

# Issues relating to Part 4 of the Issues Paper (Rights)

These conversations were an opportunity for participants to discuss any other issues or matters roughly relating to Part 4 of the Issues Paper.

Notes recorded by workshop groups

Theme/sub-topic	Comments recorded
<b>Originality test</b>	<ul style="list-style-type: none"> <li>› Bar set too low (e.g. log books).</li> <li>› Problem for museums (for exhibitions, etc.)</li> </ul>
<b>Data</b>	<ul style="list-style-type: none"> <li>› Data-mining: attribution issues/stacking. Combining data sets to create new data.</li> </ul>
<b>Commissioning rule</b>	<ul style="list-style-type: none"> <li>› Grossly unfair:               <ul style="list-style-type: none"> <li>› Section 21(3) – excludes photographers from being first owners</li> </ul> </li> <li>› Not clear to general public when the commissioning rule applies</li> <li>› Commissioner can be 'bigger' and financially stronger. Expense for person to fight through courts too high – barrier.</li> <li>› Need contract if you want to own the works.</li> <li>› Contracting out of commissioning rule sometimes problematic</li> <li>› Recorded Music recognise photographers rights.</li> <li>› Publishing – even if commissioned.</li> <li>› Dates on ownership of photo?</li> <li>› UK and Australia have taken out 'agrees to pay'.</li> </ul>
<b>Other questions of ownership</b>	<ul style="list-style-type: none"> <li>› Academic research lifecycle:</li> <li>› When does copyright apply (at what point in the development of works that are never published)?</li> <li>› Often collaborative. Sharing data, different publishing models. How does the collaboration mesh with ownership and contracted employees? How is joint ownership established?</li> <li>› What if the process for producing the works needs to be copyrighted?</li> </ul>



Theme/sub-topic	Feedback
<b>Crown copyright</b>	<ul style="list-style-type: none"><li>› Challenge getting licences from the agency that has inherited copyright.</li><li>› Information is lost when government departments merge or are restructured.</li><li>› Agencies can be very risk-averse – blanket refusal.</li><li>› UK has a centralised Copyright Agency to look after Crown copyright.</li><li>› Is there even a need for Crown copyright?</li><li>› Implementing and operationalising NZGOAL is extremely costly.</li><li>› MCH WW100 commemoration caused issues – works that were still under copyright</li></ul>
<b>Copyright term</b>	<ul style="list-style-type: none"><li>› Term harmonisation/extension (50 to 70 years):<ul style="list-style-type: none"><li>› Dispute Ergas Report conclusion that it's a net cost to NZ.</li><li>› Artists/authors create an asset – why should that be taken away as a legacy from personal and inherited wealth?</li><li>› Finite term is un-aspirational.</li><li>› Collection management organisations want harmonisation for efficiencies and practicalities.</li><li>› Net import or export of cultural assets.</li><li>› Publishing favours harmonisation of term.</li><li>› Recorded Music wants to extend term.</li></ul></li><li>› Scientific community example of importance of standing on the shoulders of giants, which is impeded by long copyright term.</li><li>› Duration of historical photos:<ul style="list-style-type: none"><li>› Term changed from being calculated from point of creation to death of the creator.</li><li>› See Geoff Maclay paper</li><li>› Drafting issue here regarding transitional arrangements – did copyright get revived?</li></ul></li></ul>
<b>Renunciation of rights</b>	<ul style="list-style-type: none"><li>› No current provision to waive copyright</li><li>› CCo licences may be revocable, which creates risks to using those works.</li><li>› NZGOAL doesn't support CCo licenses – NZGOAL hasn't been updated (for APIs) since 2010.</li><li>› National specimen photos often available under a CCo licence.</li></ul>



Theme/sub-topic	Feedback
<b>Moral rights and performers rights</b>	<ul style="list-style-type: none"><li>› No exception in New Zealand to right to object to derogatory treatment (unlike Australia)</li><li>› Remuneration for performers after communication of their recordings:<ul style="list-style-type: none"><li>› What is the problem?</li><li>› Artists do receive via communications right</li><li>› Inequality of audio recordings and visual recordings.</li></ul></li></ul>
<b>Technological protection measures (TPMs)</b>	<ul style="list-style-type: none"><li>› TPMs are not required to expire when the work comes out of copyright. This increases costs to copy works that are in the public domain but protected by TPM put on the work when it was under copyright.</li></ul>
<b>Other comments, predominantly about remuneration</b>	<ul style="list-style-type: none"><li>› Some aspirations:<ul style="list-style-type: none"><li>› Copyright framework that benefits everyone – creators and audiences/consumers.</li><li>› Future focussed legislation that enables New Zealanders to enjoy and experience NZ culture that is created here: and keep creators enabled to create.</li><li>› Industry education of rights and ease of enforcement (i.e. small claims for copyright). (WeCreate mandate?) FAQs?</li><li>› Rights are strengthened by site blocking – making a cultural shift: ‘we don’t pirate material here’. Moving public opinion through enforcement (site blocking), not individual penalties.</li></ul></li><li>› Issue regarding Netflix one-off payment – no ‘residuals’.</li><li>› Royalty payments to artists. Music artists not getting royalties / performing rights / band works / royalty sharing issues and revenue for performance rights.</li><li>› Note: Commerce Act – IP clause in legislation.</li><li>› Loss of revenue through Marrakesh Bill (section 69):<ul style="list-style-type: none"><li>› Increases prescribed entities from 2 to 3,000</li><li>› Increases those able to access from 100,000 to 400,000 New Zealanders</li></ul></li><li>› No educational lending right in NZ.</li><li>› No increase to public lending right in 10 years. No e-books. High threshold.</li><li>› Copyright licenses for schools not compulsory – it is a compliance cost of business.</li><li>› Parallel importing legislation.</li></ul>