#15

COMPLETE

Page 2: A bit about you and your submission

Q1 Your name

Alexandra Sims

Q2 Your email address

Q3 Please briefly tell us why copyright law interests you

Copyright law has been my main area of research and publication for over 15 years, as well as teaching. Copyright is fascinating as it is a mercurial subject and I am just as interested in its history as its current application as well as future application.

Q4 For the purpose of MBIE publishing the information you provide in this submission, do you wish to remain anonymous?	**No**
Q5 Do you object to your submission being published (anonymously if you have requested that) in whole or in part by MBIE on its website?Note: if you answer Yes to this question, when you reach the end of this survey, you will be asked to specify which parts of your submission (or all of it) you do not wish MBIE to publish and help us understand your concerns so that we can consider them in the event of a request under the Official Information Act.	**No**

Page 3: Question navigation

Q6 Which of the following subjects in the Issues Paper do you wish to answer questions on?

Part 3 (Objectives),

Part 4 (Rights) Section 1 - what does copyright protect and who gets the rights?

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Part 4, (Rights) Section 2 - what actions does copyright reserve for copyright owners?

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Part 4, (Rights) Section 3 - specific issues with the current rights

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Part 4, (Rights) Section 4 - moral rights, performers' rights and technological protection measures

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Part 5 (Exceptions and Limitations) Section 1 - exceptions that facilitate particular desirable uses

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Part 5, (Exceptions and Limitations) Section 2 - exceptions for libraries and archives

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Part 5, (Exceptions and Limitations) Section 3 - exceptions for education

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Part 5, (Exceptions and Limitations) Section 4 - exceptions relating to the use of particular categories of works

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Part 5, (Exceptions and Limitations) Section 5 - contracting out of the exceptions

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Part 6 (Transactions),

Part 7 (Enforcement of Copyright)

Page 4: Objectives

Q7 Q1 Are the above objectives the right ones for New Zealand’s copyright regime? How well do you think the copyright system is achieving these objectives?

Agree that copyright should provide incentives for the creation and dissemination of works, but only when copyright is the most efficient mechanism to do so. (Copyright is often not the most efficient mechanism to encourage the creation and dissemination of works - for example, for visual artists paying such artists, eg through government funding, to create work would result in the creation and dissemination of more works than further strengthening copyright.)
Agree that there should be an objective to permit reasonable access to works for use, adaption and consumption, where exceptions to exclusive rights are likely to have net benefits for New Zealand.

Q8 Q2Are there other objectives that we should be aiming to achieve? For example, do you think adaptability or resilience to future technological change should be included as an objective and, if so, do you think that would be achievable without reducing certainty and clarity?

Respondent skipped this question

Q9 Q3Should sub-objectives or different objectives for any parts of the Act be considered (eg for moral rights or performers' rights)? Please be specific in your answer.

Respondent skipped this question

Q10 Q4What weighting (if any) should be given to each objective?

Respondent skipped this question

Page 5: Rights: What does copyright protect and who gets the rights?

Q11 Q5What are the problems (or advantages) with the way the Copyright Act categorises works?

The current categorisations of works creates a lot of unnecessary complexity, and, at times, strange and illogical outcomes, thus it is a disadvantage. For example, under the current commissioning rule under section 21(3) if you commission someone to paint your portrait you (as the commissioner) owns the copyright in the painting (unless there was an agreement to the contrary). Whereas if you commission a ghost writer to write your autobiography the book's author will be the owner of the copyright in the book (unless there was an agreement to the contrary), as the book is a literary work and not included in the list of works under section 21(3)(a).
The primary reason for the difference in treatment of works under the Act was because the Statute of Anne in 1709 was just for books. Over time other creators wanted protection for their creations, so other Acts were created such as the Engraving Copyright Act 1734. Later the Acts were merged into one Copyright Act, but the different rules were essentially contained for different types of works. Later when the different Acts were essentially merged into one the different rules were not standardised.

Q12 Q6Is it clear what 'skill, judgement and labour' means as a test as to whether a work is protected by copyright? Does this test make copyright protection apply too widely? If it does, what are the implications, and what changes should be considered?

The case law is clear what 'skill, effort and judgement' means as a test, if you spend time and effort in creating a work you can gain copyright over that work even though you are, for example, compiling facts that could not be protected by copyright individually, for example, making a map. Note: the term "sweat of the brow" is used more often than 'skill, effort and judgement'.
The application of the test makes copyright overly broad in its application and protection. I have written about this at length, see Sims, A. J. (2006). Copyright's protection of facts and information. New Zealand Business Law Quarterly, 12 (4), 360-383.
In Europe (and in the UK) the issues have been partially recognised and some compilations of facts are protected not by copyright, rather by the Database Directive.

Q13 Q7Are there any problems with (or benefits arising from) the treatment of data and compilations in the Copyright Act? What changes (if any) should be considered?

Yes, there are problems with protecting data and compilations. Technically the protection of data and compilations does not prevent others from going to the original sources and using that data, eg people are able to create maps by going to the actual location and/or using information from maps that are out of copyright. But if the copyright owner is the only entity with access to the underlying data then the copyright owner in effect has copyright over the data. See Sims, A. J. (2006). Copyright's protection of facts and information. New Zealand Business Law Quarterly, 12 (4), 360-383.

Q14 Q8What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?

The commissioning rule needs to be changed. Either the commissioner owns the copyright in any work created as a result of the commission (unless there is an agreement to the contrary), or the commissioner does not own the copyright in the work created as a result of the commission and copyright remains with the author (unless there is an agreement to the contrary). In Australia and the UK the commissioning rule no longer exists, so that the author of a commissioned work is the owner of the copyright in the work (unless there is an agreement to the contrary). Both ways can result in unfairness, but consistent treatment would be an advantage over the current messy rules. On balance it would be best to follow the UK and Australian rule as that means that New Zealand can benefit from their jurisprudence on the issue.
Also, if the commissioning rule is changed so that the commissioner is the owner of the copyright in the work created, then copyright ownership should not be gained by the commissioner until actual payment is received by the author – currently only need to agree to pay.
For a discussion of the problems that have arisen with the commissioning rule in practice see Alexandra Sims, “Copyright protection of functional objects in New Zealand” (2016) Intellectual Property Quarterly 297 at 303-311.

Q15 Q9What problems (or benefits) are there with the current rules related to computer-generated works, particularly in light of the development and application of new technologies like artificial intelligence to general works? What changes, if any, should be considered?

Respondent skipped this question

Q16 Q10What are the problems (or benefits) with the rights the Copyright Act gives visual artists (including painting, drawings, prints, sculptures etc.)? What changes (if any) should be considered?

Currently the right of integrity (right to object to derogatory treatment), applies only if there has been a treatment, which means an alteration of a work. It is possible, however, to do something in relation to the work that is prejudicial to the honour or reputation of the author even though the work itself has not been altered in anyway. For example, say you have a well-known vegan painter and one of her paintings is hung in a butchers. People might think that the vegan painter was now promoting meat and that could harm the painter's honour and reputation – but as there has been no alteration of the work then there is no breach of the right of integrity.
Something that must be clarified is that moral rights should not be used to prevent otherwise legitimate uses of copyright works. For example, section 73 of the Copyright Act provides that if there is a sculpture in a public place, it is not an infringement of copyright to copy the work by making a graphic work representing it or a photograph or a film of it etc. Graphic work includes a painting and a drawing. In the High Court case Radford v Hallenstein Bros Ltd the plaintiff had been paid by the Auckland City Council to create sculptures which were placed in Western Park in Ponsonby, the sculptures were recreations of the tops of old buildings. Hallensteins sold tee shirts that contained inter alia a photograph of one of the sculptures. While there was no copyright infringement due to the operation of section 73, the plaintiff (the sculptor) argued that his moral right of integrity had been breached as the image appeared on a cheap tee shirt. The issue of whether this amounted to moral rights was never settled in the courts. If moral rights are allowed to trump copyright then section 73 would in practice have little effect and needs to be removed from the Act.

Note: section 73 does provide some protection as a person cannot create three-dimensional versions of the sculptures. Also, for visual artists, it only affects those that are permanently in a public space or in premises open to the public. In Radford v Hallenstein Bros Ltd in particular, the sculptor had been paid well for the sculptures. To remove this section (or allow for moral rights to override it) would affect the ability of people to take photographs or films in parks and indeed urban settings (photographing, drawing or filming the exterior of buildings also come under section 73).
The irony in New Zealand's protection of visual artists is that copyright law, which is allegedly meant to protect creators such as visual artists, is in fact not used to protect creators, rather it is used to protect mundane commercially produced products, including a cup for an automatic asparagus grading machine Oraka Technologies Ltd v Geostel Vision Ltd [2013] NZCA 111. Other examples include: orthotics (Foot Science International Ltd v Xu [2015] NZHC 1739); furniture (Burden v Debonaire Furniture Ltd [2016] NZHC 312, and Burden v ESR Group (NZ) Ltd [2015] NZHC 1649; (2015) 113 IPR 594); pigtail post (Gallagher Group Ltd v Robertson Engineering Ltd (t/a Strainrite) [2015] NZHC 132); pregnancy testing devices (Inverness Medical Innovations, Inc v MDS Diagnostics Ltd (2010) 93 I.P.R. 14); toy sword and toy trumpet (Tiny Intelligence Ltd v Resport Ltd [2009] NZSC 35); cattle stops (Fleming v Fletcher Concrete and Infrastructure Ltd, HC, Auckland, CIV-2005-404-4598, 1 December 2006); sideloading trailers (Steelbro NZ Ltd v Tidd Ross Todd Ltd [2007] NZCA 486); chainsaw chains (Husqvarna Forest & Garden Ltd v Bridon New Zealand Ltd [1997] 3 N.Z.L.R. 215); second hand skis (Composite Development (NZ) Ltd v Kebab Capital Ltd (1996) 7 T.C.L.R. 186); entertainment centre units (Criterion Manufacturing Ltd v Eurofurn Industries Ltd (1996) 7 T.C.L.R. 277); toilet seats (UPL Group Ltd v Dux Engineers Ltd [1989] 3 N.Z.L.R. 135); crocodile shaped sweets (Beckmann v Mayceys Confectionery Ltd (1995) 33 N.Z.I.P.R. 543); caravan window frames (Alwinco Products Ltd v Crystal Glass Industries Ltd [1985] 1 N.Z.L.R. 716 (CA)); timber processing machine (Lakeland Steel Products Ltd v Stevens (1995) 6 T.C.L.R. 745 HC); labelling tags (Dennison Manufacturing Co v Alfred Holt & Co Ltd (1987) 2 T.C.L.R. 301); pumps (Mono Pumps (New Zealand) Ltd v Karinya Industries Ltd (1986) 1 T.C.L.R. 337; Frisbees (Wham-O MFG Co v Lincoln Industries Ltd [1984] 1 N.Z.L.R. 641; kiwi fruit trays (Frank M Winstone (Merchants) Ltd v Plix Products Ltd [1985] 1 N.Z.L.R. 376 (CA)); and toilet pan connector (P S Johnson & Associates Ltd v Bucko Enterprises Ltd [1975] 1 N.Z.L.R. 311).
If any changes are made to strengthen visual artists rights the changes must not grant even greater protection for mass produced items. For an article on the problems that arise with the very broad protection of functional mass produced items, see Alexandra Sims, "Copyright's protection of functional objects in New Zealand" (2016) Intellectual Property Quarterly 297-317.

I would question whether further strengthening copyright will in fact help artists. Artists currently have strong rights, the problem they have if someone is infringing their copyright is to afford the costs of copyright litigation. Giving more rights is not going to bring down the costs of litigation. Also the problem that most artists face is not copyright infringement, instead their issue is not being able to make a living through selling their work: comparatively few visual artists have the reputation to command large prices for their work. Instead paying artists to create works would be preferable. One of the most productive times for art in the United States was when the government paid artists to create works through the Works Progress Administration (WPA). The WPA meant that artists such as Jackson Pollock were paid to create art. See, for example, Thess Thackara, "What we can learn from the brief period when the government employed artists" https://www.artsy.net/article/artsy-editorial-government-paid-working-class-artists.

Q17 Q11What are the problems creators and authors, who have previously transferred their copyright in a work to another person, experience in seeking to have the copyright in that work reassigned back to them? What changes (if any) should be considered?

I don't have first-hand experience of creators and authors attempting to have copyright in their work reassigned back to them, but I imagine that creators and authors do face problems. Currently all the power rests with the copyright owners. The US model should be looked at. For example, musicians and songwriters (with a few exceptions) are able to regain the copyright after 35 years, even if they have assigned the copyright. (It is called the right to terminate).

Q18 Q12What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?

Crown copyright is good in that it gives a fixed date for copyright protection, which makes it much easier than trying to work out the identity of authors and the date of their deaths. Saying that, the term is much too long, currently, apart from typographical arrangements, it is much too long at 100 years.
More importantly there is the question of why Crown copyright is used at all, increasingly government departments are using Creative Commons licenses, which is preferable to do. The information has far more use and value if others can use it.

Q19 Q13Are there any problems (or benefits) in providing a copyright term for communication works that is longer than the minimum required by New Zealand's international obligations?

Copyright protection should be as limited as possible in length, so if NZ is not obliged to give 50 years, then the protection for communication works should be reduced the minimum required, ie 20 years.

Q20 Q14Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?

Yes, there problems in providing an indefinite copyright term for the type of works referred to in section 117. Copyright is said to be justified because it acts as an incentive for people to create and disseminate work (although there is plenty of evidence that works will be created in the absence of protection, see eg Alexandra Sims, "Why blockchain challenges conventional thinking about intellectual property" 27 February 2018, The Conversation https://theconversation.com/why-blockchain-challenges-conventional-thinking-about-intellectual-property-91469).
It is curious that works in section 117 that are not disseminated get greater protection than works that are disseminated because they have an indefinite copyright term. Also, the protection can be even wider than that as there is a question mark whether the normal exceptions apply. For example, as explained in Alexandra Sims, "Strangling Their Creation: The Courts' Treatment of Fair Dealing in Copyright Law Since 1911" (2010) Intellectual Property Quarterly 192 at 203 where in Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd 613 which related to the publication of twelve-year old documents relating to the thalidomide tragedy, because the documents in that case had not been published the Court found that the criticism and review fair dealing exception could not be made out as it was not fair to criticise them publically. The ability to use copyright law to prevent the vital discussion of events as important as the thalidomide tragedy is concerning.
The greater protection of works that are not disseminated is not logical if copyright is meant to be justified on the basis that it is to encourage the creation of works. Australia has recently changed its law in this area and New Zealand should follow Australia's lead.

Q21 Any other comments on Rights: what does copyright protect and who gets the rights? **Respondent skipped this question**

Page 6: Rights: What actions does copyright reserve for copyright owners?

Q22 Q15Do you think there are any problems with (or benefits arising from) the exclusive rights or how they are expressed? What changes (if any) should be considered?

The exclusive rights are extremely broad, whereas the exceptions are narrow, this imbalance grants too much power to copyright owners.

Q23 Q16Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?

Respondent skipped this question

Q24 Q17What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?

Respondent skipped this question

Q25 Any other comments on Rights: what actions does copyright reserve for copyright owners?

Respondent skipped this question

Page 7: Rights: Specific issues with the current rights

Q26 Q18What are the problems (or advantages) with the way the right of communication to the public operates? What changes, if any, might be needed?

Respondent skipped this question

Q27 Q19What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?

Respondent skipped this question

Q28 Q20What are the problems (or benefits) with using ‘object’ in the Copyright Act? What changes (if any) should be considered?

Respondent skipped this question

Q29 Q21Do you have any concerns about the implications of the Supreme Court’s decision in Dixon v R? Please explain.

If the reasoning in Dixon v R, that digital files can be treated as property, is applied to the Copyright Act, this would create problems as it may create a property right over information/data. It needs to be made clear in the Act that Dixon v R does not apply to the Copyright Act.

Q30 Q22What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?

Yes, there are problems with how the Copyright Act applies to user-generated content.
User-generated content is an accepted part of our society which the Issues Paper notes, but in NZ most user-generated content infringes copyright. Canada has recognised that user-generated content is important and to be encouraged and has created an express exception. I suggest following Canada, which would have the added advantage of being able to draw on the Canadian jurisprudence on the issue. For detail on the Canadian exception see Teresa Scassa, “Acknowledging Copyright’s Illegitimate Offspring: User-Generated Content and Canadian Copyright Law” in Michael Geist (ed) The Copyright Pentalogy: How the Supreme Court of Canada Shook the Foundations of Canadian Copyright Law, for the actual chapter see https://books.openedition.org/uop/989?lang=en.

Q31 Q23What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?

As the Issue Paper notes, sometimes people do want to renounce their copyright, yet there is no ability under the Act to do so. Even if they do attempt to renounce their rights, eg by using the Creative Commons ‘No Rights Reserved’ license, this license can be revoked at a later date.
One advantage of not being able to renounce rights under the Copyright Act could be argued to be that if you were required to renounce your rights by someone else, or you made a mistake and renounced your rights when you did not mean to, you could reassert your rights at a later stage. The problem with his argument is that if you assign your rights you lose your rights and can’t regain them later. Therefore, it is preferable for people to have an easy way to renounce their rights.

Q32 Q24Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.

The length of protection is much too long. With many works being protected for the life of the author plus 50 years, this can result in copyright protection for over 100 years.

Q33 Any other comments on Rights: specific issues with the current rights

The duration of most copyright works is calculated on the death of the author or if there is more than one author, the death of the last author. This can create considerable uncertainty about whether something is still protected by copyright, particularly works created by employees of organisations. (Employers are the owners of copyright in such works due to sections 21(2) and 5(2)). If there was a set term for works made by employees (and contractors) this would help matters considerably. The US has its "work for hire", although the period of protection is overly long.

Page 8: Rights: Moral rights, performers' rights and technological protection measures

Q34 Q25What are the problems (or benefits) with the way the moral rights are formulated under the Copyright Act? What changes to the rights (if any) should be considered?

See above question 10, the right of integrity is too narrow as mere use of a work without an addition, deletion, alteration etc will not infringe the right of integrity.
The inability of moral rights to undercut exceptions, ie section 73 (see question 10) above needs to be clarified.

Q35 Q26What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?

Respondent skipped this question

Q36 Q27Will there be other problems (or benefits) with the performers' rights regime once the CPTPP changes come into effect? What changes to the performers' rights regime (if any) should be considered after those changes come into effect?

Respondent skipped this question

Q37 Q28What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?

TPMs prevent the exercise of otherwise legitimate rights, ie fair dealing exceptions and fixing objects that people own (see below), and are therefore highly problematic – especially as computer code is increasingly being incorporated into everyday objects. To be sure, there is the ability under the Act to ask a qualified person to assist in circumventing a TPM, but that is not practical especially as you need to request the copyright owner (or exclusive licensee) to circumvent the TPM and can only get the qualified person to do it after they have refused or have failed to respond to the request within a reasonable time.
In relation to fixing objects that a person owns. If there is a software bug and the software is protected by a TPM, if you fix the bug yourself you will have infringed copyright. (This is not hypothetical, see "Olivia Solon, "A right to repair: why Nebraska farmers and taking on John Deere and Apple", 6 March 2017, The Guardian https://www.theguardian.com/environment/2017/mar/06/nebraska-farmers-right-to-repair-john-deere-apple
New Zealand needs a right to repair in the Copyright Act, this is being looked at in Australia, see eg Jemima Burt, "'Right to repair' regulation necessary, say small businesses and environmentalists" 3 March 2019, ABC News https://www.abc.net.au/news/2019-03-03/does-australia-need-a-right-to-repair/10864852
For a fuller argument about the danger of copyright remaining unchecked see "The End of Ownership" by Aaron Perzanowski and Jason Schultz.
The US Copyright Office has issued an exemption that makes it legal to diagnose, repair and "lawfully" modify vehicles, including tractors.
For a practical example of the problems with the current law take a smart fridge which has been programmed to order and purchase goods from a certain expensive supermarket. If you want to change to a cheaper supermarket, and the fridge's computer programme is protected by a TPM, you will infringe copyright if you hack into the fridge's computer programme and make that change.

Q38 Q29Is it clear what the TPMs regime allows and what it does not allow? Why/why not?

Respondent skipped this question

Q39 Any other comments on Rights: moral rights, performers' rights and technological protection measures

Respondent skipped this question

Page 9: Exceptions and Limitations: Exceptions that facilitate particular desirable uses

Q40 Q30Do you have examples of activities or uses that have been impeded by the current framing and interpretation of the exceptions for criticism, review, news reporting and research or study? Is it because of a lack of certainty? How do you assess any risk relating to the use? Have you ever been threatened with, or involved in, legal action? Are there any other barriers?

Some publishers will not publish work that contains quotations, without written permission from the copyright owners of the relevant works. This is an overreaction to copyright law, but if that is the publisher's opinion of the law there is nothing that can be done, except to find another publisher or go through the process of contacting each copyright owner and seeking permission to use the material.
In the UK the ability to reproduce some material was an accepted trade practice as the following paragraph explains (this has been taken from Lynette Owen, "Fair dealing: a concept in UK copyright law" https://onlinelibrary.wiley.com/doi/pdf/10.1087/20150309
"The question of the amounts of material permissible was traditionally addressed by trade practice; in 1958, the Society of Authors and the Publishers Association laid down guidelines for their members which were regularly submitted to the then Office of Fair Trading for approval. It was generally accepted that no formal permission need be sought or fees paid for such usage (listed below) although full acknowledgement to author, title, and source should be made:
1. Single extract (prose): up to 400 words.
2. Series of extracts from the same work (prose) : up to a total of 800 words of which no one extract should exceed 300 words.
3. Poetry: a single extract of 40 lines or a series of extracts totalling 40 lines, provided that these do not constitute more than 25% of the total poem
However, the Competition and Market Authority (formerly the OFT) no longer gives official recognition to these guidelines and commercial publishers cannot assume that permission and payment are not required."
While they are no longer official guidelines they are still used by some, see eg ICE Publishing which is part of the Institution of Civil Engineers - https://www.icevirtuallibrary.com/page/author-home-books/permissions
Such guidelines are imminently sensible and provide clarity for everyone concerned and should be in the Act.

Q41 Q31What are the problems (or benefits) with how any of the criticism, review, news reporting and research or study exceptions operate in practice? Under what circumstances, if any, should someone be able to use these exceptions for a commercial outcome? What changes (if any) should be considered?

The criticism, review, news reporting and research or study exceptions, which are New Zealand's fair dealing exceptions, are rarely used in practice because they are narrow and they are unfit for current purposes. For example, it is standard to scan or take a photo of your photo page of your passport when traveling and also many employers and others require copies for their records. Technically such a photo/scan could infringe copyright, ie images on the photo page are reproduced, yet it would not come under any of the fair dealing exceptions. For this, and many other reasons, New Zealand should seriously think about enacting fair use. For an article that makes the case for New Zealand enacting fair use, see Alexandra Sims, "The Case for Fair Use" (2016) 24 International Journal of Law and Information Technology 176- 202. (Also, for two articles that track the evolution of fair dealing (and fair use is derived from fair dealing, see Alexandra Sims, "Appellations of Piracy: Fair Dealing's Prehistory (2011) Intellectual Property Quarterly 3-27 and Alexandra Sims, "Strangling Their Creation: The Courts' Treatment of Fair Dealing in Copyright Law Since 1911" (2010) Intellectual Property Quarterly 192-224.)
The fair dealing exceptions should be able to be used for a commercial outcome. The right of quotation should be introduced as it was in 2104 in the UK. Section 30 of the Copyright, Designs and Patents Act 1988 is now includes "Criticism, review, quotation and news reporting". The specific quotation exception is:
"(IZA) Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise) provided that—
(a) the work has been made available to the public,
(b) the use of the quotation is fair dealing with the work,
(c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and
(d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise)."
Interestingly before fair dealing was introduced into the UK's Imperial Copyright Act of 1911, which New Zealand in effect copied in 1913, the courts created and recognised a right of quotation (see Alexandra Sims, "Appellations of Piracy: Fair Dealing's Prehistory (2011) Intellectual Property Quarterly 3-27), but this was mysteriously missing from the statutory formulation of fair dealing, see Alexandra Sims, "Strangling Their Creation: The Courts' Treatment of Fair Dealing in Copyright Law Since 1911" (2010) Intellectual Property Quarterly 192-224.
A right of parody and satire is also needed. Australia and the UK have relatively recently created such exceptions.
Although if New Zealand enacts fair use we may not need specific exceptions for quotation and parody and satire, see Alexandra Sims, "The Case for Fair Use" (2016) 24 International Journal of Law and Information Technology 176- 202.

Q42 Q32What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?

It makes no sense to treat differently works differently. So if video clips come within the news reporting exception then photographs should as well.

Q43 Q33What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?

The UK cases on reporting current events are extremely narrow, ie you might have material protected by copyright produced years ago, but the issue it relates to is current, yet it will not come under the exception. For example, In Distillers Co Biochemicals Ltd v The Times Newspapers Ltd [1975] QB 613 the publication of twelve-year old documents relating to the thalidomide tragedy, which at the time was still of current interest, was not reporting "current events" due to the age of the copyright material. Therefore, it should not matter when the material in question was produced. (Also as noted in question 14 above, because the documents in that case had not been published the criticism and review fair dealing exception could not be made out as it was not fair to criticise them publicly.)

Q44 Q34What are the problems (or benefits) with the exception for incidental copying of copyright works? What changes (if any) should be considered?

The courts have treated the exception very narrowly. For example, in Hawkes & Son (London) Ltd v Paramount Film Service Ltd [1934] 1 Ch 593, the Prince of Wales was filmed opening a school. Part of the film showed a band passing in front of the Prince of Wales and 20 seconds of a march could be heard. The Court held that copyright infringement had occurred.
Canada has clarified the incidental copying issue and section 30(7) of its Act provides that:
“Incidental use
30.7 It is not an infringement of copyright to incidentally and not deliberately
(a) include a work or other subject-matter in another work or other subject-matter; or
(b) do any act in relation to a work or other subject-matter that is incidentally and not deliberately included in another work or other subject-matter.

New Zealand should consider copying Canada’s provision.

Q45 Q35What are the problems (or benefits) with the exception transient reproduction of works? What changes (if any) should be considered?

The Act should make it clear that internet caching is expressly covered in transient reproduction of works. Also, if a person is to view a video streamed online, there will normally be a temporary copy made so that the person can view the video – this should not be infringing.

Q46 Q36What are the problems (or benefits) with the way the copyright exceptions apply to cloud computing? What changes (if any) should be considered?

Cloud computing is now standard practice. The Copyright Act should be amended so that copyright cannot be used to prevent this legitimate activity.

Q47 Q37Are there any other current or emerging technological processes we should be considering for the purposes of the review?

If fair dealing was enacted this would help cover emerging technological processes.

Q48 Q38What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?

Society stands to gain considerably from data mining, but copyright could prevent data mining. The UK position should be followed and a data mining provision enacted, except that it should not just be limited to non-commercial research. If a person has lawfully acquired the material, they should be able to use it for data mining even if it is for a commercial purpose. Not allowing data-mining for commercial purposes would mean that facts and information is being protected, something which copyright law is not meant to do.
Also, the practical problem of not allowing data mining for commercial use is that it is not easy to draw a distinction between commercial and non-commercial use. For example, while data mining by a student or an academic may appear non-commercial, sometimes the output of that data mining will be attempted to be exploited commercially.
There is precedent for not entirely following the UK in respect to fair dealing. For example, the UK’s fair dealing provision for research and private study is limited to non-commercial use only. New Zealand’s equivalent section under section 43 is not so limited. (New Zealand copied section 43 from the UK and the UK later limited it to non-commercial use only, but New Zealand did not follow the UK and reduce the scope of the section.)

Q49 Q39What do problems (or benefits) arising from the Copyright Act not having an express exception for parody and satire? What about the absence of an exception for caricature and pastiche?

Not having a parody and satire exception puts New Zealand out of step with many other countries including Australia, the UK, Canada and the United States as well as France, Germany etc. The lack of a parody or satire exception meant that producing a mock annual report outlining Solid Energy's environmental impact was infringing copyright because it reproduced Solid Energy's logo – the use of that logo was vital to make the point of the parody, see Solid Energy New Zealand Ltd v Mountier HC Christchurch CIV-2007-409-441, 26 July 2007. Also the lack of a parody and satire exception meant that the clever parody of the misogynist's song and video of "Blurred Lines" by University of Auckland Law students would have infringed copyright in New Zealand, but it would not have resulted in copyright infringement in the US due to fair use.
In relation to the lack of ability for some artists to include someone else's copyright protected work if they are making a new work where the inclusion is necessary for a social or political reference, this could be catered for by giving satire a wide meaning. While satire is often associated with humour, it can also be used as constructive social criticism which would include social and political references. An exception could be considered for caricature and pastiche, but it would have to be separate from satire because it if was not then satire could be limited to just humorous uses.
Paragraph 312 "In addition, moral rights attached to the original work may also limit certain freedom of expression such as parody and satire, as it may amount to 'derogatory' treatment of the work" is curious. The exceptions are exceptions to rights and there is no reason why moral rights should be any different. If moral rights trumped the right to parody and satire then the right of parody and satire would be too narrow and would almost not be worth enacting.

Q50 Q40What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?

(The following is reproduced from question 30 above.) Some publishers will not publish work that contains quotations, without written permission from the copyright owners of the relevant works. This is an overreaction to copyright law, but if that is the publisher's opinion of the law there is nothing that can be done, except to find another publisher or go through the process of contacting each copyright owner and seeking permission to use the material.
In the UK the ability to reproduce some material was an accepted trade practice as the following paragraph explains (this has been taken from Lynette Owen, "Fair dealing: a concept in UK copyright law" https://onlinelibrary.wiley.com/doi/pdf/10.1087/20150309
"The question of the amounts of material permissible was traditionally addressed by trade practice; in 1958, the Society of Authors and the Publishers Association laid down guidelines for their members which were regularly submitted to the then Office of Fair Trading for approval. It was generally accepted that no formal permission need be sought or fees paid for such usage (listed below) although full acknowledgement to author, title, and source should be made:
1. Single extract (prose): up to 400 words.
2. Series of extracts from the same work (prose) : up to a total of 800 words of which no one extract should exceed 300 words.
3. Poetry: a single extract of 40 lines or a series of extracts totalling 40 lines, provided that these do not constitute more than 25% of the total poem
However, the Competition and Market Authority (formerly the OFT) no longer gives official recognition to these guidelines and commercial publishers cannot assume that permission and payment are not required."
While they are no longer official guidelines they are still used by some, see eg ICE Publishing which is part of the Institution of Civil Engineers - https://www.icevirtuallibrary.com/page/author-home-books/permissions
Such guidelines are imminently sensible and provide clarity for everyone concerned and should be in the Act.

Q51 Any other comments on Exceptions and Limitations: exceptions that facilitate particular desirable uses **Respondent skipped this question**

Page 10: Exceptions and limitations: Exceptions for libraries and archives

Q52 Q41 Do you have any specific examples of where the uncertainty about the exceptions for libraries and archives has resulted in undesirable outcomes? Please be specific about the situation, why this caused a problem and who it caused a problem for.

Respondent skipped this question

Q53 Q42 Does the Copyright Act provide enough flexibility for libraries and archives to copy, archive and make available to the public digital content published over the internet? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

Q54 Q43Does the Copyright Act provide enough flexibility for libraries and archives to facilitate mass digitisation projects and make copies of physical works in digital format more widely available to the public? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

Respondent skipped this question

Q55 Q44Does the Copyright Act provide enough flexibility for libraries and archives to make copies of copyright works within their collections for collection management and administration without the copyright holder's permission? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

The current exceptions for libraries and archives do not work in practice as to the libraries and archives need to make many digital copies and migrate to new platforms on a regular basis. For a discussion of the problems the current law creates, see Susan Corbett, "Copyright Norms and Flexibilities and the Digitisation Practices of New Zealand Museums" (2013) 29(1) Law in Context 55-73.

Q56 Q45What are the problems with (or benefits arising from) the flexibility given to libraries and archives to copy and make available content published online? What changes (if any) should be considered?

There is no such 'flexibility', (apart from in the legal deposit provisions). Indeed, section 56A limits the ability to make work available online as a person must be an authenticated user before they can access that work.
There are issues surrounding the use of works depicting Māori traditional culture, some of which should not be made available online for cultural reasons, see Susan Corbett, "Māori Cultural Heritage and Copyright Law: A Balancing Exercise" (2012) 6 9) New Zealand Intellectual Property Journal 916-921.

Q57 Q46What are the problems with (or benefits arising from) excluding museums and galleries from the libraries and archives exceptions? What changes (if any) should be considered?

There is no logical reason for not expressly including museums and galleries. (Currently they included but if they hold 'documents of historical significance' or 'public interest' and are non-for-profit.) Suggest the UK example is followed: a 'museum' is defined to include 'gallery' in the Copyright, Designs and Patents Act 1988, s 43A.
The exclusion of for profit institutions should be changed. Particularly as "born digital" collections are increasingly being collected by bodies (and people) who are not traditional CHIs. Many early digital works are orphans and could well be lost if there are no copyright exceptions to facilitate their archiving.

Q58 Any other comments on Exceptions and Limitations: exceptions for libraries and archives **Respondent skipped this question**

Page 11: Exceptions and limitations: Exceptions for education

Q59 Q47Does the Copyright Act provide enough flexibility to enable teachers, pupils and educational institutions to benefit from new technologies? What are the problems with (or benefits arising from) this flexibility or lack of flexibility? What changes (if any) should be considered?

The permitted exceptions are too narrow and don't work in practice. This forces institutions to pay for licenses, which costs students and indirectly taxpayers. While my institution, the University of Auckland has a full range of licences, those licenses still do not cover everything we would legitimately want to do. For example, we are unable to produce MOOC (massive online open courses) to the same standard as in the United States as fair use covers a number of uses that fall between the cracks, therefore, we in New Zealand are at a disadvantage to institutions in the United States.

Q60 Q48Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?

The exceptions are not too wide, if anything they are too narrow. Fair use should be enacted in New Zealand.

Q61 Q49Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered? **Respondent skipped this question**

Q62 Q50Is copyright well understood in the education sector? What problems does this create (if any)?

Copyright is well understood by some in the education sector, but not by most. The lack of understanding creates situations where some people are too cautious, ie not doing what is allowed by copyright law. On the other hand, some people are sick of the arbitrary distinctions that they ignore copyright and infringe it. "Strengthening" copyright law will have the effect of more people not carrying about copyright and infringing it even more. It is better to have a smaller, clearer law that most people follow, than a larger obscure one that is ignored by many.

Q63 Any other comments on Exceptions and Limitations: exceptions for education **Respondent skipped this question**

Page 12: Exceptions and limitations: Exceptions relating to the use of particular categories of works

Q64 Q51What are the problems (or advantages) with the free public playing exceptions in sections 81, 87 and 87 A of the Copyright Act? What changes (if any) should be considered?

The free playing exceptions are complicated and need simplification, plus as the Issues Paper points out, the exceptions do not cover all of the works involved. Indeed, if you look at the OneMusic New Zealand's website for Hair + Beauty businesses the playing exclusively of the radio in a salon still attracts a background music fee of 50% of the standard rates, see https://www.onemusicnz.com/music-licences/hair-plus-beauty/.

The exception needs simplification.

Q65 Q52What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?

Format shifting is limited to sound recordings, not sound recordings and films, thus it will infringe copyright to format shift a movie. This distinction makes no sense, format shifting should be extended to include films (video files). The use of cloud services to format shift should be recognised as non-infringing.

Q66 Q53What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?

Respondent skipped this question

Q67 Q54What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?

Respondent skipped this question

Q68 Q55What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?

Respondent skipped this question

Q69 Q56Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?

Respondent skipped this question

Q70 Q57Do you think that section 73 should be amended to make it clear that the exception applies to the works underlying the works specified in section 73(1)? And should the exception be limited to copies made for personal and private use, with copies made for commercial gain being excluded? Why?

Yes, section 73 needs to be amended to make it clear that the exception applies to underlying works. Almost all work will have underlying works.
See response to question 10 above. Section 73 should stay as it currently is, although modified to make it clear that the underlying works are also covered in the exception and moral rights cannot be used to circumvent the exception).
The exception should not be limited to copies made for personal and private use.

Q71 Any other comments on Exceptions and limitations: exceptions relating to the use of particular categories of works

Respondent skipped this question

Page 13: Exceptions and limitations: Contracting out of the exceptions

Q72 Q58What problems (or benefits) are there in allowing copyright owners to limit or modify a person's ability to use the existing exceptions through contract? What changes (if any) should be considered?

Although it has not been tested yet in NZ or Australia, it is likely for a court to find that a contract could be used to defeat copyright exceptions, with the exceptions of the sections which state that contracting out cannot occur, for example section 80D states that "[a] term or condition in an agreement for the use of a computer program has no effect in so far as it prohibits or restricts any activity undertaken in accordance with section 80A(2) or 80B(1)".

I strongly believe that contract should not be permitted to be used to circumvent copyright exceptions and that a blanket ban be put on contracting out of the exceptions under the Copyright Act 1994. I have written on this point at length, Alexandra Sims, "Copyright and Contract (2007) 22 New Zealand Universities Law Review 469-495. Or, if my arguments are not accepted, then the Australian Law Reform Commission's views in its Copyright and the Digital Economy report should be followed.

The UK has realised the importance of not allowing contracting out of exceptions. The amendments that were made to the UK's Copyright, Designs and Patents Act 1988 expressly state that no contracting out is
permitted for those exceptions.

The ability to contract out of section 81A should be removed.

Page 14: Exceptions and limitations: Internet service provider liability

Q73 Q59What are problems (or benefits) with the ISP definition? What changes, if any should be considered?

Respondent skipped this question

Q74 Q60Are there any problems (or benefit) with the absence of an explicit exception for linking to copyright material and not having a safe harbour for providers of search tools (eg search engines)? What changes (if any) should be considered?

Respondent skipped this question

Q75 Q61Do the safe harbour provisions in the Copyright Act affect the commercial relationship between online platforms and copyright owners? Please be specific about who is, and how they are, affected.

Respondent skipped this question

Q76 Q62What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?

Respondent skipped this question

Page 15: Transactions

Q77 Q63Is there a sufficient number and variety of CMOs in New Zealand? If not, which type copyright works do you think would benefit from the formation of CMOs in New Zealand?

Respondent skipped this question

Q78 Q64If you are a member of a CMO, have you experienced problems with the way they operate in New Zealand? Please give examples of any problems experienced.

Respondent skipped this question

Q79 Q65If you are a user of copyright works, have you experienced problems trying to obtain a licence from a CMO? Please give examples of any problems experienced.

Respondent skipped this question

Q80 Q66What are the problems (or advantages) with the way the Copyright Tribunal operates? Why do you think so few applications are being made to the Copyright Tribunal? What changes (if any) to the way the Copyright Tribunal regime should be considered?

Respondent skipped this question

Q81 Q67Which CMOs offer an alternative dispute resolution service? How frequently are they used? What are the benefits (or disadvantages) with these services when compared to the Copyright Tribunal?

Respondent skipped this question

Q82 Q68Has a social media platform or other communication tool that you have used to upload, modify or create content undermined your ability to monetise that content? Please provide details.

Respondent skipped this question

Q83 Q69What are the advantages of social media platforms or other communication tools to disseminate and monetise their works? What are the disadvantages? What changes to the Copyright Act (if any) should be considered?

Respondent skipped this question

Q84 Q70Do the transactions provisions of the Copyright Act support the development of new technologies like blockchain technology and other technologies that could provide new ways to disseminate and monetise copyright works? If not, in what way do the provisions hinder the development and use of new technologies?

Blockchain has flourished precisely because copyright law was not used, ie most blockchain code is open source. The open source nature means that others are able to copy the code and make changes. This has meant the very rapid evolution of blockchain, far beyond anything that would have happened had the writers of the first blockchain (Bitcoin) insisted they had copyright and attempted to stop others from copying it. (See Alexandra Sims, “Why blockchain challenges conventional thinking about intellectual property” 27 February 2018, The Conversation https://theconversation.com/why-blockchain-challenges-conventional-thinking-about-intellectual-property-91469
Blockchain and open source code are not impediments for people to disseminate works and also make money, indeed, copyright is likely to reduce dissemination and profits. Bill Gates once described Linux as a “malignant cancer”, but Microsoft made a U-turn and in October 2018 it joined the Open Invention Network (OIN), a community dedicated to protecting Linux and other open source software programmes from patent risk. That move included making 60,000 of Microsoft’s patents open source, see https://azure.microsoft.com/en-us/blog/microsoft-joins-open-invention-network-to-help-protect-linux-and-open-source/?ranMID=24542&ranEAID=nOD/rLJHOac&ranSiteID=nOD_rLJHOac-lbTRY2fJUtXpwL2.WwfvXQ&epi=nOD_rLJHOac-lbTRY2fJUtXpwL2.WwfvXQ&irgwc=1&OCID=AID681541_aff_7593_1243925&tduid=(ir__dimgaveilckfrmxe0h0nh3m2kv2xmy9blfxlsco900)(7593)(1243925)(nOD_rLJHOac-lbTRY2fJUtXpwL2.WwfvXQ)()&irclickid=_dimgaveilckfrmxe0h0nh3m2kv2xmy9blfxlsco900

Q85 Q71Have you ever been impeded using, preserving or making available copies of old works because you could not identify or contact the copyright? Please provide as much detail as you can about what the problem was and its impact.

Susan Corbett in Susan Corbett, “Regulation for Cultural Heritage Orphans: Time Does Matter” (2010) 2 (1) The WIPO Journal: Analysis and Debate of Intellectual Property Issues, 180 details a number of numbers when old works (and sometimes not very old works) could not be preserved or made available because the copyright owners could not be identified and even if they were identified they could not be contacted or if they were contacted they did not reply.
One of the examples cited by Corbett involved attempts to preserve archive and thus preserve New Zealand’s earliest computer software games by the NZTronix research project, which was a team of academic researchers at the Victoria University of Wellington. The games were stored on cartridges that were inserted into the relevant console to be played. Computer software games stored on cartridges (and other mediums including DVDs) are not stable and archiving is required if they are to be kept for future generations (or even current generations). Archiving for computer software games therefore involves creating digital copies and therefore copies need to be made, and further copies will need to be made as the technology progresses. As Corbett explains, despite exhaustive efforts to attempt to find the copyright owners of three games “Dungeons Beneath Cairo” written by David Harvey and published by Scorpion Software (sometimes also referred to as Flexisoft), “City Lander” written by John Perry and published by Grandstand Leisure Ltd, and “Poker” written by TR Spiers and published by Poseidon, the copyright owners could not be found. For example, with the City Lander game, while Corbett did make contact with the game’s author, who wrote the game when he was 13, he remembered signing over his rights to the games at the time. The former director of Grandstand could not recall any paperwork or documentation regarding the games and who owns the copyright in them. He suggested that the research team got in touch with another former director but that proved impossible.
The research team, not wanting to potentially infringe copyright abandoned its efforts to achieve these games, thus potentially resulting in the loss of important cultural artefacts. As Corbett notes, “while the technology is now available [to archive early computer software], due to the orphan works problem it cannot be used for cultural preservation purposes for the very software that is most at risk.”

Q86 Q72 How do you or your organisation deal with orphan works (general approaches, specific policies etc.)? And can you describe the time and resources you routinely spend on identifying and contacting the copyright owners of orphan works?

Respondent skipped this question

Q87 Q73Has a copyright owner of an orphan work ever come forward to claim copyright after it had been used without authorisation? If so, what was the outcome?

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Q88 Q74What were the problems or benefits of the system of using an overseas regime for orphan works?

Respondent skipped this question

Q89 Q75What problems do you or your organisation face when using open data released under an attribution only Creative Commons Licences? What changes to the Copyright Act should be considered?

Respondent skipped this question

Q90 Any other comments on Transactions

Respondent skipped this question

Page 16: Enforcement of Copyright

Q91 Q76How difficult is it for copyright owners to establish before the courts that copyright exists in a work and they are the copyright owners? What changes (if any) should be considered to help copyright owners take legal action to enforce their copyright?

I don't have first-hand knowledge of any difficulties purported copyright owners face in establishing copyright ownership beyond those in cases such as in Holdfast NZ Ltd v Henkel KGaA - [2007] 1 NZLR 336 (where the plaintiff was unable to show it was the copyright owner), but I imagine there are some. I agree that creating a voluntary registration regime would be a good move (and if it is done then would make sense for it to use blockchain.) Beyond providing a register no watering down of the requirements to prove that copyright exists in a work and that they are the copyright owners is required. Copyright owners need to ensure that they keep proper records.

Q92 Q77What are the problems (or advantages) with reserving legal action to copyright owners and their exclusive licensees? What changes (if any) should be considered?

If you are a mere licensee you have no ability to sue for copyright infringement. It is reasonably common for problems to arise in franchise situations, for example, some franchisees are granted an exclusive territory by the franchisor (who is the copyright owner), eg one part of Auckland, ie only they can operate the franchised business in that territory. Some franchisees ignore those boundaries and start transacting business in another franchisee's exclusive territory, eg cutting lawns in that area. The franchisee with the rights to that area will demand that the franchisor do something, but because it is normally only minor the franchisor often does nothing.
I am not actually sure how the Copyright Act could fix such situations, but it is another reason why franchisees are particularly vulnerable and need greater protection than they currently get in New Zealand.

Q93 Q78Should CMOs be able to take legal action to enforce copyright? If so, under what circumstances?

Given that CMOs often represent authors who do not have the resources to go to court it makes sense for CMOs to be able to take legal action to enforce copyright.

Q94 Q79Does the cost of enforcement have an impact on copyright owners' enforcement decisions? Please be specific about how decisions are affected and the impact of those decisions. What changes (if any) should be considered?

I don't have first-hand knowledge of the cost of enforcement impacting on copyright owners' enforcement decisions, but I would think it does. Copyright owners, however, should not be treated any differently to any other person or entity. The problems with access to justice are systematic and the whole judicial/dispute resolution process in New Zealand needs addressing, including the use of online courts.
One thing, however, that could be done if a voluntary registration system (see question 76 above) is set up, is to allow the Disputes Tribunals to hear low value disputes if the copyright has been registered.

Q95 Q80Are groundless threats of legal action for infringing copyright being made in New Zealand by copyright owners? If so, how wide spread do you think the practice is and what impact is the practice having on recipients of such threats?

I don't have first-hand knowledge about groundless legal threats, but it is recognised overseas, for example in Australia. Strongly suggest following Australia.

Q96 Q81Is the requirement to pay the $5,000 bond to Customs deterring right holders from using the border protection measures to prevent the importation of infringing works? Are there any issues with the border protection measures that should be addressed? Please describe these issues and their impact.

A $5,000 bond is reasonable.

Q97 Q82Are peer-to-peer filing sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?

While no doubt peer-to-peer file sharing technologies are being used by some to infringe copyright, equally more people pay for subscription services such as Netflix, Spotify etc. People are prepared to pay for content, business models need adjustment, rather than strengthening copyright.

Q98 Q83Why do you think the infringing filing sharing regime is not being used to address copyright infringements that occur over peer-to peer file sharing technologies?

Although the costs are minimal, copyright owners (or rather their agents) do not want to pay any charges for enforcing their copyright.

Q99 Q84What are the problems (or advantages) with the infringing file sharing regime? What changes or alternatives to the infringing filing share regime (if any) should be considered?

The current infringing file sharing regime is extremely generous to copyright owners and their agents. They do not have to prove copyright ownership (unlike traditional copyright cases), nor do they cover the full costs of the ISPs to provide services to them. Therefore if changes are made they should not be even more favourable to copyright owners.

Q100 Q85What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?

The success of the streaming services such as Netflix and Spotify etc, shows that when you have an attractive offering people will pay for it. Better to create good business models than a futile effort to use copyright to attempt to achieve the same end.

Q101 Q86Should ISPs be required to assist copyright owners enforce their rights? Why / why not?

ISPs should be required to assist copyright owners, but only if the full costs of their services are met by the copyright owners.

Q102 Q87Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?

Copyright owners should be required to pay the ISP's costs if they assist copyright owners to take action to prevent online infringements.

Q103 Q88Are there any problems with the types of criminal offences or the size of the penalties available under the Copyright Act? What changes (if any) should be considered?

I think it is sensible to continue the position in the Copyright Act of criminal liability attaching only to commercial uses.

Q104 Any other comments on Enforcement of copyright — **Respondent skipped this question**

Page 17: Other Issues: Relationship between copyright and registered design protection

Q105 Q89Do you think there are any problems with (or benefits from) having an overlap between copyright and industrial design protection? What changes (if any) should be considered? — **Respondent skipped this question**

Q106 Q90Have you experienced any problems when seeking protection for an industrial design, especially overseas? — **Respondent skipped this question**

Q107 Q91We are interested in further information on the use of digital 3-D printer files to distribute industrial designs. For those that produce such files, how do you protect your designs? Have you faced any issues with the current provisions of the Copyright Act? — **Respondent skipped this question**

Q108 Q92Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement? — **Respondent skipped this question**

Q109 Any other comments on Other Issues: Relationship between copyright and registered design protection — **Respondent skipped this question**

Page 18: Other issues: Copyright and the Wai 262 inquiry

Q110 Q93Have we accurately characterised the Waitangi Tribunal's analysis of the problems with the current protections provided for taonga works and mātauranga Māori? If not, please explain the inaccuracies. — **Respondent skipped this question**

Q111 Q94Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not? — **Respondent skipped this question**

Q112 Q95The Waitangi Tribunal did not recommend any changes to the copyright regime, and instead recommended a new legal regime for taonga works and mātauranga Māori. Are there ways in which the copyright regime might conflict with any new protection of taonga works and mātauranga Māori? — **Respondent skipped this question**

Q113 Q96Do you agree with our proposed process to launch a new work stream on taonga works alongside the Copyright Act review? Are there any other Treaty of Waitangi considerations we should be aware of in the Copyright Act review?

Respondent skipped this question

Q114 Q97How should MBIE engage with Treaty partners and the broader community on the proposed work stream on taonga works?

Respondent skipped this question

Q115 Any other comments on Other Issues: copyright and the Wai 262 inquiry

Respondent skipped this question

Page 20: Information you've provided that should not be publicly available

Q116 Please specify (by question number) which of your answers you object to being published by MBIE

Respondent skipped this question

Q117 Please specify (by question number) which of your answers contain information that MBIE should consider withholding if requested under the Official Information Act. For each question number, please tell us which information in your answer you believe would need to be withheld and why (preferably by referring to the relevant ground in the Official Information Act).

Respondent skipped this question