

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

## Your name and organisation

Name	
Organisation	Yellow NZ Limited

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## Responses to Issues Paper questions

Please note that this submission responds to questions 6 and 7 only.

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

6	<p>Is it clear what ‘skill, effort and judgement’ means as a test as to whether a work is protected by copyright? Does this test make copyright protection apply too widely? If it does, what are the implications, and what changes should be considered?</p> <hr/> <p>Yellow NZ Limited (<b>Yellow</b>) supports the existing test whereby the determination of whether copyright subsists in a work involves consideration of whether creating the work involves “<i>sufficient skill, judgment and labour</i>” to be an original work.</p> <p>Yellow would naturally be concerned about any change to the law which would impact on the current protection provided to its directory. It notes the following:</p> <ol style="list-style-type: none"><li>1. Yellow publishes both the White Pages residential and business directory, and the Yellow Pages. There are 29 directories published and delivered across the country.</li><li>2. The White Pages has been published in printed form since the 1930s, and also in electronic form since 1997. We have Telecommunication Service Obligations (<b>TSO</b>) pursuant to the</li></ol>
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Telecommunications Act 2001 to maintain and produce the White Pages directory, consisting of household name, address and landline detail, and to distribute that publication to households nationwide.

3. The Yellow Pages directory has been published in printed form since 1959 and in electronic form since 1997.
4. We curate and maintain listing content of over 150,000 businesses nationally (plus significant volume of residential listings).
5. Our directories are constructed using unique pagination rules to determine ad order and layout, listing wrapping and placement, typeset design and formatting to optimise content on page in style, design and format appealing to our end users.
6. The font type and style used in the Yellow pages and White pages directories is custom built for Yellow and been in use at least 20+ years.
7. The ontology of business classifications for the Yellow Pages directories has been created over many years. It is a living work which is continually revised. The database itself has been created over many years, and is also a living work, continually revised. Each directory was created by a process which involved many hundreds of hours of employee time to marry up each business with its appropriate business and geographical classification. That time was spent in collecting, verifying, recording, assembling and maintaining the relevant data.
8. The Amdocs system in place since 1989 (and system prior to that) purpose built for directory production has had a considerable level of investment – in the millions of dollars – into it to maintain customer details, listing content and category headings. With over 2,000 categories, it is an ongoing process reviewing new category requests, modifying names, maintaining category structure. This includes the creation of scoping rules and logic to enable accurate placement of new household and business listings into the correct Yellow pages / White pages directory.
9. Yellow commits significant people power to the maintenance of our directories. We have a design team which creates directory specific display ads, an administration team which creates the text ad lay outs for customers, a pre-press team to manage book production and ad lay out and preparing files for printing, and a product management team to manage categories, ad types and styles, and the creation of vertical specific publications over the years. Instances of these from past years are Yellow Frontdoor (DIY Renovation vertical) and our Retirement Guide.
10. Our customers have an expectation that we protect their listing details so they are not inundated by contact from cold calling organisations or people. We need to protect this data from what we refer to as “*data scraping*” – whereby illegitimate operators would “*scrape*” the data in our directories and contact all our customers, or on-sell their data in bulk. If this happened, our customers would leave in droves and it would completely destroy our business.
11. Yellow is concerned that its investment and business model would be severely undermined if the Copyright Law which has subsisted while Yellow’s business has existed was modified to remove its protection.
12. If protection were to be removed there would seem to be little to prevent a business from waiting for another business to invest heavily in collection and curation of content and then

simply copy that data and produce a competing publication and reap the rewards from it. This would completely undermine the goodwill built up in businesses like Yellow, and the intellectual property within it.

13. A concern raised in the Issues Paper (at [129]) is the extent to which the protection of compilations/databases may be locking up and preventing access to the underlying data itself the directory. Yellow does not agree with that statement, or at least not in relation to directories. The concern here is expressed to be that a protection of databases/compilations prevents data mining, which in turn inhibits the development of emerging technology such as artificial intelligence. This is not a concern in relation to telephone directories. The information provided in our directories has been provided by customers who have expectations regarding the use and application of that information. It is protected by our terms and conditions. Wholesale copying or mining of data would infringe the reason for which information has been provided to us in the first place. Where other organisations wish to leverage the content, for example for artificial intelligence applications, our expectation would be such organisations would enter into a partnership or commercial arrangement with Yellow to produce such application where we see it would benefit customers and / or consumers.
14. But further to this, the ontology by which our data is classified was developed by and is unique to Yellow. It is our intellectual property and it is not appropriate nor reasonable that by a change in the law we (and other providers like us) should lose our rights in relation to this considerable investment. Our customers, our employees, and our business depends on this protection.
15. Accordingly, we are of the view that there is considerable public interest in continuing to have a system where directories will be protected. These are valuable repositories of information, used by hundreds of thousands of people across our communities, and across the decades.

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Are there any problems with (or benefits arising from) the treatment of data and compilations in the Copyright Act? What changes (if any) should be considered?

Yellow considers that the current treatment of data and compilations is adequate, and no changes should be considered. We refer to our comments at question 6 above.