



Monday, 14 August 2023

Safer Online Services and Media Platforms,
Te Tari Taiwhenua Department of Internal Affairs
Wellington

Submission on the Safer Online Services and Media Platforms Discussion Document

Dear Safer Online Services and Media Platforms staff,

We attach our submission on the discussion document.

We have no objections to the release, without redaction, of this submission in compliance with the provisions of the Official Information Act.

Ngā mihi nui,

Graeme Cosslett

President,
Publishers Association of New Zealand

Jenny Nagle

Chief Executive,
New Zealand Society of Authors

Sam Irvine

Chief Executive,
Copyright Licensing New Zealand

Safer Online Services and Media Platforms

Submission to Te Tari Taiwhenua Department of Internal Affairs

Introduction

Our submission specifically responds to questions 21 and 22 in the discussion document.

The document recognises the overlap between intellectual property law and the concerns of the proposal but prefers to treat it as being outside of the new framework.

We suggest that copyright law is central to responding to the proposal's concerns, and we recommend that the department fully explore its potential value. We outline our reasoning for this below.

There is evidence of a positive relationship between copyright and combatting online harms and misinformation

Copyright law is the foundation of the publishing industry—both here and overseas. *The economic and other incentives that copyright provides supports the publishing industry's significant contribution to public knowledge and debate through the provision of authoritative, well-evidenced information.*

This valuable contribution to our national discourse is built on high standards of intellectual property, ensuring that writers, researchers, and other creators are rewarded for their efforts. It provides informed, nuanced, and balanced debate. By providing authoritative information founded on robust research, academic rigour, diverse perspectives, and professional editing, publishers provide a valuable contribution to public discourse and act as an antidote to misinformation.

Publishers' contribution stands in stark contrast to the increasingly inaccurate, polarising, and partial discourse occurring on many internet platforms. These discourses and their harmful consequences are central to many of the concerns articulated in the discussion document.

In academic publishing

Through the process of curation, editing, peer review, and publication, academic publishers act as impartial guarantors of the quality, reliability, and accessibility of research. During the COVID-19 pandemic scholarly publishers created online hubs to give access to provide free access to the latest research on the virus, facilitating the search for treatments and the collection of data to inform government policy and public health practice.

Through these efforts, publishers provide the public with access to verified ideas and data so that those who wish to can carry out their own research gaining access to the expertise of academics and researchers.

In trade publishing

Publishing aimed at consumers provide readers with access to long-form, curated arguments on matters of public interest. In stark contrast to the economics of social media, which prioritise short word-counts and provocative click-bait titles, publishing necessitates extensive research and nuanced consideration of a subject.

This facilitates respectful discussion of depth and quality on matters of public controversy and improves the tone of debate on emotive issues. Books often translate and disseminate knowledge from academic to public spheres.

In education publishing

From year one through to advanced tertiary study, education publishers provide well-research and evidence-based learning resources for students, aiding them to make progress in their own lives and to contribute to wider society.

Including copyright within the scope of the proposed regime provides Te Tari Taiwhenua Department of Internal Affairs with significant powers to address online harms

It follows that copyright law merits consideration within the range of tools to address online harms. Enlarging on this observation, we suggest that *through its well-established international scope, grounding in international law and statute in almost all countries, and extensive corpus of case law here and overseas, copyright law provides Te Tari Taiwhenua Department of Internal Affairs with meaningful powers to combat harmful content.*

The Berne Convention for the Protection of Literary and Artistic Works constitutes agreement between 181 member states on a uniform, cross-border system of copyright; this uniformity is what makes copyright such a formidable tool to address online harms. It requires that countries recognise the rights held by the citizens of all other parties to the convention. In addition to this system of equal treatment that harmonises copyright amongst parties, the Convention also requires member states to provide strong minimum standards for copyright law. No formal registration is required for creators to benefit from copyright protection.

The Convention is no less effective in responding to the Internet age. In *Kernel Records Oy v Mosley* (2011) a US court held that “a work created outside of the United States, uploaded in Australia and owned by a company registered in Finland was nonetheless a U.S. Work by virtue of its being published online.”

In New Zealand, the Ministry of Business, Innovation, and Employment has extensive powers to enforce copyright law. The *Prosecution Policy Guidelines Under the Trade Marks Act 2002 and the Copyright Act 1994* (<https://www.iponz.govt.nz/assets/pdf/Copyright/prosecution-policy-guidelines-for-copyright-and-trade-marks.pdf>) articulates how these powers are currently administered.

The policy acknowledges that in the Copyright Act 1994 the government has recognised that there is a public interest in protecting the rights of persons to their own intellectual property on the basis that, *inter alia*, unauthorised use may cause health and safety risks, deceive others, and deny rightsholders the legitimate proceeds of their work. Further, the policy acknowledges the importance of the public interest, in respect to the extent and seriousness of harm and other public interest factors.

While we do not pretend that the policy was drafted with the proposal’s harms in mind, it seems plain that addressing the harms described in the proposal are consistent with the parent legislation in the Copyright Act 1993 Part 6A, and compatible with the intent of the current policy.

Examples of situations where agencies could or did use copyright law to respond to objectionable content online

Copyright law has the potential to be an important tool in enabling agencies to undertake their work. We have identified some instances where agencies did or could have made use of copyright law to address objectionable material roughly proximate to the proposal's harms.

1. The Department of Internal Affairs recent report on online violent extremism content, a consequence of the Christchurch Call following the 15 March 2019 attacks on Christchurch mosques. <https://www.rnz.co.nz/news/political/466066/white-supremacism-biggest-source-of-illegal-content-dia-report> and the Department's on-going efforts in this area: <https://www.dia.govt.nz/Countering-Violent-Extremism>, including the Classification Office's on-going role in this area: <https://www.dia.govt.nz/Countering-Violent-Extremism-How-NZ-responds-to-violent-extremism-online>
2. Guidance and reporting service provided by the NZ Security Intelligence Service: <https://www.nzsis.govt.nz/assets/NZSIS-Documents/Know-the-signs.pdf>.
3. MBIE has recently been involved in a matter involving infringing copyright ebooks being sold through Facebook and Telegram.
4. NZ Police investigation of hate crimes: <https://www.police.govt.nz/advice-services/advice-victims/hate-crime>
5. Crown funding to support community organisation that counter and build resilience to violent extremism and radicalisation. <https://www.communitymatters.govt.nz/preventing-and-countering-violent-extremism-fund/>

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