

April 5, 2019

The Manager  
Business Law team  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140

Dear Sir /Madam

**SUBMISSIONS FOR RADIO NEW ZEALAND IN RESPONSE TO MBIE ISSUES  
PAPER: REVIEW OF THE COPYRIGHT ACT 1994 – NOVEMBER 2018**

1. This submission responds to the MBIE Issues Paper: Review of the Copyright Act 1994 dated November 2018 (**Issues Paper**).
2. Radio New Zealand (**RNZ**) welcomes the opportunity to be consulted and put forward its views on MBIE's review of the Copyright Act 1994 (**Copyright Act** or **Act**).
3. These submissions highlight RNZ's views on the key issues, along with evidence to support our position. We also comment on other issues with the copyright regime that are not covered in the Issues Paper.

**1. Executive Summary**

- 1.1 RNZ is fully supportive of MBIE's review of the Copyright Act. RNZ's key issues and concerns are:
  - (a) Q12: Crown copyright should be reduced from 100 to 50 years.
  - (b) Q19: The definition of 'communication work' should be amended to expressly include 'a data stream' as well as 'a broadcast or a cable programme'.
  - (c) Q39: There should be a specific fair dealing exception permitting use of a copyright work for the purposes of parody, satire or pastiche.

- (d) Q30-31, 33: There should be no reduction in the current scope of fair dealing exceptions set out in the Act. Consideration should be given to expanding the current scope of fair dealing exceptions.
- (e) Q58: There should be an express restriction on any party being able to contract out of the section 42 fair dealing exceptions for any purpose.
- (f) Q60: There should be a specific fair dealing exception for linking content from one website/social media account to another website/social media account.
- (g) Q71-73: There should be specific guidance in the Act on the treatment of orphan works and a specific limitation of liability in respect of orphan works.
- (h) Consideration should be given to granting RNZ special treatment under the Act, similar to libraries and archives, to enable it to fulfil key obligations under its Charter.

## **2. Overview of RNZ**

### ***Our legal and operating framework***

- 2.1 RNZ is a Crown entity established under the Radio New Zealand Act 1995. We are New Zealand's only independent public service broadcaster, and our purpose and operating principles are set out in the Radio New Zealand Charter Te Tūtohunga o Te Reo Irirangi o Aotearoa (**Charter**).
- 2.2 Under its legislation, RNZ is directed to meet the following operating principles:
  - (a) Serve the public interest.
  - (b) Play an essential role in exercising freedom of thought and expression, which are foundations of democratic society.
  - (c) Foster a sense of national identity by contributing to tolerance and understanding, reflecting and promoting ethnic, cultural, and artistic diversity and expression.
  - (d) Provide reliable, independent, and freely accessible news and information.
- 2.3 RNZ delivers on these operating principles by providing high quality, diverse, comprehensive and independent radio and online content for New Zealand audiences in line with our requirements under the Charter. Those guiding requirements include:
  - (a) Stimulating, supporting, and reflecting the diversity of cultural expression, including drama, comedy, literature, and the performing arts, taking account of services provided by other broadcasters.
  - (b) Stimulating, supporting, and reflecting a wide range of music, including New Zealand composition and performance.
  - (c) Taking advantage of the most effective means of delivery.

- (d) Reflecting New Zealand's cultural identity, including Māori language and culture, to preserve and archive broadcasting material of historical interest.
- (e) Providing awareness of the world and of New Zealand's place in it.
- (f) Providing comprehensive, independent, accurate, impartial, and balanced regional, national, and international news and current affairs.
- (g) Providing our services in a commercial-free manner.
- (h) Providing media services to countries outside New Zealand, other than Radio Pacific.
- (i) Authorising other providers of media services (whether by sale or licensing) to broadcast or publish content that has already been broadcast or published in a commercial-free manner by RNZ.
- (j) Arranging for providers of delivery platforms to provide access to live broadcasts of the content of RNZ, but only if:
  - (i) The content is free to access on RNZ's services.
  - (ii) The content is commercial-free, whether or not the delivery platforms are free to access.

### ***Our services***

- 2.4 RNZ is a multi-platform broadcaster with an estimated weekly audience of 850,000 people accessing content live on air, online, and on demand via RNZ websites and apps. Additional audiences are served by RNZ content placed on third-party platforms. RNZ is also New Zealand's civil defence emergency radio broadcaster.
- 2.5 RNZ provides a robust and independent news and current affairs service which increasingly addresses the gaps left by a retreating model of commercially funded news and current affairs. We currently deliver high quality content to more than 30 major New Zealand media organisations through innovative content sharing partnerships.
- 2.6 We have responsibilities to Te Ao Māori, and RNZ's legislated role in documenting and reflecting New Zealand's increasingly multi-cultural society is unique. RNZ engages in similar collaborations with Aotearoa's music, arts, culture and heritage communities and organisations. Increasingly our work in the music and arts sector provides a unique record of New Zealand's cultural development, to be shared now and called upon in the future.
- 2.7 These responsibilities mean that RNZ's work requires special consideration regarding copyright, for example, in fair dealing. Any use of third party material by RNZ is for the matter of public record and only rarely is there an incidental commercial gain.
- 2.8 RNZ provides audiences with trustworthy, independent content across a growing range of platforms:

- (a) [www.rnz.co.nz](http://www.rnz.co.nz) and other digital outlets.
  - (b) RNZ National.
  - (c) RNZ Concert.
  - (d) RNZ Pacific.
  - (e) The AM network which relays Parliamentary proceedings.
- 2.9 The RNZ website collates multimedia content including written articles, video, and audio from RNZ and other sources, which are retained as a public record of life in New Zealand. Our live audio services, RNZ National, RNZ Concert, RNZ Pacific, and the Parliamentary Network are available via broadcast and live-streaming from the RNZ website, apps and digital TV platforms. Most of RNZ's spoken and music content is also available on-demand in perpetuity. RNZ runs a range of social media channels and accounts to serve the needs of a broader range of New Zealanders as to where they consume information and entertainment.
- 2.10 Broadcasting 24 hours a day, RNZ National's station share of 12.1% makes it the number one radio station nationwide. Its programme mix includes news and current affairs, music, documentaries, features, and drama. At least 30% of the music we broadcast is from New Zealand.
- 2.11 RNZ Concert provides a vital platform for its partners in the music, arts, and culture sector, by delivering interviews, written stories, live performance, video, and audio covering New Zealand and international artists. While RNZ Concert focuses on classical, jazz, contemporary and world music (90% of its broadcast time), RNZ actively promotes New Zealand music, composition and recording, by making available (on-air and online) a greater range of New Zealand-originated music than any other outlet.
- 2.12 RNZ Pacific (formerly Radio New Zealand International or RNZI) provides vital news and information services via its shortwave broadcasts to the South Pacific and its website. It also provides a wide range of New Zealand programs to listeners in the Pacific and beyond.
- 2.13 The RNZ News service provides vital elements throughout our 24-hour programming schedule, bringing impartial news and information to New Zealanders every day.
- 2.14 RNZ has partnered with over 30 other publishers to make a wide range of its creative and news and current affairs content available to new audiences. We also work in partnership with many local music, arts, culture, and heritage organisations and events.
- RNZ's future state***
- 2.15 RNZ's role in the future is to expand on the services it provides, and the distribution platforms it currently uses, to reach a wider audience than achieved at present.

### ***Relevance of copyright law to RNZ's operations***

- 2.16 As a licensor and content producer, copyright law plays a major part in RNZ's day-to-day operations.
- 2.17 In order to fulfil our obligations under the Charter, RNZ relies heavily on:
- (a) The current prescribed kinds of copyright works.
  - (b) The acts restricted by copyright.
  - (c) The ability to licence copyright content that we create.
  - (d) The ability to enforce our copyright in the content that we create.
  - (e) The fair dealing exceptions in the Act, including copying or reproducing copyright works created by third parties for the purposes of criticism or review and reporting current events.

### **3. Our submissions of the copyright issues of key importance to RNZ**

**Q12: What are the problems (or benefits) with how Crown copyright operates? What alternatives (if any) do you think should be considered?**

Crown copyright should be reduced from 100 years to 50 years.

- 3.1 A key problem with the operation of Crown copyright is its duration and an overlap with Orphan Works, which we address in further detail below.
- 3.2 RNZ would support a reduction in Crown copyright from 100 years to 50 years from the end of the calendar year in which the work is first published or communicated to the public, to align with the duration of copyright in other works.
- 3.3 Crown copyright was previously restricted to 50 years under *the Copyright Act 1962*, and was increased to 100 years in the 1994 Act. There appears to be no benefit or justification for this increase.
- 3.4 Reducing Crown copyright to 50 years would also be consistent with our nearest trading partner, Australia, as MBIE has noted<sup>1</sup>.
- 3.5 The net effect of reducing Crown copyright would enable RNZ to disseminate the works within its archives more broadly. In turn, this would allow us to better fulfil our Charter by providing our users with access to more works reflecting New Zealand's cultural identity, including Māori language and culture. It would also allow use to preserve and archive broadcasting material of historical interest.
- 3.6 An example from RNZ's experience, is the inability to access or make use of old material subject to Crown copyright in the form of printed material and recordings

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<sup>1</sup> MBIE *Issues Paper Review of the Copyright Act* at [162].

created by the then Radio New Zealand "Continuing Education Unit" between 1974 and 1989.

- 3.7 Due to reforms to broadcasting in 1989 and the subsequent sale of the commercial Radio New Zealand radio stations in 1995, the assets of the "Continuing Education Unit" were neither sold to the new owners nor transferred to RNZ. Some of these resources exist in the RNZ Sound Archive at Nga Tāonga Sound and Vision (**NTSV**), and some at RNZ. However, it is unclear who owns the copyright and who has the right to permit use of this material. This means that any permissions given by NTSV or RNZ could be in breach of the Act.
- 3.8 If Crown copyright was reduced to 50 years, then it is possible that some of this material would fall into the public domain in or after 2024. Whereas if Crown copyright remains at 100 years, the earliest these works will enter the public domain would be 2074. There seems to be little public interest in that state of affairs continuing for another 55 years.

**Q19 – Communication Works - What problems (or benefits) are there with communication works as a category of copyright work? What alternatives (if any) should be considered?**

The definition of 'communication work' in section 2 should expressly include a 'data stream' as well as broadcast and cable programme.

- 3.9 RNZ is a multi-platform broadcaster with people accessing content live on air, online via our website, and on demand.
- 3.10 RNZ provides live-streaming of all its broadcasting services including RNZ National, RNZ Concert, RNZ Pacific, and the Parliamentary Network via its website, apps, and some digital TV platforms. RNZ also runs a range of social media channels and accounts.
- 3.11 Under the current Act, RNZ has no form of copyright protection for the live streaming services that it provides under the definition of 'communication works'.
- 3.12 With so much of RNZ's content available for streaming over the internet, and a clear gap in copyright protection, this is of significant concern for RNZ.
- 3.13 From a functional view, streaming is simply a digital analogy of broadcasting. Live streaming is a direct analogy, while on-demand streaming is merely a sophistication of traditional broadcasting listener requests.
- 3.14 The *Copyright (New Technologies) Amendment Act 2008* updated the Act to accommodate new Internet technologies. As part of the amendment act, New Zealand included:

(a) a new (largely) technology-neutral transmission work called a 'communication work' to replace the existing technology specific 'broadcast' and 'cable programme works'.<sup>2</sup>

(b) a new restricted act of communicating works to the public.<sup>3</sup>

3.15 In RNZ's view, the exclusive right 'to communicate a work to the public', introduced in section 16(1)(f) of the Act, must be interpreted to include communication by data streaming. As a matter of consistency, a 'data stream' should also be a copyright work, just as the older 'broadcast' and 'cable programme' are each a copyright work.

3.16 RNZ would therefore support an amendment to the definition of 'communication works' in section 2 of the Act to include a data stream, in the manner suggested:

'... and includes a broadcast, a cable programme or a data stream.'

**Q39: 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?**

There should be a specific fair dealing exception for parody, satire and/or pastiche.

3.17 Currently, New Zealand has no express exception permitting the use of copyright works for parody, satire and/or pastiche. This is a disincentive to the cultural expression, including drama, comedy, literature, and the performing arts.

3.18 RNZ supports the inclusion of an exception. Parody, satire and pastiche make up an important genre and style of humorous or comical performing and written arts. They also provide an important means of social commentary enabling criticism and review on news and current affairs.

3.19 For example, RNZ has at various times produced topical news and politics programming designed to entertain, engage, and inform those of the public who may not follow hard news reporting. The use of satire and parody are enduring and important tools in this form of communication. However, being a responsible public organisation, RNZ editorial decision-makers have noted the lack of an express fair dealing exception, and elected to err on the side of caution by removing the most hard-hitting and funny commentary in these programmes, meaning they failed to engage the public, and were subsequently cancelled.

3.20 Accordingly, an express exception for parody, satire and/or pastiche would enable RNZ to better meet key goals under our Charter including:

<sup>2</sup> See the definition of a communication work in section 2 of the *Copyright Act 1994*: 'a transmission of sounds, visual images, or other information, or a combination of any of those, for reception by members of the public, and includes a broadcast or a cable programme'.

<sup>3</sup> See section 16(f) of the *Copyright Act 1994*: The owner of the copyright in a work has the exclusive right to do, in accordance with sections 30 to 34, the following acts in New Zealand: ... (f) to communicate the work to the public.

- (a) Playing an essential role in exercising freedom of thought and expression, which are foundations of our democratic society.
- (b) Fostering a unique sense of national identity by promoting artistic diversity and expression, including comedy in New Zealand.
- (c) Reflecting New Zealand's cultural identity.

3.21 Exceptions for parody, satire and/or pastiche currently exist in:

- (a) Australia where section 41A of the Copyright Act 1968 has a copyright exception for 'the purpose of parody or satire'.
- (b) European Union Information Society Directive (2001/29/EC), Article 5, which has a copyright exception for "caricature, parody or pastiche".
- (c) The United Kingdom<sup>4</sup> (**UK**), which has implemented the EU Copyright Directive. In the UK, the introduction of a parody exception was considered to bring important cultural as well as economic benefits to the UK.<sup>5</sup>
- (d) The US, where it is recognised as a form of 'fair use' not requiring a licence from the copyright owner.<sup>6</sup>

3.22 RNZ is aware that there is currently the Copyright (Parody and Satire) Amendment Bill before Parliament that has been proposed by Mr Simeon Brown, Member for Pakuranga. However, the problem with this proposed amendment is that it is expressly linked to the section 42 fair dealing exception of criticism or review.

3.23 RNZ prefers, and supports, the approaches taken in Australia and the United Kingdom where the exception is stand-alone.

**Q30: 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 to making use of this exception?**

**Q31: 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?**

<sup>4</sup> Section 30A of the *Copyright, Designs and Patents Act 1988* added by *Copyright and Rights in Performances (Quotation and Parody) Regulations 2014/2356*

<sup>5</sup> *Digital Opportunity: A Review of Intellectual Property and Growth* by Professor Ian Hargreaves

<sup>6</sup> See: *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) that established that a commercial parody can qualify as fair use.



**Q31: What other problems (or benefits), if any, have you experienced with the exception for reporting current events? What changes (if any) should be considered?**

RNZ supports the current scope of fair dealing exceptions set out in the Act, particularly those in relation to criticism, review, news reporting, and research or study. RNZ would also be supportive of an expansion of the fair dealing exceptions.

- 3.24 In RNZ's experience, the current framing and interpretation of the exceptions for criticism, review, news reporting, and research or study is good and has worked well to date.
- 3.25 However, as times and technology change, enhancements to the regime would be welcome. RNZ supports the current scope of fair dealing exceptions set out in the Act, particularly those in relation to criticism, review, news reporting, and research or study. RNZ would also be supportive of an expansion of the fair dealing exceptions as well.

**Q32: What are the problems (or benefits) with photographs being excluded from the exception for news reporting? What changes (if any) should be considered?**

RNZ would be supportive of the removal of the photographs exception and it would be opposed to any expansion to cover video clips.

- 3.26 RNZ has no issue with the current framing of section 42(3). It would be supportive of the removal of the photographs exception and it would be opposed to any expansion to cover video clips.
- 3.27 RNZ agrees with the comments noted at [277] in the Issues Paper that the different treatment of photographs compared to video clips no longer makes sense, in the context of the section 42 fair dealing exceptions.

**Question 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?**

RNZ would support an express restriction on any party being able to contract out of the section 42 fair dealing exceptions for any purpose.

- 3.28 While there are express provisions in the Act prohibiting contracting out of some of the fair dealing exceptions, the general position around contracting out of the remaining fair dealing exceptions is not clear.
- 3.29 This can make it difficult for an organisation like RNZ, which aims to act as a responsible public organisation in discharging our obligations under our Charter, when determining whether we can make use of third party works under the exceptions.

- 3.30 For the sake of clarity, RNZ would support an express restriction on any party being able to contract out of the section 42 fair dealing exceptions for any purpose.

**Q60: Are there any problems (or benefit) with the absence of an explicit exception for linking to copyright material and not having a safe harbour for providers of search tools (eg search engines)? What changes (if any) should be considered?**

There should be a specific fair dealing exception for linking content from one website/social media account to another website/social media account.

- 3.31 In RNZ's role as a media outlet of record, and our role in supporting New Zealand's unique culture in a small population, there are publicly available versions of, for example, music performances or television clips (many of which were publicly funded) from the past which individuals have uploaded to the Internet (e.g. YouTube) and which are not otherwise available digitally. These may be the only existing copies of these works. These items can be significant means of reflecting New Zealand culture and society to the public. Where it is editorially appropriate, RNZ should be able to link to such illustrative content alongside its own contextual and informative content.
- 3.32 The Internet is a distributed network: its existence is based on the sharing and interconnection of data and files. Trying to stop linking in this forum is unrealistic. Instead New Zealand should anticipate and encourage improvements in technology that improve digital content ID and rights licencing in ways that support compliance. Then, encourage good digital citizenship by making it easy for the public to respect copyrights when linking/sharing. Expecting every potential user to undertake due diligence on every item they are interested in providing a link to is unrealistic. The platform making the content available is in the best position to manage what it makes available, as RNZ does on its platforms.
- 3.33 It is recognised that this would be contrary to decisions of the European Court of Justice when interpreting the breadth of a copyright owner's exclusive right to communicate their work to the public.
- 3.34 The communication right in section 16(1)(f) of the Act originated in the WIPO Copyright Treaty 1996 (**WCT**) and it is doubtful that hyperlinking was intended to be encompassed by communication right as formulated by the WCT.
- 3.35 Accordingly, RNZ would support a specific fair dealing exception for linking content from one website/social media account to another website/social media account. This is common practice, for example when preparing obituaries for heritage musicians where the only available copy of a TV or live performance has been uploaded by fans, friends or family.

**Q71: 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.**

**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?**

**Q73: 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?**

There should be specific guidance in the Act on the treatment of Orphan Works and a specific limitation of liability in respect of Orphan Works.

- 3.17 An 'Orphan Work' is generally taken to be one of the defined categories of copyright works, but no owner can be identified or contacted for obtaining permission to use the work.
- 3.18 Currently, the operation of the fair dealing exceptions, particularly those relevant to RNZ, enable the use of such works in certain circumstances, like criticism, review, and news reporting.
- 3.19 However, as indicated, RNZ's operations also cover the creation of music, documentaries, features and drama programmes. The fair dealing exception is less likely to apply to these works. Further, RNZ cannot make use of the libraries exception, and it is limited to only some aspects of the archives exceptions (its sound recording archive and documents – provided they are not kept for the purpose of deriving a profit).
- 3.20 RNZ has a basement and a transmitter hall full of (many orphan) tapes, and sound archive full of New Zealand material that we can no longer use where the above exceptions do not apply<sup>7</sup>, because we cannot identify the copyright owners. RNZ has largely given up trying to use orphan works because we do not have the resources to track unidentified people.
- 3.21 RNZ is of the view that there should be specific guidance in the Act on the treatment of orphan works and a specific limitation of liability in respect of orphan works.
- 3.22 RNZ would support an exception, similar to that recently adopted in UK, which allows certain uses of orphan works by UK cultural heritage institutions<sup>8</sup>, provided the exception applied to RNZ, as well as New Zealand's already recognised institutions like libraries and archives.
- 3.23 RNZ would also support the policy option outlined in the Australian Productivity Commission's report which recommended providing limited remedies for copyright

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<sup>7</sup>See also the example discussed above at 3.6 and 3.6 relating to printed material and recordings created by "Continuing Education Unit" between 1974 and 1989.

<sup>8</sup> Under the *Copyright Designs and Patents Act 1988*, Section 5 of Schedule ZA1 'Certain permitted uses of orphan works', UK Cultural heritage institutions (**CHI**), (including public service broadcasters), may make certain uses of orphan works without having to apply for a licence from the IPO. The exception covers the use of literary works, cinematographic works, audio-visual works and sound recordings across the EU.

owners where it is established that, at the time of the infringement, a reasonably diligent search had been undertaken to find the rights holder (to no avail), and the use of the work was, to the extent reasonably possible, attributed to the author.

**Q68: Has a social media platform or other communication tool that you have used to upload, modify or create content undermined your ability to monetise that content? Please provide details.**

**Q69: What are the advantages of social media platforms or other communication tools to disseminate and monetise their works? What are the disadvantages? What changes to the Copyright Act (if any) should be considered?**

RNZ would support legislation forcing social media platforms to provide a 'trusted publisher' (like the TradeMe verified seller) system, where any infringement claims against a 'trusted publisher' are dealt with prior to any intervention action by the social media or online platform hosting the live stream.

- 3.24 RNZ has experienced some difficulties with the blunt tools used within social media platforms as part of their copyright controls.
- 3.25 For example, when RNZ and the Auckland Philharmonic Orchestra (**APO**) live video streamed a classical music performance recently using a composition in the public domain (in which the recording owned by RNZ, the performance was owned by APO) one musical work in the audio of the performance was muted on the social media platform during the live performance at the request of a record label because the record label had previously commercially released the same composition performed and recorded with different artists. This was despite the fact the underlying work was in the public domain, and there was no infringement of copyright by RNZ or the APO.
- 3.26 For 10 minutes there was no sound on the live stream, and this ruined the audience experience, damaging trust and the reputations of the providers.
- 3.27 The content match was successfully disputed, but this took days to be processed, by which time the event was long over, and the damage done.
- 3.28 There is currently no means to prove that rights have been considered and cleared for content within social media platforms. This needs to be changed.
- 3.29 Further, RNZ would support legislation forcing social media or online platforms to provide a 'trusted publisher' (like the TradeMe verified seller) system, where any infringement claims against a 'trusted publisher' are dealt with prior to any intervention action by the social media or online platform hosting the live stream. Similar rules could also be developed for dealing with uploaded content as well.
- 3.30 RNZ has to use these platforms for dissemination because they are the gatekeepers for access to a wide audience, and the majority of New Zealanders who view their content online. The RNZ Charter directs us to deliver our content to the public in the best ways possible. It would therefore be helpful if social media

and online platforms carried some responsibility to act in good faith towards an institution like RNZ (and others like libraries and archives), and ensure that they do not interfere with legitimate content that is uploaded or streamed live.

#### **4. Additional issues not dealt with by the Issues Paper**

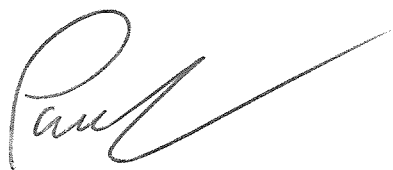
- 4.1 Consideration should be given to naming RNZ as a body prescribed under the Act, similar to the status given to educational establishments, libraries and archives under Part 3 of the Act. This would broaden the fair dealing exceptions available to it, and allow the organisation to better fulfil key obligations under its Charter including acting as an archive of reliable, independent, and freely accessible current and historical news and cultural information.
- 4.2 RNZ is a non-profit entity just like public libraries and the national archives. It also fulfils similar functions to libraries and archives, not only through its sound archive, which is specifically recognised under the current Act<sup>9</sup>.
- 4.3 RNZ's website, and its underlying content stored on its servers, now act as a defacto 'real-time' archive of many kinds of content. These archives contain literary works, films, sound recordings, and communication works.
- 4.4 Because of the evolving nature of how RNZ operates in the digital age, and the mediums it can and will utilise to distribute its content, it would make sense for:
  - (a) The definition of archives to be expanded to read "any archive maintained by RNZ". This would enable RNZ to have more than its sound archive afforded a special status under the Copyright Act.
  - (b) To provide broader fair dealing exceptions enabling RNZ to more easily fulfil its legislated providing educational and research materials to the public.

#### **Next steps**

RNZ trusts that MBIE will find these submissions of assistance as part of the Copyright Act Review.

RNZ looks forward to further opportunities for engagement in this process, and is happy to make its staff available for consultation with MBIE as part of this process.

Ngā mihi,



Paul Thompson

Chief Executive and Editor in Chief

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<sup>9</sup> See section 50 of the *Copyright Act 1994*: archive (a) means ... (iii) the sound archive maintained by Radio New Zealand Limited. Section 50 of the Act is now technically out of date as the sound archive sits with Nga Taonga. However, RNZ currently has a basement and a transmitter hall full of (many orphan) tapes.