

Copyright Act Review Issues Paper Submission Template

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Due 5th April 5pm

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Introduction

We have selected certain questions from the issues paper that directly relate to GLAMs. We encourage you to read both the [Terms of Reference](#) laid out by MBIE and the [Issues Paper](#). The Ministry is also keen to hear about what is working with copyright. We've also added a section in this draft to cover this for you and provided examples from our institutions. Think about where is copyright working well for you.

Your experiences can be used as evidence of a problem and can be a valuable source of information. This type of evidence will be more compelling if you describe the practical impacts of the current regime and the nuts and bolts of how it works, eg as a result of x, I need to do y, which costs me z amount of time and/or \$. [In this google doc](#) we've provided examples from our institutions and others that we know about so you have something to model your answers on.

If you have suggestions on how the problems you identify in your submission could be resolved we encourage you to include them in your submission.

Writing a submission

These are some tips taken from the [MBIE guidelines on preparing an effective submission](#).

Keep in mind that our submissions will help inform the development of policy options. You can answer all the questions, or as many questions as you like. We recommend submitting on behalf of your institution and a personal submission, if you can.

Focus on the problem - not the solutions

MBIE are establishing what is wrong or deficient with the current Act, and what effect that is having. MBIE have welcomed ideas and suggestions on how the problems might be addressed. This includes other examples of jurisdictions where copyright is working well. Consider the following when you're describing a problem:

- **WHAT?** What is the issue/problem?
- **WHY?** Why is it an issue/problem?
- **HOW?** How does the problem come about?
- **WHO?** Who is affected by the issue/problem and on what scale?

Evidence

- Peer-reviewed academic research if possible
- Personal experience and anecdotes - e.g.
 - Have issues with copyright ever stopped you from completing a project before?
 - Has the cost of copyright licensing stopped you using a reproduction of work for a non-commercial purpose?
 - Have you not reproduced a work due to uncertain copyright status?
- Time/cost based analysis of managing copyright - eg. as a result of X, I need to do Y, which costs me z amount of time and/or \$.

- how much time and resources have you spent on trying to manage copyright, find a copyright owner or conduct a due diligence search?

Template 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>On the whole, the existing copyright regime does a reasonable job of achieving the objectives outlined in the review. It requires more clarity, especially regarding technological changes which impact on how people use materials</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>Facilitate the preservation of New Zealand's cultural and historical heritage</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>[Insert response here]</i></p>
4	<p>What weighting (if any) should be given to each objective?</p>
	<p>Objectives 1 and 5 are the most important, followed by 4</p>

Rights

Originality

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?

This is not clear and will be difficult to interpret practically. End users, for example, will find it difficult to determine how much skill, effort and judgement was required in creating a work to then decide whether that work is likely to be covered by copyright

Commissioning Rule

8

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

It is not usually clear what the commissioning arrangements were for a work, particularly older materials. When looking at a photograph, for example, it is difficult to ascertain whether or not the photo was commissioned. If it was, what were the arrangements, if at all?

Crown Copyright

12

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

GLAM institutions hold a lot of crown works. Works published prior to 31 December 1945 are clearly in the public domain, but for works created after this the copyright duration is 100 years from the date of creation. This duration is too long and for works created prior to the introduction of NZGOAL it can become very unclear what department owns what, resulting in Crown works not being published due to the risks involved. This can prevent GLAM institutions from, for example, digitising Crown works to make them more widely available. The more widespread dissemination of Crown information should be the goal of central government. Reducing or eliminating Crown Copyright and replacing it by a Creative Commons Licence would make this much more practical and simpler.

The case of Standards NZ quoted in the issues paper is a good example. Stands NZ are very strict in their application of copyright. This is understandable given the high cost of producing the standards. However, the standards are meant to be adhered to by everyone and so should be more easily accessible. Forcing people to pay a lot of money for a one-off application seems counterproductive.

Communication works term extension

13

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?

Not so much around communication works, but we suggest that the copyright around unpublished works should be brought within the same parameters as that for other materials. Many GLAM institutions have had collections for some time and for which the agreements around copyright transfer were very unclear, or even not specified.

Exceptions and Limitations

Exceptions for libraries and archives

41

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.

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?

[Insert response here]

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?

Copyright has a major impact on digitisation, both for preservation and for providing online access. Libraries can spend a lot of time (in some cases

several hours per item) determining whether materials are in or out of copyright. Neither the date of the item nor its author is always easy to determine. This can result in materials not being digitised. A possible solution would be to allow institutions to provide a digital copy of an item held in their collections provided the original was not made available. The digital copy would in effect become the surrogate and the institution would not be making extra copies available.

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?

There is not enough flexibility. An example of this is where individual pages have been damaged or removed from a book. There is confusion as to whether or to what extent pages can be copied from other books (including those held by other libraries) to replace these.

Another example is providing images of front covers of books for library catalogues. Our library uses a licensed provider to source these images, but many books, particularly older works, are not covered by these providers. Having images on the catalogue is of benefit to the authors as they help promote their works. A possible solution could be allowing libraries to display thumbnail images where the intention is to promote the work

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?

[Insert response here]

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?

[Example Response]

Other comments

- The concept of "fair dealing" is unclear. This makes it difficult to advise customers when they are likely to be breaching copyright when copying material for their own use. Customers will often request assistance in photocopying. Again, this makes it difficult for librarians to determine to what extent they can assist without breaching copyright

- The copyright status of commercial publications such as Wises or Leighton's Directories is very unclear. There is no author listed, but the Copyright Act says that authors can be corporate bodies, so presumably the publisher (eg Leightons) would be the copyright owner. What then is the term of copyright, particularly as a corporate owner cannot die? Our suggestion would be that the term of copyright would be treated the same as for unknown author
- The status of digitised copies needs to be clarified. Are they treated as per Typographical Copyright

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?
	<i>[Insert response here]</i>
48	Are the education exceptions too wide? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	<i>[Insert response here]</i>
49	Are the education exceptions too narrow? What are the problems with (or benefits arising from) this? What changes (if any) should be considered?
	<i>[Insert response here]</i>
50	Is copyright well understood in the education sector? What problems does this create (if any)?
	<i>[Insert response here]</i>

Other comments

[Insert response here]

Transactions

Orphan Works

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.

Orphan works are very time consuming. The Act is not clear what constitutes "reasonable enquiry" when attempting to identify the author of a work. This becomes very problematic for ephemeral items such as business advertising, where there is often no clear indication of authorship. In practice we usually avoid digitising material which is still in copyright and for which there is no clear copyright owner. For fragile and other at risk materials this can be of concern as it may be some years before we are able to digitise and by then significant damage or deterioration of the materials may have occurred.

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?

Many of the photographs and ephemera in our collection can be regarded as orphan works because there is no creator information with them. GLAM institutions, or their controlling organisations, are usually risk averse, so generally we avoid digitising anything which was created within the last 50 years. If we needed to identify a work, it could take anything up to 10 hours or longer per item, and you are still not guaranteed success.

The copyright of items is also complicated by multiple copyrights. Ephemera items are particularly difficult, with images of possibly various sources (which may or may not have breached copyright themselves). In fact, we had to obtain a legal opinion on the copyright status of ephemera. And all this for a poster which, for example, advertised a meeting for a long defunct non-profit organisation which probably would not even care if their material was digitised.

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?

No, we have never had experience of this

74

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

Most of the overseas systems outlined in the issues paper seem to be too time-consuming for the day-to-day business of digitisation. Perhaps some blanket cover similar to that of Norway's would be more practical. There would have to be clear guidelines and limitations around this though.

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?

[Insert response here]

Other comments

[Insert response here]

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.

[Insert response here]

94

Do you agree with the Waitangi Tribunal's use of the concepts 'taonga works' and 'taonga-derived works'? If not, why not?

[Insert response here]

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?

[Insert response here]

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?

[Insert response here]

97

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

[Insert response here]

Other comments

[Insert response here]

Any other comments

- *Think about what is working well and what you'd like to retain*
- *Think about any other issues that may not be raised in this issues paper*

Generally, Hamilton City Libraries supports the copyright regime and the rights of authors to the materials they have created. Exceptions for libraries and other institutions should be regarded as privileges, not rights, and should be apportioned with due regard to the rights of authors. It is about balancing these against the practicalities of a libraries' role in preserving and disseminating information.

[Insert response here]