

# Submission on review of the Copyright Act 1994: Issues Paper

## Your name and organisation

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## Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

1. Auckland Libraries is the largest public library network in Australasia. The central library, 54 community libraries, mobile vehicles and online channels serve 1.56 million Aucklanders, as well as visitors.
2. Auckland Libraries has almost 40,000 visitors each day to the physical libraries and about 20,000 each day to the website. The Libraries collection contains over 3.5 million items and customers borrow around 15 million items per year, 2 million of these being e-issues.
3. Auckland Libraries thanks the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to comment on the issues raised in the Issues Paper for Review of the Copyright Act 1994 ("the Issues Paper").
4. While our submissions are focused on the impact of copyright law on library and information service providers, we have had the benefit of reviewing, in draft, the submission of Libraries and Information Association of New Zealand Aotearoa (LIANZA). We support that submission, particularly in points addressing Crown Copyright and the impact of maker spaces.

## Responses to Issues Paper questions

### Objectives

1	<p>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?</p> <p><i>Auckland Libraries considers that the balance in the current law has become weighted too heavily in favour of rights-holders and does not respond adequately to the technological changes that have occurred since the Copyright Act was passed. For example the “Google generation” is able to copy, paste, mix and mash and share information from sources much easier and faster than ever before. They are often unaware of, or do not care about copyright rules, because they see the benefits outweigh any penalty.</i></p> <p><i>Auckland Libraries consider the recommendations for principles of copyright by InternetNZ<sup>1</sup> allow a balance for rightsholders and copyright users. We have been advised that these objectives have been updated to adequately protect and respect New Zealanders creative works, while supporting fair consumer access to legitimately provided content.</i></p> <p><i>Auckland Libraries also consider that the proposed objective 2 regarding provision of reasonable access to works for “net benefits” to New Zealand is very broad and could be problematic in application. We question how these net benefits would be assessed and what the definition of a net benefit is.</i></p> <p><i>Auckland Libraries believe that there should be greater emphasis on objective 5, related to the Treaty of Waitangi, by giving it more prominence and a higher ranking in the list of objectives.</i></p> <p><sup>1</sup> InternetNZ “Getting copyright right in the information age” (February 2018)</p>
2	<p>Are 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?</p> <p><i>Auckland Libraries favours a technology neutral copyright framework that preserves existing Part 3 (“Acts Permitted”) rights, while also clarifying the limits of those rights. It is submitted that these rights are an essential counterweight to the rights granted to copyright owners, but that confusion over the scope of these rights makes them difficult to use.</i></p>
3	<p>Should 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.</p> <p><i>No response</i></p>
4	<p>What weighting (if any) should be given to each objective?</p> <p><i>No response</i></p>

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

5	<p>What are the problems (or advantages) with the way the Copyright Act categorises works?</p>
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<sup>1</sup> InternetNZ “Getting copyright right in the information age” (February 2018)

	<i>No response</i>
6	Is it clear what 'skill, effort and judgement' 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?
	<i>No response</i>
7	Are 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?
	<i>No response</i>
8	What are the problems (or benefits) with the way the default rules for copyright ownership work? What changes (if any) should we consider?
	<i>No response</i>
9	What 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?
	<i>No response</i>
10	What 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?
	<i>No response</i>
11	What 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>No response</i>
12	What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?

	<p><i>Auckland Libraries submit that Crown Copyright is problematic and that it is often very difficult to identify which Department or Crown Agency is the rights-holder for any given item or the rules around use are confusing. As an example, access to the Electoral Rolls are an important tool for family history research, but a library wanting to make historical rolls available in print or other formats also has to consider their obligations under the Electoral Act and the Privacy Act 1993. The use statement in the Rolls is in respect of manipulating electoral information so is confusing for customers.</i></p> <p><i>Auckland Libraries would also like to comment that the term of 100 years for Crown Copyright exacerbates this issue of use and is overprotective of works. A 100-year term for most items under Crown Copyright provides no additional benefit and is at odds with the aims of the New Zealand Government Open Access and Licensing framework (NZGOAL). We would recommend that Crown Copyright is waived automatically, unless it is specifically reserved.</i></p> <p><i>We would also recommend that information provision is a core government service, therefore requires a dedicated government information policy that includes copyright and a framework for information services.</i></p>
13	<p>Are 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?</p> <p><i>No response</i></p>
14	<p>Are there any problems (or benefits) in providing an indefinite copyright term for the type of works referred to in section 117?</p> <p><i>No response</i></p>

## Other comments

Auckland Libraries considers that copyright is an area of law that directly impacts upon the library and information services that we provide. This is recognised in current law by the provisions of the Copyright Act regarding the “permitted acts” that pertain to libraries and archivists (ss 50-57A).

In general, Auckland Libraries are making use of many of the exceptions, although the degree to which these are used varies. The most widely used exceptions include copying for the collections or users of other libraries, copying for preservation or replacement, and making a backup copy.

Auckland Libraries staff have commented that the library exceptions are confusing and that there is uncertainty around the scope of these exceptions, which makes it difficult to be confident when relying upon them.

Auckland Libraries staff have also commented that there is a perception that they feel obliged to police and enforce the copyright rules. Library staff struggle with the role of being portrayed as the “copyright police”, which can result in difficult customer altercations. Misinformation about copyright compliance can also be perpetuated by incorrect messaging from librarians, where rules are understood and interpreted differently between institutions.

Auckland Libraries considers that the interpretation section for libraries and archives (s 50) is limited for the definition of “prescribed libraries” as it does not clearly explain the prescribed/non-prescribed status of libraries who are part of the interloan scheme (as per the Copyright (General Matters) Regulations 1995). This should be more clearly defined or updated. In the interests of the public benefit, Auckland Libraries would support this definition of prescribed libraries being extended to include the full spectrum of the GLAM sector (Galleries, Libraries, Archives, and Museums).

### Rights: What actions does copyright reserve for copyright owners?

15	Do 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?
	<i>No response</i>
16	Are there any problems (or benefits) with the secondary liability provisions? What changes (if any) should be considered?
	<i>No response</i>
17	What are the problems (or advantages) with the way authorisation liability currently operates? What changes (if any) do you think should be considered?
	<i>No response</i>

### Other comments

*No response*

### Rights: Specific issues with the current rights

18	What are the problems (or advantages) with the way the right of communication to the public operates? What changes, if any, might be needed?
	<i>No response</i>
19	What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?
	<i>No response</i>
20	What are the problems (or benefits) with using ‘object’ in the Copyright Act? What changes (if any) should be considered?
	<i>No response</i>

21	Do you have any concerns about the implications of the Supreme Court's decision in Dixon v R? Please explain.
	<i>No response</i>
22	What are the problems (or benefits) with how the Copyright Act applies to user-generated content? What changes (if any) should be considered?
	<i>No response</i>
23	What are the advantages and disadvantages of not being able to renounce copyright? What changes (if any) should be considered?
	<i>No response</i>
24	Do you have any other concerns with the scope of the exclusive rights and how they can be infringed? Please describe.
	<i>No response</i>

## Other comments

*No response*

## Rights: Moral rights, performers' rights and technological protection measures

25	What 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?
	<i>Auckland Libraries submit that moral rights are complex to understand and difficult to rely on in practice. There is also a presumption that there is knowledge of the legislation, as it applies to the creators of the work. Because of this confusion, customers can place unreasonable demands on works that they believe they are entitled to or request restrictions on use.</i>
26	What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?
	<i>No response</i>
27	Will 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?
	<i>No response</i>
28	What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?
	<i>No response</i>

29

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

*No response*

## Other comments

*No response*

### Exceptions and Limitations: Exceptions that facilitate particular desirable uses

30

Do 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?

*No response*

31

What 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?

*No response*

32

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

*No response*

33

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

*No response*

34

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

*No response*

35

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

*No response*

36

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

*No response*

37

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

	<i>No response</i>
38	What problems (or benefits) are there with copying of works for non-expressive uses like data-mining. What changes, if any, should be considered?
	<i>No response</i>
39	What 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?
	<i>No response</i>
40	What problems (or benefit) are there with the use of quotations or extracts taken from copyright works? What changes, if any, should be considered?
	<i>No response</i>

## Other comments

*No response*

## Exceptions and Limitations: Exceptions for libraries and archives

41	<p>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.</p> <p><i>Auckland Libraries observes that there is a general uncertainty around the exceptions for libraries because they are complex and are interpreted to varying degrees of compliance, ranging from the conservative to the not so conservative uses. Staff are not always sure of how much they can copy and what they can do with copies.</i></p> <p><i>Sections 51-56 have unique interpretation issues including:</i></p> <ul style="list-style-type: none"> <li><i>-Section 52: The issue of copying periodical articles on the same subject matter. For example, the copying of every issue of the New Zealand Law Journal for a year with articles written on different legal topics, but all under the same subject of the law.</i></li> <li><i>-Section 53: The section refers to copying a “reasonable proportion of any literary, dramatic, or musical work” but does not define a “reasonable proportion”. What constitutes reasonable proportion may be dependent on many factors and therefore requires clarification in the legislation.</i></li> <li><i>-Section 54: Copying for the collections of other libraries:</i></li> </ul> <p><i>Auckland Libraries need to be able to supply copies of periodical articles and other types of materials for the collections of other libraries, not just copies of books, as allowed for under s 54 of the Copyright Act 1994. This section is confusing and does not allow enough scope for requests not fit for purpose.</i></p> <p><i>The inter-relationship between sections 54 and 56C is also confusing. While librarians of a prescribed library may make a copy (including a digital copy) for the collections of another prescribed library, this provision is limiting as it applies only to books, not to periodical articles, serials, music scores or other types of library materials.</i></p> <ul style="list-style-type: none"> <li><i>-Sections 56 are also confusing, as they have multiple steps and require referral and cross reference to other sections.</i></li> </ul>
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42

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?

*Auckland Libraries would be interested in partnering with other libraries to be able to provide comprehensive digital content on the internet. Auckland Libraries considers that digital heritage preservation is a key issue and we would like the legal right to do this for new content. In general, Auckland Libraries will make digital content with a focus on historic items that are out of copyright and can be made available to the public. However, if we were able to copy and archive, for example online school newsletters for our region this would retain a valuable history of our schools for local history researchers.*

43

Does 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?

*Generally, most content that is being utilised by Auckland Libraries for digitisation projects is unpublished or out of copyright. For more contemporary material that is published we would have documentation to cover the copyright aspect or avoid using it. Oral history is also a delicate area and we are stricter about what is put online for these items, so it is unlikely that usage would be listed as no known copyright restrictions or copyright restrictions may apply, because these can be misinterpreted by customers.*

44

Does 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?

Auckland Libraries submit that the Copyright Act does not provide enough flexibility for libraries to make copies of copyright works, within our collections, for collection management and administration, without the copyright holders permission. For example, when a special exhibition is created it is difficult to use examples of copyrighted works for posters or advertising without the rights holder's permission. They are often unable to be contacted, or do not give permission.

*Back-up copies:*

Libraries need to be permitted to make back-up copies of media such as sound and visual recordings (s 80 of the Copyright Act 1994 applies only to computer programs).

*Public domain:*

Auckland Libraries acknowledge and respect the fact that the creation of new work depends on people's ability to access and use existing works, i.e. the value of a rich public domain. The public domain is a difficult concept for Auckland Libraries customers. Some customers have even commented that because a collection is in a public space of our libraries that must mean that the content is in the public domain, so can be utilised without breaching copyright.

45

What 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?

*Locating the copyright owner can be challenging, and in many cases libraries are digitising for preservation purposes, but are unable to share that material with their communities. Auckland Libraries would appreciate legislative changes so that we can work with other institutions to engage and preserve New Zealand's documentary heritage.*

*Auckland Libraries support all people to be able to enjoy access to creative works, and the importance of copyright law and policy in facilitating access to works by people, including those with disabilities.*

46

What 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?

*No response*

## Other comments

### *Term of protection:*

Auckland Libraries is aware the copyright term is not something being raised as an issue, but considers that the current term of protection (of 50 years from the death of the creator) creates difficulties. The term of protection is often impossible to calculate under the current legislation, with minimal guidance on how to assess this. These difficulties include identifying an author, ascertaining their death date, and determining whether the work is in copyright or not (the orphan works problem). Library staff find it hard to assist customers to establish if a work is in copyright, and tools that the GLAM sector has developed to assist can be a blunt instrument that is applied incorrectly.

As an example, it is often assumed for photographs that copyright is likely to have expired for anything before 1 January 1944.<sup>2</sup> Auckland Libraries have an example of a photographer who is over the age of 100 years and still retains copyright in his photographs. Using common protocols we would have assumed, incorrectly, that his photographs were available to use. The 50 years from the death of the creator inhibits access to content which is still protected by copyright term; and the costs and delays incurred by compliance are an inhibitor to new content creation based on older content.

## Exceptions and Limitations: Exceptions for education

47

Does 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?

*No response*

48

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

*No response*

49

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

*No response*

50

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

*No response*

<sup>2</sup> See DigitalNZ flowchart <https://digitalnz.org/make-it-digital/enabling-use-re-use/copyright-status-flowcharts>

## Other comments

*No response*

### Exceptions and Limitations: Exceptions relating to the use of particular categories of works

51	What 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?
	<i>No response</i>
52	What are the problems (or advantages) with the way the format shifting exception currently operates? What changes (if any) should be considered?
	<i>No response</i>
53	What are the problems (or advantages) with the way the time shifting exception operates? What changes (if any) should be considered?
	<i>No response</i>
54	What are the problems (or advantages) with the reception and retransmission exception? What alternatives (if any) should be considered?
	<i>No response</i>
55	What are the problems (or advantages) with the other exceptions that relate to communication works? What changes (if any) should be considered?
	<i>No response</i>
56	Are the exceptions relating to computer programmes working effectively in practice? Are any other specific exceptions required to facilitate desirable uses of computer programs?
	<i>No response</i>
57	Do 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?
	<i>No response</i>

## Other comments

*No response*

### Exceptions and Limitations: Contracting out of exceptions

58	What 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?
	<i>No response</i>

### Exceptions and Limitations: Internet service provider liability

59	What are problems (or benefits) with the ISP definition? What changes, if any should be considered?
	<i>No response</i>
60	Are 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?
	<i>No response</i>
61	Do 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.
	<i>No response</i>
62	What other problems (or benefits) are there with the safe harbour regime for internet service providers? What changes, if any, should be considered?
	<i>No response</i>

### Transactions

63	Is 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?
	<i>No response</i>
64	If 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.
	<i>No response</i>
65	If 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.

*No response*

66

What 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?

*No response*

67

Which 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?

*No response*

68

Has 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.

*No response*

69

What 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?

*No response*

70

Do 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?

*No response*

71

Have 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.

*Auckland Libraries have had examples where it has been difficult to obtain permission to convert materials of old works as the publishers have often gone out of business, or simply do not give permission. Some libraries manage this by deliberately keeping and maintaining old hardware and equipment, or by sourcing alternative resources instead.*

*Issues arise when Auckland Libraries have had to work with material in obsolete formats, such as VHS tapes, material held on reel-to-reel tape, vinyl, floppy disks, CD ROMs, microfiche and even DVDs. While Auckland Libraries has retained a record player for customers to play vinyl records in our Special Collections Reading Room, many items are inaccessible as the hardware is no longer available to libraries or their users. This can lead to valuable or useful material in obsolete formats being removed from a library collection, leading to a loss of otherwise useful material.*

*Auckland Libraries also consider that it would be useful to include a provision, for educational or library purposes, for format shifting of films, videos, etc. either into digital format or into other formats.*

*Auckland Libraries believe the category of ephemera, including brochures, flyers, posters, menus and the like, causes issues for author identification. Many of these were created without any thought of copyright or reuse and have minimal information about who created them making it almost impossible to get permissions to copy. Some of these items have a high heritage value and are important for highlighting social issues or historic events. As an example, flyers of protests for the Springbok Rugby tour of 1981 are useful for history students as they tie in with school curriculum subjects.*

*Auckland Libraries would like to recommend that there is endorsement that permits such items of historical significance to be digitised and made available for users.*

72

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?

*Auckland Libraries often deal with orphan works with a general approach of following a diligent search of relevant resources to assist with the query. However orphan works are problematic, and compliance is very resource intensive in covering due diligence practices to ensure possible copyright owners are sourced. This can be particularly difficult when works have many copyright owners (e.g. periodicals or music scores). The lack of prescription as to what constitutes a "diligent search" exacerbates the difficulties with using orphan works.*

*As an example, we had a collection of photographs of a famous dancer who donated them to the Library and said "the library could do anything we liked with the photos". When an author asked to use the photographs she and Auckland Libraries understood that the photographer would have copyright, and did everything they could to find the photographer and confirm provenance. The photographer was not able to be contacted at the time, but some time later did make contact and advised that the photographs were not to be used.*

*Auckland Libraries would support an orphan works register where libraries could check to see if works had been reported.*

73

Has 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?

*Yes. As per the example above we had a collection of photographs of a famous dancer who donated them to the Library and said “the library could do anything we liked with the photos”. When an author asked to use the photographs she and Auckland Libraries understood that the photographer would have copyright, and did everything they could to find the photographer and confirm provenance. The photographer was not able to be contacted at the time, but some time later did make contact and advised that the photographs were not to be used*

74 What were the problems or benefits of the system of using an overseas regime for orphan works?

*No response*

75 What 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?

*No response*

## Other comments

*No response*

## Enforcement of Copyright

76 How 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?

*No response*

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

*No response*

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

*No response*

79 Does 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?

*No response*

80 Are 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>No response</i>
81	Is 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.
	<i>No response</i>
82	Are peer-to-peer file sharing technologies being used to infringe copyright? What is the scale, breadth and impact of this infringement?
	<i>No response</i>
83	Why do you think the infringing file sharing regime is not being used to address copyright infringements that occur over peer-to-peer file sharing technologies?
	<i>No response</i>
84	What are the problems (or advantages) with the infringing file sharing regime? What changes or alternatives to the infringing file sharing regime (if any) should be considered?
	<i>No response</i>
85	What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?
	<i>No response</i>
86	Should ISPs be required to assist copyright owners enforce their rights? Why / why not?
	<i>No response</i>
87	Who should be required to pay ISPs' costs if they assist copyright owners to take action to prevent online infringements?
	<i>No response</i>
88	Are there any problems with the types of criminal offences or the size of the penalties under the Copyright Act? What changes (if any) should be considered?
	<i>No response</i>

## Other comments

*No response*

## Other issues: Relationship between copyright and registered design protection

89	Do 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?
	<i>No response</i>
90	Have you experienced any problems when seeking protection for an industrial design, especially overseas?
	<i>No response</i>
91	We 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?
	<i>No response</i>
92	Do you think there are any problems with (or benefits from) New Zealand not being a member of the Hague Agreement?
	<i>No response</i>

## Other comments

*No response*

## Other issues: Copyright and the Wai 262 inquiry

93	Have 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.
	<i>No response</i>
94	Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?
	<i>No response</i>
95	The 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?

*Auckland Libraries recommend a greater recognition of indigenous people's rights to protect their taonga works and mātauranga Māori. Copyright is a Western construct with expiry dates and the concept of the public domain. Protection of Mātauranga Māori does not expire in the same way as western intellectual property. Knowledge and kaitiaki responsibility is not owned by a single person or entity and is more frequently shared. There is also some concern about material which contains mātauranga Māori (literature, research, data, images, art) for which the maker is non-Māori. There is the possibility of conflict between the rights holder and the subject of the material.*

*Here is an example of where the copyright regime has conflicted with protection of taonga works. Auckland Libraries received a request to remove a photograph from a display, showing a Māori ancestor. It was claimed by a customer that the library did not have permission to have or use that photograph. The photograph was out of copyright, but it was claimed it was infringing on the rights of the descendant to have it available for all customers to see.*

*Auckland Libraries also consider that consideration needs to be given to the right to object to not just derogatory treatment of a work but for example, cover culturally sensitive or inappropriate uses and protecting and enhancing the mana of taonga and the subjects in them. For example, Auckland Libraries has in the collection a newspaper photograph that showed covers in a lava tunnel, coming across ancestral bones, which had been obviously hidden away in a burial site. Auckland Libraries decided to remove these photographs from display, because of the moral rights of the associated iwi (who were not identified in the photograph).*

96

Do 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?

*Yes, we support a parallel stream of work. This work should be done in collaboration with Te Puni Kōkiri, the Ministry for Māori Development and MBIE.*

97

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

*MBIE should consult Te Rōpū Whakahaui and other Māori stakeholders in line with tikanga Māori.*

## Other comments

For the reasons set out above, Auckland Libraries welcomes the Issues Paper and welcomes flexible and open exceptions in the legislation, that are easy for the layperson to use and understand.