

SUBMISSION TO MBIE
Copyright and AI
October 2026

BACKGROUND

WeCreate is the alliance comprising forty of Aotearoa's major creative industry associations and organisations (representing 30,000+ Kiwi creators, support people, and creative businesses), which was founded in 2014 to propel growth in the sector and increase its contribution to New Zealand's social and economic wellbeing.

New Zealand's creative economy is an ecosystem, as reflected in the image below. All of these industries are digital to some extent - whether it's how their products and services are made, marketed, distributed or consumed. The market for digital creativity is constantly evolving, with generative Artificial Intelligence (AI) being the latest technology development to present both risks and opportunities for our creative sector.

New Zealand's creative sector contributes an estimated \$18.5b to the country's GDP (4.3%). It generates \$4.1b+ in exports, making it New Zealand's fifth-largest export earner and one of its fastest-growing. Our creative economy could be worth \$25b to New Zealand by 2030, capturing a greater share of the global creative market, which is projected to be worth US\$4,146b by 2030¹

OUR ABILITY TO SECURE THIS GROWTH RELIES ON IP OWNERSHIP IP IS WHAT WE SELL TO THE WORLD



WeCreate supports the [CISAC Shared Declaration for Human Creativity](#) :

1. Creativity is a fundamental human endeavour and must be actively protected
2. Innovation must strengthen – not weaken – creative value
3. Collective Management is essential to a fair and sustainable creative ecosystem
4. Governments and decision-makers must act to safeguard the future of creativity

¹ [Entertainment And Media Market Share Analysis Report 2026-2030](#)

WeCreate calls for copyright law that is fit for purpose for the digital world that creative professionals and creative businesses are operating in. We note that Copyright and AI regulation, data-centre investment and wider digital harms regulation are being progressed by different Ministers on different timelines, in different parts of government. WeCreate supports the cohesive 'one-stop shop' approach being taken in Australia, where an AI Office has been established within the Department of Prime Minister and Cabinet.

There is significant knowledge and experience of the digital world available for MBIE to draw on when updating the Copyright Act. The development of the internet, web-search and social media provide lessons across almost 30 years of the impact of allowing technology companies to operate without meaningful, enforceable, guardrails - on society, culture and our creative industries (including media).

Data centres may be the physical infrastructure of AI, but the "heart" of AI is the copyrighted creative works that it is trained on. Copyright is the mechanism by which the people who make those works are paid. Policy development of this type requires a coordinated, properly resourced, all-of-government response spanning copyright, trade & exports, privacy, transparency, competition, digital safety and investment. This is important work that will have significant short, medium and long-term ramifications for our country, and our creative industries.

WeCreate submits that it is time to reassess New Zealand's "light touch" regulatory approach to AI as outlined in the AI strategy published in 2025. So far this strategy has failed to protect both our creative industries, and our citizens, from social, cultural and economic harms brought about by digital technologies.

Artificial Intelligence, including generative AI, is the latest in a line-up of technology that is causing harm, and for which we have almost zero effective remedies.

SUBMISSION

WeCreate welcomes the opportunity to provide input to MBIE's advice to the Minister on Copyright & AI. This submission draws on and reflects the positions of WeCreate's member organisations.

For the past decade, the creative sector has **been calling for New Zealand's 1994 Copyright Act to be updated to reflect the realities of the digital environment and markets in which we operate**. In 2016 MBIE undertook engagement that resulted in the report [copyright-and-the-creative-sector-december-2016.pdf](#). In June 2017 the Minister of Commerce and Consumer Affairs announced a review of the Act, and in 2018 an Issues Paper was published. Submissions on this closed in April 2019. Next steps on the Review were deprioritised during the pandemic.

In 2025 Minister Simpson conducted a series of stakeholder roundtables on copyright. In spite of the fact that New Zealand has commitments under both the EU and UK Free Trade Agreements to amend our domestic legislation, a timeline for implementation is still unclear.

Copyright & AI

WeCreate wants to make it very clear that it does **not** support any new copyright exception for AI training, or leaving existing exceptions open to interpretation that would require rightsholders to take legal action against AI companies.

The use of copyright works to train AI models should be licensed and paid for. Just as it is for other users of copyright works.

Exceptions or uncertainty that transfers value from Aotearoa New Zealand creators to largely offshore technology companies, with nothing in return, are detrimental to our creative economy and our creative professionals.

Where AI companies use New Zealand creative works, they should seek licences and agree terms with creator and copyright owners

The International Connection

Compliance with the Berne Three-Step Test

The Berne Convention for the Protection of Literary and Artistic Works, to which New Zealand is a signatory, permits exceptions to copyright only where they satisfy the three-step test. Any exception must:

1. apply only in certain special cases;
2. not conflict with a normal exploitation of the work; and
3. not unreasonably prejudice the legitimate interests of the rights holder.

Compliance with the WTO TRIPS Agreement

New Zealand has binding obligations under Article 13 of the WTO's TRIPS Agreement, which extends the Berne three-step test to all exclusive rights and, unlike Berne itself, is enforceable through the WTO's binding dispute settlement mechanism. Any new exception must be:

- confined to certain special cases;
- must not conflict with normal exploitation of the work; and
- must not unreasonably prejudice rightsholders' legitimate interests.

WeCreate notes that some international jurisdictions are looking at a potential exception permitting text-and-data mining for AI-training to use copyright works. WeCreate submits that any proposal to create an AI-training exception is **explicitly at odds with Article 13**.

Transparency

WeCreate believes the New Zealand government should impose meaningful requirements on AI developers to keep, and to disclose to rightsholders on request, records of the works used to train their models.

Transparency is the precondition for every other remedy: without it, neither licensing nor enforcement is possible. Copyright should also remain reserved for human authors. Where AI tools assist a human creator, the human contribution must be substantial, original and creatively determinative for copyright to be applied.

Licensing

Licensing must be a requirement for the use of copyright works in AI systems – as is the case under existing copyright law. This does not require legislative change to copyright. Copyright law provides the framework for creators and copyright owners to undertake licensing if they choose to do so.

WeCreate's member organisations will want to undertake licensing in different ways. We support our members right to do this.

Enforcement

New Zealand's copyright enforcement environment is characterised by low levels of civil litigation, limited institutional enforcement capacity, and high costs relative to the value of individual claims for most creators. In this environment, legislative ambiguity does not produce balanced outcomes. Instead, it produces outcomes that systematically favour those who use copyright works over those who create them.

It is critical that Copyright enforcement mechanisms are accessible and practical. Currently, they are neither when it comes to copyright infringement in AI, even for some of our largest commercial rights holders.

Consideration should also be given to how infringement cases can move quickly into and through the court system. This is an area that copyright owners have been asking for for years – effective enforcement mechanisms.

Protection of Mātauranga Māori and Traditional Knowledge and Cultural Expression

WeCreate is concerned about the protection of mātauranga Māori, taonga works, and traditional cultural expressions in AI systems. These works occupy a distinct moral and ethical space in Aotearoa New Zealand.

There is currently no comprehensive protection for traditional knowledge and cultural expression under New Zealand's Copyright law

The recommendations of the WAI262 report are yet to be implemented, therefore, any changes to the Copyright Act must include this dimension so that we do not risk compounding existing inadequacies and shortcomings.

Data Centres

WeCreate's position on data centres is set out in our recent [letter](#) to the Prime Minister.

We noted that any data centre policy or position must include a firm commitment to protect New Zealand's creative professionals and businesses. Data-centre investment and a strong and robust creative and cultural sector can co-exist. This needs to be stated explicitly by the government.

Ngā mihi maioha,

Paula Browning
Executive Director
paula@wecreate.org.nz

WeCreate

GROWING OUR CREATIVE SECTOR

www.wecreate.org.nz