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## Introduction:

Waikato Museum has decided to answer this survey as a collective. It was discerned who in our museum dealt with copyright, then each of these people were interviewed using the questions that best applied to their roles below. In instances where a department is not specified these answers are coming from the museum as a whole.

## Objectives

1	<p>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?</p> <hr/> <p><i>Generally, the objectives seem fine. The underlying scope and the language of the objectives seems appropriate.</i></p> <p><i>Waikato Museum Collections Team: Confusion about the use of "net benefits" in Objective 2 – is this just financial or does it include social/public benefits, etc.</i></p> <p><i>Waikato Museum Communications team: In Objective 2 there needs to be absolute clarity about where exceptions can be given.</i></p>
2	<p>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?</p>

	<p><i>Tangata Whenua Curator: There seems no point in putting an objective to resilience to technological changes. Technological advances will occur regardless; for example, the format from analog to digital has changed 6 times for Audio Visual in the 50-year period that copyright takes to expire. Every single step of technological change has created a hazard for copyright.</i></p> <p><i>Waikato Museum Collections team: However, there is a need to address the technological change in data sharing across the internet. And for an awareness of technological changes to be factored.</i></p>
3	<p>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.</p>
	<p><i>Waikato Museum Communications team: Having examples of the objectives in action would be helpful to users, this would provide clarity.</i></p> <p><i>Waikato Museum Collections team: Could look at creating a sub-objective under Objective 2 outlining the "net benefits" and how they come about - for those of us with roles that are not centered around solely copyright it would be good to have specific objectives to refer to.</i></p>
4	<p>What weighting (if any) should be given to each objective?</p>
	<p>None</p>

Other comments:

*There has to be a shift regarding copyright that with the internet "the horse has left the stable" and Creative Commons is the way forward. There needs to be a perception shift around open source data that is not in the languaging of the current objectives. A safe harbor option for all of the GLAM sector needs to be considered.*

# Rights

## Originality

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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?

*Waikato Museum Collections team: It is not clear what 'skill, effort and judgement' mean with regard to copyright. Especially with regard to the digitisation of items within our collection. It is a considerable effort to digitise items from the collection and takes up a large amount of staff effort/time, but it is not clear within the act whether this induces another layer of copyright onto the digital file.*

*In saying that, technology is constantly changing, making it easier to create reproductions, i.e. high-quality scanners etc, which would indicate less time/effort will have to be expended on digitisation in the future, therefore would it be right to add copyright then?*

## Commissioning Rule

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

*Waikato Museum: Any work that is undertaken in our role as an employee is outlined in the contract as the work of Hamilton City Council. We do actively commission outside professionals to create artworks and the IP ownership is covered in their contracts.*

## Crown Copyright

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

*GLAM institutions hold a lot of crown works. Works published prior to 31 December 1945 are in the public domain, but for works created after this the copyright duration is 100 years from the date of creation. This duration is too long and for works created prior to the introduction of NZGOAL it can become very unclear what department owns what, resulting in Crown works not being published due to the risks involved.*

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Other comments:

*Waikato Museum Communication Team: There needs to be more visibility on what pertains to breaches of copyright - It would be useful to have a similar system to the Press Council and Workplace Health and Safety where complaints are published on a public platform (i.e. website) where the outcomes of the complaint are published.*

## Exceptions and Limitations

### Library/Archive Exceptions:

**Other comments**

*The exceptions should apply to the purpose of the use rather than location. We as a museum are not privy to the exceptions that Library's and Archives have, which effects a number of our departments for example:*

*Waikato Communications Team: We run public programs that are similar to that of the library but without the exceptions we don't run the events that we probably could.*

*Waikato Collections Team: Without the exceptions that Library's/Archives have we do not have the ability to share unprovenanced items within our collection with the public without fear of serious repercussions. Therefore, we are hindered in what we can share in our online collection, which has greatly affected our websites progression forward. Without any guarantee of safety we often keep information 'close to our chest', which means context is often lost for future registrars working with the collection in future.*

### 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?

*Waikato Museum Education team: One of the biggest issues with copyright and education is confusion - what does "for educational purpose" actually mean? The Act needs to make it very clear where the boundaries lie.*

*Within a museum there are often several people interpreting copyright, which can often lead to exclusion of educational purposes. With our recent National Geographic exhibition, it was murky where the right to share images for education lies - e.g. Could it be possible to always use a high res image of the photographs within our class presentations without permission?*

*Tend to rely on creative commons to source images, which are often not the best example for the lesson.*

*A huge difficulty is using video clips - it is again not clear. Especially with Science experiment clips, that we cannot recreate in house, we want to use the best clip possible, which leads to a great deal of time spent searching the internet.*

*It is very difficult to know the copyright surrounding historical footage - a huge amount time spent on finding the source of copyright.*

*We acknowledge all video clips/still images used in classroom presentations, and never alter images/only cut down video clips to fit in time frame – by always having this in mind sourcing copyright holders becomes very time laborious as we understand the importance.*

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

*Waikato Museum Education Team: Exceptions are not too wide, the problem is around interpretation and people's different views of what "education purpose" means - they are often expecting the worst. Within a museum setting where copyright is heavily guarded the Education team does not even have right to use works from within exhibitions.*

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

*Waikato Education Team: Again there needs to be clear understanding of copyright throughout the sector. This means we need clear guidelines for exceptions so that they cannot be interpreted by outside professionals.*

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

*Waikato Education Team: Copyright is not well understood within the education sector or from outside in regard to educational purposes. There is a real lack of understanding of the current act in terms of **educational intent**. There needs to be absolute clarity that education is not for commercial gain to ease outside fears.*

## Transactions

### Orphan Works

71	<p>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.</p>
	<p><i>Waikato Museum Collections team: At the Waikato Museum we do not run the risk of putting orphan works out in a publicly accessible domain because we are not sure of the ramifications. I.e. Our Collection Online is not well populated due to this.</i></p>
72	<p>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?</p>
	<p><i>Waikato Museum does not have a policy in place because we do not have the resources to do due diligence around orphan works.</i></p>
73	<p>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?</p>
	<p><i>As we do not have a high presence of our collection online we have not come across any of these issues at present.</i></p>
74	<p>What were the problems or benefits of the system of using an overseas regime for orphan works?</p>
	<p><i>N/A</i></p>

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?

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*Waikato Museum Communications team: In terms of accessing digital images of artworks we have come across instances where there are two/more claims of copyright on different sites, is it possible to have database pertaining to works under Creative Commons licences.*

*Waikato Museum Collections team: The Collections team within Waikato Museum does not actively seek to use open data.*

*However, in regard to research pertaining to collection items that we have been made aware of, records of the data has been maintained. i.e. We have attached to our Vernon records of Public Art a Wintec publication on the ISSU website that has useful information for each art piece.*

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## 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.

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*Tangata Whenua Curator: No. The languaging/premise of the new copyright regime considers Maaori pecificto be pan-tribal, which is just not the case, but iwi so the idea of kaitiaki consent is highly problematic - copyright asks for the creator/date/etc. But Matauranga Maaori is a collective knowledge base that is specific to particular iwi/hapu and not collectively held.*

*The languaging of the proposed protections/objectives has a Pakeha lens looking at Matauranga Maaori.*

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

*Tangata Whenua Curator: No. The Tuakana Teina Model is applied to all taonga works, where "taonga" and "taonga derived" works are not seen as different, rather as a "big brother" and a "little brother". For example: if an artist was told to take influence from a carving off their marae the work that the artist had created would not be considered less than the original and would become a taonga in its own right.*

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?

*Tangata Whenua Curator: Who has the power to put Matauranga Maaori into Creative Commons?*

*For example: at NZMACI, the revival of New Zealand Maaori Arts and Crafts, has just introduced bronze casting of "taonga" that has been created by their students to be sold internationally - who owns the copyright here? The creator or the crown?*

*What is the model for 3D reproduction e.g. 3D printing of existing carvings? Would the copyright stay with original carver or lie with the 3D printer?*

*As an example: our Curator recently completed research/work which was returned in a kaupapa Maaori to the iwi for comment. Upon the returning of the interactive to the iwi it was pointed out that some information had been missed and it would not be fit for public consumption. The iwi then undertook creating a team to continue the research and excluded the curator. Where does copyright come into rank when faced with Kaupapa Maaori? The interactive is the curator's work and it is right to share this information with the iwi but who should get the final say?*

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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?

*Tangata Whenua Curator: This needs to have the time/canvas to get the correct stakeholder views. What happens between iwi with claims and those without?*

*Some trust boards will have no clue, because they do not see the creative as separate. Some can talk to it and some can't at all - in terms of creative works there needs to be talk with Tertiary/Wananga experts as the iwi trust will often not know.*

*There are two very distinct ideologies in regard to Te Ao Maaori and the GLAM sector, which often "butt heads". What is best practice to GLAM is not Maaori.*

*It is important to be aware that no expert commission has ever worked*

*e.g. failure of Toi Iho, because culture is not static but rather is evolving constantly.*

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

*Tangata Whenua Curator: MBIE needs to engage with Maaori at least on an iwi level - so with tribal historians, trustboards, as well as teachers or kahautui in the creative education sectors.*

*Kaupapa methodology needs to be used.*

- *Returns finding to Maaori*
- *Share digitising, if any, that results from the project with Maaori.*

Other comments (all from *Tangata Whenua Curator*.)

*Commissioning: approaching Maaori artist's when curating an exhibition is more preferable because it is easier, as the taonga in the collection doesn't have provenance (orphan). The artist is attracted to the kaupapa of the exhibition and will make the work but not expect the museum to own it. A way around this is: "We can not pay you for this but can pay for the material cost of the work and display it for a number of months and it will be yours at the end of the exhibition." There is a great divide between the Museum Sector's view of copyright vs. A Maaori artists, which is from the divide of Pakeha/Maaori views of ownership.*

*The question is where is the intersection of Museum/Te Ao Maaori? The complexity arises with orphan works that require meetings/conversations, which will lead to the conversation of the repatriation of taonga across the country. A conversation must be had between Maaori and Crown about the role of museums before copyright on taonga items can even begin to be discussed.*

*Closed copyright files - we have an abundance of information that has been closed to the public. There is so much fear around the use of taonga/derived taonga that there is no use is all. It will sit around, and it will lose contextual/myriad layers of meaning*

## Any other comments

- Think about what is working well and what you'd like to retain

*Copyright is working well in that it gives more autonomy to creators. It is also important within the GLAM sector to be specific/comprehensive in the crediting of works, especially if we are to be regarded of institutions that offer the truth. Copyright offers GLAM institutions a standard to which we must remain accountable.*

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- Think about any other issues that may not be raised in this issues paper

**Other issues:**

*The biggest issue that we have come across was a lack of cohesive understanding of the Copyright Act across each of our departments. Copyright is something that we are aware of and that effects each of our jobs individually, but we do not have a team that works solely on copyright. That is where the biggest hindrance lies as departments can often come into minor conflict as they seek to protect their own interests when it comes to Copyright, i.e. when it has been outlined in an exhibition contract that there can be no use of images from within the collection, this will hinder the communication and education departments.*

*Collating our joint response has shown us areas that we often overlook because they have been put in the "too hard basket".*

*This was evident when it came to sharing our collections online, we do not have the resources to be going through such pedantic researching of items to only just scratch the surface of digitisation.*

*For GLAM institutions like us that do not have a set team dealing with copyright issues any new changes need to be abundantly clear, perhaps with specific examples if permitting.*

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