

ALAI Congress 2017 in Copenhagen

Copyright, to be or not to be

Questionnaire

The traditional justifications for copyright and related rights

In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

Like previous New Zealand copyright legislation, the current Copyright Act 1994 is largely based on the current United Kingdom legislation ie the Copyright, Designs and Patents Act 1988. No explicit justification for copyright is stated in the Copyright Act. The Bill which preceded the Act referred to treaty obligations under the Berne Convention and TRIPS but did not establish justifications for copyright.

Are there any similar justifications for related rights?

There are no explicit justifications for rights related to copyright in the legislation. Moral rights, for example, were introduced by the 1994 Act – again the rationale was complying with treaty obligations, rather than philosophical or policy reasons for moral rights.

Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

No distinctions are drawn, in terms of justification, between different types of qualifying works.

Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

*Copyright legislation in New Zealand may be described as ‘British heritage’ and can be interpreted in the light of British philosophical approaches to copyright. In the leading case of *Henkel KgaA v Holdfast* [2006] NZSC 102, the Supreme Court held that copyright arises when the work originates with the author and manifests ‘more than minimal skill and labour’. This could be considered to align with Lockean applied labour theory but there is nothing in the text of the Copyright Act to support a particular philosophical approach.*

Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

The Copyright Act introduced moral rights, and so there has been some discussion of the influence of personality theory in local literature. Also, since government investigations have stressed the importance of benefits for New Zealand of any changes to the law, some utilitarian influence is evident.

Economic aspects of copyright and related rights

Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

No. Ad hoc reports produced by government and private agencies have sought to estimate the value of the creative industries as a whole but not the specific contribution of copyright industries. Statistics New Zealand collects and publishes data on various sectors of the economy, which include copyright industries, but does not specifically examine copyright industries.

Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

Not applicable.

Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection?

New Zealand signed the Trans-Pacific Partnership Agreement in 2016. One of the major issues for debate prior to signature was who would benefit or suffer from the extension of the post-mortem copyright period from 50 to 70 years. Arguments were highly partisan and doubts were cast on the reliability of evidence produced both by government and groups opposing the Agreement.

If yes, please summarize the results and the methodology used.

A government report, commissioned from an independent Australian consulting firm in 2009, estimated that the cost of increasing the copyright period from 50 to 70 years would be NZD55 million per annum.

The methodology used to estimate the costs and benefits of copyright term extension involved three key steps:

- 1. Calculation of the proportion of works that are in-rights;*
- 2. Deriving relevant ratios to allow the projection of in-rights sales; and*
- 3. Calculating the costs and benefits of term extension.¹*

Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights

Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights?

Five copyright collection agencies operate in New Zealand covering musical works (Australasian Performing Rights Association Ltd-Australasian Mechanical Copyright Owners Society Ltd (APRA-AMCOS); printed (literary) works (Copyright Licensing Ltd (CLL)); public performance of musical works (Phonographic

¹ Henry Ergas (Concept Economics) "Economic Modelling on Estimated Effect of Copyright Term Extension on New Zealand Economy" (2009) <<https://www.tpp.mfat.govt.nz/assets/docs/TPP%20-%20Analysis%20of%20Copyright%20term%20extension,%20explanatory%20cover%20note.pdf>>.

Performances New Zealand Ltd (PPNZ); film and television (cinematographic and broadcast works) (Screenrights).

Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

Yes. 'Licensing bodies' are recognised under the Copyright Act and their licensing schemes are subject to the jurisdiction of the Copyright Tribunal (cf UK law).

Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

The Copyright Act follows traditional British heritage fair dealing exemptions, and freedom of panorama. (There is no parody exemption.) As noted, licensing schemes of licensing bodies may be challenged in the Copyright Tribunal. There is otherwise no compulsory licensing or obligatory collective management.