



Review of the Copyright Act 1994

TERMS OF REFERENCE

Objectives of the review

New Zealand's copyright regime is governed by the [Copyright Act 1994](#). The Act sets rules relating to copyright protection, infringement, exceptions and enforcement. It has not been reviewed in over a decade. The last major review of the Copyright Act took place from 2001 to 2004 resulting in the *Copyright (New Technologies) Amendment Act 2008*.

The Government wants to ensure that the copyright regime keeps pace with technological and market developments and is not inhibiting the provision of, and access to, innovative products and services, which will underpin higher levels of wellbeing in New Zealand. This is a focus of the Government's work in the [Business Growth Agenda](#) — working toward [Building Innovation](#) and, within this, [Building a Digital Nation](#).

Building on the [Copyright and the Creative Sector report](#), the Government is committed to understanding the landscape in which copyright settings operate and ensuring that our regime is fit for purpose in New Zealand in a changing technological environment.

The objectives of this review are to:

- assess the performance of the *Copyright Act* against the objectives of New Zealand's copyright regime (discussed further below)
- identify barriers to achieving the objectives of New Zealand's copyright regime, and the level of impact that these barriers have
- formulate a preferred approach to addressing these issues – including amendments to the Copyright Act, and the commissioning of further work on any other regulatory or non-regulatory options that are identified.

Objectives of copyright

Copyright seeks to incentivise the creation and dissemination of original works. It gives authors the exclusive right to copy, disseminate and adapt their works. Authors can also transfer or license those rights. Without the ability to protect works (e.g. books, recorded music, fine art, digital art, movies, educational literature, software code) from unauthorised copying or distribution, there would be fewer incentives to create and disseminate important social, cultural and commercial works.

However, copyright must strike a balance. Over-protective copyright settings can inhibit the creation and dissemination of copyright works by restricting competition and 'follow-on' creation — that is, using existing creative works and the ideas underpinning them to create new works, ideas, products and services. It can also inhibit important cultural activities, such as those of educational, library and archival organisations.

New Zealand's copyright law is intended to benefit New Zealanders as a whole. This requires consideration of the impacts on creators, distributors, users, consumers and all other people affected by copyright.



As a starting point, the following objectives of New Zealand's copyright regime have been identified:

- provide incentives for the creation and dissemination of works, where copyright is the most efficient mechanism to do so
- permit reasonable access to works for use, adaptation and consumption, where exceptions to exclusive rights are likely to have net benefits for New Zealand
- ensure that the copyright system is effective and efficient, including providing clarity and certainty, facilitating competitive markets, minimising transaction costs, and maintaining integrity and respect for the law
- meet New Zealand's international obligations.

These objectives are not set in stone, and will be tested through consultation on an issues paper.

Context

Copyright is unlike other forms of intellectual property, such as patents, in that there is no need to register a copyright work.

Copyright is also unique due to the broad range of content it applies to. While many copyright works require significant investment of money, talent and/or time (such as a feature film or a professional painting), other copyright works are cheap and easy to make (such as a photo captured with your phone). Many of us inadvertently create copyright works every day.

Copyright Act 1994

The *Copyright Act* provides New Zealand's copyright regime. This includes specifying:

- the works covered by copyright, the qualifications and ownership of copyright and the duration of copyright
- the acts that constitute infringement of copyright (i.e. the exclusive rights of the copyright owner and licensees)
- exceptions to infringement of copyright (including 'fair dealing' with a work)
- moral rights to be identified as an author or director, and to object to derogatory treatment of the work
- performers' rights
- technological protection measures and copyright management information
- licensing and transfer of copyright
- enforcement and remedies for infringement, including civil proceedings, the Copyright Tribunal, border protection measures and powers of enforcement officers.

The last major review of the Copyright Act took place from 2001 to 2004 resulting in the *Copyright (New Technologies) Amendment Act 2008*. This introduced:

- protection for "communication works" (previously broadcasts and cable programmes)
- new exceptions for transient or incidental copying
- decompilation of computer programs
- format shifting and time shifting
- limitations of liability for ISPs
- greater protection for technological protection measures
- new protections for copyright management information.



Study into the role of copyright and designs in the creative sector

The copyright regime plays an important role in the creative sector. A study into the role of copyright and designs in the creative sector was launched in October 2015 to help the Government better understand how copyright is used in practice.

The final report, [Copyright and the Creative Sector](#), was released in December 2016. It was the culmination of information from 71 interviews, two sector workshops, an online survey and an online consumer focus group.

The report illustrates the diversity of the creative sector, in terms of the works created, the drivers for creation, the means of distribution and the revenue models. It highlights some of the opportunities and challenges posed by developments in digital technology.

Understanding the landscape – how copyright is operating on the ground – is a first step toward developing high quality policy.

We invite feedback on the report (email creativesectorstudy@mbie.govt.nz). Stakeholder views will continue to inform our thinking.

International environment

The international environment is a significant factor in any review of the Act, as:

- International agreements set the broad framework for our settings and require that we do not depart from some approaches in certain areas.
- Many dealings with copyright works occur across borders.
- Foreign companies play a significant role in the creation and distribution of a large amount of content that is available in New Zealand.

The need to ensure copyright laws are fit for purpose in a changing technological environment has been recognised in a number of other major jurisdictions. For example, copyright reviews are proposed or underway in the [European Union](#), [Canada](#) and [Singapore](#). [Changes to Australian copyright law](#) are also being considered by the Australian Senate.

What's next?

The next step will be **release of an issues paper for public consultation in early 2018**. The issues paper will likely be broad ranging and include a number of questions for public input.

The overall scope of the review, and the staging of it, will be informed by that consultation process. An indicative process for review of the Act is set out below:



Through future consultation processes, we would encourage submitters to support their submissions with appropriate evidence. Evidence will play an important role in our analysis of issues and any options for reform. The United Kingdom Intellectual Property Office has published a [Guide to Evidence for Intellectual Property Policy](#), which is a useful tool to help guide the information provided throughout the future processes.