Australian Writers' Guild

Australian Writers' Guild Authorship Collecting Society

Australian Screen Editors Guild

Australian Production Design Guild

Australian Cinematographers Society

Joint Submission to Select Committee on Adopting Artificial Intelligence

21 May 2024

We acknowledge 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: 2500 playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers nationally. 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.

The Australian Screen Editors Guild (ASE) is a cultural, professional and educational organisation, dedicated to the pursuit and recognition of excellence in the arts, sciences and technology of motion picture film and televisual post production. It aims to promote, improve and protect the role of editor as an essential and significant contributor to all screen productions.

The Australian Production Design Guild (APDG) represents designers and their associates in screen, live performance, events and digital production across Australia. The APDG recognise and nurture excellence in design, raise the profile of stage and screen designers and facilitate a vibrant design community.

The Australian Cinematographers Society (ACS) is established to further the advancement of cinematography in all fields and give due recognition to the outstanding work performed by Australian cinematographers; keep members abreast of technology, new equipment and ideas through meetings, seminars and demonstrations; and provide a forum for cinematographers to meet with other members of the industry to discuss and exchange ideas, promote friendship and better understanding of each other's industry role.

Executive summary

Artificial intelligence (**AI**) has many exciting possibilities for efficiency and assisting non-creative decision making in our industry — as it does in all parts of our economy. However, it also has the potential to be an existential threat to the Australian creative sector, our audiences, and the communities we build. AI is, by nature, iterative and derivative. 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 investment and economic activity, while employing 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, and, more recently, local production companies, represents a threat to Australian creative work.

The need for regulation is urgent. When the landmark National Cultural Policy, *Revive*, was released last year, 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 authors and creatives, it is our view that the Australian creative sectors require unambiguous guidelines to encourage the use of only **safe and responsible** AI, 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 us or our 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.

Like many other industry organisations across screen, literature, visual arts and music we have grave concerns about the risks of 'generative' AI platforms, products and services present to the livelihoods of Australian creative workers and their audiences.

In particular, we are concerned with the unauthorised and unremunerated inputs to, and outputs of, generative AI, including large language models (**LLMs**). We also have concerns regarding the use of automated decision making (**ADM**) in games and interactive projects and Generative Adversarial Networks (**GAN**) for image based

designers. Major international studios and video game publishers are already embracing this technology. By cutting creative people out of the creative process, companies may cut costs and increase profit. We will see industry homogenisation, consolidation, 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 many 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.

AI can make the non-creative parts of our industry more streamlined, more efficient, and more effective. It is a tool that can make us more confident, more competitive, and more innovate in the pursuit of our cultural sovereignty. The industry 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.

1. LLMs, GANs and the existing Australian copyright framework

Australia's strong copyright framework is a sound basis for the continued growth of local Australian content. It is of significant economic and cultural value to our nation. 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 Right Commissions' Final Report on human rights and technology, the first step should be to apply our existing laws more effectively.

(a) **AI and copyright**

LLMs 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.[1] Generative AI 'scrapes', 'mines', 'listens to', 'trains on', or to use another word, *copies*, existing artistic work either used without the consent of the authors or which has been 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.

Please note that 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[2].

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.[3] 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'.[4]

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[1] 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

[2] Arts+Law, 'Copyright', https://www.artslaw.com.au/information-sheet/copyright/#:~:text=The%20Copyright%20Act%20does%20not,sound%20broadcast%2C%20owns%20the%20copyright.

[3] Alex Reisner, 'Revealed: The Authors Whose Pirated Books are Powering Generative AI', *The Atlantic* (online, 19 August 2023).

[4] Dan Milmo, 'Impossible to Create AI Tools Like ChatGPT Without Copyrighted Material, OpenAI Says', *The Guardian* (online, 9 January 2024).

There is currently little transparency around the creative works included in data sets that are used to train generative AI. 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.

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.[5] 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.[6]

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. 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.

(b) AI and the moral rights regime

Under Australian law, authors are granted personal and inalienable "moral rights" in connection with their original works. These rights cannot be sold, and they can be exercised by the author even if copyright is owned by someone else. These rights include the right of attribution under s 193 (the right of an author to be credited as the author of their work), the right not to have authorship falsely attributed under s 195AC-195AH, and the right of integrity under s 195AI-195AL (which is the author's right not to have their work subjected to derogatory treatment).

These legislative provisions were incorporated into the *Copyright Act* in 2000 under the *Copyright Amendment (Moral Rights) Act 2000* to fulfil Australia's international

[5] 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).

[6] 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.

obligations under Article 6*bis* of the Berne Convention and to acknowledge "the great importance of respect for the integrity of creative endeavour."[7]

In addition to the lack of authorisation to reproduce an artist's work discussed in the above section, generative AI outputs do not even credit the artist(s) whose work is being used to train the AI. This failure to appropriately attribute authorship of the source material which has directly resulted in a given output may be a breach of the original author's moral rights, particularly their right to attribution under s 193 of the *Copyright Act*.

"Derogatory treatment" is defined in the *Copyright Act as* any act "that results in a material distortion of, the mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation". It is our belief that the uptake of AI technology across different arts sectors should make the 'right of integrity' a much more prominent feature of our copyright framework.

To train an AI system using an artist's work and to produce an output based on that work is, we submit, a distortion or mutilation of that work. It is offensive to the artist and devalues their work. It diminishes the artistic process and the years of research and training it may have taken to produce the original work. It is disrespectful to the 'integrity of the creative endeavour' which these provisions were introduced to protect.

As mentioned above, an AI system can also be asked to produce an output using the 'voice' or style of a particular author. As things stand, it is possible for a generative AI to be fed an existing artists' oeuvre and then produce (for example) the next 'David Williamson' play, without one of our best-known playwrights having any recourse to prevent the publication and sale of this work. It will be appealing to consumers as a 'David Williamson' work; it will be appealing to those who wish to exploit creatives via AI because it is a 'David Williamson' work. The commercial benefit of such a work would go to whoever is trading on the playwright's name and distinctive style; we have no licensing or permissions scheme that would even require the user of the AI to notify him that the AI has been fed his work.

In our view, the existing provisions in the *Copyright Act* relating to derogatory treatment of an artist's work should be applied precisely in situations like this. Plainly, it is prejudicial to an author's reputation to have mediocre AI outputs published in or trading on their name and artists should have legal recourse for those breaches of their right to integrity of authorship.

(c) 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 (Productivity Commission Report).

[7] House of Representatives, Copyright Amendment (Moral Rights) Bill 1999, Second Reading Speech (8 December 1999).

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 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.

(d) Government funding agencies exposed to secondary liability

We are deeply concerned by the use of generative AI by production companies at any stage of development or production of a cinematographic work, be it television or film.

Firstly, there is no evidence that these businesses have sought permission from the relevant copyright owners whose work has been used to train the generative AI systems they use. These companies may not be aware that they should be asking the AI system owner what copyright and liability assurances it can give.

Secondly, given the inherent and ongoing infringement that takes place with the use of generative AI systems, we believe that government funding agencies like Screen Australia and the state agencies are exposed to secondary liability if they are funding creative projects that utilise generative AI which is trained on copyrighted material without permission from the original authors, or projects that are in breach of artists' moral rights.

We argue that these problems can be avoided if the federal and state funding agencies deny funding to any creative projects that use AI technology as a replacement (in whole or in part) for work that has traditionally been done by a creative worker at least until the copyright concerns raised in this submission are addressed by government. Any person or company applying for government funding must, throughout the grants process, have obligations to actively disclose any use of AI technology.

(e) Fair remuneration of artists

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. However, the use of generative AI circumvents this transaction 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).

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.

All other regulatory questions being satisfied (which at present they are not), 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 them 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.

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 an user online.

Recommendations:

- **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, 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.

- **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 a generative AI output – or credit an author for writing an AI output they did not write – the original artist 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. In line with current EU proposals, AI corporations should also be obligated to publicly disclose any works used as data for training where those works are protected by copyright law.

- **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, 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 who would then distribute the payments to the original authors whose work has been used to generate the derivative work.

2. LLMs and ADM and the Australian games sector

Both ADM and LLM technology is currently being used in the development of video games. Large games companies like Ubisoft and Square Enix are hiring smaller writing teams, in some cases dramatically smaller, and reducing the number of voice actors employed as a direct (and desired) outcome of AI use.

AI use in video games presents a number of significant risks not just to the creative workers involved in these projects but also to consumers.

(a) Age classification and harmful content

We see the classification and age rating of games that use AI as a significant issue for concern. In games that use AI, players would be able to input any content via text and speech, that may then accidentally or deliberately cause the game to break classification rules. Alternatively, video game AI might 'hallucinate' offensive or harmful content in the same way that generative AI chatbots are currently being observed to do.[8] Whether it is player feedback or an AI 'malfunction' there is a real risk of a video game producing feedback for players that is, at best, untruthful and defamatory; at worst, offensive or genuinely harmful. A game notionally rated PG might generate elements that put it in an MA15+ or R18+ classification category based on user input into a generative AI function.

(b) Vulnerable users and private information

AI-based characters in video games will be developed to have 'human' qualities, as already seen in ChatGPT and Bing Chat's mimicry of a knowledgeable friend with a pleasant outlook. This presents a risk to players who develop a sense of trust with these characters and become comfortable with disclosing information (including personal information) to the game. It is unclear if this information will fall within existing privacy regulation, or if AIs will 'know' not to disclose this information to other users. Strict measures must be in place to ensure that video game players understand and are aware of the kind of information they disclose to generative AI video games. Developers of these games must make legal disclosures about how that data is captured and stored. This risk is heightened in combination with the unreliability of AIs, as well as any use of biometric feedback.

[8] See Pranshu Verma and Will Oremus 'ChatGPT invented a sexual harassment scandal and named a real law prof as the accused', *The Washington Post*, 5 April 2023; Karen Weise and Cade Metz 'When A.I. chatbots hallucinate', *The New York Times*, 9 May 2023; Lauren Leffer, 'AI Chatbots Will Never Stop Hallucinating', *Scientific American*, 5 April 2024.

(c) Biometric feedback

Furthermore, all games are able to record behavioural feedback by players, while some games might incorporate the use of biometric feedback (in the same way that wearable physical fitness monitors and activity trackers such as smartwatches and Fitbits do) to track heart rate/breathing and eye movements in order to keep players engaged. Video game content will be designed to be more intense as players are acclimated to the stimulation and the addiction to such stimulation is easily exploitable. Additionally, an AI may be able to know when a player is vulnerable to exploitation even as the player themselves may not.

Such biometric information is "sensitive data" under Australian privacy legislation. We therefore see the use of this technology as raising similar privacy concerns to the use of facial recognition software in supermarkets[9] and major stadiums[10].

The use of biometric feedback is a further danger to players when video games utilise “dark design patterns” that entice players to keep playing a game[11] and/or when games include ‘gambling’ features (like loot-boxes) or predatory in-app purchases.

As stated earlier in this submission, major games studios are currently the most enthusiastic about adopting LLM and ADM technology. Games dominate the cultural landscape and will have huge impacts on the fabric of Australian society, and artificial intelligence will be a part of that. Therefore, we strongly recommend the formation of a peak industry body for games, interactive and artificial intelligence – “Interactive Australia” – that operates alongside Creative Australia, Screen Australia and the state agencies.

Recommendations:

- **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

[9] Jarny Blakkarly, ‘Kmart, Bunnings and The Good Guys using facial recognition technology in stores’, Choice, 12 July 2022.
[10] Jarni Blakkarly, ‘Facial recognition technology in use at major Australian stadiums’, Choice, 5 July 2023.
[11] See Zagal, José P; Björk, Staffan; Lewis, Chris, ‘Dark Patterns in the Design of Games’ (2013).

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.

- **Strong creative industries leadership**: An "Interactive Australia" body for games, interactive and AI that focuses on policy leadership in the sector and works alongside the other government arts agencies.

- **No federal funding:** A ban on direct government funding and access to the DGTO to Australian games projects until the impact to both workers and audiences is understood, and a framework is in place to guide funding policy.

3. The future of the creative industries

Generative AI is already being used by large game studios and 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.[12] These trends foreshadow how the creative industries as a whole will be affected by unregulated generative AI. It is our position that just because AI is 'new', it does not follow that it cannot, or should not, be regulated.

There are already few opportunities for emerging creative workers to gain a foothold in the small local industry. It is intensely competitive, with few entry points. One such entry point (for example) 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 though 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*

[12] 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).

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, but if AI is permitted to take over the writers' room and that 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. Generative AI may also undermine respect for the designer's role, contribution and value. Arts managers and producers may in the future see that a production or components of a production may be 'designed' by Generative AI under the instruction of a 'prompt engineer' with the designer's role reduced to that of an AI 'facilitator'.

Generative AI has the capacity to undermine the ambitious goals set for us in *Revive*. If left unfettered, we suspect that it will be used to replace and exploit 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?

We welcome the advent of AI and assistive tools wherever they can augment the work of the artist or practitioner, and as efficiency tools for administrative and production tasks. Accounting, payroll, administrative, production tasks can, and should, be automated where efficiencies can arrive. (To quote the Writers' Guild of America strike sign: "replace CEOs with AI".)

As creatives we suggest the government should approach generative AI in our industry with the question: "where is the demonstrated failure this will fix?"

This is the question that should be answered before AI is part of any creative process. In our view profit maximisation is not a sufficient justification to replace creative workers.

Leaving aside the substantive issues around harm to consumers, 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.

Final recommendations:

We recommend the introduction of legislation that restricts the use of generative AI in creative sectors 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.

- **User's right to opt in**: In the context of games, players must be given the choice as to whether their data and information is captured. Video games must include clear notices regarding the data and information captured and how it is used.

- **Ban the use of AI in video games with gambling mechanics.**

- **Require any video game that uses AI at runtime to be classified R18+.**