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INDUSTRIAL PROPERTY ADVISORY COMMITTEE

THE LAW OF COPYRIGHT AS IT  
APPLIES IN NEW ZEALAND TO  
INDUSTRIAL DESIGNS

Report to The Minister of Justice

20 February 1984

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THE LAW OF COPYRIGHT AS IT APPLIES IN  
NEW ZEALAND TO INDUSTRIAL DESIGNS

SUMMARY:

This Report follows a Preliminary Report and submissions arising therefrom. It proposes some urgent interim amendments to the Copyright Act 1962 recognizing that a more extensive review must follow. The proposals endeavour to modify (1) the present excessively punitive provisions relating to conversion damages, (2) the disproportionate benefits given to foreign copyright owners as compared with those given to our nationals by other countries, and (3) the term of copyright protection when an artistic work is applied industrially. The Report also seeks the removal from copyright control of material published in New Zealand in patent specifications and registered design representations, the elimination of the "non-expert" test in defending infringement actions, encouragement to mark articles claiming copyright protection, and an equalisation of the rights arising from designs which originate from models with those which originate from drawings.

## INTRODUCTION

1.1 The Preliminary Report of the Committee on this subject recommended that a number of amendments be made to the Copyright Act 1962 as a matter of urgency. These were intended to overcome certain defects in the present law on an interim basis until such time as a comprehensive study is undertaken as to the appropriate protection to be accorded to industrial design.

1.2 The Preliminary Report was published and further submissions were invited. These have been received and considered.

1.3 In addition since the Preliminary Report was prepared the Committee has had the opportunity to study steps taken in South Africa in the same field. It is of interest to note that the results of the Copyright Amendment Act 1983 in South Africa will bear substantial similarity to those which are expected to flow from the Committee's recommendations.

In South Africa the Copyright law has been amended to make it clear that technical drawings are artistic works in which copyright can subsist. In fact the amendment goes further than this and includes within the definition of "artistic work", "works of craftsmanship of a technical nature".

The South African Amendment makes it clear that infringement of an artistic work occurs when the alleged infringement is a reproduction of a reproduction of the artistic work, (i.e. indirect reproduction) but then effectively limits the period of protection of artistic works of which three dimensional reproductions have been made available, to a period of 10 years.

In South Africa a provision has been introduced enabling regulations to be passed to permit the grant of compulsory licences under copyright works.

1.4 The Committee confirms its recommendation that there should be a two stage approach to the matter. This report deals with the first stage - that of early amendments to the Copyright Act 1962 to deal with certain matters seen as requiring urgent attention.

1.5 In the Preliminary Report, the Committee recommended amendments to sections 20 and 25 of the Copyright Act. As to section 20 the Committee recommended repeal of subsection 8 which at present provides for the "non expert" or "lay recognition" defence in the alleged infringement of a two dimensional artistic work by a three dimensional reproduction. It was further recommended that subsection 8 of section 20 should be replaced by new provisions having the effect of limiting the term of copyright in artistic works applied industrially and infringed by three dimensional reproductions, and excluding from infringement three dimensional reproductions of published artistic works forming a part of patent specifications or registered design representations in the Patent Office Library. The recommendation in relation to section 25 was to provide for conversion damages only where the Court considers that ordinary damages are inadequate.

#### FURTHER SUBMISSIONS RECEIVED

2.1 As indicated above further submissions have been received since the publication of the Preliminary Report, some of which arise directly from it, while others relate to the area which will receive subsequent study. All of these additional submissions are summarized below irrespective of their relevance to the substance of this report, earlier submissions having been traversed in the Preliminary Report.

A total of 25 submissions have been received from 18 persons, firms or organizations, and the Appendix to this report lists all of the submissions which have been received and considered by the Committee at all stages of the study.

#### DUX ENGINEERS LTD. & DUX PLASTICS LTD.

These companies assert that the financial impact of a successful copyright action against a New Zealand manufacturer is so great that there is an urgent need for some simple rule to allow determination of what can, and what cannot, be done. It is claimed that the present copyright provisions are stifling development and competition, and that infringement should not occur unless the industrial article is made from an original drawing of the copyright owner, or a mould is produced directly from the copyright owner's product.

They submit that in any event copyright should not be applicable where the general dimensions of a product are bound by a published standard. At the present time the risk of liability can be avoided only by entering into purchase or licensing arrangements with overseas manufacturers for all products, but even then there is no certainty that the licensor has the right to license the earliest design. New Zealand manufacturers operate, they say, under restrictions while the rest of the world enjoys a free hand. In particular it is claimed there is an urgent need to put New Zealand on the same footing as Australia in the manufacture of industrial designs.

P.L. BERRY & ASSOCIATES (SECOND SUBMISSION)

While welcoming the general trend of the Committee's report, and its recognition of urgency in special areas, some alteration is sought to the draft provisions proposed in paragraph 5.1 of the report. Basically the proposal is that 'industrial application' in (b), and 'publication' in (c), should extend to "New Zealand or any other country". The objective in relation to (b) is to prevent a New Zealand manufacturer acquiring copyright by preparing drawings of an overseas article, or the belated acquisition of copyright in New Zealand by an overseas manufacturer by introduction of an article which has already been on the overseas market for 16 years. The proposal in relation to (c) is aimed at providing as a defence against infringement, publication anywhere of patent specifications or design representations. The view is taken that if a patent or design applicant has applied overseas but not in New Zealand, a deliberate decision has been made to exclude New Zealand from control. The submission also makes a proposal to overcome the difficulty of ascertaining whether or not an article is copyright by requiring marking of the article with the International Copyright symbol as set out in the Third Schedule of our Copyright (International Conventions) Order 1964. This suggestion is made as an interim measure to serve as a warning to the incautious and to assist in the tracing of a copyright owner.

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF  
INDUSTRIAL PROPERTY (N.Z. GROUP) INC. (SECOND SUBMISSION)

The Association generally approves the interim proposals and adds an observation on the remedy of conversion damages. It comments that as a right the present provision is so iniquitous its application at the discretion of the Court should be made the subject of special transitional provisions with the remedy being discretionary in all Court actions following the amendment of the legislation. The Association also referred to a study covering 24 countries on the legal and economic significance of design protection which emphasised that a simple quick and inexpensive design registration system is desirable to ensure protection for designs even if it is necessary to dispense with examination.

MASON & PORTER LIMITED (SECOND SUBMISSION)

After considering the Committee's report Mason & Porter have made the following, additional submissions:

1. That item (b) of paragraph 5.1 ought to include a definition of "applied industrially" which could read "an artistic work is deemed to be applied industrially when the design is reproduced or is intended to be reproduced on more than 50 simple articles".
2. That item (c) would cause considerable difficulty in interpretation. First they note that there will be a loss of copyright in respect of drawings associated with foreign patent specifications published in the New Zealand Patent Office Library in their pre-examination and pre-accepted form. Secondly they refer to the difference which exists between the drawings presented to patent attorneys and the final working drawings on which a product is based. They express doubt as to whether copyright would be available on the latter.
3. That the Committee should consider the provisions recently enacted in South Africa which provide copyright in drawings or product reproductions for a period of 10 years from the date of first publication anywhere, or 10 years from the date of the amended Act.

4. That in order to establish when a product was first published or marketed the Universal Copyright Convention marking provisions by date and circled C be obligatory.

NEW ZEALAND COPYRIGHT COUNCIL (SECOND SUBMISSION)

The Council expressed some concern about the Committee's comments at the foot of page 16 of the report concerning cartoon characters, and suggested that this probably deserves a little more reflection. It also expressed the hope that the Committee would have regard for J.D. Hardie's suggestion that the existing conflict in the relevant legislation be dealt with by excluding from the Copyright Act designs capable of registration under the Designs Act.

NEW ZEALAND INSTITUTE OF PATENT ATTORNEYS  
(SECOND SUBMISSION)

The Institute acknowledges that the present recommendations are only a first step in a comprehensive review of the protection to be afforded to industrial design but stresses that the review must consider the totality of industrial design set out in paragraph 2(2) of their earlier submission. It is urged that a complete review should take place promptly without waiting for any overseas developments. The Institute suggests that there are difficulties in limiting the term of copyright with reference to the date at which the artistic work was first "applied industrially", and questions whether this means industrial application in New Zealand only or anywhere, and whether it includes unauthorised as well as authorised application. The submission further observes that if it is the objective that copyright protection is not to outlive corresponding patent and design applications then applications for such protection must constitute an "industrial application".

Doubt is expressed about the ability of the recommendations to secure the elimination from copyright control of all embodiments of an expired or abandoned patent. It is suggested that to be consistent the earlier recommendation should include a defence against copyright infringement in respect of all constructions falling within the scope of the claims.



A number of examples have been put forward by the Institute to assert that some anomalous situations would arise in the application of the proposed section 20(8)(c) of the Copyright Act and it has been suggested that this matter ought properly to be deferred for full consideration at a later date. It is further questioned whether the cessation of registered patent or design protection in a foreign country ought to have any legal consequence in New Zealand but in any event such a defence against alleged copyright infringement should only be available to those who can show that they acted in reliance on the abandoned patent.

There is also comment in the submission on (1) the ability of a first importer patentee in New Zealand to deprive the overseas copyright owner of his full protection term by abandonment of the importation patent, and (2) of the termination of copyright protection residing in prior part drawings (not originated by the patentee) which are included in the specification of an abandoned patent.

The Institute supports the proposed repeal of the non-expert test now contained in section 20(8) of our Copyright Act, and the recommendation that conversion damages should be discretionary in the case of copying in three dimensions, but urges that transitional provisions be included relating to:

- (a) works created after the amending legislation,
- (b) infringement actions brought after those amendments,
- (c) trials heard after the amending legislation, and
- (d) infringing acts which first occurred after the amending legislation.

#### DEVELOPMENT FINANCE CORPORATION

The Corporation proposes:

- (1) A copyright term of 15-16 years.
- (2) The creation of a new mode of monopoly protection such as 'utility copyright' which has specific application to works of industrial or utilitarian nature.

- (3) A registration deposit system of two dimensional specifications.
- (4) Registration only for [nationals of] countries providing reciprocity.
- (5) A regular appraisal of industrial property laws of our major trading and historical trading partners.
- (6) The immediate revision of the monetary penalties imposed by section 25 of the Copyright Act to be more in line with civil, commercial practice offences.
- (7) A review of the staffing function of the Patent Office in the light of resource requirements and its importance as a tool for aiding protection of industrial intellectual property.

In some supporting comments the Corporation remarks that its suggested copyright registration calls only for a simple fee paid deposit system, evidence of deposit being readily obtainable within 3-6 months of the specifications being deposited, with improvements or modifications being similarly handled, and no examination being required. Searching should be facilitated by partitioning of the field into artistic and utility copyright.

The final observation is that current copyright law acts counter productively in the field of industrial property rights and that a further review is necessary before legislation is drafted as the proposed interim measures go only a little way towards addressing the key concern of the submissions.

#### PLUMBERS LTD

Due to the increasing importance of competitive overseas marketing New Zealand manufacturers are seriously disadvantaged by the current Copyright Act which creates special difficulties in competition under C.E.R., with Australian manufacturers who are not similarly constrained by a copyright act. They complain of the absence of a registration system, the lack of financial resources in small companies, and the high cost of proceedings with penalties grossly exceeding those provided under the Patents and Designs Acts, which can ruin an enterprise. It is

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asserted that the Patents and Designs Acts already provide adequate protection for industrial product design and that copyright law should not apply except where an exact copy takes place. Urgent legislation is sought to eliminate or reduce these problems.

NEW ZEALAND MANUFACTURERS' FEDERATION INC.  
(SECOND SUBMISSION)

The submission states that copyright requirements as applied to industrial designs should follow more closely those applicable to patents and registered designs. In particular it is urged:

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1. that copyright in industrial designs should be acquired through registration;
2. that strict reciprocity should be required of foreign countries;
3. that infringement damages should be limited to profits; and
4. that statutory provisions should define the nature of drawings which can attract copyright and the degree of copying which must exist in order to constitute infringement.

The submission comments on the reasons for submissions received from overseas manufacturers who favour retention of the existing law since it eliminates competition for them in the market place.

Comment is made that the Federation recommends the retention of the 'non-expert' test in the absence of any discussion on this point by the Committee in its report.

YOUNG SWAN MORISON MCKAY

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This submission refers to some judicial criticism of damages in conversion and endorses the view that the present remedy in conversion is completely anomalous and should be abolished immediately. For straight commercial piracy the provisions of section 24(3) could, if necessary, be strengthened. Criticism is made of the unintentional manner in which infringement can occur and the unreasonable level of damages available as compared with infringement of a

registered design. It is asserted that examples exist of copyright owners delaying notification of complaint in order to more effectively damage the infringer. It is urged that transitional provisions be made to secure that the proposed reform on this matter takes place immediately the legislation is passed and should apply to all proceedings where no substantive hearing has actually commenced.

#### THE COMMITTEE'S VIEWS.

3.1 A number of the points arising out of the submissions have been commented upon by the Committee in its Preliminary Report. For example, the suggestion that there should be excluded from copyright protection designs capable of registration under the Designs Act, and the suggestion that the law in this area should be harmonised with that of Australia. These suggestions are not rejected, but are seen by the Committee as relevant to the further study envisaged.

3.2 In the Preliminary Report attention was drawn to the fact that a consequence of the recommendations would be that the copyright in such artistic works as cartoon characters would be limited so as to preclude restraint on three dimensional reproduction (as in soft toys) after 16 years. Surprisingly to the Committee, except for a passing invitation by the Copyright Council for further consideration, no exception was taken to this possibility.

#### SECTION 20(8).

3.3 The recommended repeal of the present section 20, subsection 8, drew no significant submissions - only an expressed reservation by the Manufacturers' Federation which seems to arise from a misunderstanding of the provision. The subsection provides an infringer with a defence where a non expert would not recognise an infringing article as a reproduction of a copyright artistic work. It tends to discriminate against the creators of designs of, for example, an electrical circuit or other works showing technical symbols. The repeal will have no bearing upon the normal tests for infringement (or passing off) of artistic works such as the Manufacturers' Federation's logo of the stylised KIWI.

3.4 Accordingly for the reasons so well expressed in the report of the English Whitford Committee we favour repeal of the present subsection 8. Incidentally the repeal of this subsection will go some distance in assisting with the protection of the design of so called computer firmware (programmed micro chips).

3.5 A number of helpful submissions dealt with the proposed new provisions of section 20. These have been carefully considered.

The proposal in the Preliminary Report was that the maker of a three dimensional reproduction should not infringe copyright in a two dimensional artistic work if the artistic work was applied industrially more than 16 years prior to the making of the reproduction.

It was envisaged that it would be necessary to define when a work is "applied industrially". There appear to be readily available two alternatives. The first would be to adapt the provision in regulation 78 of the Designs Regulations 1954 which is incorporated in clause 3 of the second schedule to the Copyright Act 1962.

The second alternative is to adopt the wording of regulation 17 of the Australian Copyright Regulations 1969. The two regulations have very similar effect and the preference of the Committee is for the wording of the Australian Regulation. It reads:

"17. (1) For the purposes of section 77 of the Act, a design shall be deemed to be applied industrially if it is applied -

- (a) to more than fifty articles; or
- (b) to one or more articles (other than hand-made articles) manufactured in lengths or pieces.

(2) For the purposes of paragraph (a) of the last preceding sub-regulation, any two or more articles -

- (a) that are of the same general character;
- (b) that are intended for use together; and

- (c) to which the same design, or substantially the same design, is applied,

shall be deemed to constitute a single article.

(3) For the purposes of this regulation, a design shall be deemed to be applied to an article if -

- (a) the design is applied to the article by a process (whether a process of printing, embossing or otherwise); or
- (b) the design is reproduced on or in the article in the course of the production of the article."

3.6 Some of the submissions raised questions as to where, and in what circumstances, it must be shown that the work was applied industrially. The view of the Committee (which accords with the South African Law) is that the industrial application should not be confined territorially. While on its face this may appear inconsistent with the concept of domestic novelty applied in New Zealand in relation to patents and registered designs, this is not really so. The industrial application overseas will not have the effect of extinguishing the copyright protection in New Zealand but merely of limiting the term of that protection for particular purposes.

3.7 Industrial application of a design which is unauthorised or an infringing use should not prejudice the copyright owner's rights. However, in some countries such industrial application may be permissible and in others it may not. The owner of rights in the original work may not be the same in other countries. As in South Africa we have endeavoured to incorporate in our recommendations the requirement that it is lawful or authorised industrial application which triggers the term limitation.

3.8 It has been suggested by the New Zealand Institute of Patent Attorneys that a corollary of the Committee's proposal should be an amendment to the law relating to registered designs providing that disclosure on a scale less than will amount to industrial application (i.e. fewer than 50 copies), should not destroy novelty for the purpose of design registration. The Committee considers that such a provision (which exists in Australia) is unnecessary in New Zealand having regard to the dual protection which will continue to exist in this country.

3.9 In the Preliminary Report the Committee recommended a provision having the effect of authorising the copying of patent drawings and representations depicting registered designs so long as any relevant New Zealand registered protection has ceased. This recommendation drew some criticism and its practical effectiveness has been questioned.

It is important that the Committee's intention be clearly understood. It is not intended to give statutory effect to the dictum of Whitford, J. in the well known CATNIC decision in England suggesting that an application for patent protection constituted abandonment of copyright in all works relating to the same subject matter. What is envisaged is a provision to protect those who make reproductions in three dimensional form of artistic works available for search and consultation in the Patent Office Library. It is not intended that the presence of such drawings or other artistic works should result in the loss of copyright in any other works relating to the same subject matter which may have been made but not filed for patent or registered design purposes. The effect will be that so long as the patent or registered design protection (if it existed) - has ceased, the artistic works available in the library may be reproduced in production of three dimensional articles. It is to be borne in mind that many specifications in the Patent Office Library are deposited without attracting any protection in New Zealand. However, if rather than copy drawings in the Patent Office Library the maker of the article copies an article made by another he will (as now) run the risk of infringing copyright that the other may have in e.g. production drawings. It will not then avail the infringer to rely upon the fact that different drawings of the same subject matter, which were not copied, are available in the Patent Office Library.

If the Committee's recommendation is adopted one effect will be that any decision by a patentee to allow a patent to lapse before its expiry will involve relinquishment of copyright in the patent drawings - whether or not reproductions have been applied industrially. This is not expected to provide any significant disincentive to seeking patent protection in the first instance.

3.10 It is also recognised that publication in the New Zealand Patent Office Library, even though no New Zealand patent or design protection has been applied for, will extinguish the New Zealand copyright in the drawings or representations therein against three dimensional reproduction. Frequently the copyright in the drawings will

be owned by the overseas publisher (e.g. the Crown in Great Britain) so that the originator will not be divested of rights. To the extent that he may be, the Committee considers that this is less of a disadvantage than the present position wherein the Patent Office Library cannot be used safely for one of its principal purposes as a technology resource.

3.11 The Institute of Patent Attorneys has pointed out that another consequence of the recommendation will be that embodiments of the invention in a lapsed patent, other than those shown in drawings, will continue to be subject to copyright protection. This may be so, although it must be recognised that the subject matter of copyright protection is not an invention but an artistic work depicting an embodiment in a particular form. A manufacturer will still be entitled to make such embodiments after expiry of a patent relying on the patent disclosure and need have no fear of copyright infringement so long as he does not copy constructions made from drawings not in the patent records.

3.12 The Institute of Patent Attorneys has also pointed out the possibility that an unauthorised person might ascertain details of an innovation outside New Zealand, apply for a New Zealand patent under the "true and first importer" principle then allow that patent to lapse so effectively destroying the copyright of the originator. The likely incidence of this is minimal, and in any event the copyright owner may well have a remedy against the appropriator. Further he may have a remedy on the basis of other drawings against third parties. The Committee considered whether this point might be overcome by excluding from works in the Patent Office Library which might be copied, those lodged there consequent upon infringement of copyright. This is not favoured however because third parties would have no way of knowing whether or not a particular patent drawing is tainted, so leaving in doubt the freedom to use all the material in the Patent Office Library.

3.13 Accordingly, having considered the submissions the Committee now proposes revised wording for the new subsection 8 of section 20 so that it will read as follows:

"The making of an object of any description which is in three dimensions, and any two dimensional matter incidental thereto, shall not be taken to infringe the copyright in an artistic work in two dimensions if -



- (a) the artistic work was lawfully applied industrially in New Zealand or overseas more than 16 years prior to the making of the object or,
- (b) the artistic work or a reproduction thereof formed part of a patent specification or a representation of a registered design which has been published in New Zealand and in which any registered protection in New Zealand has ceased".

3.14 Notwithstanding the difficulties outlined in the Preliminary Report further submissions have suggested that it should be a condition of copyright protection in industrially applied designs that reproductions made by or with the authority of the owner of the copyright, bear appropriate marking or notice of the claim to copyright. This cannot be made a condition of copyright protection because of the provision in article 5(2) of the Berne Convention. This difficulty has been overcome in an interesting manner in the South African law under which an incentive to provide appropriate marking or notice is given in the form of rebuttable presumptions which can be relied upon by a copyright owner in infringement proceedings where appropriate marking has been used. Section 27 of the New Zealand Copyright Act 1962 raises somewhat similar presumptions but these are available only until a defendant puts the relevant questions in issue. The South African provision goes further by offering presumptions as an incentive to mark copyright works with notice by strengthening the presumptions so that they apply unless the contrary is shown.

3.15 The Committee is attracted to the South African provision although it is not optimistic that it will lead to any general practice of marking. The possibility of a defendant avoiding an award of damages by claiming "innocence" does not seem to have had this effect. Nevertheless the Committee recommends the adaptation and enactment of a provision similar to that in South Africa. Appropriate wording might be as follows:

"In an action for infringement of the copyright in any artistic work of which three-dimensional reproductions have been made available, whether inside or outside New Zealand, to the public by or with the consent of the copyright owner if it is proved that such reproductions at the time when they were so made available, carried a label or other mark specifying the following claims namely -

- (a) that copyright exists in the artistic work of which the reproductions were made,
- (b) that a person specified on the label or mark was the owner or exclusive licensee of the copyright, and
- (c) that the reproductions were first made available to the public in a year specified on the label or mark

(which claims may be indicated by means of the symbol "©" in conjunction with the name of the relevant person and the relevant year) it shall be presumed, until the contrary is proved -

- (i) that the reproductions were first made available to the public in the year so specified; and
- (ii) that the first mentioned person had at all relevant times been aware of the claims referred to in subparagraphs (a),(b) and (c)."

#### CONVERSION DAMAGES.

4.1 The Committee confirms its recommendation in the Preliminary Report that section 25(1) of the Copyright Act be amended by inserting a further proviso that in respect of infringing copies which are three dimensional reproductions of two dimensional artistic works, the owner of the copyright shall not be entitled to damages for conversion unless the Court so orders by reason of the fact that in the circumstances damages for infringement of copyright are insufficient remedy to the plaintiff.

4.2 This recommendation met with unanimous approval in the further submissions received. However it was suggested that a transitional provision is necessary to cover the matter of damages in cases pending when the new provision becomes operative. After considering the alternatives the Committee favours the suggestion advanced by Messrs Young, Swan, Mackay & Co, that the new discretion should apply in all cases where no substantive hearing has actually commenced at the date of coming into force of the amending provision.

WORKS OF CRAFTSMANSHIP.

5.1 As indicated in paragraph 1.2 of the Preliminary Report, the subsistence of copyright in features of original design may depend upon the form in which they were originally expressed. It is anomalous that a design originally expressed in the form of a drawing will constitute an artistic work "irrespective of artistic quality" whereas a design originally expressed in the form of a model will be an artistic work only if it is a "sculpture" or a work of "artistic craftsmanship".

So long as features of design are to attract copyright they should do so equally whatever the medium of expression. The designer who works with a model may invest equal originality and creativity as one who works with a pencil and paper.

The Committee therefore recommends that the definition of "Artistic work" in Section 2 of the Copyright Act be amended by an insertion in paragraph (c) so that it will read:

"Works of artistic craftsmanship, or works of craftsmanship of a technical nature, not falling within either of the preceding paragraphs of this definition".

URGENCY.

6.1 The overriding theme running through the submissions received on this topic has been the need for early steps to remedy problems perceived as serious by the commercial community. Further the increasing judicial criticism of the present law providing damages in conversion based on the full value of infringing copies indicates a need for urgency.

Accordingly the Committee recommends strongly that the amendments proposed be enacted as quickly as possible.

SUMMARY OF RECOMMENDATIONS.

7.1 Section 2 of the Copyright Act 1962 should be amended to ensure that designs which originate as craftsmanship will qualify for copyright protection on an equal footing with those which originate as drawings (paragraph 5.1)

7.2 Subsection 8 of section 20 of the Copyright Act 1962 should be repealed to remove the 'non expert' defence (paragraphs 3.3 and 3.4).

7.3 A new subsection 8 in section 20 of the Copyright Act 1962 should be provided to secure (a) the limitation of the term of copyright on three dimensional objects derived from two dimensional artistic works, to a period of 16 years from the first lawful industrial application, and (b) the freedom to use the material expressed in artistic works contained in patent specifications, or the representations of registered designs, which have been published in New Zealand and in which any registered protection in New Zealand has ceased (paragraph 3.13).

7.4 The provision of a definition of "applied industrially" (paragraphs 3.5 to 3.7).

7.5 Those claiming copyright protection for three dimensional articles derived from artistic works should be encouraged to mark those articles to give notice of their claim (paragraphs 3.14 and 3.15).

7.6 Subsection 1 of section 25 should be amended to provide that conversion damages in relation to three dimensional reproductions of two dimensional artistic works should only be available where the Court concludes that ordinary damages would be an insufficient remedy. Transitional provisions should be included (paragraphs 4.1 and 4.2).

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APPENDIX

LIST OF PERSONS, FIRMS AND ORGANIZATIONS  
MAKING SUBMISSIONS ON THE LAW OF COPYRIGHT  
AS IT APPLIES IN NEW ZEALAND TO INDUSTRIAL DESIGNS

AUTOMOTIVE PRODUCTS LIMITED.

BALDWIN, SON & CAREY.

BISLEY, A.M. & CO. LIMITED.

BUCHANAN, ELSPETH (P.L. BERRY & ASSOCIATES).

COLYER, J. N. LIMITED.

DEVELOPMENT FINANCE CORPORATION.

DUX ENGINEERS LTD & DUX PLASTICS LTD.

FISHER & PAYKEL LIMITED.

FORD MOTOR CO. OF NEW ZEALAND LIMITED.

GLAXO NEW ZEALAND LIMITED.

HARDIE, J.D. & CO.

INTERNATIONAL ASSOCIATION FOR THE PROTECTION  
OF INDUSTRIAL PROPERTY (N.Z. GROUP) INC.

MASON & PORTER LIMITED.

NEW ZEALAND COPYRIGHT COUNCIL.

NEW ZEALAND INSTITUTE OF PATENT ATTORNEYS.

NEW ZEALAND MANUFACTURERS' FEDERATION INC.

PLUMBERS LIMITED.

YOUNG SWAN MORISON MCKAY.

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