

Designers Institute of  
New Zealand Inc

Submission on Issues Paper  
(Review of the  
Copyright Act 1994)  
April 2019

**The  
Designers  
Institute.**

This submission is filed by the Designers Institute of New Zealand Inc, in response to the Issues Paper released in November 2018 by the Ministry of Business, Innovation and Employment entitled “Review of the Copyright Act 1994”.

The Designers Institute of New Zealand does not claim confidentiality or privacy over any content of this submission, and consents to the submission being posted on the Ministry’s website.

For email correspondence relating to this submission, the Designers Institute of New Zealand can be contacted at [service@clendons.co.nz](mailto:service@clendons.co.nz).

## About DINZ

The Designers Institute of New Zealand Incorporated (“DINZ”) is a longstanding national society that represents numerous design fields of practice, including:

- Graphic Design (visual communication);
- Interactive Design (including motion graphics);
- Spatial Design (built environment);
- Industrial Design (product design, consumer and capital goods);
- Design in business;
- Service Design (creating optimal user/customer service experiences); and
- Design Education (the teaching profession).

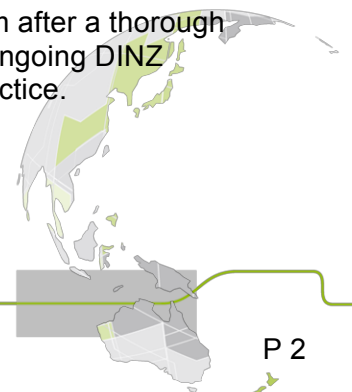
DINZ was formed in 1991 by the merger of two prior design associations: the New Zealand Society of Industrial Designers (formed in 1960) and the New Zealand Association of Interior Designers (formed in 1968). DINZ and its predecessors have therefore been the leading design organisation in New Zealand for nearly 60 years.

At the date of this submission, DINZ has 1,062 members (see attached schedule for a list of members).

DINZ encourages the development of professional skills in its membership and by bringing together all different design disciplines under a common proposition: that excellent design brings tangible benefits to its users and the community. Other aims are to improve standards of professional service, increase demand for design excellence and generally increase the profile of design.

DINZ is recognised as the official voice of design and designers in New Zealand. On behalf of its members it lobbies Government and has input into proposed changes to legislation affecting designers.

DINZ maintains its integrity of Professional Members by only admitting them after a thorough examination by their peers. Training sessions, seminars and events, and ongoing DINZ communications keep members informed about issues affecting design practice.



One of DINZ's objectives is for professional designers to be valued and rewarded for the contribution they make to the economic, cultural and social growth of New Zealand. DINZ is a strategic partner with the New Zealand Trade and Enterprise 'Better by Design' programme. DINZ also partners with the Department of Internal Affairs and ATEED.

DINZ is a founding member of DesignCo, a joint venture between DINZ, AUT, Massey and Victoria Universities, Otago Polytechnic, New Zealand Trade and Enterprise (Better by Design), Auckland Co-design Lab and Callaghan Innovation. Together with other funding partners, DesignCo commissioned a detailed study and report by PwC published in July 2017 entitled "*A Study Highlighting the Benefits and Contribution of Design to the Economy of New Zealand*".

Amongst other ground-breaking findings, the PwC study found:

1. There is a strong correlation between national prosperity, economic growth and a thriving design sector.
2. International evidence confirms that design leads to more competitive firms making and selling higher value products and services;
3. New Zealand has a highly skilled, creative, knowledge intensive design sector adding an estimated \$10.1b to New Zealand's gross domestic product (GDP), 4.2% of total GDP, and 4.4% of New Zealand's total employment.
4. If design were treated as an individual industry, its contribution to the New Zealand economy would be larger than agriculture and on a par with retail trade (\$10.6b), and food, beverage and tobacco product manufacturing.

A full copy of the 119-page PwC study report can be found at <http://designco.org.nz/value-of-design/the-value-of-design-to-new-zealand/>.

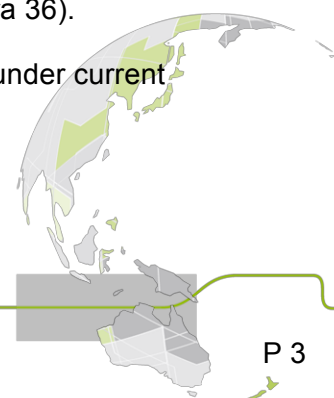
DINZ is also part of Tāmaki Makaurau Design Alliance (TMDA). TMDA is a representative committee of leading design organisations and institutions (including professional and tertiary institutions) for the promotion of excellence in design and the built environment within Auckland. TMDA is the voice of Auckland's design sector at the Tripartite Economic Alliance, **known** as the GALA Design Alliance, an agreement between Auckland, Guangzhou and Los Angeles. GALA seek to share knowledge and design experience to benefit the sustainable development of all three cities.

For more background on DINZ, please refer to our website, [www.dinz.org.nz](http://www.dinz.org.nz).

## Submission

The "primary purpose" of the copyright law review submission process is to get information and evidence of **problems with the Copyright Act 1994** (Issue Paper, para 36).

In February 2019, DINZ surveyed all 1,062 members on their experiences under current copyright laws. Key feedback included:



- 76% of respondents have experienced situations where their design has been copied or used for commercial purposes without the designer's consent.
- When asked "*what changes would you make to the Copyright Law*"?, 70% of respondents expressly sought the repeal or substantial revision to the Commissioning Rule (s21). No respondents supported the Commissioning Rule in its current form.

### Submission 1 – Repeal the Commissioning Rule (Issue Paper, Question 8)

#### **Background: 2006 – 2008 review of commissioning rule by Ministry for Economic Development**

In 2006-2007, the Ministry for Economic Development (as it was then) undertook two comprehensive rounds of public consultation, specifically relating to proposed changes to copyright laws. The Commissioning Rule (s21(3), Copyright Act 1994) was a primary focus of that process.

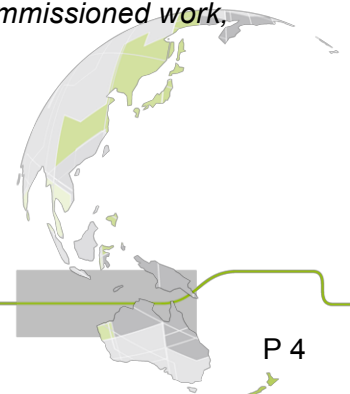
After analysing numerous submissions following the first round of public consultation in 2006, the Ministry published its initial findings and its preferred approach. In particular, the Ministry determined that its preferred approach was to repeal section 21(3) of the Copyright Act 1994.

The Ministry issued a Second Paper ("*The Commissioning Rule and the Copyright Act 1994: Second Paper*") recording this preferred approach, and reporting on the evidence collected by the Ministry that supported the repeal of s21(3), including (amongst other things) that:

- The Commissioning Rule allows for uncontrolled exploitation of works by commercial entities (paragraph 15).
- "*Many creators submitted that often a bargaining inequity exists between commercial entities and individual creators, which is enhanced by the commissioning rule. This is because from the outset copyright ownership does not belong to the creator thus placing the often weaker party at an even greater disadvantage in terms of negotiating to remain the copyright owner. This is especially the case with regards to commercial commissions.*" (paragraph 17).
- Not all creators have written contracts and/or possess knowledge of the Copyright Act and the Commissioning Rule (paragraph 29).
- The Commissioning Rule differs from copyright laws in other jurisdictions, making it difficult for New Zealand creators to compete internationally (paragraph 76).

The Ministry's second paper recorded:

38. *The Ministry's preliminary view, therefore, is to repeal the commissioning rule and protect consumers' privacy interests by providing the private commissioner with:*
- (a) *the ability to make personal and non-commercial uses of the commissioned work, and*
  - (b) *the right to restrain/object to uses of the work by others.*



Following the second round of consultation in 2007, a Bill (proposed legislation) was developed in 2008 by the government that would give creators default ownership of commissioned works (rather than the person who commissioned the work). This work was never implemented because of a change of government in 2008.

### Same problems identified in 2008 (and others) continue to exist today

Each of the problems with the Commissioning Rule that were identified by the Ministry in 2006 – 2008 (and others) continue. The reasons for the Ministry's proposed repeal of the Commissioning Rule identified by the Ministry following extensive consultation in 2006 – 2008 remain equally valid today.

Problems with the Commissioning Rule (s21(3)) include:

**Problem 1:** The Commissioning Rule promotes **unfair exploitation of design works** by commissioning parties. A design created for a limited or specific use may, without further compensation or even consultation with the designer, be used for other purposes not reflected in the terms of engagement.

DINZ members have provided various examples of works which were created for a limited purpose (and were charged limited fees accordingly) but were then used nationally/internationally without the designer's consent and knowledge. The Commissioning Rule enables this unjust outcome.

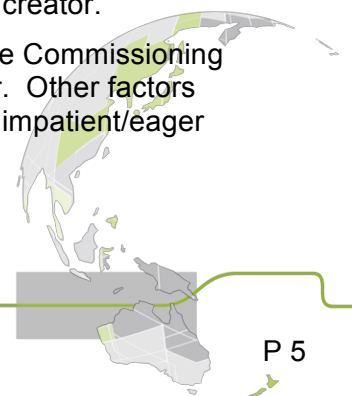
The default conferring of copyright ownership upon a commissioner is not required to provide a sufficient return on the investment of the commissioner. The work itself, as well as a licensed right to use the work, is sufficient return. While clients are often involved in the initial stages of the design process and do provide limited input, it is the designers who develop and evolve the concept and impart creativity. It is common for entire designs to be solely (i.e. 100%) the output of the designer's vision and creativity.

**Problem 2:** The Commissioning Rule creates a perverse engagement dynamic which gives the commissioner an **unfair and unjustified advantage when bargaining** with the designer.

The bargaining dynamics at the time of the commissioning engagement are similar for designers as they are for other creative suppliers. Many designers are sole practitioners or operating in small businesses and face a bargaining imbalance at the time of an engagement.

A bargaining power imbalance often exists between parties in a design engagement context, in favour of the commercial client – particularly where the design services required are reasonably homogenous and there are multiple alternative suppliers. Although this bargaining imbalance is not a result of the Commissioning Rule, the Rule in practice **exacerbates** the imbalance between a commercial entity and an individual creator.

The Commissioning Rule does not determine bargaining power. Rather, the Commissioning Rule is one of several factors that may influence a party's bargaining power. Other factors include relative financial positions of the parties, whether one party is more impatient/eager



than the other to reach agreement, which party has more information about the transaction and whether either party has other options.

Having acknowledged that there is generally a bargaining imbalance weighing against the creator, it is axiomatic that:

- The creator should enjoy the protection of the default statutory position unless they contract out; and
- The commissioning client is in a better position to negotiate a position other than the default.

DINZ submits that the Commissioning Rule may (and in practice does) significantly contribute to giving the commissioner an unfair and unjustified advantage when bargaining with the creator.

**Example: Tendering**

Given the competitive nature on the supply side of the design industry, clients will often ask several designers to tender/pitch work by providing concepts, drafts, proposals, etc. Similarly, given the competitive supply side, artists/creatives often provide initial concepts for very low fees as a “loss leader”, seeking to secure subsequent work on the project. In both situations, negative outcomes can occur because concepts provided for nominal compensation are then exploited or taken to cheaper designers, artists, etc.

If copyright remained (by default) with the designer, then these unfair business practices would not be legally permitted.

**Problem 3:** The Commissioning Rule creates a **positive disincentive for creativity** on a national scale.

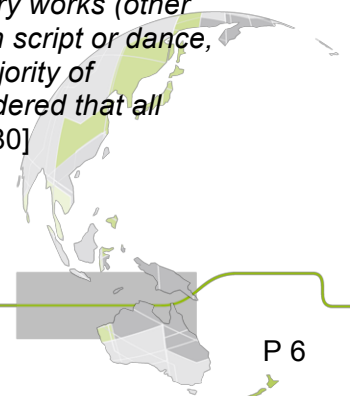
The national importance of the design sector in New Zealand has now been highlighted by the 2017 DesignCo PwC report (described above).

By denying the designer ownership of their own creative endeavours, designers are discouraged from creating any work of significance. Furthermore, the unfairness of the Commissioning Rule encourages talented creatives (including designers) to move overseas to a country where their moral and material rights are both respected and protected by copyright laws.

**Problem 4:** The Commissioning Rule is **poorly understood, inconsistently applied** to creative works, and is at odds with professional designer understanding (and public understanding) of copyright laws.

As recognised in the Ministry’s Second Paper in 2007:

*“The commissioning rule only applies to a defined list of works. Literary works (other than computer programs), dramatic and musical works, such as a film script or dance, and certain artistic works, such as collages, are not included. The majority of submitters criticised the inconsistent application of the rule and considered that all creators, irrespective of the type of work, should be treated equally. [80]”*



*Several submitters indicated that the incomplete application of the commissioning rule creates confusion, particularly where no contract is used to clarify the position of ownership, or where a person creates several works and different default ownership rules apply. A few examples include: where a person is illustrating and writing a book, or where a person creates a computer program as well as the instructing text, or where a composer uses notated music as well as music in score form. Additionally, a multimedia work as a compilation would not be covered by the commissioning rule, however, its underlying computer program would be. In each situation different default ownership rules apply. Submitters further argued that the commissioning rule provides an impractical and ineffective guide in relation to products containing works where different default ownership rules apply.” [81]*

The Ministry recognised that the Commissioning Rule was a “contributing cause of confusion” but found that the general “lack of knowledge of the law is the main factor in its misinterpretation.” [82] Either way, the Commissioning Rule was causing (and continues to cause) confusing and unexpected legal outcomes for those involved in design.

**Problem 5: The Commissioning Rule allows a designer’s work to be used before, and regardless of whether, payment is received**

In the February 2019 survey of DINZ members, 62% of respondents confirmed that they were not aware that the Commissioning Rule meant that the client owned the copyright in any commissioned work the designer created, even if the client had not paid the designer’s fee.

This is a constant and serious problem for designers in New Zealand, most of whom mistakenly believe that they retain copyright (at least until paid, and sometimes beyond that unless agreed otherwise with the client).

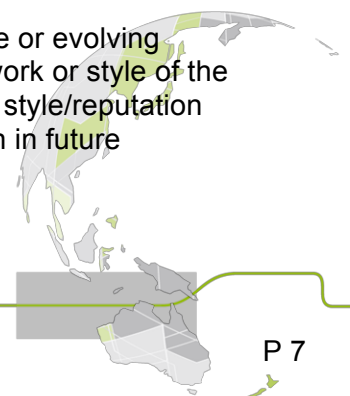
The Commissioning Rule allows a designer’s work to be used before payment is even received. This results in situations where designers are never compensated for their efforts while their work continues to be exploited by commercial entities.

The Commissioning Rule does not provide protection for designers and their creative work, and commonly leads to unfair legal and commercial outcomes.

**Problem 6: The Commissioning Rule stops designers from using their own intellectual property**, thereby jeopardising their ability to trade productively in the design industry

As mentioned above (Problem 4), the Commissioning Rule is poorly understood (if at all) by designers and others. This can (and often does) lead designers to providing design works with the expectation that they retain ownership of copyright, only to later discover that the client is relying on the Commissioning Rule (rightly or wrongly) to claim ownership of the copyright in the works.

In addition, an issue that relates specifically to designers is that of derivative or evolving works. A designer’s works are likely to use or draw upon the prior design work or style of the designer. Indeed, the designer is often engaged by a client because of the style/reputation of their prior works. Designers are likely to re-use aspects of current design in future





designs (consciously or even subconsciously). If a designer (inadvertently or otherwise) loses copyright in works, this can create significant difficulties and disputes in the event that future derivations of the design are created for subsequent clients.

**Problem 7:** The inclusion of the Commissioning Rule in New Zealand copyright law is **out of line with international convention, breaches the Berne Convention**, and leads to **perverse outcomes in cross-border situations**.

The Ministry's November 2018 Issue Paper records:

*Many dealings with copyright works occur across borders, so copyright rules should not be considered in isolation from our key trading partners.* [18]

DINZ submits that the inclusion of the Commissioning Rule in the Copyright Act is out of line with international convention and the copyright laws of New Zealand's major trading partners. This severely disadvantages New Zealand designers trying to compete in an international market.

All of New Zealand's major trading partners (including USA, UK, Canada, Australia) have already repealed the Commissioning Rule. Unless New Zealand follows suit, its designers will continue to lose ground internationally. This may (as noted above) result in designers leaving New Zealand for those countries where their material and moral rights are protected by default.

In a commercial dispute concerning copyright (*John Radford v Hallenstein Bros Limited*, CIV 2006-404-004881 – discussed at paragraphs 404 – 408, 2018 Issues Paper), the High Court (Justice Keane) observed that:

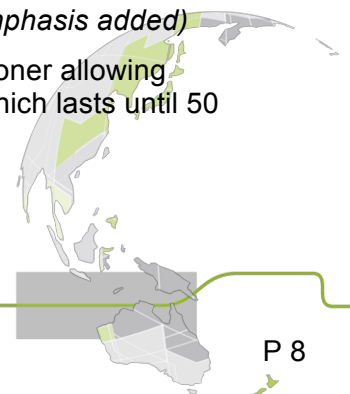
*"Where possible our statute law must be given meaning consistent with our international obligations; it being presumed that Parliament does not intend to legislate to the contrary ... Where New Zealand has subscribed to a multilateral treaty, which other countries have also subscribed to and implemented, it is desirable that the treaty be interpreted and applied uniformly."* [paras 13 and 14]

### **Commissioning Rule breaches the Berne Convention**

The leading international convention relating to copyright is the Berne Convention for the Protection of Literary and Artistic Works, to which New Zealand became a party in 1947. Articles 9(1) and (2) of the Berne Convention (mentioned at paragraphs 93-94 of the 2018 Issues Paper) provide:

- (1) *Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.*
- (2) *It shall be a matter for the legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a **normal exploitation of the work** and it **does not unreasonably prejudice the legitimate interests of the author.*** (emphasis added)

The Commissioning Rule automatically transfers copyright to the commissioner allowing them to make unlimited reproductions of the designer's work for a period which lasts until 50





years after the designer's death. This clearly **does conflict** with a normal exploitation of the work and **unreasonably prejudices** the legitimate interests of the designer.

DINZ therefore submits that the Commissioning Rule unreasonably prejudices the legitimate interests of designers, and therefore conflicts with article 9(2).

The Commissioning Rule also leads to:

- Inconsistency with New Zealand's major trading partners; and
- Conflict between the laws of differing jurisdictions, making it difficult to enforce New Zealand copyright ownership in foreign countries.

### **Inconsistency with Major Trading Partners/Conflict of Laws**

The fact that our major trading partners (the biggest being Australia) have repealed the commissioning rules can cause undesirable outcomes – for all parties concerned.

For example, where a commissioned work arises in New Zealand between a New Zealand artist and a New Zealand client, the client will be able to enforce the copyright as owner in New Zealand pursuant to s 21(3) – but not in Australia.

This was demonstrated in an Australian decision, *Enzed Holdings Ltd. v Wynthea Pty Ltd*<sup>i</sup>. In that case, the plaintiff commissioner (a New Zealand company) attempted to enforce its ownership of copyright in Australia. The Court refused to consider the New Zealand commissioning rule, instead following the position in Australian law, and holding that the plaintiff was **not** the copyright owner.

The Australian Court decided that, to ensure consistency with the Berne Convention<sup>ii</sup>, the Australian Courts were obliged to extend the protection of Australian law to foreign creators.

This is a clear example of how differing copyright laws between New Zealand and its major trading partners can lead to perverse outcomes.

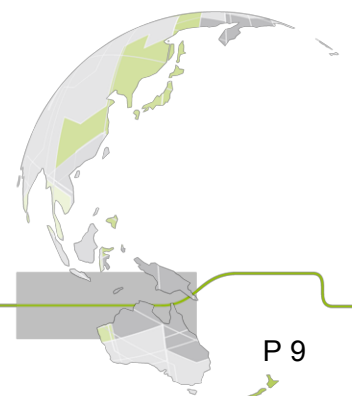
### **Conclusion – Question 8**

In conclusion, DINZ submits that section 21(3) of the Copyright Act 1994 should be repealed so that the author of any commissioned work is the first owner of copyright.

DINZ supports the position reached by the Ministry in 2006-2008 i.e:

*Repeal the commissioning rule (s21(3)) and protect consumers' privacy interests by providing a private (i.e. non-commercial) commissioner with:*

- (a) *the ability to make personal and non-commercial uses of the commissioned work, and*
- (b) *the right to restrain/object to uses of the work by others.*



Submission 2 – Enforcement of Copyright (Questions 66, 76, 79 and 85)

**Question 66** of the Issue Paper is:

*What are the problems (or advantages) with the way the Copyright Tribunal operates? Why do you think so few applications are being made to the Copyright Tribunal? What changes (if any) to the way the Copyright Tribunal regime should be considered?*

**Question 76** is:

*How difficult is it for copyright owners to establish before the courts that copyright exists in a work and they are the copyright owners? What changes (if any) should be considered to help copyright owners take legal action to enforce their copyright?*

**Question 79** is:

*Does the cost of enforcement have an impact on copyright owners' enforcement decisions? Please be specific about how decisions are affected and the impact of those decisions. What changes (if any) should be considered?*

**Question 85** is:

*What are the problems (or advantages) with the existing measures copyright owners have to address online infringements? What changes (if any) should be considered?*

All of these questions (including the under-utilisation of the Copyright Tribunal, which underpins question 66) are relevant to a central issue, of high importance to designers and their clients alike, that issue being:

**How can the owner of a copyrighted work efficiently prosecute an infringement of that work?**

The answer: under current laws and legal institutions, it is **not possible** for a copyright owner to efficiently prosecute an infringement of that work.

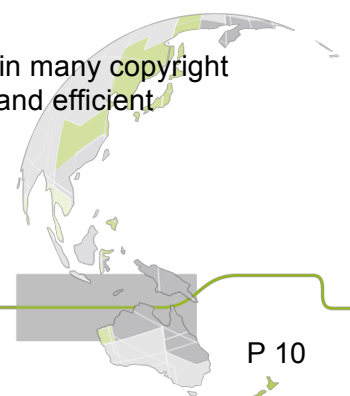
DINZ seeks two outcomes from the current copyright law review to greatly assist its members (and others) to protect their copyrighted works:

1. An efficient method of enforcing copyrights (and resolving copyright disputes); and
2. Minimum (or increased statutory) damages for breach of copyright.

**1. An Efficient Method of Enforcing Copyrights (and resolving Copyright disputes)**

Currently, neither the Disputes Tribunal nor that Copyright Tribunal have jurisdiction to assist in resolving a dispute regarding copyright ownership or unauthorised use. This means that District/High Court proceedings are the only available method for pursuing legal disputes for breach of copyright etc.

Coupled with the usually limited amount of compensatory damages arising in many copyright disputes (see next item), designers are prejudiced by the lack of a realistic and efficient forum to enforce their copyrights.



Options to remedy this problem may be:

- (a) Extend the jurisdiction of the Copyright Tribunal, so that the Tribunal can hear and determine any copyright dispute (under a minimum value threshold of say, \$200,000 in damages). Legal representation should remain optional to reduce costs and ensure access to an efficient decision-making process, and legal costs should not be awarded to successful parties by the Tribunal in such cases; or
- (b) Expand the jurisdiction of the Disputes Tribunal, to enable the Tribunal to hear and determine copyright disputes.

## 2. Minimum damages for breach of copyright:

It is important for the Ministry to recognise that:

- (a) Many New Zealand designers/creatives are small businesses or sole practitioners, and do not have the resources to spend tens of thousands of dollars in legal fees;
- (b) Often a breach of copyright claim might entitle a designer to limited relief for breach (say, between \$3,000 - \$10,000 of compensatory damages, to reflect their usual fixed-term licensing fee or similar loss of profits for the work infringed); and
- (c) The vast majority of copyright infringements experienced by DINZ members (as reported by those members) would involve deliberate misuse of copyrighted works for which compensatory damages would be below \$20,000.

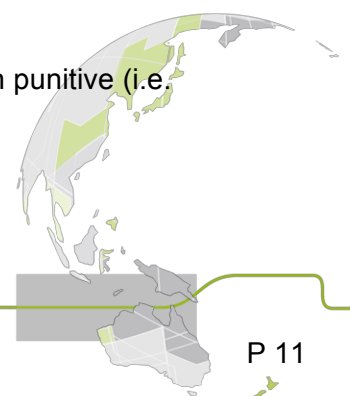
Coupled with the lack of an efficient process/forum for enforcing copyright (see item (i) above), it is **not economically viable to bring legal enforcement proceedings**.

There are some notable examples of this. For example, in the case of *G-Star Raw v Jeanswest*, the defendants (Jeanswest) were found to have committed “*flagrant infringement in that this was blatant copying [of a jean design] by Jeanswest*”. (February 2015, Court of Appeal, para 125)

Jeanswest also refused to provide key evidence until shortly before the High Court trial, and made persistent denials of liability – but refused to call the key employees that would substantiate those denials.

After a High Court hearing that spanned eight days (the Courtroom fees and setting down fees alone would now amount to \$25,600, with substantial solicitor and barristers legal fees in addition), the High Court found infringement but awarded damages to reflect the fact that Jeanswest only sold (it claimed) 63 pairs of the infringing jeans – the net profits of which were \$325 in total<sup>iii</sup>. G-Star was therefore only awarded \$325 in compensation by the High Court.

G-Star appealed, and the Court of Appeal imposed an additional \$50,000 in punitive (i.e. non-compensatory damages) against Jeanswest<sup>iv</sup>.



Media commentaries can be found on both the High Court (<http://www.stuff.co.nz/business/industries/9289902/Jeanswest-NZ-fined-for-copyright-breach>) and Court of Appeal decisions (<https://www.stuff.co.nz/business/better-business/66302907/null>).

Options to address this problem may include:

- (a) Expanding the current provisions of the Copyright Act (s121(2)) that enable the Court to award non-compensatory damages, so that a successful copyright claimant is (at least) 'made whole' by a combination of damages and cost awards; and/or
- (b) Adopting a non-compensatory damages award system for copyright infringement (similar to the "statutory damages" regime in the US) to alleviate this problem.

### Related Issues

DINZ also disputes two related comments made in the 2018 Issue Paper:

The first disputed comment is at paragraph 488:

*The most significant barrier for copyright owners taking legal action is the cost. Legal action in the courts is expensive and copyright owners often limit their enforcement actions to large-scale or commercial infringements. The cost can also provide a strong incentive for a copyright owner and an alleged infringer to settle infringement claims without resorting to the courts.*

Whilst DINZ agrees that costs are the most significant enforcement barrier for copyright owners, DINZ disagrees that "*The cost can also provide a strong incentive for a copyright owner and an alleged infringer to settle infringement claims without resorting to the courts.*"

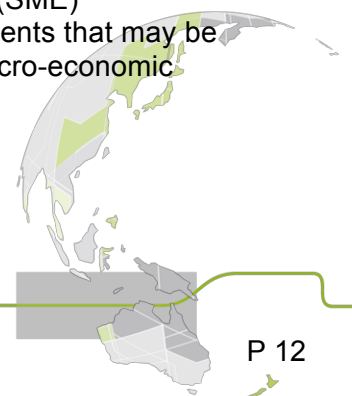
The awareness and appreciation of copyright owners' rights amongst commercial entities in New Zealand is relatively low, especially compared to overseas jurisdictions. In many infringement cases, the infringing party is both ignorant of copyright laws and dismissive of the copyright owner's legal rights. Because of the limited compensatory damages in most infringement cases, it is uneconomic for the copyright owner to initiate legal proceedings.

In that (common) context, there is only limited pressure that can be exerted by the copyright owner, and there is **little (if any) incentive on the infringing party to settle the infringement claim.**

The second disputed comment is at paragraph 489:

*Although small-scale or occasional infringements may not have a significant damaging impact on the copyright owner, the collective impact of multiple infringements of this nature can be significant.*

This fails to recognise the nature of the creative sector (and particularly, the design sector) in New Zealand. The majority of designers and other creatives work in small (SME) businesses, and in many cases, are sole practitioners. Copyright infringements that may be viewed by the Ministry as "*small-scale or occasional infringements*" in a macro-economic sense are in fact incredibly significant for a small creative business.



For example, if a design work created by a small design studio was misappropriated by a large domestic or multi-national business, and the design studio's usual fee for use of that specific work would have been (say) \$6,000 for a license permitting the unauthorised use for 12 months, that may represent most of the monthly trading profit for the design studio. There is no economic way of pursuing the infringing party, which will predictably deny the offending (even if the offending is blatant and without any colour of right). There is effectively no way for the design studio to enforce its copyright. The impact on the design business is significant.

DINZ provides (through its honorary solicitors) free legal consultations for DINZ members, a benefit that has been offered to (and used by) members for more than a decade. That experience enables DINZ to confirm that the scenario above reflects the real-life experience of many SME design businesses in New Zealand, when faced with a copyright infringement.

### Summary

For the above reasons, DINZ considers that copyright laws should be amended to enable:

1. An efficient method of enforcing copyrights (and resolving copyright disputes); and
2. Minimum (or increased statutory) damages for breach of copyright.

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<sup>i</sup> (1984) 4 F.C.R. 450.

<sup>ii</sup> *Enzed*, at 458

<sup>iii</sup> For a copy of the High Court judgment, see <http://www.iplawyer.co.nz/wp-content/uploads/2013/11/G-Star-v-Jeanswest-High-Court.pdf>

<sup>iv</sup> For a copy of the Court of Appeal judgment, see [https://www.shortlandchambers.co.nz/backend/uploads/Jeanswest%20Corporation%20\(New%20Zealand\)%20Ltd%20v%20G-Star%20Raw%20C.V.%20\[2015\]%20NZCA%2014.pdf](https://www.shortlandchambers.co.nz/backend/uploads/Jeanswest%20Corporation%20(New%20Zealand)%20Ltd%20v%20G-Star%20Raw%20C.V.%20[2015]%20NZCA%2014.pdf)

