

The Authors, Illustrators, Designers, Editors and Publishers who make New Zealand's Books Reject MBIE's Radical Attack on the Creative Sector

New Zealand Society of Authors; Publishers Association of New Zealand and Copyright Licensing New Zealand Interim Response to New MBIE Paper

Following Meeting Held 2 December 2019 on 'Review of the Copyright Act 1994: MBIE's approach to policy development'

'I think copyright is an amazing thing. Somewhere back in history, someone created legislation that allowed artists to get paid. Copyright makes me feel that my work's not for nothing. It's hard enough to be a musician. If we didn't have mechanisms to protect our work it would be almost impossible.' – Bic Runga

Authors and publishers welcomed the copyright review and the *Copyright and the Creative Sector*¹ report, which captured the dynamics of creative ecosystems and the key role of copyright in sustaining those ecosystems and the livelihood of the creators at their heart.

The *Issues Paper*² was also, in general, an even-handed attempt by MBIE to hear about what didn't work in our current copyright law and how we might fix it.

In a move that was not outlined in the process for the Review, MBIE released a new paper on 13 November 2019 (*The Paper*³). In our view, and those of other creator groups, this upends the approach to date. *The Paper* does several things:

1. **It shifts the goal posts.** *The Paper* changes the rules in the middle of the copyright review. It contains new objectives and new rationales for a radical anti-copyright agenda that attacks the creative sector and is not open for consultation.
2. **It breaks the rules on evidence-based policymaking.** *The Paper* fails to meet the basic standards of evidence-based policymaking articulated by MBIE itself. It is full of wild un-referenced, hypothetical theorising and lacks concrete evidence from submissions or peer reviewed literature.
3. **It is an attack on the Creative Sector.** The report ignores completely the role of copyright in sustaining the economic and cultural contribution of the creative sector in New Zealand and the 87,000⁴ talented people it employs. *The Paper* instead attacks our creative sector: arguing that it unfairly rewards only successful creators, that it produces look-a-like music and books and movies, and that it is built on distributors and investors ripping off creators.
4. **It argues that creators don't need to be paid.** The report suggests that copyright and financial incentives don't really matter to creators. *The Paper* argues

¹ <https://www.mbie.govt.nz/assets/527e65d882/copyright-and-the-creative-sector-december-2016.pdf>

² <https://www.mbie.govt.nz/business-and-employment/business/intellectual-property/copyright/review-of-the-copyright-act-1994/>

³ <https://www.mbie.govt.nz/assets/review-of-copyright-act-1994-mbies-approach.pdf>

⁴ NZIER, *The Evolution of Kiwi Innovation*, 2017

that because creators say they love their work and appear to accept a relatively low median-income, that means copyright and financial incentives aren't important for sustaining creative output.

5. **It says that New Zealanders aren't getting access to books, movies and music.** *The Paper* insists that – despite bookshops and libraries, audiobooks and ebooks, Spotify and Netflix – the creative economy doesn't actually give New Zealanders any real access to creative work. *The Paper* proposes that New Zealand's creative sector is instead a 'market failure' that requires government intervention to lower prices.
6. **It redefines 'access' as 'free use without paying the creator'.** The report argues that real access to copyright work for New Zealanders only be achieved through a radically expanded notion of 'exceptions' to copyright. Such exceptions would allow New Zealanders (and internet companies) to get free content and avoid paying creators whenever someone thinks there's a 'net benefit' to New Zealand in doing so.
7. **It recognises every human right and living standard except the right of people in the creative sector to earn a living.** The report builds its anti-copyright agenda out of a remarkably partial reading of the government's Living Standards Framework and Human Rights Law, parroting the arguments proposed to benefit overseas-based internet giants and ignoring the rights of people in the New Zealand creative sector to earn a living.

This approach to copyright would completely undermine the creative industries, including New Zealand publishing that provides our authors, illustrators, editors, designers and publishers with a livelihood.

The radical new policy comes at a time when the government has multiple other projects and initiatives underway that aim to do the opposite – to grow the creative sector's contribution to the New Zealand economy and to support sustainable careers in the arts and cultural sector.⁵ As *Copyright and the Creative Sector* recognised, revenue from copyright is the most important part of creators' income.

It is concerning to us that, in the meeting on Monday 2 December, MBIE indicated that they needed to 'better understand your industry'. The document *Copyright and the Creative Sector* was published after extensive consultation with the creative industries, including publishing. It clearly lays out how the publishing ecosystem operates and how copyright works in that ecosystem. The submissions to the Issues Paper from our three organisations also clearly set out how the world of books works in New Zealand and yet none of this is referenced in the new paper.

MBIE fundamentally misunderstands the creative role of illustrators, editors, designers, publishers, bookstores etc. in creating a book and finding its audience. It imagines supporting lone creators while the ecosystem in which creators thrive is left to die. And it proposes that the real problem is publishers ripping off authors, which is just an insult without evidence.

Our members reject this framework as a fair and reasonable basis from which to proceed with the Review. We call on MBIE to drop this aberrant paper and return to the process and standards that had previously guided the Review.

⁵ <https://mch.govt.nz/sustainable-cultural-sector-careers>