

Copyright (Parody and Satire) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

18 May 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Copyright (Parody and Satire) Amendment Bill (**the Bill**).
- 1.2 This submission, prepared with the Law Society’s Intellectual Property Law Committee,¹ raises various drafting and practical workability concerns, which require careful consideration by the Select Committee and officials.
- 1.3 The Law Society **wishes to be heard** in relation to this submission.

2 General Comment

- 2.1 This Member’s Bill proposes to amend the Copyright Act 1994 (**the Act**) by inserting an “authority to use a copyright work for the purpose of parody or satire, bringing New Zealand law into line with the laws of other developed countries such as Australia.”² As a Member’s Bill, it has not received the same preparatory policy work and consultation that would typically precede drafting of a Government Bill. The absence of a full policy development process, including consultation, risks creating serious defects in the law.
- 2.2 A detailed copyright review involving 97 policy questions was undertaken by the Ministry of Business, Innovation and Employment (**MBIE**) in 2018 and 2019. The public and stakeholders filed extensive submissions, a summary of which was published by MBIE in August 2019 (**the Summary of Submissions Report**). MBIE indicated that “next steps” would be “consulting publicly on potential options for change to the copyright regime.”³
- 2.3 One of the policy issues raised by the MBIE review (**Issues Paper**) related to parody and satire and the resulting Summary of Submissions Report indicated support for some form of parody exception, in principle. The way several comparable jurisdictions deal with freedom of expression uses, such as parody and satire, was canvassed. These included:⁴
 - (a) Australia;
 - (b) the United States of America;
 - (c) Canada; and
 - (d) the United Kingdom.

¹ See the Law Society website for more information about this committee: <https://www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/intellectual-law-committee/>

² Explanatory note.

³ Ministry of Business, Innovation, and Employment “Review of the Copyright Act 1994” (26 February 2021) at < <https://www.mbie.govt.nz/business-and-employment/business/intellectual-property/copyright/review-of-the-copyright-act-1994> >

⁴ Ministry of Business, Innovation, and Employment “Issues Paper: Review of the Copyright Act 1994” (November 2018) at [313] – [317].

- 2.4 We note that, historically, the United Kingdom’s (UK) copyright legislation has been the model from which New Zealand’s copyright legislation has developed, with appropriate policy adjustments to reflect conditions in New Zealand.⁵ To date, the Australian copyright legislation has not been adopted by Parliament as a model for copyright provisions. The Issues Paper specifically referenced the need for checks and balances appropriate to conditions in Aotearoa New Zealand (discussed below at section 4).
- 2.5 Work on the wider programme of reform for the Act remains in progress, although stalled.⁶ A two-stage programme of reform is planned. The first stage will prioritise a small number of priority changes,⁷ followed by a more detailed second stage.

3 The Bill’s relationship with international counterparts

- 3.1 This Bill addresses only the issue of parody and satire, and appears to have been developed with particular reference to the Australian legislation.
- 3.2 The Australian parody and satire exception (that is being proposed in the Bill) was inserted into the Australian Copyright Act 1968 in 2006.⁸ It reads:
- A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.
- 3.3 The Supplementary Explanatory Memorandum prepared during the legislative process through which the Australian provisions were inserted, recorded:⁹
41. This amendment amends Schedule 6 of the Bill by inserting items 9A and 9B to insert new exceptions for fair dealings with works (new s 41A) and fair dealings with audio-visual items (new s 103AA) for the purpose of parody or satire. Previously the proposed exceptions for parody and satire were part of new s 200AB. That section will enable copyright material to be used for certain socially useful purposes while remaining consistent with Australia’s obligations under international copyright treaties.

⁵ Since 1913.

⁶ Economic Development, Science and Innovation Committee “Briefing on intellectual property and current copyright legislation” (30 April 2026) New Zealand Parliament at <<https://selectcommittees.parliament.nz/v/6/268abfb4-d3f2-464b-56fd-08dea647243b?lang=en>>

⁷ For example, the change to the copyright term required by the EU-NZ Free Trade Agreement due to be completed by May 2028 in line with the Free Trade Agreement commitments.

⁸ Copyright Amendment Act 2006 (Aust), section 41A. As discussed below, a further provision addressing audio-visual works was also included in s103AA of the Australian Act.

⁹ Copyright Amendment Bill 2006 (Aust), Supplementary Explanatory Memorandum, Amendment (13) Parody and Satire. Within the Australian legislative process, a supplementary explanatory memorandum accompanies and explains amendments proposed by the government to the bill. Where there is no definition of key terms (or where they are ambiguous), as is the case for the Australian provision, it is permissible to have regard to such extrinsic materials in interpreting their scope (Ricketson and Cresswell 2025 *Law of Intellectual Property Copyright, Design and Confidential Information* Thomson Reuters, at [11.57]).

42. The amended parody and satire exceptions will apply where a person or organisation can demonstrate that the use for the purpose of parody or satire is a fair dealing.

43. These exceptions are consistent with the present structure of the Act which already contains fair dealing exceptions for criticism and review and reporting the news. Case law suggests that the use of copyright material for parody and satire is likely to overlap or be closely connected to uses for these other fair dealing purposes.

44. It is appropriate to require that a use for the purpose of parody and satire should be 'fair'. Parody, by its nature, is likely to involve holding up a creator or performer to scorn or ridicule. Satire does not involve such direct comment on the original material but, in using material for a general point, should also not be unfair in its effects for the copyright owner.

3.4 Some of the above considerations arose in public submission on the Issues Paper, but are not addressed by the Bill and are not referred to in the Explanatory Note to the Bill. Rather, the Bill simply proposes *one* of the Australian exceptions related to parody and satire, and does not appear to have considered the history of the Act, which has always followed the direction of the UK legislation.

3.5 By comparison, the UK Copyright Designs and Patents Act 1988 (**the CDPA**) has a different fair dealing exception for **caricature, parody and pastiche**:¹⁰

"Caricature, parody or pastiche

(1) Fair dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work.

(2) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term is unenforceable."

3.6 A European Directive in 2001 permitted member states to provide an exception in the case of caricature, parody and pastiche.¹¹ In 2006, the UK Gower Report recommended the creation of such an exception. The subsequent UK Hargreaves report in 2011 supported this. The UK Government then, in further public consultation, proposed the fair dealing exception that is now section 30A.

3.7 The Law Society considers that the clause drafted in the Bill has not benefited from full analysis and, in isolation, is potentially incomplete. For example, the Bill does not appear to adequately address the issue of the appropriate scope of exceptions (including caricature and pastiche) to copyright infringement in New Zealand.

3.8 We are particularly concerned about:

¹⁰ Section 30A.

¹¹ European Directive 2001/29/EC, article 5(3)(k). Note – while this directive was initially voluntary, there was a shift to a more limited mandatory exception in the 2019 DSM Directive (EU 2019/790), article 17(7), in relation to online content-sharing service providers. The United Kingdom was, at the time, a member of the European Union.

- (a) The absence of consideration of reference to the interaction with moral rights, in particular the right of authors to object to derogatory treatment of their works and to the interaction with cultural considerations;
- (b) Suggestions in submissions from other parties (in the Summary of Submissions Report) that the exception should be extended to audio-visual works (including film and sound recordings);
- (c) The absence of consideration of the appropriate position on contracting out of the exceptions.

3.9 We consider that these issues, discussed in more detail below, are such that the Bill should not proceed.

4 Moral rights and cultural considerations

Moral rights

- 4.1 The Bill contains no reference to moral rights nor any guidance that the moral right allowing a copyright owner to take action against derogatory treatment of their work is maintained.
- 4.2 Importantly, in its consultation (discussed above), the UK Government pointed out that the existing UK protection for moral rights, including the right to object to derogatory treatment, would be maintained. New Zealand has a comparable moral rights regime. The UK legislation has maintained the author's moral rights - even while implementing its caricature, parody and pastiche exception. We consider the same should occur in New Zealand.

Cultural considerations

- 4.3 The Issues Paper (and submissions to it) considered the need for checks and balances specific to New Zealand on this issue and suggested: "some parodies and satire may not be culturally appropriate and could cause offence to sections of the community, including Māori."¹² This does not appear to have been considered by the Bill, and no safeguards have been included in the draft clause. We consider this a serious omission in the cultural context of New Zealand.
- 4.4 The Law Society considers that the above two issues are not something that can or should be added as an amendment post Select Committee. They require proper consultation with the public and stakeholders.

5 Audio-visual works extension

- 5.1 As referenced above, the Australian Copyright Act 1968 contains a provision that extends the parody and satire exception to "audio-visual items". The section reads:¹³

¹² Above n 4 at [307].

¹³ Section 103AA.

A fair dealing with an audio - visual item does not constitute an infringement of the copyright in the item or in any work or other audio - visual item included in the item if it is for the purpose of parody or satire.

5.2 The Bill does not include a similar extension and rather proposes that the parody and satire exception applies to literary, dramatic, musical or artistic works only.

5.3 If such an extension were to be introduced into the Bill at this stage, this would be of concern. Introducing a substantive expansion of the exception at this stage would be procedurally unfair. Affected rights-holders have not had a meaningful opportunity to consider the implications of the proposal, test the underlying policy rationale, or make submissions on its potential economic and legal impacts.

6 Contracting out

6.1 Section 30A(2) of the UK CDPA (set out above) expressly prohibits contracting out. The Australian Act is silent on this. The Australian Law Reform Commission, in a report in 2013, refers to examples of contracting out. This suggests that contracting out is allowed in Australia, despite the lack of a statutory provision for it.¹⁴

6.2 This issue needs to be considered, and a policy decision taken in relation to any amendment relating to copyright exceptions.

7 Recommendation: the Bill should not proceed

7.1 Significant and complex legal rights and considerations arise from exceptions to copyright infringement. Given the much wider and more detailed copyright review currently underway, we recommend that the Bill not proceed and instead encourage progression of the copyright reform work at the earliest opportunity. This is the most appropriate way to insert a parody and satire exception.

7.2 The concerns detailed above go to a foundational policy issue, and require fuller policy development. We do not consider that they can be addressed satisfactorily and fairly via the Select Committee process. The Select Committee process is not a substitute for public consultation on significant reform options affecting intellectual property rights, particularly where potential safeguards, limits, and contractual consequences have not been assessed.

7.3 If such substantive changes are made following Select Committee, copyright owners will not have had the opportunity to comment on the possibility that the form of copyright they hold could be brought within the scope of the Bill.

7.4 If the Bill is to proceed, it will require further analysis and drafting. Should the Select Committee be minded to pursue this, the Law Society urges a further round of

¹⁴ Australian Law Reform Commission *Copyright and the Digital Economy DP 79* (6 June 2013) paras 17.10 – 17.22.

consultation and that the issue of exceptions to copyright infringement remain part of the broader MBIE Review.¹⁵



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¹⁵ For example, as occurred when the Improving Arrangements for Surrogacy Bill was redrafted at Select Committee stage.