

5 December 2023

Hon Andrew Bayly
Minister for Commerce and Consumer Affairs

By email: andrew.bayly@parliament.govt.nz

Tēnā koe Minister

I am writing on behalf of the New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society), to congratulate you on your appointment as Minister for Commerce and Consumer Affairs.

The Law Society is an active participant in the development and interpretation of commercial and consumer law. We take this opportunity to share some of our key priorities in this area.

Background

The Law Society is an independent statutory body constituted under the Lawyers and Conveyancers Act 2006 to regulate and represent the legal profession. We regulate just over 16,000 practising lawyers and represent over 98% of lawyers.

Independent Review

The Law Society commissioned an [Independent Review](#) because it had been clear that the complaints process was no longer fit-for-purpose and was not serving the public or the profession well. The Law Society also wanted to take the opportunity to shift to a more modern consumer and regulatory environment given the changes that have taken place in New Zealand and internationally since the Lawyers and Conveyancers Act was introduced in 2006. The Law Society has accepted in principle most of the recommendations, including recommendations to establish a new independent regulator and an overhaul of the system for handling complaints about lawyers. The Law Society has provided its [response](#) to the Minister of Justice, so that it can be considered for the Government's legislative agenda.

The Law Society's role in law reform and advocacy

The Law Society has a statutory function to 'assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law.' This is a regulatory function carried out in the interests of the public.

The Law Society is consistently called upon to ensure workable legislation by providing reasoned and impartial submissions on law reform proposals. Law Society submissions represent the public interest on matters such as access to justice, constitutional protections, and the rule of law. We also act as an impartial intervenor in leading court cases of general and public importance in the higher courts.

To carry out this work,¹ the Law Society has over 170 volunteer lawyers, sitting on 17 committees, who contribute to submissions on bills, policy papers, working groups, and the like. This includes both a **Commercial and Business Law Committee**,² and **Intellectual Property Law Committee**,³ both of which are comprised of lawyers experienced in these practice areas.

Key priorities in this area

There are two key areas of law and policy where we encourage consideration of a comprehensive review, both relating to areas in which current law is inadequate or is now out of date.

Review of the Copyright Act 1994

In 2018 the Ministry of Business, Innovation and Employment (MBIE) consulted on an Issues Paper and held a series of workshops to commence a review of the Copyright Act 1994. It appears submitters and workshop attendees largely welcomed the review;⁴ however, nothing further has eventuated.

A comprehensive review of the Copyright Act is much needed, and we would like to see this work proceed. There have been significant changes since the 2004 review, including ongoing technological changes to the creation and use of content.

AI, intellectual property, and copyright

The use of Artificial Intelligence (AI) to create new intellectual property (IP) from existing works, and in particular the difficulties associated with enforcing rights against AI, requires consideration. We are currently reliant on the courts' development of precedent to address the growing issue of copyrighted content being 'scraped' and used for the generation of 'new works', without protections such as labelling or other appropriate recognition of rights holders. Existing regulation was largely not designed for these emerging uses of technology.

There have been a series of reviews into the regulation of digital technologies and AI in the United Kingdom (UK). The UK Government's Chief Scientific Advisor has reviewed⁵ the regulation of digital technologies, specifically AI, and recommended the Government announce a clear policy position on the relationship between IP law and generative AI. This recommendation was accepted.⁶ In addition, the Science, Innovation and Technology Committee of the House of Commons has published an interim report⁷ identifying twelve challenges of AI that must be

¹ Further information about the breadth of our law reform and advocacy work can be found on our [website](#).

² <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/commercial-li/>

³ <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/intellectual-law-committee/>

⁴ <https://www.mbie.govt.nz/assets/review-of-the-copyright-act-1994-issues-paper-summary-of-submissions.pdf>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1142883/Pro-innovation_Regulation_of_Technologies_Review_-_Digital_Technologies_report.pdf

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1142798/HMG_response_to_SPV_Digital_Tech_final.pdf

⁷ <https://committees.parliament.uk/publications/41130/documents/205611/default/>

addressed by policymakers in designing governance and regulatory frameworks. One of the challenges identified is ‘the Intellectual Property and Copyright Challenge’.⁸

The UK’s IP Office has begun development of a voluntary code of practice on copyright and AI, working with users and rights holders. If parties do not voluntarily enter into the code of practice, legislation will be considered.

As noted above, New Zealand’s regulatory arrangements are similarly not built for generative AI and the IP challenges it raises. Without comprehensive consideration, the gap between existing law and developing technological practices will only increase. We encourage consideration of a full review, involving rights holders, content users, and IP experts.

Further contact

We are happy to discuss these matters further with you, or provide additional information to assist. In the first instance, you can contact me via Bronwyn Jones, General Manager Policy, Courts and Government (bronwyn.jones@lawsociety.org.nz) or president@lawsociety.org.nz.

Nāku noa, nā



Frazer Barton
President

⁸ See also the UK Government’s Plan for Digital Regulation, Digital Strategy and the report of the independent Taskforce on Innovation, Growth and Regulatory Reform.