



COVERSHEET

Minister	Hon Cameron Brewer	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Policy decisions on copyright including free trade agreement obligations	Date to be published	4 June 2026

List of documents that have been proactively released		
Date	Title	Author
May 2026	Policy decisions on copyright including free trade agreement obligations	Office of Minister of Commerce and Consumer Affairs
20 May 2026	Policy decisions on copyright including free trade agreement obligations ECO-26-MIN-0083 Minute	Cabinet Office
25 May 2026	Policy decisions on copyright including free trade agreement obligations CAB-26-MIN-0175.02 Minute	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of Confidential advice to Government.

IN CONFIDENCE

Office of the Minister of Commerce and Consumer Affairs

Cabinet Economic Policy Committee (ECO)

Policy decisions on copyright including free trade agreement obligations

Proposal

- 1 I seek agreement on policy proposals to update the Copyright Act 1994 (the Act). Some of these changes are required to be implemented by 1 May 2028 to meet our free trade agreement (FTA) obligations. The other proposals are targeted improvements to the Act, which I recommend are progressed at the same time.

Relation to Government priorities

- 2 These proposed updates support *Going for Growth* (by meeting FTA obligations) and *Amplify: A Creative and Cultural Strategy for New Zealand* by supporting the \$17.5 billion creative sector, including GLAM organisations (not-for-profit galleries, libraries, archives and museums).

Executive summary

- 3 When New Zealand concluded FTAs with the European Union (EU) and the United Kingdom (UK), we agreed to make amendments to domestic copyright law to better align with international standards and facilitate trade, including extending the term of copyright by 20 years. The NZ-EU FTA requires changes to be implemented by 1 May 2028.
- 4 It is important that we prioritise extending the term of copyright protection to avoid well-known New Zealand recordings from the 1970s coming out of copyright. For example, singles like Dragon's "*April Sun in Cuba*" and Hello Sailor's "*Gutter Black*" were released in 1977 so copyright in their sound recordings will expire at the end of 2027 unless the term is extended before then.
- 5 In addition to seeking your agreement to amendments required to meet New Zealand's FTA obligations, this paper also seeks agreement to a package of other updates to improve the Act. These changes respond to how technology has transformed the creation and use of content, support enforcement of copyright, and better align New Zealand's settings with those of comparable jurisdictions.
- 6 However, these changes will not address all issues with the Act, including those arising from generative artificial intelligence (GenAI) and protection of Māori cultural intellectual property. GenAI training raises complex copyright issues, and countries are taking different approaches, with some allowing use of copyright works through exceptions and others, including Australia, deciding not to do so. Any changes in regard to GenAI, and AI issues more broadly, will continue to be monitored in the meantime, and further decisions on this work will be made at a later date. Issues and opportunities relating to Māori cultural intellectual property are being considered by Te Puni Kōkiri, and that work needs to progress before deciding whether any changes to specific intellectual property statutes are required.

Background

- 7 Copyright gives creators automatic rights over original works (like art, music, books, films and software). These rights are time-limited and allow creators to control use, earn income, and support creative industries and economic growth.
- 8 Copyright obligations are a standard part of modern FTAs, easing trade by aligning laws and enforcement measures across countries. To give effect to New Zealand's international obligations the Act requires amendments by 1 May 2028. These include extending the duration of copyright protection by 20 years and strengthening protections for digital locks (like passwords to access online streaming platforms) used by copyright holders to control and monetise their works online.
- 9 The New Zealand recorded music industry has emphasised the importance of extending the term as soon as possible. They are concerned a number of iconic recordings from the 1970s are progressively falling out of copyright protection in New Zealand. Once these recordings enter the public domain domestically, they may also lose protection in overseas markets, which could reduce licensing revenues from the playing, use, and broadcast of those recordings both in New Zealand and internationally.

Copyright proposals responding to recent FTAs and stakeholder engagement

- 10 While we are amending the Act, there is an opportunity to make some other improvements. I have summarised in the table below the changes to the Act I am proposing, and the issues that they are seeking to address. The key non-FTA changes are:
 - 10.1 provide provisions for GLAM organisations to better administer copyright works in their collections in a digital context;
 - 10.2 introduce a new fair dealing exception for parody and satire to clarify that copyright works can be used, for example, for comedy, or to criticise or comment on something, without a licence from the relevant copyright owner, provided the use is reasonable and does not cause undue harm to the interests of rights holders;
 - 10.3 add specific provisions for website blocking injunctions to combat foreign pirate websites;
 - 10.4 provide that the creator is the first owner of copyright even where a work has been commissioned.
- 11 The proposals are informed by public consultation in 2018 and 2019, ongoing dialogue with stakeholders, and roundtable discussions my predecessor held last year. There is broad support for these changes, but I expect that many stakeholders will wish to make submissions on the detail of the amendments during the Select Committee process.
- 12 Some stakeholders will be disappointed that the proposals do not address the development and use of GenAI tools or advance protection for Māori cultural intellectual property. These matters are important, complex, lack sufficient consensus or certainty on approach, and remain under active domestic and international consideration. Deferring them enables further analysis, consultation, and alignment with related policy work,

while ensuring New Zealand can meet the FTAs’ implementation deadline of 1 May 2028.

- 13 In the meantime, my officials and I will continue to monitor international developments in relation to GenAI to inform future decisions once the international position becomes clearer. Two principal copyright issues that need to be addressed are whether AI developers may use copyright works to train their tools and whether AI-generated content should be protected and, if so, who should own the copyright. In relation to the first issue, jurisdictions internationally have taken different approaches, with some introducing specific exceptions to allow training on copyright works. Others, including the United Kingdom and Australia, have decided against introducing any such exceptions.

Summary of Changes

Issue addressed	Recommended change
<i>Previously agreed FTA updates that must be made by 1 May 2028</i>	
<p><u>Term of protection</u> Clarifying and extending the term of copyright and related rights protection for certain copyright works.</p>	<ul style="list-style-type: none"> Extend the term of copyright and related rights protection (including the duration of moral rights and performer’s rights) for all categories of works, except communication works, by 20 years. (For example, where the protection period expires after 50 years from the end of the calendar year in which the author dies, this time period would change to 70 years from the end of the calendar years in with the author dies). Specify that the term of protection for works of unknown authorship expires 70 years from the end of the calendar year after the creation of the work or, if lawfully made available to the public within 70 years from creation, 70 years from the end of the calendar year after the first such making available.
<i>Additional amendments linked to FTA updates (these are set out in Annex One)</i>	
<p><u>Digital locks</u> The Act only regulates the making, importing and dealing in certain bypassing devices, information and services pertaining to copy control locks. However, the Act does not afford any protections for access control locks. The EU FTA updates (paragraph 1 of Annex One) require the act of bypassing a digital lock and a broader range of bypassing devices to be prohibited.</p>	<p>Strengthen the protections for digital locks as agreed under the EU FTA by extending those protections to both copy control and access control locks by:</p> <ul style="list-style-type: none"> repealing the Act’s existing protections for copy control digital locks (sections 226 to 226I) and replacing them with the framework enacted under Part 1 of the Trans-Pacific Partnership Agreement Amendment Act 2016 (the framework), as described in paragraph 3 of Annex One; and further amending the framework to provide for the standards of protection required under the EU FTA.
<i>GLAM updates to align with comparable jurisdictions to improve preservation, access, and off-set FTA compliance</i>	
<p>Orphan works are copyright works where the copyright owner cannot be identified or contacted. GLAM organisations hold a large volume of orphan works, with no clear legal</p>	<ul style="list-style-type: none"> Permit use of orphan works for non-commercial purposes, subject to safeguards including needing to perform a reasonably diligent and proportionate search for the copyright owner. Permit the non-commercial digital copying of works held in GLAM collections for preservation, access, and

<p>mechanisms for their lawful use without the copyright owner’s permission.</p> <p>Extending the copyright term will increase the number of copyright works, including orphan works, held by GLAM organisations as some works will remain in copyright for longer, raising compliance costs and resourcing pressures to manage their collections efficiently.</p> <p>This increases legal risk, discouraging digitisation and access, and increasing the administrative burden of managing copyright works.</p> <p>Providing only physical access to their collections is not meeting the needs of New Zealanders, who now expect online access. Comparable jurisdictions routinely use digitisation to increase engagement, preservation, and administrative efficiency, approaches that current settings limit in New Zealand.</p>	<p>cultural continuity, particularly for works that are at risk of deterioration or are not commercially available.</p> <ul style="list-style-type: none"> • Allow the creation and storage of digital images for internal management purposes, including collection management and administration, and to improve associated collection metadata, such as creator, date, provenance, and rights information. • Allow non-commercial digitisation of out-of-commerce or not-commercially available works, for education, research and private study, cultural preservation, and public awareness. • Extend existing copying allowances for archives and libraries for private research or study to not-for-profit galleries and museums, to ensure consistency across all GLAM organisations. <p>Use of works would be limited to non-commercial purposes, particularly for works that are unpublished, out of commerce, or not reasonably commercially available, and in some cases orphan works. Safeguards would apply to all proposed exceptions (eg organisations would be required to openly document and, where appropriate, publish what works are being copied, digitised, or made available, and for what purpose).</p>
<p><i>Other updates to support creators and enforcement provisions</i></p>	
<p><u>Parody and Satire</u></p> <p>Unclear provisions for reuse of copyright works for parody and satire create uncertainty and discourage legitimate use, compared with similar jurisdictions, including Australia.</p>	<ul style="list-style-type: none"> • Provide a new fair dealing exception to create parody and satire using literary, dramatic, musical and artistic works, sound recordings, films, and communications works, such as broadcasts. <p>Would not change the Act’s moral rights framework that provides authors and film directors the right to object to derogatory treatment of their works.</p> <p>Would be broader than that in the Copyright (Parody and Satire) Amendment Member’s Bill (currently before Select Committee), which is limited to literary, dramatic, musical and artistic works. The Member’s Bill is based on one of two Australian copyright exceptions and, when applied directly to the Act, does not include sound recordings, films, and communication works (eg broadcasts).</p> <p>Expanding the scope of a fair dealing exception to include these additional types of works would require amendments to the performers’ rights provisions.</p>
<p><u>Website Blocking Injunctions</u></p> <p>The Act lacks a clear framework for when the courts may grant a website blocking injunction against overseas hosted pirate websites, creating legal uncertainty, higher enforcement costs, and discouraging action against online piracy, unlike comparable jurisdictions. No website blocking injunctions have been sought in New Zealand despite high levels of online piracy.</p>	<ul style="list-style-type: none"> • Provide for foreign website blocking injunctions. In doing so, set out the matters the court must consider when determining whether to grant an injunction. This would require internet service providers to block access to overseas online locations whose primary purpose or effect is copyright infringement. <p>Matters courts must consider include: the seriousness of the infringement, proportionality of the order, public interest considerations, and impacts on third parties. Courts would be able to tailor injunctions to specific circumstances and</p>

	<p>vary or extend orders over time to respond to changing online infringement practices.</p>
<p><u>Infringing File Sharing regime</u> There is an unused and outdated enforcement regime under the Act that permits copyright holders to take infringement proceedings before the Copyright Tribunal when they believe their works have been shared illegally online using peer-to-peer file-sharing networks (like BitTorrent). The regime continues to impose compliance costs on internet service providers despite not being used by copyright holders.</p>	<ul style="list-style-type: none"> • Repeal the enforcement regime for preventing infringement of copyright works using peer-to-peer file-sharing networks, including associated regulation-making powers and associated regulations.
<p><u>Collective Enforcement</u> Only copyright owners and their exclusive copyright licensees may take legal action to enforce copyright. One consequence of this limitation is that collective management organisations (CMOs), who licence copyright works on behalf of their members, are unable to take enforcement action on behalf of their members. This limits efficient enforcement action, disadvantaging copyright owners who are members of CMOs and who lack the necessary resource themselves to individually take enforcement action.</p>	<ul style="list-style-type: none"> • Provide, subject to any agreement to the contrary, for non-exclusive licensees, including CMOs, to be able to commence infringement proceedings on behalf of their members. • Proceedings would be limited to acts of infringement falling within the licensed rights, ensuring actions remain appropriately constrained.
<p><u>First Distribution Right</u> Copyright gives the copyright holder control over the first distribution (eg sale) of a physical copy of their work (for example, a book, CD, or DVD) (the first distribution right). This means they can decide when, where, and by whom that copy is first put on the market. After the first sale of any copy, that copy may be resold without the copyright holder’s permission. A recent Supreme Court decision (<i>Burden v ESR Group Ltd</i>) concerning the importation of infringing copies of a work from overseas has cast doubt over whether the first distribution right applies to imported infringing copies (ie whether the copyright holder can prevent infringing copies being imported into New Zealand). Uncertainty has also arisen from excluding subsequent importation from the scope of the first distribution right, creating uncertainty about lawful</p>	<ul style="list-style-type: none"> • Clarify the first distribution right by amending the definition of “issue to the public” to require that the right is exhausted only when copies are first issued in New Zealand or overseas by, or with the consent of, the copyright owner. • Remove subsequent importation from the acts excluded from the first distribution right.

<p>personal imports and parallel importation of non-infringing works.</p>	
<p><u>Commissioning Rule</u> The commissioning rules determines who is the first owner of copyright in any work that a creator produces under a commission. For certain types of works, such as photographs, drawings and paintings, the first owner of copyright is the commissioner, yet for other works it is the creator of the work. These different rules for different types of works create inconsistent copyright ownership outcomes and weaken creators’ bargaining position. It is increasingly out of step with international practice and recent reforms to commissioning arrangements in the science sector that make the creator the first owner of any intellectual property rights, including copyright.</p>	<ul style="list-style-type: none"> • Provide a single default copyright ownership rule for all types of commissioned works, such that the creator (or author) of a commissioned work is the first owner of copyright in the work, unless the parties agree otherwise by contract.

Amendment to the Resale Right for Visual Artists Act 2023

- 14 The Resale Right for Visual Artists Act 2023 (the Artists Resale Rights Act) gives artists a right to receive a royalty on eligible resales of their artworks over the term of copyright protection of the work. In 2023 Cabinet agreed that if the copyright term was to be extended, the resale right duration will likewise be extended (paragraph 1.13 of SWC-22-MIN-0144 refers).
- 15 Consistent with that earlier decision, I recommend that an amendment to the Artists Resale Rights Act to extend the duration of the resale right by 20 years be pursued simultaneously with the amendments to the Copyright Act.

Financial implications

- 16 The recommendations in this paper do not have any financial implications for the Crown.

Legislative implications

17 Confidential advice to Government

- 18 The proposed amendment to the Resale Right for Visual Artists Act 2023 would extend the duration of the resale right to remain aligned with the extended term of copyright protection for eligible artworks. This approach supports coherence across the two frameworks regulating the sale of artistic works. The inclusion of this amendment in

the proposed Copyright Amendment Bill will be progressed in consultation with Parliamentary Counsel Office and the Office of the Clerk as the Bill is developed.

Regulatory Impact Statement

- 19 A Regulatory Impact Statement (RIS), attached as **Annex Two**, has been prepared by the Ministry of Business, Innovation and Employment (MBIE) for the proposed changes related to digital locks, website blocking injunctions and repeal of the commissioning rule. A Quality Assurance Panel from MBIE has reviewed the RIS and considers that the information and impact analysis summarised in the RIS **meets** the Quality Assurance criteria.
- 20 The Ministry for Regulation has determined that other proposed changes to the Act are exempt from the requirement to provide a RIS. Exemptions are mostly due to the economic, social, or environmental impacts being limited and easy to assess.

Climate Implications of Policy Assessment

- 21 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population, cost-of-living and human rights Implications

- 22 There are no direct population, cost-of-living or human rights implications.

Consultation

- 23 The following agencies have been consulted on the recommendations in this paper: Statistics New Zealand, Department of Internal Affairs, Ministry for Culture and Heritage, Ministry for Regulation, Te Puni Kōkiri, Ministry of Justice, and the Ministry of Foreign Affairs and Trade. The Department of Prime Minister and Cabinet has been informed.
- 24 The recommendations in this paper have taken into account information received during public consultations undertaken in 2016 for the purposes of developing and enacting the 2016 TPP regime; from submissions received on a 2018 public consultation paper *Copyright Act 1994: Issues Paper*; and engagement during and after 2025 Ministerial roundtables held with various copyright stakeholders, interested parties and experts.

Communications and proactive release

- 25 I expect to announce these proposals soon after Cabinet decisions are made. This paper will be published on MBIE's website within 30 working days after final decisions have been made, subject to appropriate redactions.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that New Zealand has entered into free trade agreements with the United Kingdom and European Union (the FTAs) that require changes to the Copyright Act 1994 and those changes must be implemented by 1 May 2028;

- 2 **note** that FTAs changes concern:
 - 2.1 extending the term of copyright and related rights protection for all categories of works, except communication works, by 20 years;
 - 2.2 specifying that the term of protection for works of unknown authorship expires 70 years from the end of the calendar year after the creation of the work or, if lawfully made available to the public within 70 years from creation, 70 years from the end of the calendar year after the first such making available; and
 - 2.3 under the European Union FTA, strengthening protections for digital locks applied to copyright works by copyright holders (as described in paragraph 1 of Annex One);
- 3 **agree** to amend the Copyright Act to:
 - 3.1 repeal the existing legal framework for the protection of digital locks under the Act concerning the protection of copyright control digital locks (ie sections 226 to 226I); and
 - 3.2 replace the repealed sections in recommendation 3.1 with a framework similar to that enacted under the Part 1 of the Trans-Pacific Partnership Agreement Amendment Act 2016 for protecting digital locks (the framework) as described in paragraph 3 of Annex One; and
 - 3.3 further amend the framework being implemented to provide for the standard of protection required under the New Zealand – European Union Free Trade Agreement as described in paragraph 1.3 of Annex One;
 - 3.4 permit not-for-profit gallery, library, archive and museum (GLAM) organisations, in respect of works within their collections, to not infringe copyright or related rights when undertaking the following non-commercial activities:
 - 3.4.1 making digital copies of works for preservation purposes;
 - 3.4.2 making digital copies for internal collection management and administration purposes;
 - 3.4.3 digitising of certain works in their collections for public good purposes;
 - 3.4.4 copying by not-for-profit galleries and museums of works for private research or study or preservation purposes, as is currently permitted for archives and museums; and
 - 3.4.5 otherwise using orphan works subject to appropriate safeguards;
 - 3.5 introduce a fair dealing exception for the fair use of copyright works for the purpose of parody and satire;
 - 3.6 provide explicitly for the courts to have the authority to order website blocking injunctions, based on section 115A of the Australia Copyright Act 1968, with necessary modifications;

- 3.7 repeal the infringing file sharing regime under Part 6, sections 122A to 122U and associated regulations made under section 234;
- 3.8 allow non-exclusive licensees to start infringement proceedings on behalf of the copyright holder;
- 3.9 clarify the meaning of “issue to the public”, which provides the copyright holder with a first distribution right, such that the right:
 - 3.9.1 is exhausted only when a work is issued to the public in New Zealand or overseas by the copyright holder, or with the copyright holder’s consent; and
 - 3.9.2 to remove the act of subsequent importation from the list of acts specifically excluded from the first distribution right;
- 3.10 repeal the default copyright ownership rule that gives first ownership of copyright in certain works to the commissioners of those works;
- 4 **note** that in 2023 Cabinet agreed that the duration of the artists’ resale right, as provided for in the Resale Right for Visual Artists Act 2023, is to be aligned with the duration of copyright protection, such that an extension of the copyright term would likewise extend the resale right (paragraph 1.13 of SWC-22-MIN-0144 refers);
- 5 **agree** to amend the Resale Right for Visual Artists Act 2023 to extend the duration of the artists’ resale right by 20 years;
- 6 **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to these decisions;
- 7

Confidential advice to Government
- 8 **authorise** the Minister to make minor or technical changes to the policy decisions in this paper, as well as additional policy decisions consistent with the general policy intent, on issues that arise during the drafting and passage of the Bill through the House.

Authorised for lodgement

Hon Cameron Brewer

Minister of Commerce and Consumer Affairs

Annex One: Updates required to protect digital locks and the 2016 TPP framework

- 1 Article 18.17 of the EU FTA requires an adequate legal framework for digital locks for preventing a person from:
 - 1.1 bypassing digital locks used by copyright holders in respect of their works which a person carries out in the knowledge, or with reasonable grounds to know, they are pursuing such an objective;
 - 1.2 making, importing and dealing (eg distributing, selling or hiring) a circumvention device that:
 - 1.2.1 has only a limited purpose or use other than to circumvent a digital lock; or
 - 1.2.2 is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of a digital lock;
 - 1.3 providing any service that is promoted, advertised or marketed for the purpose of enabling or assisting in the bypassing of digital locks.
- 2 A strengthened framework for the protection of digital locks (including for both copy control and access control locks) already exists under the 2016 TPP framework. However, the 2016 TPP framework may only be brought into force in the event that the Trans-Pacific Partnership Agreement enters into force. The agreement is unlikely to now enter into force, as that would require the US ratifying the agreement.
- 3 The 2016 TPP framework was enacted following public consultations undertaken in 2016. The framework consists of:
 - 3.1 Civil provisions prohibiting a person from circumventing a digital lock applied to a copyright work, unless circumvention is for a specified purpose (see below).
 - 3.2 Civil and criminal provisions prohibiting the dealing in TPM circumvention devices, and the supply of information or services for circumventing any digital lock (ie any copy control or access control digital lock) applied to a copyright work.
 - 3.3 A list of specified purposes under which digital locks may be bypassed including, for example, doing something with a work that is already permitted by the Act (ie if use of the work itself does not infringe copyright).
 - 3.4 A safe harbour for certain not-for-profit entities and their staff in the good faith performance of exercise of their functions, powers or duties and without knowing that act of bypassing a digital lock applied to the copyright work was prohibited.

Annex Two: Regulatory Impact Statement