



To: Hon Kris Faafoi:
Commerce and Consumer Affairs - Minister
Broadcasting, Communications and Digital Media - Minister

Cc: Hon Dr Megan Woods
Government Digital Services - Minister
Research, Science and Innovation - Minister

31 October 2018

Dear Minister Faafoi,

Re: New Zealand Copyright Review - Fixing Barriers To Innovation

The AI Forum has recently been advised by the team at MBIE that the New Zealand Copyright Act review has been delayed, with the issues paper unlikely to be released until later this year. Obviously we are disappointed at the changes to the review timetable - we understand the crowded consultation schedule but encourage the government to maintain momentum to ensure that the review is completed as soon as possible.

We would like to use this opportunity to reiterate our position that the current Copyright Act disadvantages New Zealand businesses who face a barrier to innovation which their overseas competitors do not.

The Artificial Intelligence Forum of New Zealand represents a broad group of New Zealand's AI producers and users from across the private sector, Government and universities. A full list of our current members can be found on our website at <https://aiforum.org.nz/about/our-members/>. Our recent report *Artificial Intelligence - Shaping a Future New Zealand*¹ recommended that "the current review of New Zealand's copyright law should consider flexible exceptions to remove New Zealanders' perceived competitive disadvantage in respect to text and data."

This position is backed up by a recent report by Deloitte, *Copyright in the Digital Age - An economic assessment of fair use in New Zealand*², which recommends greater flexibility to support innovation. In particular, the Deloitte report found that NZ Copyright law does not permit (p25):

- *data mining* – that is, the technological analysis of copyright materials for patterns, trends, and uses other than their intended purpose;
- *machine learning and artificial intelligence* which relies on the ability to access large amounts of data for non-consumptive uses, to train algorithms by trial and error;
- *software that matched the audio stream of a television program against a database to inform the user what program they were watching; and*
- *a commercial database which provided information to lawyers on how other litigators had framed successful arguments on particular legal issues in court.*

¹ <https://aiforum.org.nz/our-work/research/>

² <https://www2.deloitte.com/nz/en/pages/economics/articles/copyright-nz-digital-age-google.html#>

AI Forum New Zealand

PO Box 302469, North Harbour, Auckland 0751, New Zealand
P +64 9 394 7693 | E info@aiforum.org.nz | W aiforum.org.nz

The AI Forum's research has identified hundreds of New Zealand businesses, universities and other organisations who are currently using artificial intelligence and machine learning - just three examples include AI Forum members:

- Auckland-based Xtracta, using AI to automatically capture data from documents, whether they are scanned, photographed or digital
- Wellington-based Intela working on applying AI in the energy sector
- Christchurch-based Geospatial AI firm Orbica, using satellite and other spatial datasets to generate significant, intelligent insights about the world - with applications ranging from environmental compliance to monitoring huge infrastructure projects.

Because the technologies contemplated here have emerged relatively recently, laws and principles in New Zealand have not caught up to a state where they clearly address legal issues as they relate to these new technologies. Some of the uses mentioned in this letter may be covered by exemptions to copyright protections while others may not. Equally, some of the uses may currently be tolerated as a matter of practice even though they violate copyright laws.

This creates an atmosphere of *legal uncertainty*, which is a concern to all stakeholders, including investors, researchers and entrepreneurs. Many New Zealand organisations may be unwittingly in breach of the law when applying machine learning and other AI techniques, which might expose both them, as well as the legal framework within which they operate, to adverse scrutiny.

As a nation, we should all be concerned that the infrastructure for investment in advanced technologies, including artificial intelligence, is as supportive as possible, including in connection with our legal framework. If some firms can choose which country to invest in AI research and development, many may choose to invest in other countries like Singapore, Israel or the United States that offer greater certainty.

We would recommend introducing a specific "fair dealing" exemption for data mining / machine learning - eg any use which does not undermine the market for the original product and levels the playing field with international norms.

We look forward to continuing to work closely with the Copyright Review team at MBIE to make progress. Your attention to this matter is appreciated.

Yours Sincerely,



Ben Reid
Executive Director
Artificial Intelligence Forum of New Zealand
ben.reid@aiforum.org.nz +64 27 344 6808

AI Forum New Zealand

PO Box 302469, North Harbour, Auckland 0751, New Zealand
P +64 9 394 7693 | E info@aiforum.org.nz | W aiforum.org.nz