

Issues relating to Part 5 of the Issues Paper (Exceptions and Limitations)

These conversations were an opportunity for participants to discuss any other issues or matters roughly relating to Part 5 of the Issues Paper.

Notes recorded by workshop groups

Theme/sub-topic	Comments recorded
Approach / purpose	<ul style="list-style-type: none"> › Section 43A and streaming (since 2008): <ul style="list-style-type: none"> › Transient copying (UK, not USA) › Prescriptive approach presently – there will always be cowboys. Principle-based maybe better? › Principles-based approach: <ul style="list-style-type: none"> › Shift in technology › Examination purposes exception works › Improving our standing as an information society › Fair use: exceptions should be just that, not the rule. Real world functionality – priority of usage › It works for parliamentary business › Cannot draft law to specify network technology › Essential vs most efficient tech design › List of specific exceptions is hard to use: <ul style="list-style-type: none"> › Long list of exceptions to compare activities to: <ul style="list-style-type: none"> › Does it fit? › Can I do it? › e.g. MET Museum putting whole collection online – NZ Museums cannot do that as easily?



Theme/sub-topic	Comments recorded
	<ul style="list-style-type: none">› Shift in distribution:<ul style="list-style-type: none">› TV news, movies . . . -> internet› Can you contract out of exceptions?<ul style="list-style-type: none">› Eg Sky TV Olympics
Safe harbours for ISPs	<ul style="list-style-type: none">› ISP has no explicit licence:<ul style="list-style-type: none">› Is receiving a stream 'transient'?› Not clearly within safe harbour<ul style="list-style-type: none">› Safe harbours may be too narrow (a broad approach to flexibility might help)› Uncertainty for ISPs and others building useful tech
Parody & satire	<ul style="list-style-type: none">› We need this. ISPs need to support streaming.› Good consensus around demand for it› vs derivative work› What is the market impact?› Limitation of reception› Exceptions for criticism vs commercial?
News reporting	<ul style="list-style-type: none">› News reporting vs private study<ul style="list-style-type: none">› News reporting works well because it's not too prescriptive, purpose-based› No hard and fast rule, but it has to be fair› Can't compete with the source› Doesn't cover photos› News reporting vs commercial use› Telling a story over time:<ul style="list-style-type: none">› How long it remains news?› Barrier to publication› Does 'interesting' = 'newsworthy'?› Open-ended news reporting exemption doesn't work in the digital world



Theme/sub-topic	Feedback
Education	<ul style="list-style-type: none">› Educational exceptions are technologically outdated› Practically, it's cumbersome and hard to police› "Lecturers will do it anyway"› Created at a remove from reality
Photographs & videos	<ul style="list-style-type: none">› Increasingly mundane for New Zealanders› Putting something on a platform, they are commercialising it› Are photos and videos the same now online? (ie Instagram browsing)› To get video to the public, it basically has to go through third party (ie YouTube or Facebook)
Enforcement	<ul style="list-style-type: none">› How to keep track of where a file's gone› Take internet infrastructure for granted - procedure to escape liability: where in the process does a breach get addressed?› International control: can't treat NZ content differently. Stories about NZ for New Zealanders› Tech is the biggest barrier: the law is out of date
Risks / certainty	<ul style="list-style-type: none">› Lack of certainty can affect production? e.g. music story<ul style="list-style-type: none">› Others don't know how often this happens› Re-use?› Most content reaching most New Zealanders without harm. Protect creators and get it out.› Dissemination of information (like research / education exception). Some are more risk-adverse› Digital publishing, especially on third party platforms› Cultural institutions worry about reputation vs commercial worries and money about legal recourse; some commercial see reputational risk (intellectual, cultural).



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Users	<ul style="list-style-type: none">› Reuse has developed› User expectation of access› Users expect online access› More adaptability needed to cope with change (and change is certain)› Public display<ul style="list-style-type: none">› 'Permanent' display – creates ambiguity.
General	<ul style="list-style-type: none">› Optimisation of content at point of transfer› Publishing in perpetuity – social purpose› Cultural value (also: publicly funded)› How do exceptions carry over into archiving?› Mandate? Commercial releasing to archive? Databases? Legislation vs public good/acts of parliament› Someone on staff has to be there for the exception – it's costly.