand's copyright regime? How well do you think the copyright system is achieving these objectives?

I disagree with objective two, which makes the rights of the user outweigh the rights of the creator or copyright holder. It makes a disincentive for me to create new works if others can profit from my works more than I can.

In the existing system the exceptions already limit my ability to earn from my work. For example the exemption for access to my works under the Marrakesh treaty reduces my opportunity to receive royalties, and I am the only person in the production chain who doesn't get paid. Eg, talking books for the Foundation for the Blind, The organisers get paid, the sound recording people get paid, the voice artist gets paid, but not the writer who created the work. It allows hundreds of thousands of people the ability to access and use my work for free, so I do not receive a royalty or compensation. The PLR system offers a small amount of compensation, but this is hugely outdated, does not include school libraries and an ELR and there hasn't been an increase in the total amount of money for over a decade. Further exemptions would further erode my ability to earn and therefore eat, pay my mortgage, all the things that support my ability to create the content everyone wants.

As a little aside, already the government makes more money from my work than I do, as they receive 15% of the sale of a book with GST, whereas I only receive 10%, and my 10% is subsequently taxed.

The existing law does not provide a simple and inexpensive mechanism for a writer to pursue infringements of their copyright.

Q8 Q2 Are there other objectives that we should be aiming to achieve? For example, do you think adaptability or resilience to future technological change should be included as an objective and, if so, do you think that would be achievable without reducing certainty and clarity?

Technology has enabled the wholesale theft of my works through the ability to create electronic copies, and the lack of accountability of ISPs and platforms in preventing it. Current and future technologies must be taken into account in this copyright act review to protect my copyright.

Q9 Q3 Should sub-objectives or different objectives for any parts of the Act be considered (eg for moral rights or performers' rights)? Please be specific in your answer.

The rights of the creator should be paramount

Q10 Q4 What weighting (if any) should be given to each objective?

Most weighting to objective 1 - to provide incentive for the creation of work - by protecting the creators right to earn from that work.

Then 3 -

Then 2, 4 and 5 equally

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

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

It seems OK

Q12 Q6 Is it clear what 'skill, judgement and labour' means as a test as to whether a work is protected by copyright? Does this test make copyright protection apply too widely? If it does, what are the implications, and what changes should be considered?

It seems OK for works created by NZ authors

Q13 Q7 Are there any problems with (or benefits arising from) the treatment of data and compilations in the Copyright Act? What changes (if any) should be considered?

Data has value, and therefore should be protected.

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

As a writer of fiction the default rules work well.

Q15 Q9 What problems (or benefits) are there with the current rules related to computer-generated works, particularly in light of the development and application of new technologies like artificial intelligence to general works? What changes, if any, should be considered?

Copyright must stay with the creator. If for example an AI writer-bot created a work that was significantly similar to an existing work by an author, there must be avenue to pursue infringement of copyright in that scenario and clarity on who is liable for infringing.

Q16 Q10 What are the problems (or benefits) with the rights the Copyright Act gives visual artists (including painting, drawings, prints, sculptures etc.)? What changes (if any) should be considered?

I think visual artists should be compensated when people on-sell their work for profit.

Q17 Q11 What are the problems creators and authors, who have previously transferred their copyright in a work to another person, experience in seeking to have the copyright in that work reassigned back to them? What changes (if any) should be considered?

Rights reversion should always be available for an author when their book goes out of print, or when publisher's print on demand results in such low numbers of sales that the writer is not benefiting at all from the publisher holding the rights.

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

Respondent skipped this question

Q19 Q13 Are there any problems (or benefits) in providing a copyright term for communication works that is longer than the minimum required by New Zealand's international obligations?

New Zealand's copyright term should match those of our main trading partners.

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

As a writer it would allow me to financially benefit from my work. Would it apply to my estate upon my death?

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

Respondent skipped this question

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

Q22 Q15 Do you think there are any problems with (or benefits arising from) the exclusive rights or how they are expressed? What changes (if any) should be considered?

Exclusive rights protect me as an author and allow me to earn from my works. The number of exemptions should be reduced.

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

Parallel importing currently goes against territorial use of copyright
Internationally ISPs allowing overseas sites to pirate authors works

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

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

Page 7: Rights: Specific issues with the current rights

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

To ensure copyright infringements by transmission over the internet are enforceable in a quick and inexpensive manner.

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

The technology is advancing so quickly, care must be taken to put some future-proofing or ability to adapt quickly into the legislation

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

The term needs to encompass all possible formats of a work that is infringed.

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

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

User generated content should not be protected to the disadvantage of the original content creator.

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

Authors should have the choice of how they license their work or allow it to be used. If they choose to have it available for free or in vary degrees eg. Creative Commons, then it is their choice.

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

My biggest concern is that I want to choose how my works are used, and if that right is infringed, then that there is a quick and inexpensive way to pursue and resolve it

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

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

Q34 Q25 What are the problems (or benefits) with the way the moral rights are formulated under the Copyright Act? What changes to the rights (if any) should be considered?

I think Moral rights should not have an expiry date, particularly the right to have your work attributed to you.

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

I see a problem with sound recordings of books, in that voice artists would have rights to the recording rather than authors of the content they recorded eg. audio books, audio books for the blind.

Q36 Q27 Will there be other problems (or benefits) with the performers' rights regime once the CPTPP changes come into effect? What changes to the performers' rights regime (if any) should be considered after those changes come into effect?

As above

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

TPMs are useful in protecting unauthorised copying.

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

The 'qualified persons' definition is unclear.

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

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

Q40 Q30 Do you have examples of activities or uses that have been impeded by the current framing and interpretation of the exceptions for criticism, review, news reporting and research or study? Is it because of a lack of certainty? How do you assess any risk relating to the use? Have you ever been threatened with, or involved in, legal action? Are there any other barriers?

In the writing world exceptions for criticism, review etc. are quite clear.

Q41 Q31 What are the problems (or benefits) with how any of the criticism, review, news reporting and research or study exceptions operate in practice? Under what circumstances, if any, should someone be able to use these exceptions for a commercial outcome? What changes (if any) should be considered?

Respondent skipped this question

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

The rights of the photographer to their copyright and how their images are used should be protected.

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

Respondent skipped this question

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

There should be definitions for transient, incidental and reproduction

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

A transient copy of a book is still a copy that can be read.

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

Respondent skipped this question

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

Respondent skipped this question

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

Data mining is still a use of a work, and creators should be protected and able to be compensated for it, especially as the tech companies do it for profit.

Q49 Q39 What do problems (or benefits) arising from the Copyright Act not having an express exception for parody and satire? What about the absence of an exception for caricature and pastiche?

I have no problem with an exception for parody and satire

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

Quotations and extracts used for the purpose of review or promotion of the author are acceptable

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

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

Q52 Q41 Do you have any specific examples of where the uncertainty about the exceptions for libraries and archives has resulted in undesirable outcomes? Please be specific about the situation, why this caused a problem and who it caused a problem for.

Digital lending from libraries and archives is a concern as there is no ELR to compensate authors for that use. The current PLR is woefully inadequate compensation as the fund has not increased in over ten years.
PLR does not cover school libraries or private libraries.

Q53 Q42 Does the Copyright Act provide enough flexibility for libraries and archives to copy, archive and make available to the public digital content published over the internet? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

There must be compensation to authors for digital content being published or made available over the internet by libraries and archives, or a mechanism for authors to be able to give permission

Q54 Q43 Does the Copyright Act provide enough flexibility for libraries and archives to facilitate mass digitisation projects and make copies of physical works in digital format more widely available to the public? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Mass digitisation to make available for the public negates my rights as an author to benefit from my works. There is no ELR, so this impacts greatly on my ability to be compensated for use of my works

Q55 Q44 Does the Copyright Act provide enough flexibility for libraries and archives to make copies of copyright works within their collections for collection management and administration without the copyright holder's permission? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

There should be a mechanism for them to seek permission.

Q56 Q45 What are the problems with (or benefits arising from) the flexibility given to libraries and archives to copy and make available content published online? What changes (if any) should be considered?

The rights of the author to be able to earn from their works should be foremost. Online publishing without compensation or permission is theft.

Q57 Q46 What are the problems with (or benefits arising from) excluding museums and galleries from the libraries and archives exceptions? What changes (if any) should be considered? **Respondent skipped this question**

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

Libraries seem to be pushing for more and more exemptions. The creative content they want for their patrons can't happen if authors aren't compensated so they can afford to pay the bills so they can create the content.

Page 11: Exceptions and limitations: Exceptions for education

Q59 Q47 Does the Copyright Act provide enough flexibility to enable teachers, pupils and educational institutions to benefit from new technologies? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

The act allows plenty of flexibility, and new technologies are available to allow licensing which is fair to creators and users.

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

Licensing of all schools and learning institutions should be mandatory

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

as above

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

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

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

Q64 Q51 What are the problems (or advantages) with the free public playing exceptions in sections 81, 87 and 87 A of the Copyright Act? What changes (if any) should be considered?

Authors should be compensated or asked for permission to use

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

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

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

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

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

Q70 Q57 Do you think that section 73 should be amended to make it clear that the exception applies to the works underlying the works specified in section 73(1)? And should the exception be limited to copies made for personal and private use, with copies made for commercial gain being excluded? Why? **Respondent skipped this question**

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

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

Q72 Q58 What problems (or benefits) are there in allowing copyright owners to limit or modify a person's ability to use the existing exceptions through contract? What changes (if any) should be considered?

The copyright owner should have the right to negotiate the use and monetisation of their works

Page 14: Exceptions and limitations: Internet service provider liability

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

The definition needs to be clarified so that ISPs cannot hide behind its vagueness when it comes to liability in enabling a platform for illegal activities

Q74 Q60 Are there any problems (or benefit) with the absence of an explicit exception for linking to copyright material and not having a safe harbour for providers of search tools (eg search engines)? What changes (if any) should be considered?

ISPs and search engines should not be able to lead people to sites that infringe copyright.

Q75 Q61 Do the safe harbour provisions in the Copyright Act affect the commercial relationship between online platforms and copyright owners? Please be specific about who is, and how they are, affected. **Respondent skipped this question**

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

There is no accountability.

Page 15: Transactions

Q77 Q63 Is there a sufficient number and variety of CMOs in New Zealand? If not, which type copyright works do you think would benefit from the formation of CMOs in New Zealand?

PLR and an ELR would benefit from the formation of a purpose made CMO

Q78 Q64 If you are a member of a CMO, have you experienced problems with the way they operate in New Zealand? Please give examples of any problems experienced. **Respondent skipped this question**

Q79 Q65 If you are a user of copyright works, have you experienced problems trying to obtain a licence from a CMO? Please give examples of any problems experienced. **Respondent skipped this question**

Q80 Q66 What are the problems (or advantages) with the way the Copyright Tribunal operates? Why do you think so few applications are being made to the Copyright Tribunal? What changes (if any) to the way the Copyright Tribunal regime should be considered?

Timeliness and cost is a huge impediment for pursuing breach of copyright. There needs to be a simple, quick and inexpensive mechanism

Q81 Q67 Which CMOs offer an alternative dispute resolution service? How frequently are they used? What are the benefits (or disadvantages) with these services when compared to the Copyright Tribunal?

Respondent skipped this question

Q82 Q68 Has a social media platform or other communication tool that you have used to upload, modify or create content undermined your ability to monetise that content? Please provide details.

No as I have been careful in what I share/ upload

Q83 Q69 What are the advantages of social media platforms or other communication tools to disseminate and monetise their works? What are the disadvantages? What changes to the Copyright Act (if any) should be considered?

They have reach to an audience, when used by an author under their terms

Q84 Q70 Do the transactions provisions of the Copyright Act support the development of new technologies like blockchain technology and other technologies that could provide new ways to disseminate and monetise copyright works? If not, in what way do the provisions hinder the development and use of new technologies?

Respondent skipped this question

Q85 Q71 Have you ever been impeded using, preserving or making available copies of old works because you could not identify or contact the copyright? Please provide as much detail as you can about what the problem was and its impact.

Respondent skipped this question

Q86 Q72 How do you or your organisation deal with orphan works (general approaches, specific policies etc.)? And can you describe the time and resources you routinely spend on identifying and contacting the copyright owners of orphan works?

Respondent skipped this question

Q87 Q73 Has a copyright owner of an orphan work ever come forward to claim copyright after it had been used without authorisation? If so, what was the outcome?

Respondent skipped this question

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

Respondent skipped this question

Q89 Q75 What problems do you or your organisation face when using open data released under an attribution only Creative Commons Licences? What changes to the Copyright Act should be considered?

Respondent skipped this question

Q90 Any other comments on Transactions

Respondent skipped this question

Page 16: Enforcement of Copyright

Q91 Q76 How difficult is it for copyright owners to establish before the courts that copyright exists in a work and they are the copyright owners? What changes (if any) should be considered to help copyright owners take legal action to enforce their copyright?

Respondent skipped this question

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

Access to a timely and cost effective tribunal

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

Respondent skipped this question

Q94 Q79 Does the cost of enforcement have an impact on copyright owners' enforcement decisions? Please be specific about how decisions are affected and the impact of those decisions. What changes (if any) should be considered?

I could not afford to take anyone to court! There needs to be a cost effective mechanism that does not disadvantage the author/ creator

Q95 Q80 Are groundless threats of legal action for infringing copyright being made in New Zealand by copyright owners? If so, how wide spread do you think the practice is and what impact is the practice having on recipients of such threats?

Respondent skipped this question

Q96 Q81 Is the requirement to pay the \$5,000 bond to Customs deterring right holders from using the border protection measures to prevent the importation of infringing works? Are there any issues with the border protection measures that should be addressed? Please describe these issues and their impact.

Respondent skipped this question

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

Respondent skipped this question

Q98 Q83 Why do you think the infringing filing sharing regime is not being used to address copyright infringements that occur over peer-to-peer file sharing technologies?

Respondent skipped this question

Q99 Q84 What are the problems (or advantages) with the infringing file sharing regime? What changes or alternatives to the infringing filing share regime (if any) should be considered?

Respondent skipped this question

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

There are few existing measures that are timely or affordable.

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

Yes, by promptly site blocking and take down notices

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

The infringers

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

Fines are feeble

Q104 Any other comments on Enforcement of copyright

Respondent skipped this question

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

Q105 Q89 Do you think there are any problems with (or benefits from) having an overlap between copyright and industrial design protection? What changes (if any) should be considered?

Respondent skipped this question

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

Respondent skipped this question

Q107 Q91 We are interested in further information on the use of digital 3-D printer files to distribute industrial designs. For those that produce such files, how do you protect your designs? Have you faced any issues with the current provisions of the Copyright Act?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Q110 Q93 Have we accurately characterised the Waitangi Tribunal's analysis of the problems with the current protections provided for taonga works and mātauranga Māori? If not, please explain the inaccuracies.

Respondent skipped this question

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

Respondent skipped this question

Q112 Q95 The Waitangi Tribunal did not recommend any changes to the copyright regime, and instead recommended a new legal regime for taonga works and mātauranga Māori. Are there ways in which the copyright regime might conflict with any new protection of taonga works and mātauranga Māori?

Respondent skipped this question

Q113 Q96 Do you agree with our proposed process to launch a new work stream on taonga works alongside the Copyright Act review? Are there any other Treaty of Waitangi considerations we should be aware of in the Copyright Act review?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

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

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