WeCreate
#NZCREATIVITYCOUNTS

SUBMISSION TO MFAT - NTB OPEN PLURILATERAL ARRANGEMENT

June 2025

WeCreate 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.

Trade barriers experienced by the creative sector are, like those experienced by the tech sector, markedly different to those of New Zealand's traditional export industries.

The global value chains and markets for digital creative products and services and Intellectual Property (IP) are often not contained within the geographic boundaries of our trading partners, as many reside in the commercial operations of large global technology companies.

Non-Tariff Barriers (NTBs) for New Zealand creative exports vary by individual creative industry and business (particularly in relation to creative content). As many of New Zealand's creative exports are now digitally distributed, they largely do not face tariffs[1], nor many other trade restrictions, but do face some particular NTBs.

Digital trade is inherently trade in data, and NTBs can include data restrictions and compliance, data localisation requirements, privacy and data protection regulations, and cross-border data transfer restrictions. The rapid development, adoption and global reach of Artificial Intelligence technologies is further complicating digital trade. We note that many of the large global AI companies use the word "data" to homogenise the content inputs to their technologies, most of which is web-scraped content for which they did not seek permission from the website owners.

Examples of NTBs that can affect creative exports include:

- Restrictions on the type of products that can be exported, or burdensome or restrictive registration or licensing requirements – eg. limited number of licences for videogame exports, or onerous registration processes for creative professionals.
- Restrictions on cross-border data flows that underpin digitally delivered creative exports – such as requirements to process or store certain kinds of data in the market (so-called 'forced data localisation'), or unduly restrictive rules around the handling of certain kinds of data.
- Restrictions or excessive costs on electronic payments – eg. high fees on the micropayments common in video games, or difficulty in repatriating funds back to New Zealand.
- Requirements to establish a bricks-and-mortar presence in a foreign market (sometimes with associated rules around corporate structures), even to supply products digitally.
- High local content requirements in foreign markets.
- Restrictive or costly approaches to visas, limiting flows of creative talent across borders.

[1] Noting that the United States has recently suggested that tariffs may be imposed on creative products

These barriers often interact and compound each other's effects, making market entry particularly challenging for smaller creative businesses that lack the resources to navigate complex regulatory environments across multiple jurisdictions.

Intellectual Property Regulations & Enforcement

IP protections are not harmonised and in some developing markets, particularly in the ASEAN region, IP infringement is a deterrent to market entry. In digital market-places enforcement relies on both the responsiveness and the terms and conditions of the platform. For example, Facebook and Instagram have recently changed their terms to give themselves a free licence to use any content published on their platforms for their Artificial Intelligence products. For artists and brands, this means that they have no control over their IP if they want to reach audiences and customers this way.

Market Control and NTBs imposed by Global Platforms

Global Tech platforms – Alphabet (Google and YouTube), Amazon, Meta (Facebook and Instagram), Apple, and Microsoft - have substantial influence over digital markets. Their control impacts how products, services and information flow globally and affects competition, local businesses, and consumer choice. This control raises a range of policy issues and concerns, including:

1. Market Power and Dominance: Large platforms are significantly dominant in their respective markets (e.g, search, e-commerce, social media, and app ecosystems), often operating as gatekeepers.
2. Control Over Digital Advertising: Meta and Google command the majority of digital ad spending worldwide, as well as control of the algorithms that determine which content on their platforms has visibility. This concentration of power allows them to dictate ad pricing, standards, and placement, which can disadvantage smaller advertisers, media outlets, and regional businesses that rely on online visibility.
3. App Ecosystems and Fees: Apple's App Store and Google's Play Store are major distribution channels for mobile apps globally. The fees for these services are not able to be negotiated and are up to 30% on in-app purchases and subscriptions.
4. Data Control and User Insights: Platforms can collect vast amounts of user data, which they use to drive targeted advertising, develop new products, and enter new markets. This unmatched access to user data gives them a competitive advantage that is nearly impossible for new entrants or smaller companies to replicate.
5. Price Control in Cloud Computing: Amazon Web Services (AWS), Microsoft Azure, and Google Cloud dominate the cloud computing market. Cloud has become essential for businesses worldwide. The pricing strategies and subscription models of these large cloud providers can be difficult for smaller competitors to match.
6. Vertical Integration and Market Expansion: Platforms may leverage their financial resources to acquire companies in various sectors, from health tech to autonomous vehicles, which enables them to control multiple points in the supply chain or service pipeline. This expansion limits the opportunity for smaller or regional competitors to thrive, as these platforms capture more of the value chain.

E-commerce Moratorium

This long-standing agreement amongst members of the World Trade Organisation, is due to be reviewed again in 2026. If it is removed, a significant degree of uncertainty and variability is probable for exporters of digital goods and services.

Geography

The distance to travel to trade events, to meet face-to-face with customers, and to perform is exacerbated by the rising travel costs of recent years.

Further information about how New Zealand's creative ecosystem can help double export value can be found in our Creative Export Explainer. New Zealand's creative industries and government working together to identify export market opportunities and overcome barriers, and to develop a more targeted and strategic approach to creative trade, would inevitably result in the growth of creative and creative tech exports.

WeCreate would be happy to facilitate further discussion between MFAT and leading creative export businesses to inform the proposed NTB plurilateral arrangement.

Paula Browning
Chair
paula@wecreate.org.nz

Victoria Blood
Leader
victoria@wecreate.org.nz

WeCreate's Members and Friends are:

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
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Design Assembly	Directors & Editors Guild NZ
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Kōawa Studios	Māori Music Industry Coalition
Media Copyright Agency	Mindful Fashion NZ
Music Managers Forum NZ	Music Producers Guild NZ
Ngā Aho Whaakari	NZ Comedy Trust
NZ Film Commission	NZ Game Developers Association
NZ Institute of Architects	NZ Institute of Professional Photograph
NZ Music Commission	NZ On Air*
NZ Society of Authors	NZ Writers Guild
Playmarket	Publishers Association of NZ
Radio Broadcasters Assn	Recorded Music NZ
SAE Institute	Screen Industry Guild Aotearoa NZ
Screenrights	Sky Network Television
Screen Producers NZ (Spada)	Taro Patch Creative
TVNZ	Visual Effects Professionals Guild (VFX

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For more information, please see www.wecreate.org.nz