

Submission to  
Biometric Processing Privacy Code  
March 2025

WeCreate<sup>1</sup> is the alliance of Aotearoa's major creative industry associations and organisations, representing 30,000+ Kiwi creators, support people, and creative businesses. The organisation was founded in 2014 to propel growth in the sector and increase its contribution to New Zealand's social, cultural, and economic, wellbeing.

Creative professionals rely on their both their innate creativity and, for many, their image and voice, to create work and to derive an income. WeCreate, and our members, have broad and deep experience in how technology impacts human rights, and the economic and moral rights embedded in intellectual property. We welcome the opportunity to provide feedback on the **Biometric Processing Privacy Code** (the Code). Our sector is deeply invested in **intellectual property (IP) protection, personal privacy, and the ethical use of biometric data**. We believe the Code must carefully consider the intersection of biometrics regulation with **IP law, privacy rights, and data governance** to ensure fair treatment for creators and performers.



<sup>1</sup> Readers of this document who are not familiar with WeCreate's work may wish to watch this short [video](#)

## SUBMISSION

This is our first submission on the topic of biometric processing and the proposed code. We are encouraged to submit given the Commissioner's question about **what might have been missed** in the draft proposal.

We note that the New Zealand government prefers to take a "light touch" to regulation. We believe that this has, in the technology revolution of the past two decades, resulted in harm to both individuals and to businesses. We acknowledge that making rules, legislation and regulation relating to the creation and use of digital technologies is complex and are pleased to see the Commission taking steps to protect New Zealanders in the digital world.

There is an **inter-play and overlaps between privacy, data, biometrics and IP**. As currently enacted New Zealand legislation and regulation leaves gaps between each, allowing bad actors to take advantage of New Zealand citizens, including our creative professionals.

The draft Biometric Processing Privacy Code (the Code) appears to use a limited technology lens rather than being **neutral to a particular technology** and seeking to achieve positive outcomes on all biometrics use. We believe that this is a missed opportunity to protect New Zealanders in a world that is at the tipping point of the next phase of Artificial Intelligence, and any other new technology developments.

The most recent widely available AI technology is generative AI. Our Chair, Paula Browning, leads the Creative Industries Workstream in the (recently updated) [AI Blueprint for Aotearoa](#). Artificial Intelligence, as with other digital technologies, presents opportunities for New Zealand and also risks in both a local and global context.

The companies at the forefront of this technology have scraped the internet (both the open internet and content behind paywalls and other closed repositories) to train their models. This "training content" is not only text but also includes video and audio content. This mass content ingestion has brought into focus issues of **AI-generated likenesses and voice cloning**; however, these have been confronting the creative sector for a number of years and are only now being seen more commonly in the general public and in politics.

A Biometrics Code is an opportunity to provide protections for New Zealanders from the use of our biometric likeness in any technology. We submit that **the Code should address issues of consent and control** of any biometric input; including capturing the data, who has access to the data, where the data is stored, and any subsequent uses. Biometric data misuse should be actionable in a cost-effective and accessible way by individuals as well as groups/collectives. The enforcement mechanisms for New Zealanders must be effective and meaningful regardless of where the offending takes place. The Code should require **a clear opt-out mechanism** for individuals to prevent unauthorised use of their biometric data.

Internationally there are existing regulatory frameworks that have been enacted to provide protections on biometrics. In implementing a Biometrics Code New Zealand should ensure that it is **future-proofed** by not limiting the Code to technology we already know about and uses that already exist. We must aim to stay ahead of technology and provide a level of protection in the online world that is at least equivalent to the safety and security provided for us in the physical world.

We would welcome the opportunity for a discussion with the Commission and can bring sector representatives to the conversation to assist with broadening the Commission's understanding of the matters contained in this submission. We note that the Commission is planning further work on some matters, including the use of web-scraping tools, and we know that our members will have useful contributions and experiences to bring to this work.

Ngā mihi nui,

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WeCreate

GROWING OUR CREATIVE SECTOR  
[www.wecreate.org.nz](http://www.wecreate.org.nz)

## WeCreate's Members and Friends are:

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| Advertising & Illustrative Photographers Assn | APRA AMCOS NZ                     |
| Tātaki Auckland Unlimited                     | Australia & NZ Screen Association |
| Christian Copyright Licensing International   | Coalition for Books               |
| Code NZ                                       | Commercial Communications Council |
| Copyright Licensing NZ                        | Creative NZ                       |
| Design Assembly                               | Directors & Editors Guild NZ      |
| Equity NZ                                     | Independent Music NZ              |
| Māori Music Industry Coalition                | Mindful Fashion NZ                |
| Music Managers Forum NZ                       | Music Producers Guild NZ          |
| Newspaper Publishers Association              | Ngā Aho Whaakari                  |
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| NZ Game Developers Association                | NZ Institute of Architects        |
| NZ Institute of Professional Photography      | NZ Music Commission               |
| NZ On Air                                     | NZ Society of Authors             |
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| Publishers Association of NZ                  | Radio Broadcasters Assn           |
| Recorded Music NZ                             | SAE Institute                     |
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| Screenrights                                  | Sky Network Television            |
| Screen Production and Development Association | Taro Patch Creative               |
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