

## Submission to Ministry of Business, Innovation and Employment

### Copyright Act Issues Paper

April 2018

#### *Background*

WeCreate is the alliance of New Zealand's creative industries with the mission to grow the creative sector's contribution to New Zealand's social and economic wellbeing. WeCreate's member organisations represent content creators and owners across the spectrum of the creative industries from screen, to games and books, visual arts, advertising, music, performing arts, mixed reality, design, photography and architecture. In addition to our members, large businesses and government agencies in the New Zealand creative sector are Friends of WeCreate. Together our Members and Friends represent over 25,000 individual creators and creative businesses.

In 2016, WeCreate commissioned NZIER to prepare *The Evolution of Kiwi Innovation*. This report demonstrated that kiwi creativity drives jobs and economic growth, not only in the creative industries, but increasingly as a key enabler of other sectors.

The New Zealand creative sector:

- **Enriches the lives of all New Zealanders** through our ideas, and our stories of people and place
- Brings fresh thinking and new solutions to **help Kiwis thrive**
- Is at the forefront of **technological innovation**
- Drives **growth** in the digital age through **innovation and productivity, diversifying** our output and exports beyond traditional industries
- Generates **high value jobs and outputs** – not just in the creative industries, but **in every sector**
- Fosters the skills and talent we will need to confidently face the **Future of Work**
- Offers new opportunities for **small business and regional development**
- Is sustainable and **kind to the environment, helping to meet emissions targets**
- **Exports globally**, growing trade weightlessly and with few barriers

In the past 2 years, WeCreate has consulted widely in the development of an Action Plan to grow our creative sector for the good of all New Zealanders. The comments made here are informed by that process, which has involved over 200 creative industry leaders and government officials and included the establishment of six Working Groups comprising industry experts, one of which is dedicated to Regulation. Copyright is the means by which creators of content manage and monetize their work and is the regulation that is most critical to the success of the Creative Sector.

We support the submissions of our Members and Friends and record that WeCreate is currently seeking a concerted industry-led partnership with government to grow our sector's contribution to Aotearoa New Zealand's wellbeing. Following two years of consultation, WeCreate has proposed an Action Plan to accelerate growth, which includes recommendations to:

- Better connect our creative industries for growth - with each other, with government, with Māori, with other industries, and with the world.
- Enhance the profile and potential of our creative sector; and creativity as an enabler of social and economic wellbeing.
- More accurately measure, and track, the value and potential of our creative sector.
- Enable accelerated growth in the capability, capacity, and export potential of our creative people and businesses.
- Support our creators' ability to derive value from their work.

The government response, led by MBIE and MCH, to the WeCreate Action Plan is currently being prepared.

We welcome the continuation of the engagement we have with the Ministry to increase the understanding of the potential of and challenges for NZ creative businesses, as they relate to copyright policy. Policy that has clarity and is efficient for business is welcomed by the Creative Sector.

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## Submission

1. WeCreate congratulates MBIE for undertaking a review of this legislation. Copyright legislation that provides clarity and certainty is useful for both the creators of copyright works and those who wish to access and use others' creative works.
2. We refer to our earlier submission (attached) – *Copyright Drives New Zealand's Creative & Digital Wellbeing* – and emphasize that the principles-based approach to copyright as adopted by the World Economic Forum<sup>1</sup>, should underpin the review of New Zealand's Copyright Act.
3. Regulation that is fit-for-purpose underpins every sector in the economy. If we are going to maximise the opportunity presented by New Zealand's creative sector, including the digital opportunity, the regulatory framework for creative business needs to be informed by the experience of the sector and be evidence-based.
4. Our IP framework should support and reward New Zealanders and New Zealand businesses that create value in IP. Robust, clear and certain copyright law underpins the health and sustainability of Aotearoa New Zealand's creators and creative industries.
5. We draw MBIE's attention to the *UK Intellectual Property Office's Five Year Strategy – Making life better by supporting UK creativity and innovation*.<sup>2</sup> The 6 goals of this strategy are recommended for their emphasis on understanding the value of IP for productivity, employment and exports.
6. We do not support all of the Proposed Objectives as outlined in the Issues Paper. Objective 2 includes the use of the words "net benefits for New Zealand". WeCreate, and many of our members, have experience with and are alert to the issues involved in measuring areas of the economy, including the creative industries. One of the goals of WeCreate Action Plan (as noted earlier in this submission) is on Measurement and Research and the need for greater accuracy in how occupational and business value is captured. This is especially true for the digital areas of the economy – where much of the potential and growth of the creative sector will take place. We are concerned that making policy decisions based on a net benefits test will result in the use of data that is not accurate.
7. The Issues Paper does not clarify whether the social and cultural wellbeing value of the creative sector to Aotearoa New Zealand will be factors in calculating "net benefits". With Budget 2019

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<sup>1</sup> [http://www3.weforum.org/docs/WEF\\_GAC\\_CopyrightPrinciples.pdf](http://www3.weforum.org/docs/WEF_GAC_CopyrightPrinciples.pdf)

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/528791/Corporate\\_5\\_Year\\_Strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/528791/Corporate_5_Year_Strategy.pdf)

expected to focus on wellbeing, we would anticipate that policy decisions across government would also take into account wellbeing benefits.

8. There are currently no mechanisms available to copyright owners for effective enforcement when IP rights are breached.
9. Information and resources about IP need to be accessible and the next generation, whose income will more heavily rely on knowledge assets, need to know how to manage and monetize IP.
10. When business value is not held in physical assets, but in digital assets, digital protections need to be strong. As New Zealand's economy becomes more reliant on digital business, cyber-security and increased understanding of the opportunities and risk of cloud-services is critical.