



**Australian Writers' Guild  
Australian Writers' Guild Authorship Collecting Society**

House Standing Committee on Employment, Education and Training

Submission to the Inquiry into the Digital Transformation of Workplaces

25 June 2024

*The Australian Writers' Guild acknowledges we live and work on Aboriginal land. We pay our respects to Elders past and present. We thank them for their custodianship of land and waterways, stories, and song, and pay our respects to the oldest storytelling civilisation in the world.*

## Who we are

The Australian Writers' Guild (**AWG**) represents Australia's performance writers: playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers. We represent over 2,000 performance writers in Australia. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees such as the Theatre, Television and Games committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society (**AWGACS**) is a not-for-profit collecting society for screenplay authors. With more than 2,000 members and 32 partnerships with overseas collective management organisations, AWGACS has collected more than \$25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS continuously advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

## Executive summary

Artificial intelligence (**AI**) technology has the potential to be an existential threat to the Australian creative sector. It is, by nature, iterative and derivative. It is 'trained' by scraping from works that have come before, most often without consent, acknowledgement, or payment to the original artists.

The unregulated use of AI by corporate content producers, including the major international studios and more recently, local production companies, represents a threat to Australian creative workers. Australia's creators are already a vulnerable cohort. Even prior to the pandemic, many creatives earned below the workforce average and relied on multiple sources of income.<sup>1</sup> The pandemic has only exacerbated this.

The need for regulation is urgent. When the National Cultural Policy, *Revive*, was released the Government's message was loud and clear: artists are central to our shared culture. Artists would and should be returned to the heart of creative decision-making, as part of a robust and flourishing democracy. This can only work if the relationship between creators and audiences is protected, recognising it as a core part of a successful society.

As representatives of Australia's creatives, it is our view our sectors require unambiguous guidelines regarding the use of AI, reinforced by rigorous, forward-looking legislation to provide strong protections.

AI must only be used as a tool to facilitate and assist creative workers, rather than replace us. It must not undermine artists' ability to derive a fair income from our creative works and must not undermine our copyright. It must comply with pre-existing copyright frameworks designed to deliver for Australian artists and creative workers.

Like many other industry organisations across screen, literature, visual arts and music we have grave concerns about the risks 'generative' AI platforms, products and services present to the livelihoods of Australian creative workers. In particular, we are concerned with the unauthorised and unremunerated inputs to, and outputs of, generative AI, including large language models (**LLMs**) and generative adversarial networks (**GAN**).

There are two primary ways in which this technology is likely to undermine the job security of creative workers in Australia. Firstly, there is already widespread infringement of Australian creators' copyright through unauthorised inputs to generative AI. The use of AI in this way devalues creators' work, allowing corporations to profit from the labour of the original authors without seeking consent, providing fair remuneration, or attribution. Secondly, we are concerned by the potential wholesale displacement of creative workers resulting from the use of generative AI in creative industries to replace, rather than supplement, the creative work of humans.

By cutting creative people out of the creative process, companies may cut costs and increase profit. But as a result, we will see industry homogenisation, consolidation,

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<sup>1</sup> Australia Council, [Impacts of Covid-19 on the Cultural and Creative Industries](#) (2022), 3.

contraction, and a reduction of the economic contribution of the creative sector. Livelihoods will be at risk and over time we will see a devastating erosion of the skill base of Australian creatives.

We acknowledge that there are useful and important purposes to which AI more generally is currently being applied, particularly in scientific fields. We support those applications, and our submission does not canvas them. In these instances, we can see a clear need and benefit to the use of AI: where human ability falls demonstrably short, and AI can be relied upon to produce a beneficial output. No such use case exists in the creative industries. There is no failure of Australian artists to generate works people want to engage with. In our industry, AI is a solution in search of a problem, and big tech should be made to reign in its worst exploitative behaviours to ensure we retain our cultural sovereignty.

Claire Pullen  
**Group CEO**

- 1. The risks, opportunities, and consequences for the nature of work, including effects on hiring, rostering, work intensity, job design, wage setting, monitoring, surveillance and job quality**

Generative AI technology is already being used by large game studios, as well as art departments in the screen sector, as a way to quickly generate visual content that would ordinarily be a task given to an entry-level practitioner.<sup>2</sup> This foreshadows how the creative industries as a whole will be affected by unregulated generative AI. There are already few opportunities for emerging creative workers to gain a foothold in a small local industry. It is intensely competitive, with few entry points.

One such entry point (for example) for screenwriters is the position of a ‘notetaker’ in a writers’ room (i.e. groups of writers that come together to develop a television series or workshop an episode script). Note-taking is an entry-level (paid) job that allows a new writer to contribute to a show and learn about the creative process from experienced writers. From here, notetakers may progress through a number of roles including script coordinator, staff writer, story or script editor, and eventually are given the chance to write their own script. All the steps prior are training for the next, and are the process by which show runners and senior writers hone their craft to produce the stories we love.

As one writer said:

*“As a mid-career writer, I’ve been plugging away in the wings, refining my work, and waiting to see if luck will turn my way. Screenwriting is my vocation, my livelihood, and my passion. In the ten years or so since I entered the industry, writing has been my full-time job. I have navigated this precarious industry carefully and at considerable personal sacrifice.”*

If writers’ rooms are recorded and automated, it seems likely note-taking will be the first role to be cut, thus eliminating one of the few possible entry-points into the industry that new writers still have. This phenomenon will repeat many times across the screen and interactive sectors – affecting emerging writers and narrative designers, directors, actors, designers, composers, cinematographers, screen and sound editors – and the professional development of the next generation of Australian creative talent will be stunted as AI becomes more and more commonplace.

Generative AI could reduce the screenwriter’s job to simply reading and reviewing drafts, generated from a derivative outputting of other people’s work. This might work for now while we have an established stable of experienced writers who have spent a career honing their craft who have sufficient market power to demand decent wages and conditions, but if AI is permitted to take over the writers’ room and a generation of writers is displaced, we will not have enough fresh talent to replace them. It is for this reason AI was such a critical component of the Writers’ Guild of America strike action last year. The impact of generative AI on the creative industries is widespread and goes beyond its effect on writers.

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<sup>2</sup> See, eg, the use of AI for props in screen productions, Adrian Horton, ‘Where Do We Draw the Line on Using AI in TV and Film?’, [\*The Guardian\*](#) (online, 20 April 2024).

AI cannot and should not replace the human role in creating books, films, plays, interactive media, digital graphics, artworks and music. This is not what audiences want. A recent survey conducted by Wattpad and Wakefield Research found that whilst 43% of respondent authors were concerned about AI's effects on their publishing opportunities, 92% of respondents "want actual humans involved in writing and producing books".<sup>3</sup> Furthermore, a recent study found that people show a preference "for art labelled as 'human-created' compared to 'AI-created'".<sup>4</sup>

Generative AI has the capacity to undermine the ambitious goals set for us in the National Cultural Policy. If left unfettered, we suspect that it will be used to replace and devalue creative workers and produce ever-more derivative content that exploits consumers. The long-term impact of this will be felt in terms of our cultural sovereignty, and our economy. Why film on location if you can artificially generate 'the Outback' or a 'quintessential Aussie beachside village'? Why employ Aussie actors when you can generate images instead, and not pay a worker? There are unlikely to be high-quality competitive offerings if everyone has access to similar technology and uses it in a race to the bottom. Why employ a composer, or an editor, or a dramaturg, when you can copy someone else's work, feed it into a program that works anywhere in the world, and sell that output?

Leaving aside the substantive issues around harm to our industry, and workers, AI has no work to do in replacing creative workers. We have an available, trained and skilled workforce, ready to be put to work.

## **2. Appropriate safeguards or regulatory interventions to guide responsible implementation in the workplace, including the digital skills and resources necessary for employers to appropriately utilise these technologies; and**

As a very first step, government must regulate the use of AI to safeguard copyright.

This is not just in the interests of creative workers but impacts all industries and businesses that use any such technology. This is because any user of AI technology can potentially be liable – intentionally or not – for copyright infringement.

### **(a) Copyright infringement**

LLMs and GANs have access to enormous datasets, comprised of both text and media, that are publicly and "freely" (and potentially unlawfully) available. It is on these datasets that AI can be trained.<sup>5</sup> Generative AI 'scrapes', 'mines', 'listens to', 'trains

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<sup>3</sup> Megan Poiniski, 'Why AI Can't Take Away Creative Jobs', *Forbes* (online, 17 January 2024).

<sup>4</sup> Bellaiche et al, '[Human versus AI: Whether and Why We Prefer Human-Created Compared to AI-Created Artwork](#)' (2023) 8(42) *Cognitive Research: Principles and Implications*.

<sup>5</sup> Websites like Kaggle and Convokit publish datasets for precisely this purpose. See for example:

- Kaggle's "Movie scripts corpus": <https://www.kaggle.com/datasets/gufukuro/movie-scripts-corpus>
- Kaggle's "Movies dataset": <https://www.kaggle.com/datasets/rounakbanik/the-movies-dataset>
- Convokit's "Movie dialog corpus": <https://convokit.cornell.edu/documentation/movie.html>

on', or to use another word, *copies*, existing artistic work, either used without the consent of the authors or pirated and illegally published online. In both these cases, an unauthorised reproduction of copyrighted work has occurred and therefore an author's copyright has been infringed.<sup>6</sup>

Widespread copyright infringement of pirated literary work (noting that 'literary work' encompasses Part III Literary Works and includes screenplays and plays) has already taken place. Last year, the Books3 database was exposed as a database used by companies such as Meta, EleutherAI and Bloomberg to train generative AI models.<sup>7</sup> The dataset contained approximately 183,000 pirated books, plays and other literary works used to train generative AI systems without the permission of their authors which included many Australian writers and AWG members. The US Authors Guild filed a class action for copyright infringement against ChatGPT creator OpenAI over its use of pirated book datasets. There are also author class action suits pending against Meta and Google. In proceedings overseas, AI companies have conceded that their models rely on the unauthorised and unremunerated use of copyrighted work, with OpenAI stating it would be "impossible to train today's leading AI models without using copyrighted materials".<sup>8</sup>

Given this is the case and there is some use case for LLMs (though this proposition has yet to be made out) then Australian creative workers cannot be expected to subsidise these foreign firms via their work, and should be asked for consent for any use of their work. They should be credited and they should be compensated.

### **(b) Copyright owners: consent and payment for exploitation, transparency**

Copyright is the commercial output of a creator's work. It must be protected if the jobs, livelihood and competency of Australian creators are to be safeguarded. Australia's copyright framework is a sound basis for the continued growth of local Australian content. We are strongly opposed to any suggestion that 'generative' AI systems should be allowed to use copyrighted works without permission from, or remuneration being paid to, the authors of those works. As noted in the Australian Human Rights Commissions' Final Report on human rights and technology, the first step should be to apply our existing laws more effectively.

There is currently little transparency around the creative works included in data sets that are used to train generative AI, and it appears there is active avoidance of the question. Without the ability to identify their work as one which has been reproduced, it is difficult for copyright owners to initiate any action against infringers. Even in cases where Australian creatives can identify the infringers, questions of jurisdiction arise because many of these corporations are off-shore entities. Given these obstacles, it is necessary to focus efforts on forward-looking regulation and not just retrospective enforcement.

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<sup>6</sup> We use 'author' here in the sense given within the *Copyright Act 1968*, the person who put creative skill and effort into creating a work, which may include a writer, a director, or a photographer (for example). 'Authorship' should also be taken to include 'maker' in this submission.

<sup>7</sup> Alex Reisner, 'Revealed: The Authors Whose Pirated Books are Powering Generative AI', [\*The Atlantic\*](#) (online, 19 August 2023).

<sup>8</sup> Dan Milmo, 'Impossible to Create AI Tools Like ChatGPT Without Copyrighted Material, OpenAI Says', [\*The Guardian\*](#) (online, 9 January 2024).

As a starting point, it will be essential to empower copyright owners with the ability to identify when their work has been used in such a data set. AI-training practices are notoriously kept secret by AI companies.<sup>9</sup> The European Union (EU) has attempted to address this obstacle by introducing a provision in the Artificial Intelligence Act which requires public disclosure of summaries of data used for training that is protected by copyright law.<sup>10</sup>

For some of our best-known creative practitioners, their existing corpus of work has a distinctive ‘voice’ (which will incorporate audio-visual as well as written elements) and this forms part of their commercial appeal as a creative. It is intrinsic to their future work, and a key factor in their ongoing and future engagement. For many, it is this uniqueness that sees them considered part of an Australian canon and the artist is inseparable from their oeuvre. AI can be used to replicate an individual creative’s artistic or ‘authorial voice’ (and future works in this voice) simply by requesting an output in the style of a particular author or artist. In order for the AI technology to produce this output, it must necessarily have scraped that author’s work.

The same applies for directors, designers, composers, musicians, authors and other creatives who have spent a lifetime of creative practice developing their distinctive body of work. It is for this reason that the artists’ permission must be sought, and an absolute right of refusal rest with them.

### **3. The effects of AI technology on disadvantaged and vulnerable cohorts of workers.**

#### **(a) First Nations cultural assets**

Of particular sensitivity and import is the application of generative AI to First Nations stories. We support the legal recognition and protection of ‘cultural assets’ and ‘traditional cultural expressions’ owned by First Nations Traditional Owners as proposed in the Productivity Commission’s [Report on Aboriginal and Torres Strait Islander visual arts and crafts](#).

However, our current copyright framework does not adequately account for the collective and community ownership of First Nations dreaming and storylines, and in our view this matter requires consideration in and of itself by relevant experts.

It is entirely possible in our current settings (for example) for a generative AI to be trained on fake Aboriginal art or stories, to generate a fake ‘Dreaming story’, and be made and distributed internationally and in Australia, to the benefit and profit of non-First Nations entities, without regard to cultural protocols, community wishes or remuneration. It should be clear that this would be profoundly offensive, as well as leaving unanswered all the questions currently being asked and dealt with by the proposed copyright reforms touching on First Nations storytelling.

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<sup>9</sup> OpenAI indicates there is a need to “weigh the competitive and safety considerations above ... the scientific value of further transparency” in their *GPT-4 Technical Report* (4 March 2024).

<sup>10</sup> Regulation (EU) 2024 of the European Parliament and of the Council of Laying Down Harmonised Rules on Artificial Intelligence and Amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act); see Recitals 107 and 108.

## **(b) Minimum standards for gig workers**

Artists were the first gig workers. Australian writers, musicians, actors, designers, cinematographers, generally work on a freelance basis and rarely enjoy minimum employment standards considered the community norm (such as the NES or superannuation) for their work. Many creatives, including writers for screen and stage, are classified as independent contractors rather than employees and, as such, are not protected by the safety net of minimum conditions that apply to employees. They are rarely able to negotiate pay and conditions above industry agreed minima.

In a standard performance writer or editor's agreement, a writer may agree to assign the copyright in their original work to a production company in exchange for, at the very minimum, fair remuneration and an appropriate credit. This is the basic transaction of the screen industry. It is imperfect but it is what has been historically 'accepted' as standard.

The use of generative AI in the creative sector has potential to circumvent this transaction and undermine creative workers' and creative businesses leverage further still. Content can now be produced by 'scraping' writers' – and other artists' – work without permission from the original authors, and without any payment or appropriate credit.

In some cases, writers might assign their copyright subject to certain restrictions (for example, around their creative control over the work), or rights might be assigned to a producer or production company for certain uses of a work (with additional payments being due should the producer seek to exploit the work beyond those agreed uses). Creators always retain their moral rights.

No creative's agreement grants production companies the right to use their work to train generative AI platforms in order to generate new 'works' (and we contend that it is not as simple as an assertion that a writer sold their rights, and therefore the rights holder can use it to train AI). The rights in an authors' work were not purchased for this purpose and, in most cases, the proposed exploitation did not even *exist* at the time of signing the contract. Current industry agreements do not permit this use.

All other regulatory questions being satisfied (which at present they are not), if we follow our existing frameworks an additional payment must be paid to the original authors for any new commercial exploitation of their work, even if the output has been produced by a generative AI platform, subject to the writer giving permission for it to be used at all. Such terms would need to be part of future contracts across creative industries.

Since any 'successful' AI output requires successful (human) input, the commercial success of any AI generated content is also directly tied to the substantive success of the original works that are scraped by the model. In simpler terms: generative AI could only 'write' a successful screenplay because it is replicating successful screenplays

written by people. There is likely very limited commercial utility in training AI on unknown works from unknown writers. Therefore, an original author who consents for their work to be used should be entitled to ongoing payments when their work is used by generative AI platforms to produce outputs that are commercially exploited.

A framework for such payments already exists under Australian copyright legislation. Certain users are excepted from seeking authorisation to use a copyright work, provided that those users pay remuneration to the relevant collecting society. The authors of the original works then receive a share of the money collected. Currently, Government (s 183), educational institutions (Part IVA (Division 4)) and audiovisual services retransmitting free-to-air broadcast to another service (such as Pay TV) (Part VC) have access to these “remunerated exceptions”. This money represents a substantial portion of some screenwriters’ income. In the 2021–2022 collection period, \$1.7 million was collected and in the 2022–2023 collection period, AWGACS collected \$2.4 million for distribution to writers.

We propose a similar statutory stream of remuneration for authors who have consented to have their work used by generative AI platforms. A royalty should be payable to those authors each time their work is used to generate an output, as well as for the initial input of the work (where consented to). If a piece of audio-visual content is produced based on generative AI material, then a royalty must be paid to the human author(s) of the source work(s) each time that content is transmitted or accessed by a user online.

### **Final recommendations:**

We recommend the introduction of legislation that recognises the unique and potentially existential impact of generative AI on the creative industries. The use of generative AI in creative sectors must be restricted in the following ways:

- **Artists’ right to opt in:** Artists must expressly opt in to their work being used by generative AI platforms. AI users and developers must actively seek permission from the artists whose work the generative AI platform is trained on. Should the AI user or developer fail to comply or otherwise infringe on an artists’ original work, penalties should apply.
- **Fair remuneration for artists:** If an artist’s work is used to generate an output, the artist must be paid for that ‘use’. If that output is then used to produce audio-visual content, then further royalties should be payable each time that content is transmitted or accessed. Any entity that commercially exploits the derivative work must make payments to the relevant collecting society who would then distribute the payments to the original authors whose work has been used to generate the derivative work.
- **First Nations:** specific consideration must be given to risks that generative AI platforms present to First Nations cultural assets, to be determined by sufficiently qualified experts.

- **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, preserving authorial control means that 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:** A 'notice and takedown' system should be introduced similar to pre-existing legal mechanisms in place that protect rights holders from copyright infringement online. 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.
- **Transparency:** In line with current EU proposals, AI corporations should be obligated to publicly disclose any works used as data for training where those works are protected by copyright law.