

New Zealand music industry submission to Copyright Act Review

SETTING THE SCENE **INTRODUCTION & SUMMARY**



“I think copyright is an amazing thing. Somewhere back in history, someone created legislation that allowed artists to get paid. Copyright makes me feel that my work’s not for nothing. It’s hard enough to be a musician. If we didn’t have mechanisms to protect our work it would be almost impossible.”

BIC RUNGA

Artist & Songwriter

“I would say that protecting the integrity of copyright should be our number one priority, so that the work of music creators continues to be valued.”

NEIL FINN

SPLIT ENZ, CROWDED HOUSE, FLEETWOOD MAC

Artist & Songwriter

“The internet changed things so quickly and there’s so much still to be revealed about its nature. It scares me that big tech companies are determining so much of the future for artists – and for the world in general. So much has been made possible for us by sharing – but far more has been made possible for them by what we share.”

SALINA FISHER

Composer, Performer & Fulbright Scholar

“Protecting the value of what people compose, write and create is fundamental. If we were to lose sight of that, we would disadvantage the next generation of composers, writers and creators. And if they couldn’t make all the work that’s in them, what a terrible loss that would be.”

DON MCGLASHAN

BLAM BLAM BLAM, FROM SCRATCH,
THE FRONT LAWN, THE MUTTON BIRDS

Artist, Songwriter & Screen Composer

MUSIC MATTERS

IT INSPIRES US

**IT TELLS OUR
STORIES**

**IT ENTERTAINS AND
UPLIFTS US**

**IT SUPPORTS AND
UNITES US**

**IT IS THE
SOUNDTRACK TO
OUR LIVES**

Our musical tradition is rich and deep. From The Chills to Split Enz... Moana Maniapoto to Shona Laing... Lorde to Six60... Te Vaka to Shapeshifter... Scribe to Rei... King Kapisi to JessB... John Rowles to Daphne Walker... Alien Weaponry to Aldous Harding... music is a defining element of our culture that tells our many stories in our many voices. Music contributes to our physical, mental and social wellbeing. As New Zealanders we are lucky to have a rich history of musical taonga that stretches back hundreds of years, combining with and existing alongside a vibrant contemporary music scene that encompasses tangata whenua, Pākehā, and the rich diversity of our society.

The authors of this document are united in their vision to protect and support New Zealand music, and achieve a thriving and sustainable music industry for the benefit of all New Zealanders.

A key pillar of this is a robust framework for copyright law. This document forms a fundamental part of our submission to MBIE's review of the Copyright Act 1994. It explains who we are and what we do, and how our contribution to Aotearoa New Zealand is enabled and sustained by copyright law.

In preparing this document we have consulted within the music industry - with artists, songwriters and composers, record companies and digital aggregators, music publishers, music managers and many others, for their views on the state of the industry, the opportunities and challenges, and the importance of copyright to what they do. We cannot claim to speak for all of them, but their views have helped to shape this document.

Embracing a digital environment

In a few short years, the way we listen to music has changed beyond recognition. In 2012, most of us bought our music on CDs. Today, streaming services such as Spotify and Apple Music have become the preferred way to enjoy music. New Zealand consumers can now enjoy music in more ways than ever before, in different formats and at affordable prices.

As a result of embracing the digital transformation, the music industry has enjoyed four consecutive years of recorded music revenue growth since 2014, after 14 years of decline due to online piracy and technology disruption. As an industry we are continuing to invest, innovate and celebrate the new opportunities offered by the internet and the myriad of new ways to reach our audience.

The music industry contributed over half a billion dollars to New Zealand's GDP in 2017 and supported 2,500 full time equivalent jobs for Kiwis. New Zealand artists and their music contribute to our economy and our culture in ways that are both tangible and priceless. We remain committed to investing in New Zealand music creators, just as they continue to invest in and benefit us.

As well as preserving and celebrating our sense of identity through music, we want to see our artists succeed on the world stage. With the rise of streaming services, the market for music has become truly global and the tyranny of distance is no longer a barrier to global success.

The New Zealand music industry is focussing on export now more than ever before, with good reason. Digital music is a weightless export. There is no need to ship product around the world and enjoyment of music is a low emission activity that does not consume scarce resources.

In the past New Zealand has been a “net importer” of music but there is no reason why this has to remain the case in the future. Our local industry has the drive and ambition to become a net exporter of music, and government supports this goal. We welcome the Ministry for Culture and Heritage initiative to form a working group of government agencies and industry experts to look into enhancing the international potential of the New Zealand music industry.

We are aligned with the wider creative sector in our ambition to grow. We are proud members of WeCreate, the alliance of the creative sector, in seeking a concerted industry-led partnership with government to grow our sector's contribution to Aotearoa New Zealand's wellbeing.

New challenges

Despite the good news about digital transformation, increasing revenues and export opportunity, our creative ecosystem is facing new challenges.

With the rise of streaming services, the market for music has become truly global and the tyranny of distance is no longer a barrier to global success.



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I want our anthems to go abroad... in and of themselves as our ambassadors for New Zealand and our creativity... But what is it going to take for us to be a net exporter of music?

JACINDA ARDERN

Going Global Music Summit 2018

The streaming economy is fragile, with each licensed stream delivering only a fraction of a cent to creators and investors. Now more than ever before, imbalance in the digital marketplace has a profound effect.

There are serious concerns about the accountability of global platforms that monetise music uploaded by their users. The legal framework of safe harbours in copyright law has created a culture of appropriation and a digital Wild West where paying for music is optional. Even when platforms are licensed to make music available, it hasn't been a fair negotiation due to the safe harbours which give user upload platforms an unfair advantage.

In addition, and despite the proliferation of legal choices for consumers, 24% of New Zealanders are still using pirate sites to obtain or listen to music. We estimate that the losses to the New Zealand music industry from piracy in 2018 were around \$50 million. These forgone revenues could be directed to investment in new artists and music, but instead are being channelled to offshore pirate sites.

In the face of these challenges, work is needed to ensure that our music ecosystem remains sustainable.

Priorities for copyright review

New Zealanders all benefit from a thriving music ecosystem: culturally, socially and economically. A robust copyright framework is an essential element of that ecosystem both to ensure sustainable growth, and to allow the freedom to explore, experiment and take the creative risks that allow us to lead, express our uniqueness, and drive our artform forwards.

The Copyright Act provides a sound framework, however in light of the rapid digital transformation of the music industry and the related challenges, there are some key issues that must be addressed to ensure that it continues to foster sustainable growth into the future. This is essential both to preserve New Zealand's national and cultural identity, and to develop our position as exporters on the world stage.

Our detailed priorities for the copyright review are set out in the summary that follows. At a principle level we would like to see a copyright framework that:

- Recognises the **value of music**, for its contribution to our social and cultural wellbeing as well as to the economy and employment
- Enables creators and investors to **obtain fair value** for their work through **being able to choose** who can use their music and on what terms
- Provides effective tools to enable creators and investors to **safeguard music against unauthorised uses**
- Is clear and **provides for legal certainty**, respects market solutions and recognises that licensing fuels innovation, not exceptions
- **Harmonises New Zealand's laws** in line with those of our trading partners, to maximise export success
- Reflects Aotearoa New Zealand's **rich cultural diversity** and contributes to ensuring that all our voices, including those of Tangata Whenua and our diverse communities, can be valued and heard.

The legal framework of safe harbours has created a culture of appropriation and a digital Wild West where paying for music is optional.



Taonga works need a separate regime

While copyright is an important structure that supports and protects the works being created in our country and has done since our first copyright law in 1842, it is also a Western framework that has been imposed on a musical tradition that existed in Aotearoa long before Pākehā arrived here.

Our tangata whenua are the kaitiaki of music that our law was not conceived or equipped to adequately represent.

We support the Waitangi Tribunal's recommendation that a new regime be established to protect taonga works and Mātauranga Māori on Māori terms. We believe that this is an incredible opportunity for Māori to lead the world in the creation of a mechanism that honours and protects their traditional indigenous creations.

Although we have included the perspectives of some of our Māori music creators in this document, we do not in any way presume to speak for Māori on the larger, parallel issue of protecting taonga and Mātauranga Māori creations. We understand that any examination of this will be conducted separately with Māori alongside the Copyright Act review, on a different timeframe to that submission process. In the meantime we pledge our support to the process and will engage with it in whatever capacity tangata whenua invite.

We look forward to working with government and other stakeholders throughout the review.

Recorded Music New Zealand, representing recording artists and record companies

APRA AMCOS, representing songwriters, composers and music publishers

Independent Music New Zealand (IMNZ), representing independent music rights holders

Music Managers Forum New Zealand (MMF NZ), representing music managers and self-managed artists

New Zealand Music Commission Te Reo Reka O Aotearoa - the Government-funded organisation that promotes music from New Zealand and supports the growth of New Zealand music businesses.

Copyright Review and the Issues Paper – Music's Key Priorities

- New Zealanders all benefit from a thriving creative ecosystem – culturally, socially and economically. In the new world of music streaming services, there is a huge opportunity for New Zealand music to grow and to reach a global audience – enhancing both our sense of national identity and our growing international reputation.
- But this opportunity can only benefit our country if we can properly capture and manage the value of our creative endeavour. We need to maintain clear exclusive rights and liability principles that underpin and support our licensing of the digital services that deliver music to New Zealanders. We also need to protect the right of creators and investors to choose who can use their music and how.

Fair Market Conditions

- The current safe harbour provisions are hampering development of the digital market by giving an unfair advantage to platforms that rely on user uploaded content. This has resulted in an unfair value gap, as demonstrated by the graphic below.



- The safe harbours have also enabled a culture of appropriation and a digital Wild West, where paying for music is optional. It is time for platforms to be accountable. The safe harbour provisions should be reviewed to ensure that they are only available to passive intermediaries and not to platforms that actively engage with and monetise content [Issues 59-62].

Safeguarding creativity

- Despite the proliferation of legal choices for consumers, 24% of New Zealanders are still using pirate sites to obtain or listen to music. We conservatively estimate that the losses to the music industry from piracy in 2018 were around \$50 million. These forgone revenues could be directed to investment in new artists and music, but instead are being channelled to offshore pirate sites.
- We need effective tools to assist us in taking enforcement action – in particular a streamlined process to enable right holders to seek an order for ISPs to block access to pirate sites [Issues 85-87]
- We also need to improve the process of notice and take down so it means notice and stay down [Issues 59-62] and improve the prohibitions on circumventing technical measures that protect streaming services [Issues 28-29]

- Intermediaries such as search engines and advertisers are providing services that amplify piracy and make it easier and more profitable. We need a duty on intermediaries to take reasonable steps to ensure their services are not used in connection with piracy [Issue 62, Issue 85]
- The current law contains unreasonable procedural hurdles for right holders seeking to enforce their rights. Changes are needed with respect to proof of copyright ownership and the application of the law of authorisation to linked sites based overseas [Issue 17]

Legal certainty and evidence-based approach to exceptions

- Licensing fuels innovation, not exceptions, and the market should be the first port of call to enable uses of music.
- We support the existing approach to fair dealing and believe a more flexible fair use approach would undermine business certainty.
- Any discussion of exceptions should involve examining the evidence that the exception is needed either for a non-profit social benefit, or as a result of market failure.
- With regard to cloud computing and format shifting, there is no need for further exceptions and market solutions should be respected [Issue 36, Issue 52].
- We recognise the important work of non-profit cultural institutions such as archives and stand ready to discuss the issues they experience with cataloguing and preserving music [Issues 41-45], and orphan works [Issues 71-74].

Copyright term equality

- It's time to stop penalising New Zealand artists, songwriters, composers, record companies and music publishers and harmonise term of copyright protection to 70 years, in line with other OECD countries.

