#17

COMPLETE

Collector: Web Link 1 (Web Link)

Page 2: A bit about you and your submission

Q1 Your name

Melissa Laing

Q2 Your email address

Q3 Please briefly tell us why copyright law interests you

I am an artist, academic, writer, producer, curator and commissioner of works. It is from these multiple perspectives that I write my responses to the issues paper that MBIE has produced. My responses draw both from my personal experience and a series of discussions of the issues paper that I have facilitated with the support of ST Paul St Gallery, AUT's contemporary art gallery.

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 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 4 - exceptions relating to the use of particular categories of works

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Part 7 (Enforcement of Copyright) **,**

Part 8, (Other issues) Section 2 - copyright and the Wai 262 inquiry

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?

I support the introduction of a set of framing principles and objects for the act that will be written.

I feel strongly that this review is an opportunity to review the underlying assumptions of copyright and inflect them differently. As you point out in your issues paper our current system is built on an Anglo-American model, where copyright is understood as a utilitarian, state-sanctioned property right in a commodity. A commodity that can be traded without impact to the culture and to the artist. This review presents the opportunity to revisit this assumption, and shift the principles underlying copyright to from the utilitarian and economic to one that recognises the relationship artists have with their works that go beyond the paradigm of property and encompasses and reflects te ao Maori values. Your objectives as described in the issues paper do not do this.

1. The Principle of Respect
At the heart of the artist discussions held at St Paul St Gallery was a desire for the principle of respect to be imbedded into the act and its objectives. Respect is understood as economic, social and spiritual. Something that upholds the mana of the creators, the works and the culture and context from which they come. Respect means acknowledgement of authorship, influence or whakapapa, compensation for labour and the dialogue through creative exchange that builds rather than diminishes. Understanding the bundle of rights through a framework respect rather than commercial exploitation of property is more inline with the needs of the visual arts.

In the field of visual arts (both the creation of traditional 2 and 3D works, fine art photography and film and the newer conceptual, immaterial, perforative and relational practices) the core rights bundle of copyright do not act as an economic incentive for creation or dissemination of new work. The economic model of the visual arts is based on either the sale of a scarce and unique object or limited edition by an artist, or payment for presence and participation – expressed through fees for creating and presenting exhibitions, events

edition by an artist, or payment for presence and participation - expressed through fees for creating and presenting exhibitions, events, talks and experiences for audiences to engage with. The value of either the object or the artist's presence is strongly influenced by the process through which industry professionals confer credibility and has little relationship to copyright.

The core rights bundle of rights described in the copyright act in conjunction with the moral rights clauses mainly serve to enable the artist to protect their creations from harm caused by mass reproduction and/or derogatory use. This harm can take three forms:
Economic harm - devaluation of the unique object through mass reproduction;
Reputational harm to the artist as a person; and
Harms to the integrity of the work as an independent entity with mauri.
Currently our act and the objectives you outline only recognises the first two harms. Recognising that works themselves (both Māori and western) have mauri and can be harmed, much as we have recognised rivers and maunga would be a significant step. Incorporating this principle into the new act would also act to incorporate principles espoused in the Wai 262 report into the body of the act.

2. The Principle of Generosity
Respect was not the only core principle that artists spoke to over the focus sessions. We invoked the principles of openness, sharing or generosity as the balancing forces that would stop the principle of respect becoming constrictive on creative practice and dialogue in and through culture. Generosity speaks to the principles of access to knowledge and cultural expressions, and to the ability to work in and with your cultural context and the ability to build on, transform and remix existing works and knowledge expressed in figure 2 of your report. This diagram resonated and the balance it expresses resonated more strongly with artists than your objectives statement.

Many artists spoke on the positive impact that historically infringing works have had on our field of practice. Examples range from the ready mades of Elsa von Freytag-Loringhoven and Marcel Duchamp and the collage and reproduction techniques of pop art; the sampling of plunderphonics and concrete poetry to the simultaneous playing of 100 White Albums by Rutherford Chang; the exact photographic reproductions of famous artworks by Sherrie Levine and the rescaled reproductions of New Zealand works by Michael Parekowhai. All of these works are based on infringing appropriation yet are pivotal and transformative to the field. Any copyright regime must incorporate the principle of supporting and enable creative reuse that contributes to the fields of creativity.

Here a strong distinction was made between generative reuse and extractive reuse for commercial gain that diminished the field of practice. There is a strong support for an objective and Act that allows for use and adaption of works in the ways that artists are already acting. Without a robust dialogue in the arts through the medium of art, without use and reuse the arts cannot grow. However there is a concurrent desire that commercial exploitation of such use and adaption be limited to protect the works and creators from extractive and exploitative treatment.

In your proposed objectives you frame the decision on exceptions through the lens of net benefits for New Zealand. It is important that net benefit is understood as social, intellectual and cultural rather than a narrow economic measure. While, under the current government there is an emphasis on wider societal measures of wellbeing this is not the lens that all governments have taken. The current act prioritises specific types of users in its exceptions and the public benefits of education, reporting and criticism are well established. However the benefits of non-commercial fan fiction and remix have less precedent and are vulnerable to contestation. Understanding that active participation, not just consumption of culture is a public good. The positive benefits of actively participating in the arts, creating as well as consuming have been evidenced internationally and Creative New Zealand provides the following evidence links https://www.creativenz.govt.nz/development-and-resources/advocacy-toolkit/the-evidence-for-advocacy

The twin principles of respect and generosity are necessary for a society supports the arts and an act that codifies this. Respect can not operate with generosity and generosity cannot function without respect. These are cultural and social matters as much as legal matters. Similarly the creation and dissemination of the works the act concerns itself with are cultural and social matters as much as economic and therefore in writing the objectives for new act economics should not be given greater weight than the social and cultural.

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?

Both in your discussion paper Copyright and the Creative Sector and the current Issues paper your descriptions of artistic work focus on the traditional - paintings, drawings, sculptures etc. This fails to account for the fact that what is understood to be an artistic work by both galleries and artists has significantly changed as contemporary art practice has evolved. Much as you state you want the Act to not become outdated in terms of technology, you should also concern yourself with both bringing up to date and future proofing the act against the ever changing practice of contemporary art.

While the current act does not prescribe what an artistic work I am concerned that the conservative framing in the issues paper will lead to poor decision making. Contemporary art practice has both expanded to encompass activities that would be protected as film, audio visual, sound recording, code, literature, communication, typography and performance. In addition artistic works can be immaterial in their entire expression, based in social exchange, dialogue, and shared physical actions. Whether something is an artistic work is no longer determined by the material or methods with which it is made but through the intention with which and context within which it is made.

The expansion of artistic practice to encompass almost everything throws up a number of issues that complicate how the visual arts relate to the paradigm of copyright. Many of these are philosophical – going to the question of what is art– and therefore outside the scope of legislation. However, beyond the philosophical there are two concrete issues with the current definitions that I have identified.

1. Is an individual video or film work an artistic work or a film (or communication) work? While under copyright for the purposes of authorship and ownership the distinction as to whether a work is literary, dramatic, musical or artistic has little consequence, determining if a work is an artistic work or a film (or communication) work throws up important distinctions around who is the author and what is the term of copyright.□□A good case study for this would be the practice on New Zealand artist Lisa Reihana, whose video based work has been pivotal in New Zealand art history since 1990. Most recently she presented 'In Pursuit of Venus' as New Zealand's national artist at the Venice Biennale. Lisa Reihana's video works have been made and presented in a visual arts context (museums, galleries and international festivals). However, the medium is video and written discussion of her work frames it as both art and film. If Lisa Reihana makes films then her early work such as the the highly influential video artwork Wog Features 1990 in the the Auckland Art Gallery collection will fall out of copyright in less than 20 years while the work of her contemporaries who paint or sculpt will remain in copyright. □□

To date the categorisation of this kind of work has not been tested as video only became a medium in the visual arts in New Zealand in the 1970s. Earlier film work by artists such as Len Lye were created, presented and discussed in the context of experimental film and only entered art gallery collections in the 1980s.

Artists such as Gavin Hipkins blur the matter even further by presenting their artworks at both film festivals and art galleries. An example of this is the 2014 film Erewhon which has been shown at the NZIFF and the Edinburgh International Film Festival as well as at the Mangere Arts Centre and the Hamish McKay Gallery. The film is sold to collectors as an editioned multiple like a print or photograph and when loaned for screening at festivals a screening copy is provided that must be destroyed at the end of the loan.

As Lisa Reihana's work has become more technically complex, involving more people participating in the creation of the work, her production process has mirrored film and she credits the people who are involved in making the work according to film conventions (see http://www.inpursuitofvenus.com/credits-2). Artists working in the field of video art may be operating within the conventions of authorship of the artistic work, while working with a producer thereby creating a lack of clarity about who owns the copyright. Here we see cross over with issues the commissioning rule throws up addressed in Q8, where the producer may also be the commissioner. If we change the commissioning rule, artists may still not own their work due to this ambiguity.

The question of if such works are considered artistic or film works under the current legislation is presently untested and there is no clarity around this. Under the current legislation this question has the potential to be tested within the few years as seminal works from the 1970s reach the 50 year date and the question will only become more likely to be posed in the next 20 years.

2. Contemporary art has evolved to include improvised, performative, action–based non–material and ephemeral practices. These practices are rarely scored. If they are the score tends to resemble an idea ie. serve people cups of tea. (see Fluxus event scores web.mit.edu/uricchio/Public/documentary/fluxus.pdf). However, very few artists I have spoken with seek to see the copyrights extended to 'ideas'. As artist Monique Redmond from Public Share said we make people cups of tea, thats not a unique thing. Artists who work in this manner, with an emphasis on social exchange tend to prioritise access and use for audiences and other artists and would be reluctant to see constraint introduced to the field of ideas.

In the Wai262 report they flag the issue of the protection of immaterial oral traditions, including whakapapa (genealogy), traditional korero (formal speechmaking), or mōteatea (traditional Māori chant or lament) which also do not qualify for copyright protection unless they are written down or documented.

While I do not have a recommendation on how to act around immaterial works and recognise that attempting to expand copyright protections to them has the strong potential to constrain artists through restricting the use of ideas, something I am opposed to. I am discussing immaterial works to both flag how broad the category of artistic work is now by the industry's standards and a potential overlap between these practices discussed and the recommendations made in Wai 262 where attempting to address one may impact on the other.

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?

Respondent skipped this question

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?

Respondent skipped this question

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

As someone who funds and commissions creative work across the visual arts, music, film and performing arts I would like to see the default commissioning rule change to preference the artist. At present I contract the copyright back to the artists I fund and contract for a limited set of licences to use reproductions of the work to promote the fact that Auckland Council funded it through my role as the Whau Community Arts Broker.

I support this change for a number of reasons.

Firstly to counteract the general power imbalance between artists and commissioners. In most situations structurally the artist has less power and less access to expertise in negotiations than the commissioner who holds the money and confer institutional validation on the artist's career. Most artist's practices are economically marginal and the commissioning fees rarely cover the full cost of the labour that goes into making a work. Early career artists are particularly vulnerable to being exploited, needing both the money and the institutional validation to proceed their careers. Negotiating to retain copyright may fail or even not even be seen to be possible due to the structural power imbalance between the parties.

Secondly while artists and arts workers may understand the core bundle of rights there is a prevalent lack of knowledge about the commissioning rule. Where a commissioner may routinely commission works as in the case of city council public art teams and large public galleries many artists may only undertake one or two commissions in their career and not be informed as to the default ownership of the work. Shifting the default position would lead to the commissioner actively having to contract for ownership of the copyright. As a result of this the artist will be aware of the transfer of ownership up front.

Thirdly, in the case of smaller institutions and private commissions the commissioner has no idea that by commissioning a work they acquire the copyright. In researching this question I spoke with a former curator of Te Tuhi gallery. They said they operated under the social and ethical conventions of the visual arts wherein an artist owns their work and are consulted on any presentation of their work. They were under the misapprehension that the copyright belonged to the artist in all of their commissions and had undertaken no formal contract to opt out of the commissioning rule.

Given the balance of power rests with the commissioner and the social conventions of the industry assume copyright belongs to the artis I argue that artistic work (understood in the expanded sense I outlined in Q 5) should be treated the same as literary, dramatic and musical works.

For discussion on the issue of film authorship and copyright ownership I refer you to my response to question 5 and the question of how of film and video operating within the paradigms of the visual arts. Shifting the way default authorship and ownership is managed to align with the examples you cite (Australia and the EU) would resolve the problem I raise where I write: "In addition artists working in this field may be operating within the conventions of authorship of the artistic work, while working with a producer, creating a lack of clarity about who owns the copyright"

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?

As you point out and as I stated in my answer to q1 “The economic model of the visual arts is based on either the sale of a scarce and unique object or limited edition by an artist, or payment for presence and participation – expressed through fees for creating and presenting exhibitions, events, talks and experiences for audiences to engage with.” Given that the economic model of the arts is not based on receiving an ongoing royalty for unit sales copyright does not act as an economic incentive to make work and an artist resale right has been presented as a response to this.

While I do not believe that a resale right would incentivise the creation of new work it would serve to provide ongoing financial support for artists as their work enters the secondary market. It would provide recognition that the ongoing labour of the artist into their career positively impacts the overall value of their work on the secondary market when work is sold. A resale percentage would go towards recognising that the value of a work would not increase without their labour.

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?

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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.

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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?

There is an opportunity here to reconsider the moral rights framework through the lens of the Wai262 claim and report. One of underlying philosophical principles of the Wai262 claim was the protection of a taonga as an entity with its own mauri, and the relationship of the a people to the taonga as guardians of its well being, rather than owners of it as portable and exchangeable property.

The moral rights regime allows an artist to object to the derogatory treatment of their work through amendment and inappropriate reuse and association because it impacts on the artists reputation. However, I would argue that artists object to the amendment or inappropriate reuse of a work as it impacts on the integrity of the work itself, particularly where the work is understood to have its own mauri. Internationally, in the visual arts the most common reason moral rights are asserted are to object to the proposed partial destruction of a work of art in public space or, if the destruction has already occurred, to force the removal or restoration of the damaged work. Here the concern is the integrity of the work as it was conceived and made.

Not all works would be understood has having mauri, just as not all works are taonga. However, where a work is understood in this way there is a clear cross over between the Wai262 claim concerns, the framework of kaitiakitanga and the broader field of artistic practice.

In the case of dead artists there are clear examples of a parallel western framework of enduring kaitiakitanga being applied to artists' oeuvres through the legal mechanism of trusts like the Len Lye Trust and the Colin McCahon Trust. Such trusts are not concerned with the individual artists 'reputation' but the integrity of their artworks. However, unless these trusts are the heirs to the artists work they can not act to protect the work through the mechanism of the moral rights of the artist. While moral rights should not be transferable during the artists life there should be a provision for the artists heirs to choose to transfer these rights where a trust mechanism has been set up.

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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?

There is a strong case for expanding fair dealing or shifting to a fair use model based on the disjunct between existing practice and legislation. Currently the appropriation, citation and reuse and adaption of existing ‘works’ is common practice in the visual arts. Examples of appropriation range from the ready mades of Elsa von Freytag-Loringhoven and Marcel Duchamp and the collage and reproduction techniques of pop art; the sampling of plunderphonics and concrete poetry and the simultaneous playing of 100 White Albums by Rutherford Chang; the exact photographic reproductions of famous artworks by Sherrie Levine and the rescaled reproductions of New Zealand works by Michael Parekowhai; the reproduction of maps, international conventions and archival material and other textual material as part of an artwork. All of these works are based on infringing appropriation yet are pivotal and transformative to the field.

Such practices are taught at art schools and considered ‘fair use’, even though there are no fair use provisions in our act. The current Act does not recognise such activity in its fair dealings despite its long history in contemporary art. Such activity is rarely impeded by the law in New Zealand because the norms and history of the field of art outweigh any consideration of the copyright act. As an artist who works in this manner the decision as to whether to seek permission for use and adaption is not based on the law, but on the nature of the artwork itself, its conceptual concerns, the ethics of the situation and my relationship with the source material. Litigation is rare as such activity is primarily seen as non-commercial or marginally commercial. Objections specific reuses tend to come from a moral rights rather than economic grounding and are often discussed as plagiarism rather than copyright infringement.

The oft proposed introduction of a parody and satire exception will not fully address the gap between common practice and the law. The intent of such practices is often closer to that of criticism or research than parody or satire, in that such works generally critique or investigate the practices of art, or social and cultural issues and do not use humour to do so. Unfortunately the current criticism exceptions do not appear to protect such practices as they are focused towards textual discussion of an existing work in a review and the status of art as research outside of the academy is ambiguous.

Any copyright regime must incorporate exceptions that support and enable creative reuse that contributes to the growth and development of the creative field. The absence of such exceptions means there is no respect for the law and it would be better to bring the law inline with such an established practice than attempt to suppress it.

Secondly non-commercial use and reuse should be enabled. As Lawrence Lessig famously argued remixing an existing work is the contemporary equivalent of singing on our porch and speaking in your cultural vernacular. What the copyright act defines as works, creative expressions in material form, are now pervasive in our society and as such it is impossible to actively participate in in many forms of social and cultural exchange without infringing. The current act does not reflect this reality and criminalises everyday activities. Remix culture and fan-art can be a gateway into creativity and our copyright act should not impede people from entering this realm. The positive benefits of actively participating in the arts, creating as well as consuming have been evidenced internationally and Creative New Zealand provides the following links https://www.creativenz.govt.nz/development-and-resources/advocacy-toolkit/the-evidence-for-advocacy

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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)?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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?

As it presently stands Section 73 is overly broad in its exception. As the Radford v Hallensteins case demonstrated the exception enables the commercial exploitation of artworks in public space to the detriment of the artist.

Firstly it treats buildings and permanent artworks in public spaces as identical when the social, intellectual and economic frameworks within which they are created and understood are different. I would argue that these two types of works should be separated.

I see and endorse the value of section 73 in enabling both professional and amateur film, street photography and sketching in an urban environment and would want such uses to still be protected in the new act. A simple separation between commercial and non commercial use would have a negative impact on the above activities unless the incidental use exception applied.

I would contest your assertion in point 409 in the issues paper that copyright owners have knowledge of section 73. As I discussed under Question 8, the contents of the copyright act beyond the core bundle of rights are poorly understood, and badly communicated by the government. While ignorance of the law is not a defence, presuming that artists are aware of such exceptions is problematic. In addition, as I discuss in under q8 the structural power imbalances and economic precarious of artists in the arts industry and the general underfunding of the arts leads to a coercive situation where there is an appearance of a choice but not an actual meaningful choice.

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?

Respondent skipped this question

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?

Respondent skipped this question

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.

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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?

Within the field of visual arts infringement of the rights are more commonly addressed by artists through negative social and professional judgement than through the legal mechanisms of copyright. This dialogue is applied to both the infringement of ideas and concrete expressions. The social censure has weight and is effective within the field of practice or the social network but not outside it.

Under the current regime copyright as a legal mechanism is primarily invoked when external actors expropriate expressions for commercial gain. At this point the cost of enforcing copyright tends to prevent most artists from litigating their rights. The emotional cost of an ineffective struggle negatively impacts the artists ability to work. As such the current regime does not meet the stated objective 'to be effective and efficient' as it is inaccessible.

Introducing a 'small claims' court for copyright infringement cases with expert judges could reduce the burden of copyright enforcement, as well as the cost of defending against claims for the purposes of intimidation. As such extending the scope of the copyright tribunal.

This could be coupled with the establishment of a commission to provide both expert advice and a mechanism to make copyright complaints without resorting to litigation. Here I am proposing a commission whose functions include include investigating complaints about breaches of copyright and administering an objections process, running education programmes advising on best practice, and providing expert policy and legislative advice as well as fulfilling the recommended functions from Wai 262, administering an objections process, facilitating contact with kaitiaki, providing best practice advice and developing principles. Here I look to an effective example such the Office of the Privacy Commissioner. The one commission with a strong Māori mandate undertaking both tasks could positively impact on the understanding of and dialogue about copyright, and mediation of conflicts much as the privacy commission has transformed its field.

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?

Respondent skipped this question

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.

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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?

Respondent skipped this question

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

Respondent skipped this question

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

Respondent skipped this question

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?

Respondent skipped this question

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?

I support the robust consideration of the Wai 262 report in relationship to the Copyright Act review and argue that principles from te ao Maori should be incorporated into the new act to aid us in inflicting our understanding of the management and care for works always from a solely property based mentality. I refer you to my answers under q 1, 5 and 25 for possible ways in which integrating principles from the wai 262 into the new act will provide new framings and solutions for all creators.

Returning to the question of future proofing the act against not only technological change but the the ongoing evolution of the creative fields and culture I suggest that care is exercised in how the definitions of taonga and taonga derived works from the Wai 262 claim are transferred. We should not lose sight of the possibility that a taonga derived work may in time become a taonga work as the people it engages with become ancestors and its narratives are integrated into the history of Māori. Any legislation should not fix what is considered a taonga so firmly that a taonga derived work can not evolve into a taonga with a kaitiaki as matauranga maori is living and evolving.

I support the proposal that a commission be set up to advise, administer and manage objections and facilitate consultation with kaitiaki and argue that the establishment of a commission could be expanded other functions of copyright management. I addressed this further under q79.

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