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## **Artificial intelligence in performance and interactive writing**

The Australian Writers' Guild asserts that art in all its forms is an expression of our humanity; that good writing is human writing; that the art and craft at the core of great writing results from human endeavour, experience, and aspiration, and often from application across many years.

The Australian Writers' Guild's primary purpose is to affirm and defend the right of every Australian writer and narrative designer to have the value of their work recognised and protected through copyright, and properly remunerated through just and binding industrial agreements.

Artificial Intelligence (**AI**) is, by its nature, iterative and derivative, and it is 'trained' by scraping from work or works that have come before, most often without consent, acknowledgement, or payment to the original artists.

The Australian stage, screen, performance, broadcast, and interactive content sectors are essential Australian industries, stimulating enormous investment and economic activity, while employing huge numbers of Australian artists and workers.

Australian productions are an indispensable projection of Australian identity globally, augmenting and promoting tourism and investment, along with providing opportunities for soft diplomacy. They represent critical tools and expressions of our cultural sovereignty.

The unregulated use of AI by corporate content producers – including the major international studios and major video game publishers – represents a clear and present danger to Australian writing, and consequently a significant dilution of the critical functions we perform.

The Australian Writers' Guild seeks recognition of the threat to Australian culture; to Australian Indigenous culture; to Australian creative ambitions; to Australian theatre, screen, broadcast and interactive content, and their evolution; and most pressing, to Australian creative employment, now and into the future.

In response, it is our position that the Australian creative sectors require the implementation of unambiguous guidelines, reinforced by rigorous, forward-looking legislation to provide strong protections.

### **Safe and responsible AI:**

- Ensures creative products do not harm or exploit consumers;
- Facilitates and assists creative workers, rather than replacing them or their practice;
- Ensures artists can continue to derive a fair income from their creative works;
- Protects and strengthens copyright frameworks designed to deliver for Australian artists and creative workers.

### **The dangers:**

AI and its supporting technology are developing with exponential speed.

The imminent threats are:

- The degradation and loss of Australian culture in general in its primary and most accessible forums.
- The appropriation and erosion of the world's oldest living cultures: Australian Indigenous culture.
- The replacement of thoughtfully developed and realised Australian screen drama, theatre, and interactive content with an endless churn of derivative work driven purely by profit and owned by non-creatives.
- The wholesale displacement of artists and creative workers.
- The loss of livelihoods for Australian creative workers.
- A devastating erosion of the skill base of Australian creatives.
- The evaporation of viable and meaningful career pathways for Australian creatives.
- The stunting of vital initiatives addressing inclusivity in Australian cultural endeavours – and in particular, the theatre, screen, and interactive sectors. In some instances, closing off the opportunity to enter those sectors altogether.
- The risks to audiences when video games that utilise AI expose them to potentially harmful or offensive content.
- The breaches of audience privacy that will result when video games capture, or encourage players to disclose, personal information.
- The increased effectiveness of “dark design patterns” in video games which entice players to continue playing a game, particularly those games that include gambling features like loot-boxes or predatory in-app purchases.

### **Broader context:**

It should be acknowledged that there are many useful and important purposes to which AI more generally is currently being applied. Where AI is utilised in service of a demonstrable improvement in the outcomes of health and/or social services, its considered and timely use can bring about an increase – or halt the decrease in – standards of living, and/or quality of life.

Creativity and art are fundamentally and exclusively human endeavours.

Art in all its many forms is the fruit of creativity. It has – and has had – primacy in societies as a result of its power to express what most people struggle to express, and to do so in ways that unite populations in the shared experience of it.

By cutting artists and creative workers out of the creative process, companies may cut costs and increase profit. However, the resulting lack of authenticity and craft in the productions will see homogenisation and consolidation, and a marked contraction in quality. The audience experience of Australian screen, stage, audio and interactive arts will also be diminished, and in turn their power to provoke, to unite – to heal – will be blunted. A downturn in audience engagement will follow, and ultimately a splintering of the very industries that corporations are attempting to wring value from in employing AI.

Many of these same corporations are offshore entities that will do this damage to Australian creative industries while also contributing minimal tax.

AI is in a sense a self-defeating prophesy when it comes to the arts in general, and particularly when applied to performance writing.

In the process, it will destroy value that has only grown across decades, it will extinguish jobs and career paths, and strangle culture.

At its worst, and left unregulated, AI will steal Indigenous culture and IP.

Of course, AI can make the non-creative parts of any industry more streamlined, more efficient, and more effective. It is a tool that, when wielded ethically and strategically, can make us more confident, more competitive, and more innovative in the pursuit of our cultural sovereignty and expression. Performance writing can benefit from the efficiencies generated by assisted non-creative decision-making, so long as those savings are reinvested into quality creative work.

AI can support creativity, but it cannot replace it.

Good writing is human writing.

### **Features of the appropriate regulation of AI:**

- **First Nations:** specific consideration must be given to risks that generative AI platforms present to First Nations cultural assets.
- **Searchability:** Only public domain works should be accessible to generative AI platforms for 'scraping', and search and other platforms should have a positive obligation to remove copyrighted works, or works

where the provenance is uncertain. Fines and other sanctions should apply to platforms that do not do this.

- **Out of copyright and public domain works:** When a work that is publicly available for free use, or out of copyright, is part of a 'new' work via AI, the preferred outcome is someone can and should benefit from the staging and production of the work, but cannot own it, or has only some form of limited licence, and the produced work should be considered another public domain work.
- **Authorial control:** Authors of works that are currently protected by copyright must opt in to having their works used by AI. It should be incumbent on the owners and/or developers of the AI systems to seek permission for that use and the creative should have an absolute right of refusal. Conversely, nothing in the law should prevent an author training a generative AI platform on their own original work for their own use.
- **Notice and takedown:** Should owners and/or developers of the AI systems knowingly infringe on a copyright owner's work, then financial penalties should apply. The burden of proof must rest with the owners and/or developers of the AI systems.
- **Protection of moral rights:** Any author whose work is 'scraped' to produce a generative AI output must be credited appropriately, after their permission is given for use. Should any other person falsely claim authorship of – or fail to appropriately credit – a generative AI output then the original artist(s) should have a legal claim against that person for a breach of their moral rights.
- **Transparency:** Any creative content, including audio-visual content that is created with the assistance of AI, must include declaration that AI technology has been used in its creation. This must be applied broadly not just to – for example – scripted performance content but advertising, especially political advertising. For interactive content, players must be shown a statement clarifying capture and use of information every time they load and exit the game. Notices regarding the capture and use of this information must be shown at point of purchase.
- **Fair remuneration:** Where an author's work is used by a generative AI platform to produce an output ("derivative work"), and the author has given permission for that work to be used, then the author must be paid for that use. If that derivative work is then used to produce audio-visual content, then further remuneration and royalties should be payable by the owner of the audio-visual content to the original author each time the audio-visual content is broadcast, communicated or accessed.
- **Subsequent use:** Where a derivative work is exploited commercially by a third party, then the original author or authors of the source material

should be entitled to remuneration with each transmission or viewing of the derivative work. Any entity that commercially exploits the derivative work must make payments to the relevant collecting society. The collecting society would then distribute the payments to the original authors whose work has been used to generate the derivative work.

- **Strong creative industries leadership:** Major games studios are currently the most enthusiastic about adopting AI technology. A peak industry body for games, interactive and artificial intelligence is urgently needed. This new body – Interactive Australia – would operate alongside Creative Australia, Screen Australia and the state agencies.
- **Classification:** All interactive content using AI during production must be rated R18+ unless all content can be verified. All video games using AI to generate content at runtime must be refused classification until new certification or processes exist to adequately judge and classify these experiences, with guarantees they can maintain content appropriate to the classification. The interactive content must be labelled – i.e. that ‘AI has been used’ – and include a warning that the results and outputs are uncertain and cannot be guaranteed to comply with relevant age restrictions.
- **Player opt in:** Players must actively opt in to having their data and information captured and stored. Active disclosures must be made by the content to them that include clear notices regarding the nature of the data and information captured and how it is used by the game they are playing.
- **Player privacy:** A mandatory sector code of conduct should be quickly implemented to ensure that video games do not deceive players into revealing personal information.
- **Gambling and in-app purchases:** AI should be prohibited in video games with gambling mechanics, and those with in-app purchases of resources used for in-game economies.

**Australian Writers’ Guild**

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