

# NEW ZEALAND WRITERS GUILD

## SUBMISSION ON THE REVIEW OF THE COPYRIGHT ACT 1994, ISSUES PAPER – APRIL 2019

This is the official submission by the New Zealand Writers Guild (NZWG) on the review of the copyright Act 1994, Issues Paper.

Below are the responses to the relevant questions as proposed in the Issues Paper. As this is the starting point of the review process it is clear that more detailed responses will be required to support and enact some of these suggestions. We look forward to participating in the ongoing review process.

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### QUESTION 1.

NZWG believe that the objectives are the right ones for the regime. Though implementation of these objectives doesn't match the stated objectives. For example – Objective 1 is looking to provide or achieve incentives for the creation of works. The ability for producers to purchase the rights in a script, and achieve an income for writers, when funding at development stage of copyright for screen is highly underfunded. This is a wider issue that needs addressing of increasing funding to New Zealand On Air, New Zealand Film Commission and Te Māngai Pāho – through other forms of legislation changes to increase the want to create new copyright in New Zealand.

However, should points 147 or 148 be implemented, it would reduce the original authors capacity to financially benefit from the creation of their works for screen. As producers would have further pressures in financing the production of the works.

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### QUESTION 2.

The ability to ensure end product of format (for screen works in particular) is not restricted in copyright legislation. Meaning that resilience for future uses, as yet unknown, are incorporated in a way that doesn't reduce certainty or clarity. This could be done by a reviewing terminology of uses after a certain period of time.

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### QUESTION 5.

The advantage of the Copyright Act currently categorizes is that it is clear and covers the works that are being created.

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### QUESTION 6.

Yes, it is clear what skill, judgement and labour mean. 119 – should stand, original does not need any further definition.

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### QUESTION 8.

147 and 148 are problematic for screenwriters – the original copyright owners of the works. These concepts could potentially erode the financial benefit of screenwriter's future earning as their royalties or residuals will be divided further to compete with Directors. New Zealand Screenwriters do benefit from receiving royalties on their works from showing internationally through the New Zealand Writers Guild being a member of the International

Affiliation of Writers Guilds and writers being afforded the same rights as their colleagues in international territories. And through standardised contracting for screenwriters.

This issue could be remedied through simple contracting changes, lobbied by the Directors and Editors Guild of NZ. By creating a standardised agreement that affords director's royalties payments for works shown overseas. NZWG believe this is a contracting issue, rather than a legislation issue.

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#### QUESTION 13.

The benefit of extending the copyright term would be the ability for the original copyright owner to continue receiving the financial benefit of the works, however due to the nature of screenwriter's rights agreements NZWG don't see any definite need to change this period of time.

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#### QUESTION 18.

The changes should be to remove the wording "to the public". As some internet platforms are not reporting their viewing figures and there is no way to determine if they genuinely screening to the public or are financially benefiting from others copyright without paying for it fairly for example Netflix.

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#### QUESTION 50.

No copyright is not understood well and this is transferred to the students. We see many students level schools and tertiary institutions with little or no knowledge of how to monetise or protect copyright – especially in the screen sector.

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#### QUESTION 53.

Without active CMO's in New Zealand this clause is hard to realise for screenwriters. Should CMO's be able to collect for screen works then this clause needs to be very clear that time shifted viewing creates another avenue to collect royalties for screen writers – as it is a further use of the original copyright.

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#### QUESTION 59.

This ISP definition should be more broadly defined to include UGC and web 2.0, as New Zealand are currently able to help capture cases of copyright infringement through this definition.

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#### QUESTION 61.

This is future issue, as the New Zealand creative market grows, we need to protect the copyright owner's ability to be fairly remunerated for their works distribution and usage. Yes, we should future proof the safe harbor provisions by being more specific about content host behavior.

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#### QUESTION 63.

NO – there is not a sufficient variety of CMO's in New Zealand. The screenwriters would benefit from a CMO licensing scripted content for distribution on screens – including traditional broadcast and online platforms and streaming services. See the [Writers Earnings Survey](#) for proof that writers need an increase in their earning potential.

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QUESTION 68. & 69.

New Zealand hasn't yet been able to reach a market threshold that has afforded us the ability to make significant income from social media platforms. Though this is a change we will see in the future. In order for the Copyright Act to be enforceable on these platforms CMO's or other forms of tracking need to be established to help original content creators track and monetise their works. Capturing any type of social platform as a user platform and ensuring that the Copyright Tribunal can adequately manage these offences.

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QUESTION 74.

NZWG fully support the UK and Canadian models of protecting orphaned works – we would like to see these types of protections implemented within the NZ Copyright Act.

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QUESTION 82.

YES – they are used especially for TV series and Films from New Zealand. Boy by Taika Waititi is a good example of the extent of file sharing piracy occurring in New Zealand and its impact on copyright creators' incomes being negatively impacted. It is an underground movement that is hard to track, yet you will find groups on Facebook and other social sites, like Reddit, that have groups and pages dedicated to sharing copyright freely through file sharing.