

Regulatory Impact Statement: Updates to the Copyright Act 1994

Decision sought	Policy decisions on updates to the Copyright Act 1994
Agency responsible	Ministry of Business, Innovation and Employment
Proposing Ministers	Minister of Commerce and Consumer Affairs
Date finalised	12 May 2026

Description of the Minister's regulatory proposal

Under New Zealand's Free Trade Agreements (**FTAs**) with the United Kingdom (**UK**) and the European Union (**EU**), New Zealand must extend its copyright term and introduce enhanced legal protections for digital locks. The FTA with the EU requires the changes to be in place by 1 May 2028. A bill amending the Copyright Act 1994 (**the Act**) must be developed, introduced and subsequently enacted to implement FTA obligations.

The Minister is seeking Cabinet approval for three substantive policy decisions on other amendments to the Act to include in this bill. At the same time, he will seek Cabinet approval for a number of other minor amendments to be included. These have been granted an exemption from the requirement to produce a Regulatory Impact Statement (**RIS**). The policy decisions sought, and exemptions granted, are listed at **Annex One**.

This RIS covers proposals to amend the Act to:

- provide enhanced protections for digital locks, including access control digital locks, by implementing the framework that was enacted under the Trans-Pacific Partnership Agreement Amendment Act 2016 (the **2016 TPP framework**) with adjustments to bring it up to the standard of protection required under the EU FTA;
- explicitly provide for website blocking injunctions (**WB injunctions**) enabling a court to order Internet Service Providers (**ISPs**) to block access to foreign pirate websites, with provisions based on the Australian Copyright Act 1968; and
- replace the commissioning rule on who is the first owner of copyright with a single default rule providing for the creator of a commissioned work to be first owner, unless the creator and commissioner agree otherwise.

Summary: Problem definition and options

What is the policy problem?

This RIS covers three issues:

Issue 1: Adequate protection for digital locks

The EU FTA requires New Zealand to amend the Act to enhance protections for digital locks by:

- prohibiting the bypassing of digital locks (ie technology that is designed to prevent or restrict acts not authorised by the copyright holder) where the person concerned carries this out in the knowledge, or with reasonable grounds to know, that they are pursuing such act, and
- expanding the rules around types of devices used to bypass locks that may not be made, imported, distributed, offered for sale, sold or otherwise provided.

The above changes only relate to copy control locks (ie technology that prevents a digital material being copied). However, amending the Act to only strengthen its existing protections for copy control locks overlooks the need to protect access control locks (eg technologies requiring the use of accounts and passwords). These are often more important for streaming services and the development of new online ways of selling and distributing content. As the Act already needs to be updated to meet EU obligations on the protection of digital locks, this creates a good opportunity to consider extending protection to access control locks at the same time.

The Crimes Act 1961 includes offences for crimes involving computers that can apply to access control locks.

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Issue 2: Facilitating WB injunctions

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Most infringing websites are hosted overseas and outside New Zealand's legal reach. Although copyright holders may seek an injunction from the High Court requiring ISPs to block access to infringing websites, neither the Act nor the High Court Rules (**the Rules**) provide guidance on the circumstances in which the Court should grant injunctions or the form those court-ordered measures should take.

This creates legal uncertainty, cost and risk for both copyright owners and ISPs.

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ISPs face potential liability if they block content without a court-ordered injunction. Compared with overseas jurisdictions that provide clear legislative frameworks for their courts to order WB injunctions, New Zealand lacks an effective and predictable enforcement mechanism for copyright holders to address online piracy.

Issue 3: Repeal of the commissioning rule

Section 21 of the Act sets out the rules for who owns first copyright in an original work. For most types of works this is the creator of the work. However, section 21(3) (the **commissioning rule**) provides that the person who commissions certain categories of works (including photographs, paintings and drawings) is the first owner of copyright, unless there is an agreement between the creator and commissioner that provides otherwise. This means that creators who have been commissioned and wish to retain copyright must negotiate this outcome and provide for it in contract.

Creators, in particular photographers, have said that the rule is poorly understood, is inconsistently applied and weakens their bargaining position. Cabinet agreed in 2007 to repeal the commissioning rule (following consultation in 2006) and a Bill amending the Act was introduced into Parliament in 2008. However, the Bill was subsequently discharged from the Order Paper after a change of Government.

What is the policy objective?

Issues 1 and 2: Adequate protections for digital locks and facilitating WB injunctions

Primary objectives:

- facilitate lawful online business models for copyright holders to monetise the consumption of their content online in New Zealand
- enable copyright holders to take timely and proportionate action to address infringements of their works in the digital environment.

Secondary objectives:

Issue 1: Adequate protection for digital locks

Provide a legal framework for protecting digital locks used by copyright holders that:

- is effective and cost-efficient for copyright holders to use
- permits locks to be bypassed under limited circumstances to protect lawful activities, fairly balances the rights of copyright holders with the wider interests of society, supports competition and innovation, enables security and safety research, and protects consumer and public interest.

Issue 2: Facilitating WB injunctions

- provide clear, efficient and fair court processes for the granting of WB injunctions, reducing legal uncertainty and litigation costs for copyright holders, website owners and ISPs.

Issue 3: Repeal of the commissioning rule

Primary objectives:

To provide:

- rules for first ownership of copyright are easy to understand across all categories of works
- a balanced functional relationship between creators and commissioners when original works are commissioned.

What policy options have been considered, including any alternatives to regulation?

Issue 1: Adequate protection for digital locks

- **Option One – Status quo:** Amend protections for copy control locks under the Act to strengthen their protections as required by the EU FTA. Existing protections for access control locks would continue to be provided through the computer-related offence provisions under the Crimes Act.
- **Option Two – Implement the 2016 TPP framework with EU FTA related enhancements (preferred):** Implement the legal framework for protecting digital locks enacted under the Trans-Pacific Partnership Amendment Act 2006 (the **2016 TPP framework**) providing civil remedies and criminal penalties for both copy control and access control locks, with some adjustments to implement enhanced protections required by the EU FTA.

Issue 2: Facilitating WB injunctions

- **Option One – Status quo:** Retain existing arrangements which are that WB injunctions (requiring ISPs to block pirate websites) may be sought under the common law and High

Court rules, but without any guidance on what matters the Court should consider before ordering such an injunction.

- **Option Two – Amend the High Court Rules:** Amend the High Court Rules to provide guidance on the matters the Court should consider before ordering such a WB injunction.
- **Option Three – Replicate the Australian regime:** Amend the Act to introduce the same guidance on applying for a WB injunction as provided under the Australian Copyright Act, where an ISP is required to block a pirate website.
- **Option Four – Modified Australian regime (preferred):** Amend the Act to introduce guidance on applying for a WB injunction based on the Australian regime, with modifications reflecting lessons learned from its operation and tailored to the New Zealand setting.

Issue 3: Repeal of the commissioning rule

- **Option One – Status quo:** Retain the existing commissioning rule under section 21(3).
- **Option Two – Repeal the commissioning rule (preferred):** Repeal section 21(3), making creators the default owners of copyright for all categories of commissioned works.
- **Option Three – Extend the commissioning rule:** Expand the commissioning rule by having it apply to all categories of copyright works.

What external consultation has been undertaken?

In June 2025, the Minister of Commerce and Consumer Affairs at the time held two roundtables with a range of copyright stakeholders representing the key sector bodies, representatives of copyright owners and the creative sector more widely, experts, libraries, museums, ISPs, academics and lawyers to test proposed amendments to the Act, including those discussed in this RIS. Further engagement with ISPs was subsequently undertaken regarding implementation of options for facilitating WB injunctions. In those discussions, there was broad support for progressing the proposed amendments discussed in this RIS.

The proposals discussed at the roundtables were developed from submissions received following the 2018 release the *Review of the Copyright Act: Issues Paper* (the **Issues Paper**) inviting the public to identify issues with the Act, including proposals for how those issues could be addressed. Approximately 150 submissions were received covering numerous issues and varying proposals on how those issues might be addressed.

Proposals discussed at the roundtables and subsequently with others included strengthening protections for digital locks (including for access control locks) based upon implementing a framework similar to the 2016 TPP framework, WB injunctions to align with Australia Copyright Act provisions and changes to commissioning rules to provide a single default rule for all works. Roundtable participants supported the proposed reforms

The 2016 TPP framework was developed following a discussion paper in early 2016 and consideration of submissions received on the protection of digital locks to the standard required under the Trans-Pacific Partnership Agreement. Prior to its enactment by Parliament, the provisions of the 2016 TPP framework were considered by Select Committee after a call for, and consideration of, public submissions.

On the commissioning rule, two rounds of consultation were undertaken by way of two discussion documents in 2006 and 2007. This resulted in a Bill to amend the Act being introduced into Parliament in 2008, but a change of Government resulted in the Bill being discharged in 2009.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs

Description of costs and where they fall

Issues 1 and 2: Adequate protection for digital locks and facilitating WB injunctions

Creators and in particular copyright holders

Copyright is personal property, meaning that creators, and in particular copyright holders, are responsible for enforcing their copyright. The costs related to deterring and preventing infringement of their rights, including undertaking court action where appropriate, are costs they must voluntarily incur if they wish to prevent copyright infringements.

Courts

Providing enhanced or additional civil procedures for the enforcement of copyright may result in a minor increase in costs for courts, but only if copyright owners use those procedures. Experience suggests that publicity associated with successful court action deters future infringements and thus the need for court action.

ISPs

Facilitating WB injunctions for foreign websites would likely create some costs for ISPs. Costs would fall into two categories:

- Costs to appear before the courts – Australian experience is that ISPs only appeared for the first few applications. WB injunctions have subsequently become routine, and ISPs no longer appear.
- If ordered by the Court, costs to block their subscribers from accessing those websites. However, the Court would have some flexibility to apportion at least some of the ISP costs to copyright owners applying for such injunctions on a fair and reasonable basis.

Issue 3: Repeal of the Commissioning Rule

Commissioners of certain types of copyright works, particularly for artistic types of work where the status quo gave them first ownership of copyright, may incur increased costs. They would need to negotiate assignment of copyright with the creator.

Benefits

Description of benefits and where they fall

The proposals would largely benefit creators and copyright owners, and those lawfully involved in the distribution of copyright works online.

Issues 1 and 2: Adequate protection for digital locks and facilitating WB injunctions

Copyright owners would have additional cost-effective measures to address online piracy of their works that, if used, would reduce New Zealanders' access to and consumption of infringing works online.

This would help drive consumers towards lawful consumption of digital works and, in particular, to using lawful websites and other online platforms to purchase and consume works, increasing revenue for copyright holders, including lawful website owners and streaming platforms. Increased revenue from New Zealand consumers lawfully consuming copyright material will help increase the incentives for copyright holders to make more of their material available in New Zealand.

Issue 3: Repeal of the commissioning rule

Providing a single default rule for who is the first owner of copyright in commissioned works would primarily benefit creators, especially those who create smaller amounts of content, giving them more control over how and when their works may be used by the commissioner.

As creators become the default owners of copyright in the commissioned work, they would no longer need to incur time and costs to persuade the commissioner to assign copyright in the commissioned work over to them if they wished to do so.

Balance of benefits and costs

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs? Yes.

Issues 1 and 2: Adequate protection for digital locks and facilitating WB injunctions

The costs are largely voluntarily incurred by copyright holders taking legal action to address infringement of their copyright material online. They will weigh the benefits of stopping and deterring online infringements against the costs of taking court action. The proposals in this RIS are aimed at reducing their costs to take court action.

Issue 3: Repeal of the commissioning rule

The proposals involve a shift in who incurs time and costs to contact out of the default ownership rule. Creators incur fewer costs whilst some commissioners may incur more costs compared to the status quo.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

Implementation path: Primary legislation to amend the Act with guidance for creators, copyright owners, online distributors of creators' works, ISPs, commissioners and consumers on changes and what they mean for them.

Roles and readiness: MBIE owns policy settings. Resourcing to be met within existing baseline.

Risks:

Protection for digital locks and facilitating WB injunctions – if proposals are not implemented it is expected that the rates of online piracy experience and reported by copyright holders will continue to be high. The success of the proposed changes will be dependent on the extent to which copyright owners use them.

Commissioning rule – changing the default ownership rule for artistic works may cause a decrease in commissioning as commissioners may prefer to rely more on the use of stock works (those available to public for free use including art works in the public domain). However, we've not seen evidence of this outcome occurring overseas where jurisdictions have made a similar change to first ownership.

Monitoring: MBIE will monitor court cases by copyright holders related to the bypassing digital locks and WB injunctions. However, due to the nature of copyright being personal property, it is difficult to monitor what types of works are being commissioned and how frequently. MBIE will monitor feedback from copyright stakeholders on the effects of the proposals once implemented.

Limitations and constraints on analysis

It has not been possible to undertake quantitative analysis of the nature and magnitude of the problems or the various options considered. Confidential advice to Government

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well as evidence from overseas jurisdictions (notably Australia).

It is not possible to quantify how frequently digital locks are bypassed, especially access control locks, without authorisation, whether for lawful or illicit purpose and whether bypassing, for example, contributes to the creation of pirate websites

WB injunctions are being sought and granted in Australia, but not in New Zealand, despite the same infringing websites being accessible in both countries. Confidential advice to Government

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As no applications for website-blocking injunctions have been made in New Zealand, it is not possible to quantify current or expected costs, how those costs might change under the proposed amendments, or how they would be allocated between applicants (such as copyright owners) and intermediaries (such as ISPs).

We also have no firm information about how frequently copyright works are commissioned, by whom and how commissioning contracts provide for copyright ownership. We have largely relied on anecdotal information from creators and commissioners.

I am satisfied that, given the available evidence, this RIS represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: _____



Gillian Sharp

**Manager, Corporate Governance
and Intellectual Property Policy**

12 May 2026

Quality Assurance Statement

Reviewing [Agency/Agencies]: MBIE

QA rating: Meets

Panel Comment:

A Quality Assurance Panel from MBIE has reviewed the Regulatory Impact Statement (RIS) prepared by MBIE titled Regulatory Impact Statement: updates to the Copyright Act 1994 on 12 May 2026. The Panel consider that the information and impact analysis summarised in the RIS **meets** the Quality Assurance criteria.

The RIS is long but well structured, and the additional length seems necessary given it cover three related but separate proposed changes. While it would have been good to have more evidence to support some of the conclusions, particularly around the relative costs, we feel the analysis is sufficient. On Issue 2, we feel more consideration could have been given to Option 2 to revise the High Court rules but feel the recommended option is defensible. It would be good to undertake further work to identify options for monitoring the effectiveness of the changes.

Section 1: Diagnosing the policy problem

Definitions for certain terms used throughout this RIS

EU FTA: New Zealand-European Union Free Trade Agreement

FTAs: New Zealand- European Union Free Trade Agreement and New Zealand-United Kingdom Free Trade Agreement

GLAM organisation: Not-for-profit galleries, libraries, archives and museums

UK FTA: New Zealand United Kingdom Free Trade Agreement

The Act: Copyright Act 1994

Access control lock: a technology-based lock that controls who may access a work online by, for example, requiring an account to be created and use of a password to access an online database

Copy control lock: a technology-based lock that controls when a person may make a copy of a digital work, for example, it may prevent a person from printing a hard copy of an electronic document

Commissioning rule: section 21(3) of the Act providing a default ownership rule that a person who commissions and pays (or agrees to pay) for certain types of works (a photograph, computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording) is the first owner of copyright, unless a contract states otherwise

Court: High Court of New Zealand

Creative sector: includes individuals, industries and organisations involved in creating, producing, and distributing creative goods and services

Digital lock: a technology-based lock that uses, for example, passwords, encryption, licence keys, and activation codes and are used by copyright holders to control and monetise online consumption of their works

ISP (Internet service provider): a provider of a service that enables its subscribers to access the internet (described under Australian legislation as “carriage service provider”)

Rules: High Court Rules 2016

Stream-ripping: the act of downloading sound recordings or video from streaming services (eg YouTube) in order to make a digital copy

TPP: the Trans-Pacific Partnership Agreement, a major multilateral trade agreement signed in 2016 to lower trade barriers and set shared rules across Pacific Rim economies. The original TPP did not enter into force, but New Zealand now participates in its successor, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which is fully in force and continues to shape NZ’s trade and economic relationships in the Pacific.

2016 TPP framework: amendments made to the Act when Parliament enacted the Trans-Pacific Partnership Agreement Amendment Act 2016. They enabled ratification of TPP by providing a new framework for the protection of digital locks, including for both copy control and access control locks. While enacted, it was never brought into force, because the TPP did not enter into force.

WB injunction (website blocking injunction): a court ordered injunction requiring an internet service provider (ISP) to prevent its subscribers from being able to access a website.

What is the context behind the policy problem and how is the status quo expected to develop?

1. Copyright, which applies automatically to eligible works, including paintings, photographs, music, novels, films, broadcasts and software, gives creators exclusive rights to control when and how their works are used and consumed for a set period of time. It protects against unauthorised copying and distribution to the public, supporting creators' ability to monetise their works, thereby promoting creative activities.
2. Copyright obligations are a standard part of modern free trade agreements, easing trade by aligning laws and enforcement measures across countries. The FTAs include obligations to extend the duration of copyright protection by 20 years (eg the life of the author plus 50 years to life plus 70 years) and enhance protections for digital locks. The EU FTA requires us to do this by 1 May 2028. The need to amend the Act to meet FTA obligations provides an opportunity to make other changes to the Act, including those discussed in this RIS.
2. There is Confidential advice to Government online copyright piracy in New Zealand. Copyright piracy is, in plain terms, taking someone else's creative work and using it illegally. Common examples of online piracy include:
 - a. downloading movies, music, or games from illegal websites
 - b. sharing paid software or ebooks for free over the internet
 - c. streaming TV shows or sports events from unauthorised websites
 - d. copying images, videos, or text from websites and reposting them without permission.
3. When New Zealanders access infringing material online through a pirate website, the copyright owners do not receive remuneration for the use of their works and the Government does not receive tax from that income. Confidential advice to Government

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Issue 1: Adequate protection for digital locks

4. Digital locks are technology-based locks such as passwords, encryption, licence keys, and activation codes. They are used by copyright holders to control and monetise online consumption of their works. Digital locks enforce rules around when and who may access, copy, share, modify or use digital works and come in two broad categories: copy control and access control locks. Common examples limit:
 - a. movies to being played only on certain streaming platforms or applications
 - b. ebooks to being read only on certain devices
 - c. software from being run unless a licence key or online activation code is completed
 - d. music files from being copied to other devices.

5. New Zealand is obliged under various international agreements to provide adequate legal protection and effective legal remedies under the Act against the bypassing of digital locks that are used by copyright holders in connection with the exercise of their rights.¹ These international agreements do not explicitly define what types of digital locks should be protected under the Act. The Act only provides limited protections against the unauthorised bypassing of copy control locks. It provides civil remedies and criminal penalties for the making, importing, and dealing in devices used for bypassing, and the supply of bypassing services and related information. It does not provide protection for access control locks as “access” is not an exclusive right provided under the Act to copyright holders.
6. Currently, there is only limited protection available for access control locks under New Zealand’s law. Copyright holders may only take civil action against a person bypassing an access control locks where that bypassing breaches a prior contractual agreement with the copyright holder. However, copyright holders are unable to take civil action against, for example, someone else bypassing their access control lock nor against anyone making or supply devices for bypassing access control locks or providing bypassing services or related information.
7. Access control locks receive some protection under the Crimes Act through the offences related to computers. Confidential advice to Government

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8. The EU FTA requires the current protections for copy control locks under the Act to be strengthened by, at least, prohibiting a person bypassing copy control locks and broadening the range of circumvention devices that may not be made, imported, marketed and distributed. The FTA obligations are described in **Annex Two**. The National Interest Analysis for the decision to sign and ratify the EU FTA discussed the impact of the obligation to strengthening protections for digital locks under the Act.
9. However, strengthening the protections for copy control locks will not assist to strengthen the protection of access control locks that are just as important, if not more so, to copyright holders. Access control locks are more important for those providing streaming services and developing new consumption models for monetising their content online.

Issue 2: Facilitating WB injunctions

10. Pirate websites and streaming platforms make infringing copyright works available free of charge or at lower prices than lawful websites and platforms. Pirate websites are created using copyright works that are frequently acquired by bypassing digital locks and using practices such as stream-ripping lawful websites and streaming platforms.
11. Other countries, including Australia, have amended their copyright laws to facilitate the granting of WB injunctions. Overseas experiences shows that where WB injunctions are granted, consumers migrate to using lawful websites and platforms for consuming copyright works, lifting the remuneration creators receive for their works being consumed online.

¹ See, for example, article 11 of the WIPO Copyright Treaty, article 18 of the WIPO Performances and Phonograms Treaty and article 18.17 of the NZ-EU FTA.

12. Confidential advice to Government continued high levels of online piracy would be expected to persist in New Zealand.

Issue 3: Repeal of the commissioning rule

13. The commissioning rule (section 23 of the Act) establishes a default ownership rule that a person who commissions and pays (or agrees to pay) for certain types of works (a photograph, computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording) is the first owner of copyright, unless a contract states otherwise. As a result, where they have been commissioned, creators of these types of works must actively negotiate to retain copyright in those commissioned works.
14. Cabinet agreed in 2007 to repeal the commissioning rule, but that decision has never been implemented nor rescinded. The rule continues therefore to apply, leaving a long-standing policy decision unresolved and the *status quo* unchanged.

What is the policy problem or opportunity?

Issue 1: Adequate protections for digital locks

15. As discussed above, there are no civil procedures and remedies available to rights holders to prevent circumvention of access control locks and existing offences under the Crimes Act that might apply have never been used and are unlikely to be used by either copyright holders or enforcement agencies.
16. As changes need to be made to the Act to strengthen protections for copy control locks to meet EU FTA obligations, it provides a timely opportunity to consider amending the Act to also extend those protections to access control locks.

Issue 2: Facilitating WB injunctions

17. Many pirate websites are hosted overseas and outside the territorial jurisdiction of New Zealand courts. In practice, the main way for copyright holders to prevent New Zealand based users from accessing these websites is to seek a court-ordered WB injunction requiring ISPs to block access.
18. The Act and the Rules allow for the Court to grant WB injunctions. However, they provide no guidance on the circumstances in which such injunctions should be granted or the matters the Court should take into account. This includes the evidential threshold, how proportionality and public interest should be assessed, and whether alternative remedies or the conduct of overseas website operators are relevant.
19. Confidential advice to Government
Confidential advice to Government Without clarity on these matters, copyright holders face a heightened risk that applications may fail despite incurring substantial and potentially unrecoverable legal costs.
20. A lack of guidance also impacts ISPs. If an injunction is granted, ISPs must implement it, but there is no guidance on the nature and scope of blocking order that may be imposed or how implementation costs should be allocated.
21. No WB injunctions have been sought in New Zealand to date, despite ongoing online piracy and the availability of comparable remedies overseas. Confidential advice to Government

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In contrast, jurisdictions such as Australia provide explicit provisions in their copyright laws to support applications for WB injunctions, and courts have regularly granted WB injunctions in Australia since 2015.

Issue 3: Repeal of the commissioning rule

22. Creators argue that retaining copyright is important for developing and controlling their creative output. Commissioned works often have a similar look or feel to a creator's prior works, even where the commissioner has had no input into those earlier works. Where the commissioner owns copyright, creators report increased legal uncertainty and a risk of inadvertently infringing copyright in their own body of work.
23. The default rule can also limit a creator's ability to respond when commissioned works are used in ways not anticipated at the time of commissioning. Because creators do not own copyright under the default rule, they are unable to take remedial action.
24. The default rule is out of line with other jurisdictions such as UK, US, Canada and Australia where commissioning rules have changed to favour creators being the first owners of copyright.
25. There appear to have been two rationales for creating the commissioning rule in the Act, dating from 1994. Firstly, that the commissioner will have often directed or influenced the nature of the work created. Secondly to protect individuals who commission a work for private and domestic purposes. Consultations undertaken by the MBIE concluded that the first rationale does not provide sufficient justification for the existence of the commissioning rule and that any issues relating to the creative input, investment of and usage by the commissioner might be better addressed by contract.
26. Concerns about the commissioning rule have been longstanding. Creators argue that the rule is unfair because it applies inconsistently across different types of works. As a result, some creators must negotiate ownership of copyright, while others are automatically granted copyright.

What objectives are sought in relation to the policy problem?

Issues 1 and 2: Adequate protections for digital locks and facilitating WB injunctions

27. **Primary objectives:**
 - a. facilitate lawful online business models for copyright holders to monetise the consumption of their content online in New Zealand
 - b. enable copyright holders to take timely and proportionate action to address infringements of their works in the digital environment.
28. **Secondary objectives:**

Issue 1: Providing adequate protection for digital locks

- a. Provide a legal framework for protecting digital locks used by copyright holders that:
 - i. is effective and cost-efficient for copyright holders to use
 - ii. permits locks to be bypassed under limited circumstances to protect lawful activities, fairly balances the rights of copyright holders with the wider interests of society, supports competition and innovation, enables security and safety research, and protects consumer and the public interest.

Issue 2: Facilitating WB injunctions

- b. Provide clear, efficient and fair court processes for WB injunctions, reducing legal uncertainty and litigation costs for copyright holders, website owners and ISPs.

Issue 3: Repeal of the commissioning rule

29. Primary objectives:

- a. rules for first ownership of copyright are easy to understand across all categories of works
- b. encourage a balanced functional relationship between creators and commissioners when original works are commissioned.

What consultation has been undertaken?

Consultation informing this RIS

30. In June 2025, the previous Minister of Commerce and Consumer Affairs held two roundtables in Auckland and Wellington with a cross-section of interested stakeholders. Over 20 representatives attended from key creative sector organisations and other related fields presenting the interests of authors, publishers, performers, directors and actors, music and film producers, the education sector, libraries and museums, ISPs, lawyers and academics.
31. The proposals discussed during the roundtables and in this RIS were developed from submissions received in response to the 2018 consultation paper *Copyright Act 1994: Issues Paper*. The paper invited the public to identify issues with the functioning and operation of the Act and suggest options to address identified issues. Over 150 submissions were received as part of those consultations.
32. The aim of the roundtables was to gather updated information from stakeholders to ensure that the issues we proposed to address, including those discussed in this RIS (and those outlined in Annex One) were still relevant and, if so, to identify most appropriate means to address them.
33. Our preferred options for addressing Issues 1 and 2 were broadly supported by attendees
34. Support for the proposal to address Issue 3 (repealing the commissioning rule) was mixed. Some attendees raised concerns about its possible impact on the education sector (where it was said that commissioning of artworks, software and other creative works is common) and small businesses who commission creators to design products for based upon their ideas and/or to include particular design features they want to incorporate into their products they manufacture and/or sell.
35. Proposed options for WB injunctions were subsequently discussed in July 2025 with the Internet Service Provider Association of New Zealand and New Zealand Telecommunications Forum. They were supportive of the introduction of clear rules for implementing WB injunctions into the Act, as have been implemented in Australia. A key need for the ISPs was to ensure that any provisions about WB injunctions afforded them adequate protection against liability for any damage arising from blocking lawful websites.
36. The proposals in this RIS have been discussed with relevant agencies, including Ministry of Justice, Ministry for Cultural and Heritage and the Ministry of Foreign Affairs and Trade.

Earlier consultations by policy issue

Issue 1: Adequate protection for digital locks

37. In 2016 public consultation on a new legal framework for protecting digital locks, including providing protection for access control digital locks, under the Act was undertaken in conjunction with ratifying the TPP. This resulted in Parliament enacting the Trans-Pacific Partnership Agreement Amendment Act 2016 providing a new framework

for the protection of digital locks, including both copy control and access control locks. However, the 2016 TPP framework has not entered into force, nor is it likely to.²

Issue 2: Facilitating WB injunctions

38. We have engaged with the Australian Attorney-General Department and an Australian based copyright holder with experience obtaining WB injunctions. These discussions informed understanding of how the Australian provisions work in practice and its practical impacts. This comparison is relevant because many stakeholders operate in both jurisdictions and both countries have similar copyright law and enforcement challenges.
39. Australia has held multiple public consultations on WB injunctions as part of its copyright enforcement strategy. This includes consultation which led to its Copyright Amendment (Online Infringement) Act 2018, which expanded the scope of WB injunctions to include search engines and foreign-hosted sites.
40. Further Australian consultation occurred in 2022–23 through the Copyright Enforcement Review, inviting feedback on the effectiveness of current enforcement tools, including WB injunctions. Submissions supported WB injunctions as an effective and proportionate response to persistent online infringement, especially when combined with safeguards to protect legitimate access and due process. This support reflects a broader consensus among copyright holders, legal experts, and some consumer groups that WB injunctions are a practical enforcement mechanism within Australia's copyright regime.
41. The analysis has also been informed by independently published research by Professor Graeme Austin on legislating for WB orders: *Legislating for Site-Blocking Orders*, New Zealand Universities Law Review (2023).³

Issue 3: Repeal of the commissioning rule

42. Two rounds of consultation were undertaken in 2006 and 2007 through discussion documents. Submissions from creators and commissioners were equally split on whether the rule should be repealed, modified or retained. A Bill was introduced in 2008 to repeal the commissioning rule. The Bill was, however, subsequently discharged in 2009 due to a change in Government priorities.
43. Submitters supporting the repeal argued that copyright ownership is important for creators to control the future use of their works. Commercial commissioners raised concerns that repeal could reduce the number of works commissioned, as organisations are less willing to invest in works where copyright ownership must be negotiated.
44. Some submitters suggested that commercial commissioners would use stock photographs or library music instead. Other submissions suggested demand for works is constant and that the need for works to be created will continue whether by way of commission or through increased employment of creators.
45. Submissions on the 2018 *Copyright Act 1994: Issues Paper* largely confirmed that the issue persists and that the views expressed in 2006 and 2007 have not changed over time.

² The commencement of the 2016 TPP framework requires the TPPA to enter into force, but this is now very unlikely to happen unless, and until, the US ratifies it.

³ [Legislating for Site-Blocking Orders by Graeme W. Austin :: SSRN](#)

Section 2: Assessing options to address the policy problem

Issue 1: Adequate protection for digital locks

What criteria will be used to compare options to the status quo?

46. The legal framework for protecting digital locks under the Act should:
- satisfy international copyright and related rights obligations in a manner that clear and unambiguous
 - provide comprehensive protection for all types of digital locks
 - provide cost effective enforcement measures for copyright holders
 - provide clear, proportionate, and usable exceptions for circumvention that have regard to (for example) enabling users to undertake acts that are permitted by copyright law, consumer rights and interests, competition, enabling encryption.

What scope will options be considered within?

47. As discussed above, the EU FTA requires New Zealand to amend the Act to strengthen protections for at least copy control locks by prohibiting a person from bypassing a lock and expanding the rules around bypassing devices. However, there is some ambiguity around the interpretation of the EU FTA obligations as to whether they also apply to the protection of access control locks.
48. The decision to strengthen the existing protections for copy control locks has already been taken as part of the decisions to ratify the EU FTA so will not be considered in this RIS. This RIS only considers whether the resulting framework required for protecting copy control locks should be extended to access control locks. It does this by considering the impacts, costs and benefits of implementing the 2016 TPP framework to the enhanced standard of protection required under the EU FTA for copy control locks.
49. The 2016 TPP framework provides a ready-made framework for protecting both copy control and access control locks. More crucially it provides comprehensive and tested (through previous consultations) rules under which digital locks may be lawfully bypassed, something the Crimes Act lacks.

What options are being considered?

Option One (status quo) – *Continue with existing copy control regime with EU FTA related amendments*

50. Under this option, after amending the Act to implement EU FTA obligations, the Act would provide:
- civil provisions prohibiting the act of bypassing copy control locks
 - civil and criminal provisions prohibiting the making, importing and dealing in devices for bypassing copy control locks and supplying information about, and services for, bypassing such locks
 - for qualified persons to assist a person bypass a copy control lock to exercise a copyright exception, for example, to copy a work for research or private study
 - for qualified persons to be supplied with circumvention devices and information.

51. The Crimes Act, and, in particular, the offences for crimes involving computers (including offences for unauthorised access and interfering with a computer system), provide implicit protection for digital locks, including access control locks. However, there are no provisions outlining when bypassing a digital lock without the copyright holder's authorisation would be lawful (eg to repair a faulty machine controlled by software).

Option Two – *Implement the 2016 TPP framework with EU FTA related amendments*

52. Under this option the Act would be amended to repeal and replace the copy control regime with the 2016 TPP framework that is further amended to meet EU FTA obligations.
53. Key features of the 2016 TPP framework include civil remedies and criminal penalties that protect both copy control and access control digital locks. More importantly, the framework removes the need to engage a qualified person to bypass locks on behalf of users. Instead, it provides a comprehensive and tested list of specified purposes under which digital locks (particularly access control locks) may be lawfully bypassed. This includes the ability to specify additional purposes through regulations.
54. The 2016 TPP framework also includes good faith protections for not-for-profit organisations, including educational establishments, and GLAM organisations from becoming criminally liable for bypassing a digital lock applied to a copyright work not knowing that the bypassing of the lock is prohibited.
55. No changes to the Crimes Act provisions would be made.

How do the options compare to the status quo?

	Option One (status quo) – Continue with existing copy control regime with EU FTA related amendments	Option Two – Implement the 2016 TPP framework with EU FTA related amendments
	0	+
International copyright and related rights obligations	Only amending the Act to strengthen protections for copy control locks as required by EU FTA is the minimum necessary to meet international obligations. However, some ambiguity remains as to whether New Zealand would be fully meeting its international obligations to protect digital locks and, in particular, access control locks.	Broadening the scope of protections to include prohibiting the act of circumvention, and extending the existing civil and criminal provisions to apply to both copy control and access control digital locks, would ensure New Zealand is clearly and unambiguously fulfilling its international obligations to providing an adequate legal framework for protecting digital locks.
Comprehensive protection	0 Under this option, different regimes would continue to exist for preventing unauthorised bypass of digital locks. Copyright holders would still be reliant on enforcement agencies taking action to prevent bypass of digital locks under the Crimes Act. Confidential advice to Government	+
Cost effective enforcement measures	0 Although this option strengthens protections for copy control locks, Confidential advice to Government Confidential advice to Government Lack of effective enforcement measures for preventing the bypassing access control locks condones copyright infringements and allow copyright piracy to thrive.	+

Clear, proportionate, and usable exceptions	0 It might be argued that the existing exceptions are clear and proportionate for copy control digital locks. However, we have heard from stakeholders, especially from the GLAM organisations that the provisions in relation to qualified persons assisting others to bypass locks, are largely unusable. For example, librarians do not have the technical knowledge, skills nor equipment to bypass digital locks. Further we have found no evidence of any “qualified person” has bypassed any digital lock to aid a person exercise an exception available under the Act.	+ The 2016 TPP framework provides clear, proportionate and usable exceptions for when both copy control and access control digital locks may be bypassed for legitimate purposes. These were developed through public consultation and subsequently tested through select committee process.
Overall assessment	0 This option, whilst applying enhanced protections to copy control digital locks, does not assist the copyright holder to prevent unauthorised bypass of access control digital locks. It leaves access control digital locks, a key element of copyright holders’ online business models to earn revenue from their works, vulnerable to illicit and damaging use.	++++ Implementing the 2016 TPP framework, which is amended to strengthen protections for digital locks as required by the EU FTA, would ensure that New Zealand is clearly and unambiguously meeting its international obligations to protect digital locks. It provides a more cost-effective enforcement framework for copyright holders to address copyright infringements in the digital environment, especially where they are relying on access control locks to monetise their works online. The 2016 TPP framework would also provide an improved criteria setting out when digital locks may be bypassed for legitimate and fair purposes.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

56. Option Two (implementing the 2016 TPP framework with EU FTA related amendments) is the better option for ensuring New Zealand meets its international obligations to provide an adequate legal framework for protecting digital locks used by copyright holders. It is comprehensive and cost effective for enforcement purposes because it would set out protections for both copy control and access control digital locks under a single statute, whilst including a range of appropriate exceptions that have previously been tested through public consultations as to their clarity, proportionality and usability.
57. Implementation of the comprehensive protections provided under Option Two would also send a clear signal to public, including copyright pirates, copyright holders, and trade partners that New Zealand does tolerate online copyright piracy including, for example, stream ripping practices.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

58. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Copyright holders	They would incur costs to apply to the courts to address the bypassing of their digital locks, such as court and lawyer fees, preparation and filing of evidence, and the like.	Cost are uncertain and depend of the circumstances surrounding the bypassing of their locks, including who is doing the bypassing, who frequently and the number of copyright works impacted.	Low – no civil cases have been taken to address unauthorised bypassing of copy control locks.
Consumers	No additional costs identified for consumers who lawfully acquired copies of copyright works or subscribe to lawful (eg copyright licensed) websites and platforms making copyright works available to them.	N/A	
Courts	Expanding the scope of civil and criminal provisions to protect all forms of digital locks and in particular access control locks under the Act could impact court resources. For example, copyright holders may take civil legal	Minimal	Low – clarifying the law related to circumvention of digital locks and the relative success of threats of legal action by copyright owners should be sufficient to deter and stop unauthorised bypassing. The occasional court case may be necessary to reinforce the

	proceedings against someone illicitly bypassing an access control lock.		prohibitions on bypassing locks.
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	A small increase in court resourcing costs	Low	High
Additional benefits of the preferred option compared to taking no action			
Copyright holders	Greater deterrence and reduction in opportunities to pirate and supply copyright works in New Zealand should lead to increased revenue from lawfully offerings of their works in New Zealand. Increased confidence to supply their works to New Zealand consumers, particularly online, knowing more cost-effective measures are available to address how and when copyright piracy occurs.	Small, not quantifiable.	Low Overseas experiences and studies indicate increased revenue for copyright holders arises when effective enforcement measures are able to be taken to address illicitly copying and distribution of their works online.
Consumers	Increased availability of lawful copyright works online. Possibly lower prices paid to consume copyright works online, because copyright holders are not having to recover costs arising from copyright piracy.	Small, not quantifiable.	Medium
International trading relationships	Closer alignment with key trading partners, which contributes to a more positive relationship with them. Reduction in the risk of New Zealand becoming a source of pirated works online internationally and trade partners initiating dispute settlement procedures for failing to adequately meet our international obligations to protect digital locks under copyright law.	Small, not quantifiable.	Based upon inquiries from, and assessments by, key trade partners concerning the protections provided to copyright work, especially in the digital environment and how international obligations are met.

Total monetised benefits	Some non-quantifiable monetised benefits would be realised under this option, if there is a subsequent deduction in copyright infringement, including the ability to prevent pirate websites and platforms being created in New Zealand and/or New Zealand copyright works being unlawfully acquired or accessed online.	Small, not quantifiable.	N/A
Non-monetised benefits	Not quantifiable		

Issue 2: Facilitating WB injunctions

What criteria will be used to compare options to the status quo?

59. The following criteria are applied to assess the options for the granting of WB injunctions:
- providing greater legal certainty for website owners, copyright holders and ISPs
 - cost effective and efficient court procedures
 - clarity and consistency in law as to where remedies to address copyright infringement are found.

What scope will options be considered within?

60. Obligations under the EU FTA require New Zealand to “ensure that its judicial authorities may issue an injunction against an intermediary whose services are used by a third party to infringe an intellectual property right”. New Zealand currently meets this obligation through the Rules (in particular rules 1.6 and 2.1, as affirmed by section 92B of the Act). Options must provide for WB injunctions; any option that prevents applications to the court for blocking websites is out of scope. Alignment with Australian copyright law is preferred to deepen alignment and because of the overlap of stakeholders and consumers.

What options are being considered?

Option One – *Status Quo*

61. Under this option there would be no legislative amendments made to either the Rules or the Act. The Court would continue to be free to develop its own criteria for considering such applications, including considering overseas jurisprudence from, for example, the Australian Federal Court. Successive applications over time would allow the Court to develop its own jurisprudence around what criteria to consider when such applications are received.

Option Two – *Amend the Rules to specify criteria the Court should consider*

62. Under this option, the Rules would be amended to specify the criteria the Court should consider for granting an application for a WB injunction.

Option Three – *Provide explicitly for WB injunctions in the Act by replicating the Australian regime*

63. Under this option, the Act would be amended to explicitly provide for WB injunctions by replicating the provisions for WB injunctions set out in section 115A of the Australian Copyright Act 1968.
64. The Australian regime has been used because the online markets for copyright in Australia and New Zealand are closely connected, and copyright holders have had relative success in Australia with these injunctions.
65. Copyright owners could apply to the Court requiring an ISP to block access by its subscribers to websites that:
 - a. infringe, or facilitate infringement of copyright
 - b. have the primary purpose or the primary effect of infringing, or facilitating an infringement, of copyright, whether inside or outside New Zealand.
66. The method of implementing a block is left up to the ISP, allowing different or a combination of approaches to be used.
67. The Court could also grant WB injunctions requiring online search engine providers to take reasonable steps to prevent users from being directed to blocked websites through search results.
68. WB injunctions would be subject to terms and conditions set by the Court. Copyright owners would be required to make reasonable efforts to inform the website owner that an WB injunction blocking access to the website is being sought.
69. In determining whether to grant a WB injunction, the Court would be required to take into account a non-exhaustive list of factors, including:
 - a. the flagrancy of the infringement, or its facilitation
 - b. whether the websites concerned make available directories or other lists of the means to infringe, or facilitate infringement of copyright
 - c. whether the owner or operator of the website demonstrates a disregard for copyright generally
 - d. whether other countries have blocked access to the website for reasons related to copyright infringement
 - e. whether blocking access to the website is proportionate in the circumstances
 - f. the impact on any person or class of persons of granting the injunction
 - g. whether blocking access to the website is in the public interest
 - h. whether the copyright owner has informed the website owner or operator
 - i. whether any other remedies are available under the Copyright Act
 - j. any other relevant matter.

Option Four (preferred) – Provide explicitly for WB injunctions with a modified Australian regime

70. Under this option, the Act would be amended to explicitly provide for WB injunctions by developing a provision based of the provisions in section 115A of the Australian Copyright Act (as outlined in Option Three). The provision would include modifications to the matters the Court could consider reflecting the lessons learned from the operation of that regime, independent research on legislating for WB orders and the New Zealand setting.
71. Australia’s experience demonstrates that statutory guidance for WB injunctions can materially improve legal certainty, reduce procedural costs and enable more routine use of injunctions to address overseas online piracy. That experience also provides insight into aspects of the regime that could be clarified or refined to improve efficiency and predictability.
72. Independently published research by Graeme Austin highlighted areas where the matters that the Court must take into account could be modified to improve the efficiency of the Court’s process.
73. This option proposes the following modifications to the Australian regime:
 - a. to remove the requirement for the courts to consider whether the owner or operator of the website demonstrates a disregard for copyright generally
 - b. to require the court to consider the reasonable costs of implementing a WB injunction and how these costs could be allocated.
74. Experience from the Australian regime suggests that considering whether the owner or operator of the website demonstrates a disregard for copyright is redundant as the websites that meet the threshold for blocking typically exhibit a disregard for copyright.
75. The Australian provisions do not expressly require the Federal Court to consider the costs of implementing a injunction. In the first site blocking case, the Court nonetheless held that it was reasonable for the copyright owners to pay the ISPs compliance costs in the amount of AU \$50 per domain name.
76. We propose to expressly permit the Court to take into account the reasonable costs of implementing a WB injunction and to make directions about how those costs should be allocated between the copyright owners and ISPs. This would give greater certainty to ISPs that the costs they incur in complying with blocking orders will be considered by the Court and would reduce the risk of inconsistent or unexpected cost outcomes across cases.

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Amend the Rules to specify criteria the Court should consider	Option Three – Provide explicitly for WB injunctions by replicating the Australian regime	Option Four - Provide explicitly for WB injunctions with modified Australian regime
Providing greater legal certainty for website owners, copyright holders and ISPs	0 All parties lack clarity on criteria the Court will consider, Confidential advice to Government While overseas jurisprudence (including Australia) could be considered, the differences in law and judicial approaches makes any outcomes unpredictable.	+	+	++
Cost effective and efficient Court procedure	0 Absence of legislative criteria creates uncertainty about evidentiary requirements, leading to over-provision of material and increasing costs for applicants, respondents, and the Court. This may delay or prolong proceedings.	-	+	++
Clarity and consistency in law as to where	0	--	+	+

remedies to address copyright infringement are found	Neither the Act nor the Rules provide guidance on the criteria for granting WB injunctions. The Court would be free to develop their own approach for WB injunctions.	Locating remedies across multiple regimes (the Rules and the Act) may make it harder for a copyright holder to determine what remedies are available to prevent infringement of their rights. The Rules provide general rules for how the court operates and don't generally go into specific detail on civil remedies. The level of detail needed to provide guidance on WB injunctions would be too detailed and specific for inclusion in the Rules.	Having criteria in the Act would provide consistency and clarity with the other types of remedies where criteria apply, such as additional damages, specified in the Act. This is also consistent with overseas copyright regimes, including Australia.	As per Option Three.
Overall assessment	0 Retains uncertainty on what terms and conditions injunctions will be granted.	-- Improves certainty on what will be considered by the Court but the level of detail required to provide WB injunctions is too specific for the Rules.	+++ This option should result in more certainty and cost-effective procedures for the Court to consider applications from copyright holders, ultimately helping copyright holders to prevent overseas pirate websites being available to New Zealand consumers.	+++++ This option should result in even greater certainty than Option Three and more cost-effective procedures to help copyright holders to prevent overseas pirate websites being available to New Zealand consumers.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

77. Option Four is likely to be the best option. However, implementing either Option Three or Four would be a significant improvement over the *status quo* and as overseas experience shows (particularly from Australia) WB injunctions have been effectively applied for and granted. Blocking overseas pirate websites would lead to significant reduction in the availability and consumption of infringing copyright works in New Zealand and reduce the financial harm to copyright holders caused by overseas pirate websites.
78. Australian research has shown for users of sites targeted for blocking, traffic to legal content viewing sites increased by 5% in the period following the blocking⁴.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

79. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

80. Under the status quo no WB injunctions have been applied for or granted. Therefore, there is no basis on which to quantify the impacts on various parties (copyright holders, ISPs, website owners, courts and New Zealand consumers).
81. The known costs and benefits of implementing the Australian regime have been set out below as an indication of what is to be expected for Option Three. The cost difference between implementing Option Three and Four is expected to be minimal.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Copyright holders	If copyright holders apply for a WB injunction, they will incur costs in applying to the Court and in providing evidence to support an application. Application fees set under the Rules. Variable costs (eg evidence gathering) are expected to decline over time as applications become more routine. The Court may require copyright holders to compensate ISPs for at least some of the implementation costs.	Total costs are uncertain and depend on the number of domains targeted. We expect the cost to reduce over time as applications become treated as "routine". It would be up to the courts to determine who should bear the costs for ISPs to implement blocks into their systems. Australian cases have ordered rights holders to pay ISPs AU\$50 per domain name to implement blocks.	Medium – informed by Australian case law without any legislative guidance on how cost allocation should be considered.

⁴ Motion Pictures Association *Measuring the Effect of Website Blocking in Australia on Consumer Behaviour: December 2018* <https://www.mpa-apac.org/wp-content/uploads/2020/02/Australia-Site-Blocking-Summary-January-2020.pdf>

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Owners of overseas pirate website	Owners of overseas pirate websites are unlikely to participate in proceedings, as they typically do not contest blocking applications. They will have no valid defence to infringing copyright and causing harm to copyright holders.	N/A	High – consistent Australian experience is that pirate website owners do not contest WB injunctions.
ISPs	ISPs may incur costs if they choose to challenge any application, and to implement a blocking order.	The costs to implement a block are unknown, but likely to vary depending on the number of sites to be blocked. Australian cases have ordered rights holders to pay ISPs AU\$50 per domain name to cover costs of implementing a block.	Medium – Australian experience suggests ISPs generally do not oppose applications and receive AU\$50 from copyright holders for each website block implemented.
High Court	Based on Australian experience, approximately two applications per year are anticipated. Application and evidentiary costs may deter trivial or vexatious claims.	Low impact on the High Court. Initial applications may require more judicial time, but impacts are expected to diminish as jurisprudence develops.	Medium – based on Australian caseloads and discussions with Australian officials.
Consumer	No costs anticipated – consumers should not be accessing overseas pirate websites.	N/A	High
Total monetised costs	An increase in Court resources costs	Low	High
Non-monetised costs	N/A	N/A	N/A
Additional benefits of the preferred option compared to taking no action			
Owners of lawful or legitimate websites	Successful blocking may redirect consumers from infringing websites to authorised services, increasing lawful consumption and potential revenue.	Positive	Medium – international research indicates increased traffic (around 5%) to legal services following blocking ⁵
Consumers	Increased lawful consumption of copyright works.	Positive (non-monetised)	Medium – indirect behavioural effects inferred from overseas studies.

⁵ Motion Pictures Association *Measuring the Effect of Website Blocking in Australia on Consumer Behaviour: December 2018* <https://www.mpa-apac.org/wp-content/uploads/2020/02/Australia-Site-Blocking-Summary-January-2020.pdf>

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
New Zealand courts	Statutory guidance on relevant criteria would support more streamlined and consistent decision making.	Positive (non-monetised)	Medium
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	N/A	N/A	N/A

Issue 3: Repeal of the commissioning rule

What criteria will be used to compare options to the status quo?

82. The following criteria are applied to assess the options for the commissioning rule:
- consistency with international copyright principles⁶
 - consistency in the law for creators and commissioners across all categories of copyright works
 - International alignment.

What scope will options be considered within?

83. Other jurisdictions, including Australia, UK, US and Canada, have introduced changes to clarify that the creator, and not the person who commissions a work, is the first owner of copyright across all types of works.

What options are being considered?

Option One – Status Quo

84. Section 21 of the Act provides that the creator of a work is the first owner of copyright in the work, unless a person commissions one of the following types of works: a photograph, computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording. The creator of these particular types of works must negotiate a contract to the contrary with the commissioner to displace the default rule if they wish to own copyright in the work they produced from the commission.

Option Two (preferred) – Repeal the commissioning rule under section 21(3)

85. Under this option section 21(3) would be repealed. This means that by default, the creator of work is always the first owner, irrespective of whether it is commissioned. The commissioner must negotiate a contract to the contrary with the creator to displace the default rule if they wish to own copyright in the commissioned work.

Option Three – Extend the commissioning rule to apply to all types of works

86. Under this option, which is the reverse of Option Two, the commissioning rule would apply to all types of works. The commissioner of the work is the first owner of copyright. The creator must negotiate a contract to the contrary with the commissioner to displace the default rule if they wish to own copyright in the commissioned work.

⁶ Article 9, [Berne Convention for the Protection of Literary and Artistic Works](#).

How do the options compare to the status quo?

	Option One – Status Quo	Option Two – Repeal the commissioning rule	Option Three – Extend the commissioning rule to apply to all types of copyright works
Consistency with international copyright principles	- A principle of copyright protection under international law is that creators have copyright over their works. The commissioning rule is inconsistent with this principle.	+ Consistent with international law as all creators get copyright in all of their works upon creation.	-- No creators get copyright in their works upon creation.
Simple to understand and apply	- Different rules for different types of works means it is difficult to understand and apply.	+ Single rule for all types of works, easy to understand and apply.	+ Single rule for all types of works, easy to understand and apply.
International alignment	- Does not align with Australia, UK, US and Canada.	+ Aligns with Australia, UK, US and Canada.	- Does not align with Australia, UK, US and Canada.
Overall assessment	--- For some types of works, in particular artistic works, this option is out of alignment with international copyright principles and overseas jurisdictions.	+++ Under this option the first owner of copyright aligns international copyright principles and overseas jurisdictions.	-- Out of alignment with international copyright principles and overseas jurisdictions.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

87. Option Two is considered the best option as it aligns with international copyright principles and international jurisdictions. A single rule that applies to all types of works would be easier to understand and apply, reducing confusion between creators and commissioners, especially commissioners who are either individuals or small businesses who only infrequently commission new creative works. This in turn should encourage a balanced, functional relationship between creators and commissioners.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

88. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Creators	No cost to creators.	Low	Medium – based on current contracting practices, though variation exists across sectors.
Commissioners	Cost to negotiate copyright ownership as creators are the first owners. Standard form commissioning contracts are already commonplace for many types of works, and this is unlikely to change. Where the commissioner wants copyright, those contracts would need to assign copyright to the commissioner.	Low	Medium – reflects a shift in default position rather than new obligations.
Total monetised costs	Some costs for commissioners offset by standard contracts	low	Medium
Non-monetised costs	N/A		
Additional benefits of the preferred option compared to taking no action			
Creators	No cost to creators for having to negotiate ownership of copyright in their works. Reinforces the creator's position as the default copyright owner, potentially supporting greater use of licensing arrangements between the creator and commercial commissioner.	Positive (non-monetised)	Medium – outcomes depend on negotiation practices.

Commissioners	No benefits	Low	Medium
Total monetised benefits	None	N/A	N/A
Non-monetised benefits	Medium	Low	Medium

Section 3: Delivering an option

How will the proposal be implemented?

89. Proposals discussed in this RIS would be implemented through a Bill to amend the Act. This Bill will include other changes to the Act not covered by this RIS, namely decisions taken by Cabinet to extend the duration of copyright to comply with obligations under the FTAs and other proposals for which the Ministry for Regulation has given a RIS exemption.
90. Information about changes to the Act (once enacted) would be published on the websites of MBIE and the Intellectual Property Office of New Zealand, which functions as the primary website for publishing information about copyright. Information about the changes would also be emailed to subscribers on our Copyright Act Review mailing list. We would also look to liaise with stakeholder representative groups to ensure information on changes reach their members in a timely manner, eg through their member communication channels such as emailed newsletters and updates to their respective websites where these exist.
91. For WB injunctions, Australian experience shows the first few applications are more complex and longer to determine as applicants, ISPs and the courts become familiar with how to apply the criteria. However, with frequency, they have become routine.

How will the proposal be monitored, evaluated, and reviewed?

92. Assuming the proposals are agreed to and implemented, they will be monitored, evaluated, and reviewed in line with good regulatory stewardship principles. We will seek feedback from rights holders and ISPs which, along with closely monitoring and scrutinising court cases involving the bypassing of digital locks and WB injunctions, will be used to assess the effectiveness of changes discussed in this RIS.
93. While we will monitor the effectiveness of the changes as best we can, there are limits on the availability of data and evidence to assess the effectiveness of the changes. This is primarily due to copyright being a private property right requiring private legal action to enforce. There is a lack of available data about:
 - a. how frequently parties take legal action to enforce these rights⁷
 - b. how much time and resources copyright holders spend on monitoring, investigating and taking legal action to enforce their rights
 - c. when and why private parties create (or commission) new works, and how they are subsequently used (including made available online for lawful access and consumption)
 - d. how frequently illicit copies are made (including through the unauthorised bypassing of digital locks), distributed (or made available illicitly online by overseas parties) to, and consumed by New Zealanders.
94. The proposals addressing Issues 1 and 2 should lead to increased enforcement efforts by copyright holders, including the number of court cases directed at preventing copyright infringement. An increase in court cases, particularly if WB injunctions are ordered, is expected to have an impact on the availability of infringing copyright works in New Zealand and, in particular, consumer access to foreign pirate websites. Publicity about successful court cases should assist to deter further online infringements and drive

⁷ Often complaints about the infringement of copyright are settled without parties resorting to court action.

consumers toward using lawful websites for accessing and consuming copyright material. The quality of data and evidence on the performance of proposals will have “knock on” effects for evaluating the effectiveness of the changes, as it will be based on partial data and we may have to rely on some anecdotal evidence from copyright holders.

95. The changes proposed in this paper will be reviewed within five years of implementation. The review would assess the effectiveness of proposals, particularly whether the changes has caused change in consumer habits around how they consume copyright material online and the effects on the revenue for lawful websites and streaming platforms offering copyright material.
96. A review of EU FTA obligations to provide enhanced protections for at least copyright control digital locks may only be reviewed as part of a review of the FTA. A review of the obligations would only occur where parties to the agreement agree to undertake such a review.

Annex One: policy decisions sought and exemptions granted

	Update proposed	RIS provided or exempt
Meet FTA obligations	Extend duration of copyright by 20 years	Exempt under 'Government has limited decision-making discretion or responsibility for the relevant content of the proposed legislative action'.
	Extend the duration of protection for certain types of works to comply with the UK FTA	Exempt due to prior Cabinet decision.
	Protections for digital locks (Technological Protection Measures)	RIS completed above.
Updates to support not-for-profit GLAM organisations	Create an exception to allow GLAM organisations to make digital preservation copies of all types of works	Exempt under limited impacts criteria.
	Create an exception to allow creation of digital representations by GLAM organisations for internal collection management and administration purposes	Exempt under limited impacts criteria.
	Create an exception to allow GLAM organisations to digitise certain works in their collections, for public good purposes	Exempt under limited impacts criteria.
	Extend current exceptions for archives and libraries, to make copies for private research or study or preservation purposes, to galleries and museums	Exempt under limited impacts criteria.
	Provide a safe harbour from liability to allow GLAM organisations greater ability to use orphan works	Exempt under limited impacts criteria.
Other updates to support creators and enforcement	Fair dealing exception for parody and satire	Exempt as the economic, social, or environmental impacts are limited (eg in scope and type) and are easy to assess (limited impacts criteria).
	Provide explicitly for WB injunctions	RIS completed above.
	Repeal infringing file sharing regime	Exempt under limited impacts criteria.
	Permit non-exclusive licensees to start infringement proceedings with the copyright owner's permission	Exempt under limited impacts criteria.
	Require owner's consent to exhaust first distribution right	Exempt under limited impacts criteria.
	Repeal of the commissioning rule	RIS completed above.

Annex Two: EU FTA obligations related to digital locks

Article 18.17 of the EU FTA requires an adequate legal framework for digital locks for preventing a person from:

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;
2. making, importing and dealing (eg distributing, selling or hiring) a circumvention device that:
 - a. has only a limited purpose or use other than to circumvent a digital lock; or
 - b. is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of a digital lock;
3. providing any service that is promoted, advertised or marketed for the purpose of enabling or assisting in the bypassing of digital locks.