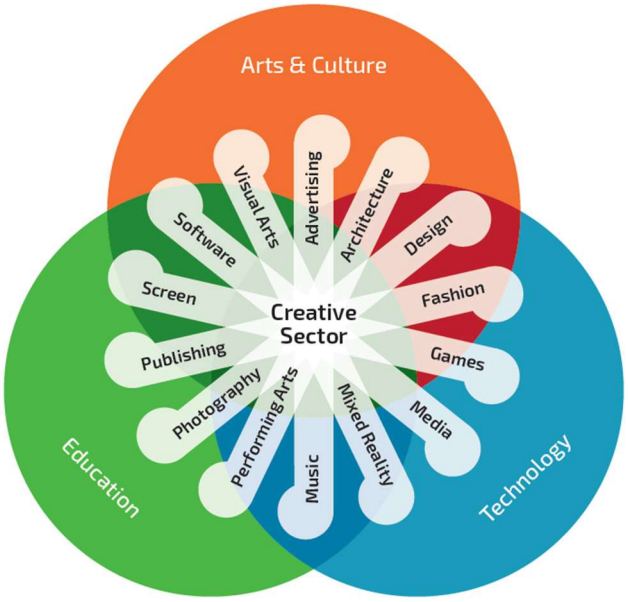
WeCreate
#NZCREATIVITYCOUNTS

SUBMISSION
Copyright (Parody and Satire) Amendment Bill
May 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.

The creative sector is an ecosystem, as reflected in the image below. We note that all of these industries are digital from the perspective of how their products and services are either made, marketed, distributed or consumed. The market for digital creativity is constantly evolving, with generative artificial intelligence being the latest technology development to present both risks and opportunities for the creative sector.



WeCreate recognises that copyright exceptions for parody and satire exist in comparable jurisdictions, and the realities of the digital world we live in, including use of social media, may suggest the need for an explicit exception for this form of use of copyright works. However, we submit that changes to the Copyright Act should be made through a comprehensive, best-practice policy development approach, not through ad-hoc amendments via a Member's Bill. This approach presents a risk to creative professionals and to ensuring that Aotearoa New Zealand has copyright law that is fit for purpose in the digital world we live in. The Bill as drafted is insufficiently defined, risks unintended consequences for creators and rightsholders, and requires significant strengthening before being enacted.

Our submission calls for a comprehensive review of the Copyright Act that centres creators economic and moral rights, and the realities faced by the creative workforce and creative businesses in the digital economy.

Should the Select Committee decide to proceed with the amendment our submission calls for:

- A narrow, clearly defined exception that fully complies with the Berne Convention three-step test
- Statutory or regulatory definitions of "parody" and "satire"
- Published guidance from MBIE or IPONZ on the scope and application of the exception
- An appropriate remedy and enforcement regime for misuse of the exception
- Explicit protection for mātauranga Māori, traditional knowledge, and Taonga works

- Confirmation that the fair dealing framework applies
- Reference to international case law in the drafting and interpretation of the exception
- A small claims mechanism for meaningful enforcement and remedies for infringement

We support the submissions of our members:

- Recorded Music NZ
- NZ Writers Guild
- Copyright Licensing NZ

SUBMISSION

Overdue Review of the Copyright Act

The creative sector has, for the past decade in particular, **been calling for our 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 . (We note that this report did not reference parody or satire, in spite of the extensive research undertaken). 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 but nothing has progressed since.

Those MPs who spoke to this Amendment Bill during its first reading referenced "harmonisation" as a primary reason for the Bill to advance. **The creative sector has been asking for harmonisation – of the term of copyright protection for artists and creators – for many years**. In spite of a requirement to progress this under the New Zealand's commitments to the EU and UK Free Trade Agreements, our artists continue to have less duration of protection and earning potential from their creative work than their peers in New Zealand's main trading markets. The framing of the 70-year term of copyright as a "corporate rights grab" by some that are opposed to this term extension misrepresents who benefits in a small creative economy like Aotearoa New Zealand where individual creators and their estates are more often the direct rightsholders.

Should the Bill Proceed

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. The 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.

We submit that the proposed section 42A as drafted is too broad to satisfy this test with confidence. The clause contains no limiting conditions beyond the bare purpose of "parody or satire," creating a risk that uses extending well beyond genuine creative commentary — including commercially exploitative or damaging uses — could be claimed, or even encouraged, under the exception.

We recommend the Select Committee amend the Bill to incorporate language reflecting the three-step test directly, ensuring the exception is self-evidently narrow in scope and cannot be interpreted in ways that unreasonably prejudice the economic or moral rights of rightsholders.

Definitions of Parody and Satire are Essential

The Bill does not define "parody" or "satire." These are legally and conceptually distinct terms. Parody typically involves the imitation or transformation of an existing work to comment on that work itself. Satire uses creative works as a vehicle to comment on broader social, political, or cultural matters, and may involve works that are only incidentally reproduced.

The absence of definitions creates significant uncertainty for creators, rights holders, and the courts. Without clear boundaries, the exception risks being claimed expansively — for example, to justify commercial reproduction of protected works under a thin veneer of satirical intent.

We submit that the Bill should include statutory definitions of both "parody" and "satire". The definitions should reflect the learning from Australian case law and the jurisprudence of the Court of Justice of the European Union, both of which have developed meaningful tests for what constitutes genuine parody.

MBIE and/or IPONZ should publish public guidance
Even with statutory definitions, the practical application of a new parody and satire exception will require interpretation. We submit that MBIE and/or IPONZ should be required to publish accessible public guidance on:

- What uses fall within the exception and what uses do not
- How the exception interacts with moral rights, particularly the right of integrity, and including in relation to mātauranga Māori and traditional knowledge and cultural expression
- The treatment of commercial versus non-commercial parody
- How rightsholders can challenge misuse of the exception

This guidance should be developed in consultation with rightsholder organisations and should be published in plain language and accessible formats. It should be actively communicated to the New Zealand public — not merely made available — given the prevalence of parody and satire content on digital platforms.

Introduce an appropriate enforcement and remedy regime
The Bill makes no provision for remedy or enforcement where the parody or satire exception is misused. For example, where a use claimed as parody is in fact commercial exploitation, or where it causes reputational damage.

WeCreate submits that the Bill must be accompanied by:

- A clear cause of action for rightsholders where use purported for parody or satire causes economic harm or infringes moral rights.
- Access to meaningful remedies (We note that take-down provisions could, in many instances, require social media companies to take action which, in our experience, is extremely difficult to achieve by an individual or small business).
- A low-cost small claims process, or expansion of the existing Disputes Tribunal jurisdiction, to allow individual creators and SME rightsholders to enforce their rights without prohibitive legal costs.

New Zealand is a low-to-no enforcement jurisdiction for copyright. Without accessible enforcement mechanisms, a broadly worded exception will function in practice as a free-for-all, as the cost of challenging misuse will exceed the value of any claim for most individual or SME creators.

Protection of Mātauranga Māori and Traditional Knowledge and Cultural Expression
We are concerned that the Bill makes no provision for the unique status of mātauranga Māori, taonga works, and traditional cultural expressions. These works occupy a distinct moral and ethical space in Aotearoa New Zealand, and an ill-defined parody and satire exception creates real risk of harmful, offensive, or culturally inappropriate use being claimed as protected commentary.

Copyright law in New Zealand does not currently provide comprehensive protection for traditional knowledge and cultural expression. The recommendations of the WAI262 report are yet to be implemented. A parody and satire exception that is silent on this dimension risks compounding existing inadequacies and shortcomings. We submit that the Select Committee should seek advice from groups representing traditional knowledge-holders, and that the Bill should at minimum include a provision explicitly preserving the Crown's obligations under Te Tiriti o Waitangi in relation to the use of taonga works.

We note that this is an area where international experience offers limited guidance; New Zealand's obligations under Te Tiriti are unique and must be addressed specifically rather than by reference to overseas precedent.

Be Explicit that the Fair Dealing Framework Applies
The Bill inserts section 42A as a standalone provision adjacent to the existing fair dealing sections of the Copyright Act 1994. We submit that the relationship between the proposed exception and the existing fair dealing framework must be made explicit.

It should be clear that:

- The new exception does not displace or diminish the protection currently afforded to rightsholders under the fair dealing framework
- The two regimes operate cumulatively, not in substitution for one another

International case law should inform the drafting
Rather than simply copying the wording of legislation from another jurisdiction, the available international jurisprudence that exists on parody and satire exceptions should also be drawn on to appropriately shape the exception. We submit that the drafting of any definitional provisions, and the explanatory materials accompanying the Bill, should draw explicitly on:

- Australian jurisprudence under section 41A of the Copyright Act 1968, including the experience of APRA and PPCA
- The Court of Justice of the European Union's decision in Deckmyn v Vandersteen (C-201/13), which established that parody must evoke an existing work while being noticeably different from it and must not constitute discrimination
- UK case law on fair dealing for the purposes of parody, including the approach taken since the introduction of the parody exception in 2014

New Zealand has the advantage of being able to learn from jurisdictions that have already navigated the implementation challenges of a parody and satire exception.

The New Zealand enforcement gap demands greater legislative clarity
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.

We submit that precisely because NZ is a low-enforcement jurisdiction, the parody and satire exception must be drafted with greater precision than might be necessary in jurisdictions with robust and accessible enforcement mechanisms. The Bill as drafted would create a broadly available excuse for infringement with limited practical remedy for creators.

Consideration must be given to:

- Statutory definitions that minimise interpretive uncertainty
- A small claims or simplified tribunal process for copyright disputes below a defined threshold
- A requirement on MBIE / IPONZ to monitor and report to annually to the Minister on the use and misuse of the exception

We look forward to speaking to this submission as your considerations of this Bill progresses.

Ngā mihi maioha,

Paula Browning
Executive Director
paula@wecreate.org.nz

WeCreate
GROWING OUR CREATIVE SECTOR
www.wecreate.org.nz