

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

## Your name and organisation

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# Introduction

## About the Massey University College of Creative Arts

The Massey University College of Creative Arts Toi Rauwharangi is New Zealand's premier provider of higher education in the creative arts with a heritage that can be traced back over 130 years.<sup>1</sup>

The College offers undergraduate degrees in Design, Fine Arts, Māori Visual Arts, Creative Media Production and Commercial Music, plus a suite of postgraduate degrees that include the Master of Design (Concept Design) in partnership with Weta Workshop, the Master of Creative Enterprise, the only transdisciplinary MFA programme in art and design in the country, and the Doctor of Philosophy in Fine Arts.

Each year our team of over 180 staff teach and support over 1800 equivalent full-time students. Our staff include highly regarded and globally-connected artists, designers, musicians, film makers and media professionals and our students represent a diverse array of backgrounds. This, together with the College's outstanding facilities, offers a stimulating and highly innovative learning environment.

As an incubator for the creative industries in New Zealand, we aim to support and nurture future generations of critical thinkers who are able to contribute to a rapidly transforming world. Our numerous alumni can be found in leading roles in creative industries around the world and include Weta Workshop founder Sir Richard Taylor, New York-based fashion designer Rebecca Taylor; Go Pro vice-president Danny Coster; and internationally renowned artists Gordon Walters, Len Lye and John Drawbridge.

Our teaching is designed to equip students with critical thinking, entrepreneurial attitudes and innovative problem solving skills that enable them to flourish in creative businesses, connect with real issues, add value to our economies and contribute new knowledge and understandings that address significant domestic and global challenges. In addition, the College is committed to upholding the principles of Te Tiriti o Waitangi, demonstrating informed practices consistent with tikanga Māori, and embracing kaupapa Māori across its activities.

## About this submission

Even though we, as arts practitioners, hold copyright in our works we are aware that creativity is an act that builds upon previous creative works. If Copyright is too flexible, artists' work may not be respected and artists may not be able to derive an income from their creative labour. If copyright relies too heavily on permissions, artists may self-censor out of fear of infringement and new works that have the potential to enrich our collective culture may go unrealised. Further, as an institution we have a duty to teach our students about established modes of production which may include modes of creation that sample other works i.e. collage (incl. video & audio), hip hop, pop art, ready-mades, remix, détournement, and appropriation. Some of these sit uncomfortably with the Copyright Act as it stands, which puts us in a difficult position.

We welcome this opportunity to input into legislation that has a pronounced effect on the College's core business areas. The following submission collates staff comments that have been gathered over the course of several months. While not an exhaustive representation of views within the College, it indicates commonly-held positions expressed by staff.

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<sup>1</sup> 2018 QS World university rankings placed the College of Creative Arts in the top 100 for art and design in the world, and it was also ranked 1st in the Asia Pacific by International Red Dot. Its three schools are Nga Pae Mahutonga School of Design (est. 1886), Whiti o Rehua School of Art (est. 2002) and Te Rewa o Puanga School of Music and Creative Media Production (est. 2015).

# Responses to specific questions

## Objectives

1

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?

*Generally, we support the proposed objectives and consider that the existing system is achieving some of these objectives (Objectives 1, and 4), but that there is also room for improvement (Objectives 2, 3, and 5).*

**Regarding Objective 2:** "Permit reasonable access to works for use, adaptation and consumption, where exceptions to exclusive rights are likely to have net benefits for New Zealand."

*This is a worthy goal to aspire towards, however the current regime is not entirely clear on what "reasonable access" is. We further note that "consumption" and "use" are synonyms, therefore suggest that "consumption" is removed from the sentence.*

*The provided Model of outcomes [Fig 2.] describes the ability to "use, improve on and adapt works developed by others". The question of whether a new work is an "improvement" on a pre-existing work, or not, is a matter of opinion. We suggest that "transform" is used instead, and that this sentence is amended to "...works for use, adaptation, and transformation..."*

*There is capacity for Fair Dealing to be adjusted to better support the use, adaptation, and transformation of works for the net benefit for New Zealand. This is further discussed in our response to Q31-58).*

**Regarding Objective 3:** "Ensure that the copyright system is effective and efficient, including providing clarity and certainty, facilitating competitive markets, minimising transaction costs, and maintaining integrity and respect for the law."

*We are aware of concerns across the College, and more broadly in New Zealand's creative arts sectors, about a perceived lack of clarity and certainty in New Zealand's copyright regime. For this reason, and in response to the objectives presented in the issues paper, we support a principle-based approach to New Zealand's copyright law with a meaningful purpose statement/stated objectives presented up front. This approach would be an excellent grounding for an improved understanding and communication of the act, and (if the law is widely regarded to be fair) a means for maintaining integrity and respect for the law.*

**Regarding Objective 5:** "Ensure that the copyright system is consistent with the Crown's obligations under the Treaty of Waitangi."

*This is discussed later in the document in response to Q95-96.*

2

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?

*Firstly, we consider the arts to be innate to the human condition and advocate that the Copyright Act's purpose should be to stimulate the creation of new works for the shared benefit New Zealand society. In addition to the objectives stated above, we suggest that this should be grounded in a framework of respect: respect for the creators of works, respect for those who seek to build upon them, and respect for those who seek to access them. For this reason the Māori concept of kaitiakitanga is one we propose as relevant to the objectives of this review. We are all responsible for caring for, or guarding, our collective heritage in a*

respectful manner that works in the interests of New Zealand’s cultural wellbeing. Extending the previously mentioned principles-based approach to copyright law, this will allow for adaptability and resilience in the face of future technological change.

Secondly, Copyright has the potential to be used as a tool for political censorship, or to prevent unflattering commentary on copyrighted works. The given objectives support reasonable access to works for reasons that are likely to have net benefits for New Zealand, however acts of free expression may not necessarily fall under this definition. The stated objectives could be expanded to clarify that censorship or restriction of free speech is NOT an objective of New Zealand’s Copyright regime. We emphasise that hate speech and the inciting of violence does not hold a place in this exception, but rather that a healthy democracy should tolerate uncomfortable ideas that are free to be responded to by others. No one should be muzzled by copyright law when it comes to political speech or social critique in any medium.

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

5 What are the problems (or advantages) with the way the Copyright Act categorises works?

*Creative works are increasingly shifting towards artforms that bridge categories and incorporate new media. This has the potential to cause difficulty and confusion when trying to categorise a work for copyright purposes (particularly in consideration to exceptions). For example, “sculpture” is given as an example of “artistic craftsmanship”, however sculpture has been shifting towards an ever expanding field for decades and may now be considered to include a range of temporal forms including physical performance, or “social sculpture”.*

6 Is 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?

*We are content with the wording as stated.*

8 What 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 must be carefully considered in relation to agreed objectives for the Copyright Act, particularly if our suggested principle of respect and kaitiakitanga is to be carried forward. We would argue that the creator of a work is best placed to act as its default kaitiaki, not the commissioner. These rights can of course be transferred, but defaulting them to the creator empowers artists to have more bargaining power in the transaction. Many visual arts commissioning contracts we have encountered have opted to waive this right, leaving the copyright with the artist. Perhaps the law should follow suit.*

*Regarding works made in the course of employment, difficulties can arise if that course of employment is in a creative field. For many artists, their individual reputation is deeply intertwined with their work regardless of which employer they are producing the work under. For example, the College of Creative Arts employs many staff who are known publicly for their creative work. Some of this work may be produced through the course of employment, particularly for academic staff who have creative arts research expectations placed upon them, however there are cases where we do not consider it appropriate for the university to claim copyright over these works. This may also cause conflict with Moral Rights.*

*Secondly, many creative arts projects are funded by various sources that may compete (and conflict) in their expectation of rights over the work. This can have a crippling effect on the*

	<i>production of new works.</i>
10	<p>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?</p> <p><i>We support an artists' resale right scheme.</i></p> <p><i>Over 40 countries already have a resale royalty scheme including Australia, the UK, Singapore and many European nations, with China, Canada and the US looking to follow suit. The schemes in the UK and Australia have been in place for approximately 10 years, and have seen no particular negative effects to secondary market sales figures. In fact, they have continued to increase. This would indicate that a scheme in NZ would bring a net benefit to artists and art collectors alike.</i></p>
11	<p>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?</p> <p><i>This issue should be considered in relation to the agreed objectives for the review.</i></p>
12	<p>What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?</p> <p><i>We believe that, unless there is good reason, any newly created works fully funded by public money should fall into a (newly established) New Zealand public domain. Crown copyright should be abolished and, unless there is a justifiably good reason to do so, any works previously published under Crown copyright should revert to the public domain. Resources that require some form of protection should be published under an appropriate Creative Commons license as per the NZ GOAL framework.</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>We emphatically oppose any extensions to the term of Copyright in New Zealand. This will have the adverse effect of working against encouraging creation, use, access, and transformation of works, further burying historic works in the vaults of time, expanding the orphaned works problem, and further risking total loss of works due to media deterioration.</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>This situation similarly seems counter-productive to the stated objectives.</i></p>

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

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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?

*We are happy with the rights as they stand, however note there is potential for confusion in relation to the right to make an adaptation, as the stated objectives for the review specify that the act should permit reasonable access to works for adaptation (where exceptions to exclusive rights are likely to have net benefits for New Zealand). This will be required to fall back on the test of whether an unlicensed adaptation has net benefits for New Zealand, which may be sufficient, but is worth consideration.*

## Rights: Specific issues with the current rights

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

*We are concerned that this category may be unnecessarily broad due to the internet being included as a mode of transmission.*

20

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

*The term 'object' is widely understood to refer to tangible forms, particularly in the visual arts field. In the interests of the stated objective of providing 'clarity and certainty', we support the suggestion that the term 'object' should be replaced with language that removes any suggestion that some copies do not infringe copyright merely because of the format or medium in which they exist or the way they are accessed.*

22

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

*Provided the exceptions to copyright are adjusted as we have recommended, we see no problem with this.*

23

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

*We support the introduction of a public domain (as discussed in relation to Crown Copyright), and suggest that this tool could include provisions for a rights-owner to irrevocably dedicate their work to the public domain if they so choose, possibly with a specific process prescribed.*

## 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?

*We see moral rights as an important part of copyright law, and support the suggestion that it should cover culturally inappropriate uses. This may work in tandem with any outcomes in response to the Wai 262 report. We do, however, reiterate that neither copyright nor moral*

	<i>rights should be used as a form of censorship (as discussed in our response to Q.2). Any cases brought before the copyright tribunal may be able to further clarify how derogatory treatment is defined in a New Zealand context.</i>
26	<p>What are the problems (or benefits) with providing performers with greater rights over the sound aspects of their performances than the visual aspects?</p> <p><i>In the age of smartphones, the ability to create audio-visual recordings is both accessible and prolific. The audio and visual elements of such recordings are often deeply intertwined, although at times the visual aspects of performances can be considered more valuable than the audio aspects and vice-versa. Distinguishing between the two is a counter-intuitive approach, and likely to cause confusion amongst creators and users alike.</i></p>
27	<p>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?</p> <p><i>Which "certain moral and economic rights" are being put in place? How is "economic rights" defined? It is difficult to respond to this question without seeing the full text of the CPTPP. We are concerned about how this change may conflict with, and place unrealistic expectations on, common public behaviour where recording devices are frequently used in public situations. Is there an exception for performances that take place in public space, where it might be assumed that the public are free to view and document a performance? Further, how do these rights work in connection with the exception for news reporting and current events? Again, we see potential for this clause to be exploited as a form of censorship, however it is difficult to respond without seeing the text.</i></p>
28	<p>What are the problems (or benefits) with the TPMs protections? What changes (if any) should be considered?</p> <p><i>We respect the concerns of rights-holders who wish to curtail copyright infringement through technical means however are concerned that the law, as currently written, is overreaching and in practice unnecessarily removes people's rights to usage exceptions that would normally be permitted under law. The 'qualified person' regime is costly, burdensome, and impractical. Instead we suggest that Section 226A(2)(a) of the Act explicitly states that a person is permitted to perform a service "...to enable or assist B to circumvent a technological protection measure unless the use is permitted in Part 3 of the act".</i></p>

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

30	<p>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?</p> <p><i>Staff have reported that it can be difficult to produce work that critiques popular culture without the risk of illegally utilising copyrighted material. Meme culture has been cited as a particular contemporary visual language that commonly makes use of remix and re-sharing however, despite being a prolific and popularly understood mode of communication, it is unclear whether this approach is protected under Fair Dealing (as a form of criticism and commentary), or not.</i></p>
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*A further issue has been presented where works have encountered problems when transitioning from the classroom to a public setting. We often find opportunities for students to present their work in public as part of our mission to support them in establishing their public reputations as creative workers. In one example, a brief for a digital video course involved a remix project in collaboration with DigitalNZ. Some students incorporated copyrighted footage from the DigitalNZ system in their projects, however—due to a lack of clarity in the law around Fair Dealing protections for remix works—the best works in the class were blocked from being publicly screened.*

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?

*Our staff and students have alternately found themselves:*

- *self-censoring potential creative works due to uncertainty and lack of case law on whether they qualify as “criticism or review” or “reporting current events”;*
- *deciding to take on the risk but being hindered by other more risk-averse bodies; and*
- *creating works despite the risk and experiencing no repercussions.*

*This suggests that the law could be adjusted to provide more certainty for creators who are seeking to create transformative works that incorporate copyrighted content. The current approach is not particularly focused on contemporary artistic practice, making the boundaries for artists difficult to ascertain and stifling the making of new works.*

*A general provision for “transformative use” would assist in this regard, where the reuse of works is permitted under certain conditions, for example when the secondary work is sufficiently different from its antecedent to be classed as a new work.*

*The question of commercial/non-commercial use is also one that many artists struggle with, as the boundary between commercial applications and non-commercial applications is not always clear-cut and the Act is currently silent on the definition of “commercial”. Often works are made without a commercial intention, however they are picked up by the market at a later date depending on the artist’s career trajectory. As US musician Gillian Welch articulated in her song Everything is free: “Everything is free now / That’s what they say / Everything I ever done / Gotta give it away / Someone hit the big score / They figured it out / They were gonna do it anyway / Even if it doesn’t pay.” Artists should not be unfairly penalised for artworks created without commercial intention that later attract commercial success.*

32

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

*The news media has shifted significantly since the Copyright Act was updated in 1994. While print media, radio and television dominated the news media then, today news is increasingly reported through multiple internet-based media over multiple platforms.*

*As noted, social media has seen the rise of ‘citizen journalism’. Concurrently, the established news media industry has reduced its reporting staff.*

*As static and moving images are a primary language through which people engage in public dialogue it makes sense to provide exceptions for visual media alongside written and aural media. However, due to the expanded field of expressions that could be considered “news reporting” this would require clarity around what qualifies as news reporting. Questions we have encountered include: can documentary works be considered news reporting? How long does something remain “news”? Does “interesting” equate with “news worthy”? What specific requirements (eg attribution) might be prescribed in order for the exception to be*

legitimate?

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?

*We support the addition of Parody & Satire as exceptions to the Copyright Act. Nicolas Burley's Master or Laws thesis Copyright, Parody and Satire – Finding Freedom of Expression (University of Auckland, 28 February 2006) may provide some useful wording in this regard. The addition of an exception for Transformative Works (see comments on Q.31) and clarification regarding the inability for Copyright to be used as a form of censorship (see Q2) would significantly assist in protecting works that incorporate copyright protected works as a necessary step to make a social or political reference point.*

## 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?

*We broadly support the comments made in the submission by NZ Universities.*

48

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

*We broadly support the comments made in the submission by NZ Universities.*

49

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

*We broadly support the comments made in the submission by NZ Universities.*

50

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

*We broadly support the comments made in the submission by NZ Universities. Further, we have experienced varying levels of understanding of Copyright in our sector. While the basic principles of copyright are generally well understood, inconsistencies within the exceptions have led to uncertainty for staff. We have also found that public perceptions influence the opinions of staff and students, and some of the prevailing 'myths' about copyright are present, for example, 'if it's online, it's public domain'. Further, some staff have come to our institution from abroad and, while they may understand the copyright regime in their own country, they don't understand the particulars of NZ's regime. This is particularly present in assumptions about Fair Use, which have come from an understanding of the US Copyright regime. While we are not expecting the Act to solve these problems, this highlights the importance of good communication and public education about the law.*

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

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?

*We are interested in the implications of this section being limited to copies made for personal and private use, however are concerned that this could unfairly limit members of the public who wish to share images of artworks on i.e. public social media accounts. Any such situation risks eroding the public sphere and limiting freedom of expression, so would need to be written with Fair Dealing exceptions in mind. In addition, we further reiterate our comments/concerns under Q. 31 regarding the definition of “commercial”.*

## 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?

*In the interests of freedom of expression, it should not be possible for the exceptions given in law to be curtailed through contract. We support the Australian approach.*

## 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?

*There is a lack of CMO representation for visual artists in NZ (it is noted that Viscopy only represents NZ artists whose work is reproduced in Australia). In New Zealand, musicians and songwriters are well represented by APRA, playwrights by Playmarket, authors by Copyright Licensing NZ, and actors, performers and dancers by Equity. Internationally, more than 80 collective visual arts rights organisations operate across 60 countries. It seems sensible that New Zealand should follow suit.*

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?

*We would like to see the scope of the Tribunal extended to facilitate the delineation of Fair Dealing disputes. This would allow for artists and copyright users to be provided with more certainty without the risk of a costly court case, particularly as artists are typically less-well resourced than large rights-holding bodies. A limited term (say 10 years) could be set in which these cases need to be brought to the tribunal for a subsidised decision, and decisions could be issued via summary judgement. Delloites research suggests there could be an overall downward trend in copyright infringement litigations once its limits are better delineated. This could help define the boundaries of derogatory treatment (ie as discussed in Q.25), and other 'grey' areas of the law.*

## Other comments

*We support the addition of an orphan works provision in the copyright act, and would particularly welcome further definition and clarity around what a ‘diligent search’ or ‘reasonable effort to contact owners’ might be.*

Further, the term of copyright is now longer than the average lifespan of historic media formats i.e. film, VHS, floppy disk, hard disk, etc. This creates a risk that orphaned works will be lost forever due to deteriorating media. Extending the provisions given to the GLAM sector, we would like to see a general public exception allowing for back-up copies to be made of orphaned at-risk works (regardless of media). This would enable independent historians, academics, art critics, and other enthusiasts of New Zealand culture to protect at-risk works, mitigating the burden of time and resources that is already placed on the GLAM sector. There is very rarely any commercial value in orphan works, but they are often culturally/socially important.

## Enforcement of Copyright

83

Why 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?

*This regime was created to address the problem of people using illegal downloads to access popular content that wasn't otherwise accessible in New Zealand. Since this regime was introduced, the ability to access popular content has considerably improved. Streaming services such as Netflix, Lightbox, Spotify, Soundcloud, and Vevo now cater to this market, and digital music is readily available for purchase and download online via services such as BandCamp. Although peer-to-peer sharing may still be used for illegal content downloads, the scale of the problem has significantly reduced.*

84

What 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?

*Advantages: this regime is significantly fairer than its predecessor in that it is overseen by impartial Copyright experts, it specifies the burden of proof before accused parties are punished, and fines issued thus far appear to be fair. Overall this reflects positively on artists and rights holders who are seeking to use the regime, where as the previous legislation (S92A) would have resulted in public resentment towards artists.*

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?

*Section 92C effectively operates as a takedown regime. This can cause problems when content is removed unfairly: when it is accused of infringing, but is in actuality legally permitted. A regime requiring ISPs to inform their users of the accusation before they remove the content (and therefore enabling them to challenge the accusation and defend their position) would be fairer.*

## Other issues: Copyright and the Wai 262 inquiry

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?

*We are generally supportive of a new legal regime for taonga works and mātauranga Māori. However there is potential that this regime could conflict with the objectives of Copyright law as discussed in Q2. As previously stated, we consider that the purpose of Copyright should be to stimulate the creation of new works for the shared benefit New Zealand society. The aforementioned notions of respect, and kaitiakitanga would fit comfortably with the new regime, however there is a risk that the new regime could conflict with the Fair Dealing exceptions and potentially be used as a form of censorship.*

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. From what we understand, issues of misappropriation and misuse of taonga works and mātauranga Māori tend to stem from a lack of cultural awareness. There is, however, growing awareness amongst artists of the need to recognise and respect indigenous knowledge. As Barry Barclay has articulated in his book Mana Tūturu, "I suppose one reason we like to do the right thing by people, especially when we are working among strangers, is so as not to cause hurt in some way and bring down upon ourselves their scorn and rejection. This humiliation — and it may come to plague an artist's whole career — would be especially hard to carry if we had set out to follow what we took to be best practice. And so we do well to be mindful of tikanga."*

*For this reason, we feel that it would be greatly beneficial for this process to include the development of a resource, in partnership with iwi, that provides guidance on appropriate tikanga/protocols to follow in order to seek permission to use a taonga or mātauranga Māori work.*