

A. FIRST NATIONS FIRST

A core promise of *Revive* was to facilitate the implementation “stand-alone legislation to protect First Nations knowledge and cultural expressions”. We supported this goal and proposed the formation of a working group of relevant experts comprised principally of First Nations creatives in the screen and stage sector, supported by a relevant industry organisation, other relevant subject matter experts, and the collecting agencies. We recommended that the working group would consider the translation of ‘cultural assets’ as a class of copyrightable assets into stage and screen contracts, in addition to industry terms of trade and contracts for performed or cinematographic works based on these assets or expressions.

As yet, there is no standalone legislation regarding First Nations cultural assets and expressions and the need for legal recognition is particularly urgent with the advent of AI. There is a pressing need to close these gaps and work on this reform given the significant delay. In our view, this issue and the way it is resolved could impact the treatment of other creative works protected by copyright (i.e. literary, musical and artistic works) and currently non-copyrightable creative works and activities (i.e. acting, dance, screen editing, set design). We discuss this in more detail in Part B of this submission.

AI presents particularly acute risk to First Nations creative workers and the Traditional Owners of cultural assets. 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.¹ AI companies must be compelled to share data confirming whether or not AI platforms have been trained on Australian works, including First Nations works. Without such transparency, all Large Language Models (LLMs) must be assumed to be infringing Australian and First Nations works, committing cultural harm, and are a significant and inherent risk in their current forms.

In the context of First Nations content, cultural protocols around the reproduction and broadcast of the voices and images of Elders and people who have died cannot be adequately respected within AI models.

Even if the input data is ‘accurate’ and a First Nations person has added it to the ‘training’ corpus of an AI generator, there is no guarantee that the person who input the data had the cultural authority to do so, or that its perpetual availability or rendering down to parts for algorithmic purposes is consistent with cultural protocols.

First Nations Traditional Owners (as with all creators) must have the right to refuse consent for tech companies to use cultural assets for ‘training’ AI models, and to have works disgorged at any time. Tech companies that have used these assets without permission (i.e. in the form of images, transcriptions, and the like) should be forced to disgorge that data and demonstrate this has occurred. The regulation must emphasise transparency and First Nations Traditional Owners must be given reasonable assurances that the disgorgement has taken place.

¹ James Vyver and Tahnee Jash, “Calls to Protect Indigenous Intellectual Property from AI,” *ABC News*, 23 August 2025 <<https://www.abc.net.au/news/2025-08-23/calls-to-protect-indigenous-intellectual-property-from-ai-cultur/105680182>>

First Nations Traditional Owners and creatives who **do** consent to the use of cultural assets must be enabled to do so on their terms (for example, a tech company may have a restricted licence to use an image; or the right to use a First Nations actor's image only while they are alive). We urge Government to consider the First Nations data sovereignty work of Te Mana Rarunga.² There are First Nations companies and artists creating sovereign models, and it should be noted they bear a disproportionate burden when doing so. Ideally, the cost of this development would be borne not by these creators, but the multinational tech firms creating the problem.

The development of legislation to protect First Nations knowledge and cultural expressions, with specific protections against tech companies exploiting cultural assets without consent, should be done in conjunction with the Department of Industry, Science, and Resources, as well as the AI Safety Institute. These organisations should bear the administrative and support costs to develop this legislation since they are seemingly the most enthusiastic about the widespread use of AI in our economy. It would be an undue burden for creators, the organisations that represent them and the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (**DITRDCSA**) to solely bear the costs of mitigating and managing the risks of AI to First Nations Traditional Owners and creators, as well as the Australian cultural sector more broadly.

Recommendations

- **Establish a First Nations Working Group:** First Nations creatives and representatives from relevant professional organisations should form a working group to develop standalone legislation for protecting cultural assets.
- **AI data transparency:** AI companies must disclose training data and confirm whether First Nations works were used to train LLMs, Generative Adversarial Networks (**GANs**), or other models.
- **AI regulation:** Regulation that specifically empowers First Nations Traditional Owners to refuse consent for tech companies to use cultural assets for training AI models, and to have works disgorged at any time.
- **Funding from AI companies** to fund the development of sovereign AI models by and for First Nations creators.

² Te Mana Rarunga, Principles of Māori Data Sovereignty: <https://www.temanararaunga.maori.nz/principles-of-maori-data-sovereignty>

B. FAIR REGULATION OF GENERATIVE AI

Generative AI is an existential threat to the arts and creative economy. In 2023, Australian screen and theatre sectors contributed nearly \$1 billion worth of value in the Australian economy, comprised of \$121 million in theatre ticket sales³ and \$930 million in screen productions (both television and movies).⁴ The uptake of AI threatens to erode this economic activity. There are approximately 6,000 authors, screenwriters, script and book editors in Australia,⁵ earning approximately \$553 million per year.⁶ At standard population growth levels, this industry would be expected to increase to 6,767 people over the next decade. However, if AI technology reduces jobs by even 5% per year, this industry will have approximately 2,690 jobs fewer than forecast, representing some \$1.8 billion worth of wages lost over the next decade.

In a recent survey of our members:

- 81% of respondents believe that producers and broadcasters will look to replace writers with AI;
- 91% were highly concerned about AI programs impacting their livelihood;
- 86% writers stated that, if given the option, they would require AI models to unlearn their scraped material;
- 83% believe it is fundamentally unethical for companies to ingest writers' work for AI models without explicit consent or payment.

Recent industry intelligence indicates that production companies are already erasing entry level writer roles by replacing note takers with AI tools (while at the same time as publicly lamenting the availability of good note takers).

It must be acknowledged that recent research has shown that even without using specific prompts, LLMs can regurgitate entire copyrighted works.⁷ Generative AI works by copying existing artistic work either used without the consent of the authors or which has been pirated and illegally published online. In either case, an unauthorised reproduction of copyrighted work has occurred and therefore an author's copyright has been infringed. In addition, any business that uses Generative AI is exposed to secondary liability for copyright infringement. This is because generative AI technologies have been 'trained' on copyrighted material without permission from the original authors. As we learned in the hearings of the Select Committee on Adopting Artificial Intelligence (AI), tech companies crawl and transcribe content of every kind to copy works upon which the models are built.⁸ Furthermore, any output that is based on the infringing material – or any output that is generated by Generative AI – cannot be protected by copyright. Copyright does not subsist in material that is not a product of the "independent intellectual effort" of a human author.

3 Live Performance Australia, *Live Performance Industry in Australia: 2023 Ticket Attendance and Revenue Report*, 11 October 2024.

4 **Screen Australia**, *Drama Report 2023/24: Key Findings*, 11 April 2025.

5 To use the category of "Author" as defined by the Australian Bureau of Statistics

6 Australian Bureau of Statistics, *Survey of Employee Earnings and Hours, May 2023 (customised report)*, 2024.

7 Liu, Xinyue, et al. "Alignment Whack-a-Mole: Finetuning Activates Verbatim Recall of Copyrighted Books in Large Language Models." arXiv, 2024, <https://doi.org/10.48550/arXiv.2410.15555>.

8 Senate Select Committee on Adopting Artificial Intelligence. (2024). Public hearings. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Public_Hearings

The cultural sector welcomed the Government's commitment not to weaken our existing fair dealing exceptions in the *Copyright Act*, a position that is being followed worldwide⁹. We agree that Australian copyright laws – to the extent that they deal with copyright infringement – are fit for purpose. The **problem** is that foreign tech companies have flaunted those laws and continue to do so without penalty. Australian creative workers are unable to afford legal action against the likes of Google, Meta and Amazon. Yet this is purely a problem of resource rather than a flaw of our legal system that needs to be fixed with new laws. It is the **enforcement of existing copyright laws** that should be Government's priority.

It is our view that, under Australian law:

1. The copyright of creative workers has been infringed by the developers of Generative AI models;
2. There is no legal defence in Australia for the conduct of the infringers;
3. The infringing party should be penalised and forced to rectify the harm caused to copyright owners; and
4. Individuals and businesses using of AI technology built on infringed work should have concerns about their secondary liability for copyright infringement.

We therefore recommend that Government acts quickly to address the infringement of creative workers' copyright by AI companies by:

1. Requiring consent is given by creative workers before their work is used to 'train' AI datasets, with an appropriate compensation model;
2. Ensuring that the creative workers are aware that the infringement has taken place;
3. Implementing a compensatory and rectification process for infringements that have already taken place, including the removal of work from models; and
4. A no-cost jurisdiction be available to creators to seek remedy where they believe their work has been infringed, where transparency is required and any failure to provide transparency results in a default judgement against the defendant AI company.

Our detailed position on the operation of a potential AI royalty and regulatory framework is set out in our submission to the Copyright and AI Reference Group (**CAIRG**), which has been provided on a confidential basis (**Attachment A**).

However, we must emphasise that the development of any licensing and royalty system is not our primary concern for the purposes of this submission. The primary concern of the National Cultural Policy must be to ensure that the copyright of creative workers is respected. This means if a creative worker has not consented to their intellectual property being used, then they may compel the developer to disgorge that intellectual property from a model, in addition to being provided with some form of compensation.

Our industry generates intellectual property value and is supported by Government on that basis. If we simply allow this industry to be eroded by foreign actors, it calls into question the purpose of a National Cultural Policy. The distortion of the market caused by the theft of creative works, rather than good-faith engagement around the licensing or purchase of these works, has created an untenable situation and is preventing markets from emerging.

⁹ Hendry, Justin. "UK Urged to Follow Australia's Lead on AI Data Mining." InnovationAus, 9 Mar. 2026, <https://www.innovationaus.com/uk-urged-to-follow-australias-lead-on-ai-data-mining/>.

Recently introduced French legislation cuts through the endless back and forth between creators, rightly angry at the theft of their work and the destruction of their jobs, and disingenuous big tech executives who pretend the issue of access to copyright materials is insoluble. The French legislation presumes copyrighted works are used in LLMs, but the presumption is rebuttable by complying with transparency obligations¹⁰ and it will reduce costs for AI companies that choose **not** to use specific content. It provides an off ramp for tech companies, but acknowledges the reality of how these models were produced.

It is not the role of the Australian government to protect foreign big tech companies from the legal consequences of their own actions. If these tech companies seek to mitigate copyright risk, complying with the law and engaging with creators in good faith would have been an excellent place to start.

There is an urgency to this issue and it must be addressed in the National Cultural Policy, if we are to have a policy that encourages creators to continue creating.

There is an argument to be made for an urgent solution to the threat of AI. To date, the nascent copyright licensing market for AI training has secured some deals for global rightsholders but failed to deliver compensation back to the vast majority of Australian creators.

The legal and commercial resolutions to this global battle will take time to emerge. Whether the market is left to develop without any new regulation, or government intervenes with new legislation, or rightsholders seek redress through the courts, solutions remain a way off. Meanwhile, our members face an immediate threat to their business models and a decimation of long held assumptions about the cost of production.

Government could deliver for creators in the form of an interim emergency relief package for creators in order to ensure the sustainability of the creative sector. Creators are the most vulnerable participants in the creative economy - with already marginal careers - and we want to ensure we do not lose valuable skilled creators while navigating the disruption caused by generative AI. To lose them would leave Australian culture hollowed out and leave creators without their essential business asset: new intellectual property,

This relief package should be funded either by a temporary AI levy imposed on providers of generative AI services in this market. We refer to our confidential submissions on how these payments might be managed. Such a relief package must be understood as a temporary measure and ought not interrupt ongoing conversations about the longer term structural solution needed from government.

As a longer-term solution, we support the expansion of our Australian copyright framework to protect creative works and activities that are not protected by copyright, including First Nations cultural assets as discussed above.

10 Baud, Emmanuel G., et al. "Navigating Copyright in the Age of Generative AI: EU, French, and UK Developments and Approaches." Lexology. <https://www.lexology.com/library/detail.aspx?g=1f8c827a-2e68-41de-aac0-06a951d993e6%20%20r.org/resources/cest-presume-frances-ai-copyright-shortcut/>

(i) The economic right to train a computational system

Under s. 31(1)(a) of the *Copyright Act 1968* (Cth), copyright in relation to a literary or dramatic work entails the exclusive right to do any or all of the following acts:

- i. to reproduce the work in a material form;*
- ii. to publish the work;*
- iii. to perform the work in public;*
- iv. to communicate the work to the public; and*
- v. to make an adaptation of the work.*

The right to communicate the work to the public was introduced in March 2001, via the *Copyright Amendment (Digital Agenda) Act 2000* (Cth). Under s. 10 of the CA, “Communicate” means “[to] make available online or electronically transmit ... a work”.

The introduction of the new right was the government’s response to new and changing technology – i.e. the rise of digital media – that has now become an essential part of the way we consume media content.

We propose a similar reform, for similar reasons: the inclusion of “(vi) to train a computational system” in section 31(1)(a) of the *Copyright Act*.

If we were to accept the arguments of the AI optimists who believe the technology rivals the telegraph and railroads, then creating a new economic right to use copyrighted works to train AI models seems like a small but essential change to the way we legally treat copyrighted material, and a reform that will deliver certainty for all parties.

By establishing this new right, there would be clarity about where in the production value chain the right to ‘train’ for AI purposes falls, and make clear which parties need to seek permission and offer payment. In our view no legal uncertainty exists about the ownership of these rights, but if big tech advocates are to be taken seriously and such uncertainty *does* exist, then an amendment like the one proposed here would resolve all ambiguity.

For the avoidance of doubt, we are not suggesting that tech companies should escape liability for infringement of existing economic rights (i.e. unauthorised reproduction, unauthorised communication to the public).

(ii) A moral right against AI training

Under Australian law, ‘authors’¹¹ 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

¹¹ In the context of copyright law, this term is used broadly to refer to the person or persons responsible for creating, through their own skill and effort, an original literary, dramatic, artistic or musical work (which may include a writer, a director, or a photographer for example). ‘Authorship’ should also be taken to include ‘maker’ in this submission as it is defined in the *Copyright Act* to refer to the ‘maker’ of a sound recording, film or broadcast who is the copyright owner.

have their work subjected to derogatory treatment). We note many of our members have put the view the ingestion of their work into AI models is derogatory treatment in and of itself.

In addition to the lack of authorisation to reproduce an artist's work discussed in the above section, generative AI outputs do not 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 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.

From our surveys of our members it remains a strongly held view that incorporation into an AI model constitutes derogatory treatment. This is particularly true now as publicly available LLMs have begun providing 'answers' to queries that include paid advertising¹¹ and thus artists are exposed to potentially having their works adjacent to products or services to which they are vehemently opposed.

(iii) Protection of creative works and activities that are not protected by copyright

During the 2024 Senate inquiry, it became clear that companies like Amazon and Google had both the capability to, and a history of, scraping copyrighted material available on "the open internet" (not a term that exists at copyright law) in many different formats including "web documents and code ... image, audio, and video data along with text". Amazon was asked, but declined to answer, the question of whether "content on 'Prime Video' [was] ever transcribed, whether using AI or not, and that transcription subsequently used to 'train' AI."¹² Companies that develop AI have the capacity to 'train' their models on audio-visual content (including films and television series available online to stream), meaning that these companies have scraped the copyrighted works of screenwriters, directors, and composers (screen authors for copyright purposes) as has already been discussed.

Yet we now know that AI models can 'learn from' and copy the work of any member of the production team, post-production team, or cast and anyone else involved in the production of that film or series whose creative work is communicable visually or auditorily: e.g. the style and technique of a screen editor or cinematographer, a make-up artist or production designer. These aspects of an audio-visual production are not currently protected by copyright, but AI still copies that work and has the effect of shifting market demand away from those creative workers. These creative workers could foreseeably see their names used as 'prompts', and they are offered no protection against what is clearly a job-destroying use of the technology, noting also that the remuneration for any particular project did not

¹² Amazon, Answers to Written Questions on Notice from Senator Tony Sheldon (9 September 2024) (received 9 October 2024) in Senate Select Committee on Adopting Artificial Intelligence, Interim Report (Appendix 1 – Submissions and Additional Information).

include payment for such a use of the final work.

At present, a makeup artist or cinematographer (for example) does not own copyright in the work they have done as it is displayed on a screen. If someone wanted to produce a competing audiovisual product, before AI they would hire a different cinematographer or make-up artist to produce the visual style they wanted – but this was the market at work, a choice between paying worker a or worker b. Now, however, AI can replicate the style of a makeup artist or a cinematographer, and no worker is engaged at all.

AI is a novelty requiring novel regulation precisely because it results in those shifts in the market: there will be far fewer opportunities for emerging practitioners within these creative fields for employment or training. It is therefore critical that **all** creative workers whose output – which is a product of their individual effort, creative aspirations and skill – has been copied by AI companies should be fairly compensated even if the current copyright framework does not consider their creative work to be a 'work' or 'subject matter' for the purposes of copyright subsistence. The Department may consider an expansion of the doctrine of moral rights to cover creative workers who do not own copyright in any of the Part III literary, dramatic, artistic or musical works that a Part IV subject matter (i.e. a feature film, an episode of a television series) is comprised of. In this way, the special connection that each worker has to their creative output, services, or skill and expertise is recognised, even if they do not themselves hold any economic rights in the "work" itself. AI companies would need to seek the creative worker's consent to breach their moral rights and (assuming the creative worker is willing to grant that consent) pay them a fair fee.

We suggest that Government turn to developments in the EU, particularly in Denmark, where creators, as well as ordinary citizens, can own and license their voice, face, and likeness. We propose that a similar right is introduced in Australia and extended to protect creative workers. Noting the notorious theft of Scarlett Johannessen's voice,¹⁸ creative workers need to be able to ensure their likeness, style and voice are not stolen from them by AI and used to compete with them for work, nor to damage their 'brand' or professional standing.¹⁹ This expanded copyright framework should also contemplate the specific exclusion of artists' names as prompts, and full and ongoing transparency around input (wrongly called 'training') data so artists can have confidence they are not being infringed or taken from.

(iv) 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 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.

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.

Some screen funding bodies have already introduced requirements against AI being used in the creative process as a condition of funding, and we support that: see, for example, Screen Australia's [AI Guiding Principles](#).