



Copyright and Museums

What is protected by copyright? When do you need permission to use copyright material? How do you find the copyright owner? This guide introduces you to some things to bear in mind when working in a complex field.

How does copyright affect museums?

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Museums face issues of copyright in areas as diverse as collection management, exhibitions, publications and websites, employment policy and marketing. Museums use copyright material belonging to others. They commission copyright material such as artworks. They also create new copyright material such as texts, illustrations and photographs.

Copyright materials in museums

Here are some examples of materials that are used by museums and are protected by copyright.

- Texts - works in books, newspaper articles, pamphlets, private letters, reports, government documents.
- Visual and graphic works - drawings, diagrams, maps, charts, plans, paintings, original prints, sculptures, photographs, and works of artistic craft (e.g., ceramics, woodcarvings and tapestry).
- Music - recorded and in published form.
- Films, videos and CD-ROMs.
- Archival sound recordings (e.g., an interview or oral history).

Guidance on copyright

Te Papa has compiled a manual, *The Copyright Act 1994: A Manual for New Zealand Museums*, which outlines how the act applies to the work of museums. The manual is available from Te Papa National Services. However, this guide and the manual are not comprehensive statements of the law applicable to every situation.



An overview of copyright



WHEN IN DOUBT, REFER TO THE ACT OR SEEK LEGAL ADVICE.

What is copyright?

Copyright is an intellectual property right. Intellectual property is anything produced by people's thought, and intellectual property rights determine its ownership and control. Other examples of intellectual property rights are patents, registered designs, trademarks and moral rights.

Mātauranga Māori

While the Copyright Act 1994 encompasses works produced by Māori, it has no express provisions for the protection of Māori knowledge and understanding, in document or other form. The Act's implications for these issues are noted in the copyright manual.

Who owns copyright?

Ownership of the copyright in a work exists separately from the ownership of the work itself. Copyright is something that can be owned, sold, bequeathed or misappropriated. It is commercially valuable.

The ownership of copyright generally remains with the author (the person who first created the work) or the person who commissioned the work (except literary works), unless the copyright is specifically transferred when the work is sold or transferred.

Be aware of ownership

Museums often do not own the copyright for most copyright works in their collections. Therefore, permission must be obtained from the copyright owner before these works are copied. Museums also have a custodial responsibility to protect the copyright owner's interest in the works they hold.

How long does copyright last?

Copyright exists for different periods of time for different categories of things. The following table is a summary.

CATEGORIES	DURATION OF COPYRIGHT
Broadcasts	50 years from the end of the year of broadcast. (Before 1 April 1963: no copyright exists, unless in the actual work itself.)
Cable programme	50 years from the end of the year of first inclusion in a cable programme service.
Computer-generated works Work generated by computer where there is no human author	50 years from the end of the year of creation. (Before 1 January 1995: the work was treated as a literary work and should be considered under that heading. Copyright expires at the end of 50 years from the year in which the work was made.)
Crown copyright	100 years from the end of the year in which the work is made (except for typographic arrangements, for which the duration is 25 years). (Note: museums are not “the Crown” for this purpose.)
Literary, dramatic, musical and artistic works Literary works: any work, other than a dramatic or musical work, that is written spoken or sung, including a table or compilations and computer programmes. Dramatic works: dance, mime and a scenario or script for a film. Musical works: a work consisting of music, excluding words or actions to be performed with the music. Artistic works: a graphic work, photograph, sculpture, collage, model, work or model of architecture, works of craftsmanship.	50 years from the end of the year of the author’s death. (The following exceptions apply for the period from 1 April 1963 to 1 January 1995: For unpublished works where the author died before 1 January 1995: 75 years from the end of the year in which the author died. For works published, performed or broadcast after the death of the author, where the author died before 1 January 1995: the shorter of either 50 years from the end of the year in which the work was first published, performed or broadcast; or 75 years from the end of the year in which the author died.)
Photographs	50 years from the end of the year of the death of the photographer.
Sound recordings and film Sound recording: a recording of sounds, which may be reproduced, including recording of literary, dramatic or musical works. Film: a recording on any medium from which a moving image may be produced.	50 years from the end of the year of making, or 50 years from the end of the year in which first made publicly available, whichever is longer. (Before 1 April 1963: no copyright exists unless the work came under the definition of an original dramatic work in the 1913 Act, and when section 23 of the 1994 Act applies.)
Typographical arrangements	25 years from the end of the year in which the edition was first published. (Before 1 April 1964: no copyright exists.)
Works of unknown authorship	50 years from the end of the year in which the work first became publicly available. (Note: for published works, if the author subsequently becomes known during the term of copyright, the term is 50 years from the end of the year of the death of the author; for unpublished works, the term is 50 years from 1 January 1995.)



COPYRIGHT DOES NOT APPLY TO AN IDEA, BUT IT DOES APPLY TO THE MATERIAL EXPRESSION OF THAT IDEA.

What does copyright do?

Copyright protects an original work from being copied without the permission of the copyright owner. Copying is defined as reproducing or recording a work in any material form. That includes broadcasts, data stored in computer memory, digital recordings, digitised images, facsimiles, photocopies, photographs, prints, publications and sound recordings. Copyright is breached if a 'substantial part' of an original work is copied, as described in the manual.

What does copyright apply to?

Any work or object created by people is automatically copyright. An original work is automatically protected as soon as it is recorded, written down or takes some physical form. A work may be protected by copyright even if:

- it does not have the symbol © or a copyright notice on it
- it has not been published
- it is not ostensibly 'artistic' or 'cultural'.

An idea may be used repeatedly, so long as the original expression of it is not repeated.

Moral rights

Authors, performers and artists have the moral right to be identified as the author or director of a work, and to object to false attribution or the derogatory treatment of their work. The author of a copyright work retains their moral rights even if they relinquish copyright or ownership of the work. Moral rights can be waived.

A creator who has asserted moral rights must be identified reasonably prominently in relation to all copies of the work. In a book, for example, an assertion can often be found on one of the first pages.

Moral rights affect various museum activities. The terms and conditions applying to each moral right are specified in the copyright manual.

Some ways **copyright** affects *museums*

Museum exhibitions and loans

Exhibiting an original work does not infringe copyright, but displaying an unauthorised copy does. You may copy images once for exhibition development purposes without infringing copyright if this can be considered research.

Showing a broadcast (and any sound recording or film included in it) or a cable programme as part of an exhibition does not infringe copyright if no admission fee is charged. Some public performances are protected by copyright. You need to be satisfied that copyright approval has been obtained before performances are given or recorded.

When works are lent or borrowed for exhibition, both the lending and receiving museums must obtain approval from copyright owners before the works are copied for any purpose, such as inclusion in catalogues or promotional material.

Educational and public relations activities

As museums are not considered to be educational establishments in the Act, no education exemptions apply.

Any work that is derived from published sources, such as an educational handout for schools, must be an original expression of those sources. You should not make copies of substantial parts of published works unless copyright permission has been granted.

When using copyright material for marketing and public relations purposes, you must obtain copyright clearance. You also need to keep moral rights issues in mind. These uses include promotional products such as posters and flyers, advertisements and public corporate documents.

You will own the copyright in public relations products you create (for example, posters, diaries and calendars), as well as in compilations you produce, such as promotional videos or CD-Roms. However, copyright ownership of the individual components will remain with the owners unless otherwise negotiated.

Public photography, film and video

Various copyright issues are raised if the public is permitted to make copies of works on display by photograph, film or video (these issues are described in the copyright manual). Placing a blanket ban on such copying overcomes the legal and commercial risks involved. If you prominently display the ban as a condition of entry to the museum, the public will be contractually bound to observe it.

Photographs and videos of general scenes within the museum may be permitted, if copyright works appear only incidentally.

Commercial film and video products are well protected by copyright. The manual outlines suitable approaches to this complex area.



Museum publications

'Publication' means issuing a work to the public by sale or otherwise, including electronic retrieval systems. Establish the copyright ownership of all work included in a publication and obtain clearance for its use. Copyright ownership terms and agreements must be included when you draw up commissioning contracts for publishing.

All published material should be marked copyright to the museum, with the date of publication, and you should include a statement that it may not be copied without permission.

Other copyright images supplied to the public, such as photographs, should be accompanied by an assertion of the museum's copyright.

The conservation of works

Photographing a work to record conservation treatment may breach copyright, but the risk of action is low where the photographs are used only within the museum. Conservators and other museum staff should, however, gain copyright approval before giving public talks or publishing articles illustrating the treatment or use of copyright works. (See also the copyright manual's chapter on moral rights.)

Museum employment contracts and commissions

Museums own the copyright in work produced by their employees, including field and personal notes related to their employment. They do not have rights over the ideas that employees form in the course of their employment, so long as the expression of those ideas elsewhere is different. To avoid later disputes, employment contracts should make explicit reference to the rights of all those involved.

Museums may seek to retain copyright, in writing, in all contracts and commissions in order to protect the right to use the work as they wish in future.

Databases, multimedia productions and the internet

Copyright exists in databases and multimedia productions as 'compilations'. The copyright ownership and protection of the individual components of compilations may be complex. These issues are discussed in the manual.

Once images and text are published on the Internet and other online access networks, there is little control over their use. Copyright is very difficult to enforce. See the section on museums online on page 12, as well as the copyright manual, for further guidance in this area.

Some frequently asked questions

When is permission needed from a copyright owner?

You need permission from a copyright owner to make a copy of a work protected by copyright by:

- photographing it
- photocopying it
- copying it by hand
- filming it
- creating a digital image or copy of it (for example by scanning)
- duplicating a computer file containing the work.

You also need specific permission covering every adaptation of an original, public showing of a copy you have made, or issuing of copies (whether or not by sale) of a copyright work. This permission is often referred to as a 'licence'.

Caution - multiple ownership

In some cases, there can be more than one owner of copyright - for example, where copyrights are passed to a number of beneficiaries in a will, or where two people collaborate to create a work.

Are there any exceptions to the rule?

You do not need the copyright owner's permission if

- the copyright has expired, or
- you make a single copy for your own research or private study purposes, and the use is 'fair'. Fairness is a question of degree, and depends on the number and extent of extracts and the use made of them. The copyright manual offers guidance in this.

Some archives and 'prescribed libraries' may make electronic and other copies of documents with the objective of preserving or replacing items of their own collections, without risk of infringing copyright.

Do we need permission to scan and alter an image to create a new work?

You do need permission to produce a new image by altering or adding to an original image, if an important part of the original is still recognisable.

Do we need permission to reproduce a painting we own?

You need permission unless you own the copyright, or unless it's one of the exceptions to the copyright rule (above). You do not automatically become the owner of copyright when you become the owner of the painting.

To transfer ownership of copyright, there must be a document signed by the copyright owner. The position is the same for any other item protected by copyright.

Do we have to pay a fee to another museum or gallery to reproduce a work in its collection?

In some cases, a museum or gallery owns copyright in a work in its collection, and you need permission from the museum or gallery to reproduce the work - and may be charged a fee. In other cases, the copyright is owned by someone else, or has expired.

In some cases, a museum or gallery charges an access fee to reproduce works from its collection, even if it does not own copyright or the copyright has expired.

Do we need to consult our community when we use images relating to them?

Every museum wants to build strong relationships with its community. If a community group has a vested interest in a particular image or text, it makes sense to talk through with them how you plan to use it.

Say, for example, you want to use a photograph of a local marae or a photograph of a group of miners whose grandchildren are still living in the community. Such groups may have no legal rights to these images, but they may feel a sense of ownership that the museum needs to respect.

Obtaining the right to copy a *work*

Owning the copyright

One of two main ways to obtain the right to copy a work is to own the copyright in the work by, for example:

- creating or commissioning the work
- buying, being given or bequeathed copyright by the owner (assignment of copyright).

Obtaining a licence

The second way to obtain the right to copy a work is to obtain a licence from the owner for the use of a work, or gaining permission from the owner to reproduce a work for a particular purpose.

When acquiring new works, museums may seek to buy ownership of the copyright or to obtain a licence or get permission to copy the work for specific purposes. Arranging assignment of copyright or arranging licensing in advance of anticipated uses can have significant advantages, such as using works for commercial purposes.

Correspondence with a copyright owner seeking the right to reproduce a work forms a contract between the two parties. The correspondence must state clearly the conditions and intended use of the work.

The copyright manual includes model letters, procedural guidelines for dealing with copyright works and moral rights issues, and information required for copyright search and recording.

Finding the owner of copyright

Copyright is administered by copyright owners themselves or by collecting societies that provide centralised copyright licensing services to copyright users.

The following copyright collecting societies operate in New Zealand and are Copyright Council members:

- Australasian Performing Rights Association Limited
- Australasian Mechanical Copyright Owners Society Limited
- Copyright Licensing Limited
- Phonographic Performances (NZ) Limited
- Screenrights.

Contact details are listed on page 15. Below are some suggestions to help you find an owner of copyright.



Written works

Approach Copyright Licensing Limited (CLL) in the first instance. CLL is a non-profit collective licensing organisation which provides centralised copyright clearance for the copying of extracts from books, periodicals and journals for internal use within New Zealand institutions.

CLL negotiates licences and appropriate fees with prospective users, and collects and distributes fees to owners of the works used. For permission for other types of copying from written material you should communicate directly with the copyright owner, though CLL will help you in this. CLL is jointly owned by the Book Publishers Association of New Zealand and the New Zealand Society of Authors, and has an 0800 phone number. New Zealand Books in Print, published annually by Thorpe, is a useful tool if you wish to trace a publisher or author.

Music

Approach Phonographic Performances (NZ) Limited (which represents most major international and New Zealand-based recording companies and their artists) in the first instance if you wish to copy or reformat music.

Approach Australasian Mechanical Copyright Owners Society Limited if you want to reproduce recorded music.

Film

Approach Motion Picture Distributors Association in the first place if you wish to copy from an international movie, or the Screen Producers and Directors Association if it is a New Zealand film.



Video

Contact the Video Association of New Zealand (VANZ) if you wish to copy from a video.

Television

Approach the television broadcaster or Screenrights (international programmes) or the Screen Producers and Directors Association (New Zealand programmes) in the first instance.

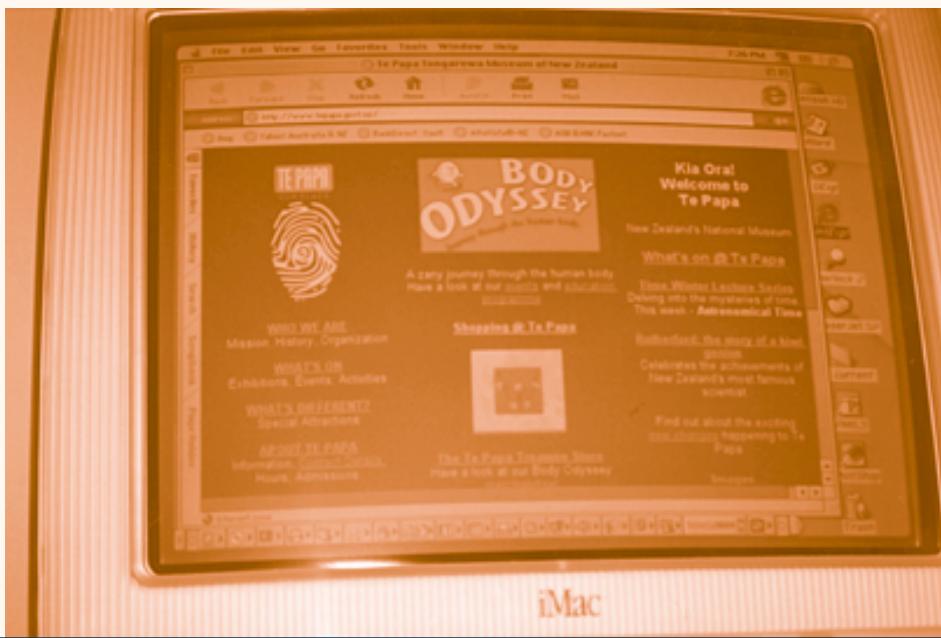
Photographs

Copyright in photographs may be hard to trace. If a photo has a source in advertising, try the Advertising and Illustrative Photographers Association. Other places to try are the Photo Library Association and the NZ Institute of Professional Photography.

Ask other people who have reproduced the work

If you know that the work has been reproduced by someone else - for example, in a book - it may be worth contacting that person or organisation for information about where they obtained permission.

Museums *online*



You want to digitise?

Museums, like other organisations worldwide, are taking advantage of digital technology to reach out in new ways to their communities and audiences. Many museums are developing their own websites and online facilities.

Digital technology has had a big impact on the availability of copyright works for these purposes. Copyright law will inevitably be revised to take the changing digital environment into account and you will need to keep up to date on it. In this section we offer some guidelines for operating in this increasingly important area.

Go for the easy options

When you are choosing images to digitise, if you want to avoid copyright complications consider the following:

- an old item for which copyright has expired (e.g., a photograph taken more than 50 years ago)
- an old functional article (more than 50 years old), such as a machine or appliance, where the designer is unknown
- a work in which you own the copyright
- a work which is licensed by one of the copyright collecting society members mentioned in the previous section
- a work for which you already have information about the copyright owner.

Cautions

- There may be more than one copyright work in a physical object - for example, a book may contain text, illustrations and photographs, all of which are separate 'works' and may have different owners and different periods of protection.
- A person who sells or donates an item to you may not be the copyright owner.
- You do not own copyright unless the previous owner has signed a written document assigning the copyright to you.

What to ask the copyright owner for

For an image to be available online, the permission you request from the copyright owner should cover:

- creating a digitised image of the work, and
- making the image available for viewing online.

You must also check whether the copyright owner will permit viewers of the work to print a copy, and, if it's on a website, to copy the image onto their computers.

What the copyright owner is likely to ask for

Attribution

The creator of any copyright work made after 1 January 1995 has a right to be identified as such. This is called the 'moral right' in the work.

Copyright notice

You could use a copyright notice near an image as a hypertext link to more detailed information about the copyright owner, and the circumstances (if any) in which a viewer may download or print an image.

Faithful reproduction of the work

Publishers of digitised material often publish art works at low resolution, which allows viewing on screen but does not produce very good printed copy. This is often required by copyright owners, as a way of discouraging unauthorised reproduction of their digitised work.

If the copyright owner does not require you to do this, you should check that they understand that you plan to publish the work at low resolution, and perhaps get their written consent in the agreement.

If you plan to make other alterations, such as cropping or overprinting, your agreement with the copyright owner should specifically authorise these.

If the copyright owner is not the creator, you should also get the creator's written consent. This is because the Copyright Act gives creators a right to take legal action if their work is treated in a derogatory way (under moral rights). (Publishing a work in low resolution is unlikely to be derogatory, as its purpose is to discourage unauthorised reproduction. However, other alterations may infringe the creator's rights, if done without the creator's consent.)

Measures to prevent or limit unauthorised copying

Many copyright owners are worried about the potential for unauthorised reproduction of their work if they allow their work to be digitised - particularly if it is published on the internet.

You cannot prevent unauthorised copying of a digitised image, in the same way that you cannot prevent unauthorised copying of an image published in a book. However, there are technological means (such as digital watermarking) which can be used to inform viewers of the image about the copyright owner, and whether the image has been tampered with.

Another approach is to make the image available in low resolution, so people are less likely to copy it. You can also publish information about the copyright in the image, and the viewer's copyright obligations, on the website where the image appears. You should make sure that the copyright owner clearly understands what steps you are going to take in relation to copyright, and what the effect of those steps will be.



Payment

There are no standard rates of payment for a licence to create and publish a digitised image of a work. In some cases, a copyright owner may ask for something other than money (for example, a copy of the catalogue) or may be prepared to give the permission for free.

Before you digitise

Check

- Has the copyright expired?
- Do you have the copyright owner's permission?
- Does the permission must cover everything you intend to do with the copy. Think ahead, and you won't have to go back to the owner for further consents.

Before you publish digitised images

Check

- Have you prepared an accompanying notice giving copyright information on the digitised images?
- Do you display, at the very least, a clear notice about what people viewing the images are permitted and not permitted to do with them? Is printing or downloading forbidden?
- On your website, do you have a prominent notice on each page which says something like Copyright information, and which is linked to a page with more detailed information on what viewers may and may not do with material on the site? (You may also want to have the copyright notice and/or creator's name near each image, linked to further information about what viewers may and may not do in relation to that image.)
- Have you complied with any conditions in the licences from the copyright owners? For example, have you agreed only to make the image available in low resolution so people are less likely to copy it?
- Have you attributed each creator? The creator may require you to do this as a condition of the licence, or may otherwise have asserted moral rights.
- If you have altered or modified an image, do you have the creator's consent? The creator may require you to get his or her consent to make any alterations as a condition of the licence. In any event, you also have an obligation not to prejudice the reputation of the creator by distorting or mutilating the work.

Contacts for copyright

permissions

BELOW ARE CONTACT DETAILS FOR ORGANISATIONS REFERRED TO IN THIS PUBLICATION, AND RELATED ORGANISATIONS.

Advertising and Illustrative Photographers Association (AIPA)

PO Box 9218, Newmarket, Auckland
Phone: 64-9-309 1825; **Fax:** 64-9-309 6107;
E-mail: ian_Batchelor@compuserve.com

Australasian Mechanical Copyright Owners Society Limited (AMCOS)

PO Box 37695, Parnell, Auckland
Phone: 64-9-379 0638; **Fax:** 64-9-379 3205;
E-mail: ahealy@apra.com.au

Australasian Performing Rights Association Limited (APRA)

PO Box 6315, Parnell, Auckland
Phone: 64-9-379 0638; **Fax:** 64-9-379 3205;
E-mail: ahealy@apra.com.au

Book Publishers Association of NZ (BPANZ)

PO Box 36477, Northcote, Auckland
Phone: 64-9-480 2711; **Fax:** 64-9-480 1130;
E-mail: bpanz@copyright.co.nz

Copyright Council of New Zealand Inc (CCNZ)

PO Box 36477, Northcote, Auckland
Phone: 64-9-480 2711; **Fax:** 64-9-480 1130;
E-mail: council@copyright.co.nz;
Website: www.copyright.org.nz

Copyright Licensing Limited (CLL)

PO Box 36477, Northcote, Auckland
Freephone: 0800 480 271
Phone: 64-9-480 2711; **Fax:** 64-9-480 1130;
E-mail: cll@copyright.co.nz

Motion Picture Distributors Association of New Zealand (MPDA)

PO Box 2627, Auckland
Phone: 64-9-376 4480; **Fax:** 64-9-360 1135;
E-mail: whood@fvlb.org.nz

New Zealand Institute of Professional Photography (NZIPP)

PO Box 1715, Palmerston North
Phone: 025-790 016; **Fax:** 64-6-358 9683;
E-mail: primestk@xtra.co.nz

New Zealand Society of Authors (NZSA)

PO Box 67013, Mt Eden, Auckland
Phone/Fax: 64-9-630 8077

New Zealand Television Archive

PO Box 30945, Lower Hutt
Phone: 64-4-619 0564; fax: 64-4-569 8810

Phonographic Performances (NZ) Limited (PPNZ)

PO Box 37442, Parnell, Auckland
Phone: 64-9-308 0510; **Fax:** 64-9-306 4977;
E-mail: terence@rianz.org.nz

Photo Library Association of New Zealand Inc (PLANZ)

PO Box 136, Napier
Phone: 64-6-835 1143; **Fax:** 64-6-835 1142

Recording Industry Association of New Zealand Inc

PO Box 37442, Parnell, Auckland
Phone: 64-9-308 0510

Screenrights

PO Box 1248, Neutral Bay NSW 2089,
Australia
Phone: 61-29-904 0133; **Fax:** 61-29-904
0498; **E-mail:** james.dickinson@screen.org

Screen Producers and Directors Association (SPADA)

PO Box 9567, Wellington
Phone: 64-4-802 4577; **Fax:** 64-4-385 8755;
E-mail: info@spada.co.nz

Video Association of New Zealand (VANZ)

PO Box 2627, Auckland
Phone: 64-9-376 4480; **Fax:** 64-9-360 1135;
E-mail: whood@fvlb.org.nz



Further reading

Museum of New Zealand Te Papa Tongarewa (1997). *The Copyright Act 1994, A Manual for New Zealand Museums*. Wellington: Museum of New Zealand Te Papa Tongarewa. (Available from Te Papa National Services.)

Useful resources

The Copyright Council will give general free advice on the implications of the Copyright Act 1994 and the use of copyright works either under the Act or by negotiation of licences. The Council is an interface between copyright organisations and people seeking access to use copyright material, and issues updated directories of copyright organisations in pamphlet form. If sending a written enquiry to the Council, please include your phone number and e-mail address.

If you need to know about how the law applies in a particular situation, seek advice from a copyright lawyer.

Te Papa National Services Resource Guides | He Rauemi are published by Te Papa National Services in support of its work with museums, galleries, iwi, and related organisations throughout New Zealand to enhance the museum services offered within communities.

For further information or to discuss training opportunities related to this topic please contact:

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	Cable Street, PO Box 467, Wellington
	Phone (04) 381 7000
	Fax (04) 381 7080
	email natserv@tepapa.govt.nz
	Website www.tepapa.govt.nz/National_Services/
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