Australian Screen Industry Guilds Joint Submission to Productivity Commission 'Harnessing data and digital technology' Interim Report

15 September 2025

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 civilisations in the world.

Executive summary

Before we can assess the impact – positive or negative – artificial intelligence (**AI**) will have on Australian productivity, the fundamental issue that it has been built on the back of stolen intellectual property must be resolved. There can be no economic, cultural or scientific benefit to the nation until a process of transparency, consent and ongoing compensation is afforded to the creative workers who have made AI possible.

In our submission to the Productivity Commission's initial call for submissions to inform the 'Harnessing data and digital technology' interim report (**attached**), we argued that Australia's strong copyright framework is a sound basis for the continued growth of local Australian content and the future growth of Australian intellectual property. Our creative industries are billion-dollar industries, and Australian audiences want more of what we make. It is contrary to our economic and cultural interests to allow theft of our work by foreign companies, or exploitation of creative workers here. Government must ensure that our existing laws are applied to this blatant theft of work, now and into the future. We note the Productivity Commission failed to consult with creative organisations, or did so in an extremely limited way, in the preparation of its interim report, and this in part informs a thorough misunderstanding or dismissal of the creative sector in it.

We reject in the strongest possible terms any proposition that workers whose creative work has been stolen go uncompensated. We reject any proposal to retroactively legalise this theft. It is disappointing that the Productivity Commission seems to have accepted as foregone that it will endorse a text and data exception in its final report, despite the fact that consultations have not yet ended.

The Productivity Commission neglects to address concerns about whether or not this technology actually works reliably,[1] and whether it will have the economic impact that its proponents and investors – those with the greatest incentives to hype it – claim it will.[2] The tenor of the Interim Report is generally predicated on there being benefits for everyone if only some particularly permissive AI policies are adopted, usually ones that entrench the interests of foreign corporations. These propositions are dismissive of the real and tangible concerns regarding the damage AI has done and will do to the rights of creative workers, copyright owners and Australia's cultural and data sovereignty. Assertions about the benefits of AI are rarely interrogated or put to any evidence. As the Productivity Commission is aware, the work of Acemoglu *et al* demonstrates a far more nuanced picture of technological advancement and to whom the benefits of technology flow. It is telling that so much of the

[1] Elizabeth Gibney, "Is AI Running Out of Data?" Nature, 18 June 2024; David Tuffley, "How Elon Musk's Chatbot Grok Could Be Helping Bring About an Era of Techno-Fascism," The Conversation <, 15 August 2024 <https://theconversation.com/how-elon-musks-chatbot-grok-could-be-helping-bring-about-an-era-of-techno-fascism-261449>; Matthew Sparkes, "AI Hallucinations Are Getting Worse – and They're Here to Stay," New Scientist, 14 August 2024 <https://www.newscientist.com/article/2479545-ai-hallucinations-are-getting-worse-and-theyre-here-to-stay/>

[2] Simon Foy, "Mark Zuckerberg Freezes AI Hiring amid Bubble Fears," The Telegraph, 21 August 2025 <https://www.telegraph.co.uk/business/2025/08/21/zuckerberg-freezes-ai-hiring-amid-bubble-fears/>.

Interim Report is dedicated to correcting those "overly pessimistic"[3] findings while continuing to peddle the utopian line that the profits of AI will be equally distributed among all Australians who, we are told, we receive '$4,300 per person'[4].

The Productivity Commission does not consider it relevant "whether [generative AI outputs] attract copyright protection and what happens when AI outputs infringe a third party's copyright".[5] For workers generating billions in Australia, upon whose work these models are built, these are the only relevant questions – as are the risks inherent in not answering these for every single business or citizen who uses a model built on stolen work. These important questions go to whether AI technology is worth investing in at all. As it stands, the ongoing possibility of copyright infringement – and a lack of ownership over outputs – is a liability for any AI company, any investor, and any user of that technology and is rightly seen as a huge barrier to businesses being able to confidently adopt the technology. It should be noted that in its litigation response to Disney, Midjourney has asserted that users are ultimately responsible for any copyright infringement, not the company deploying AI itself; surely an unacceptable risk for any business or citizen to take on, and not one government should be encouraged to facilitate[6].

The Productivity Commission's calls for a 'light touch' on regulation are a familiar refrain – they are views shared, naturally, by the Tech Council of Australia. As we saw during the evidence and submission process of the 2024 Senate Select Committee on Adopting AI, [7] companies like Google hold the position that any potential breach of copyright law was justified by the supposedly "socially beneficial purposes" of the technology; an obvious self-serving argument when those companies stand to profit from those breaches. These justifications also do not deal with the question of compliance with Australian law – 'social benefit' or 'public good' is not an Australian defence to infringement[8] but, instead, an argument based in the US 'fair use' regime, a regime currently being tested *en masse* by AI litigation.

If a company cannot afford to pay the workers whose labour and intellectual property has been extracted to build its models, it should fail. Instead, the Interim Report appears to endorse a government bail-out dressed as productivity.

We reiterate the recommendations we made in our earlier submission. Government must address the infringement of creative workers' copyright by AI companies by:

- Ensuring that the creative workers are aware that the infringement has taken place;
- Requiring consent is given by creative workers before their work is used to 'train' AI datasets, with an appropriate compensation model; and
- Implementing a compensatory and rectification process for infringements that have

[3] Interim Report, 105.
[4] Interim Report, 105.
[5] Interim Report, 24.
[6] Aaron Moss, "Why the Studios' Midjourney Lawsuit Is Different." *Copyright Lately*, June 15, 2025 <https://copyrightlately.com/why-the-studios-midjourney-lawsuit-is-different/>
[7] Commonwealth of Australia, Official Committee Hansard, Senate Select Committee on Adopting Artificial Intelligence, "Adopting AI," Public Hearing, Canberra, 16 August 2024.
[8] See Copyright Act, 'Division 3 – Acts not constituting infringements of copyright in works'.

already taken place, including the removal of work from models.

In addition to the above, we propose:

- Standalone protections or updated copyright frameworks for First Nations cultural assets;
- A moral right of an artist against the use of their work for AI training by expanding Part IX of the *Copyright Act* relating to the "Moral Rights of Performers and of Authors of Literary, Dramatic, Musical or Artistic Works and Cinematograph Films";
- A no-cost jurisdiction 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; and
- Standalone AI regulation consistent with Department of Industry, Science and Resources (DISR) 'mandatory guardrails for AI use in high-risk settings'.

1. Why not say creators deserve to be paid?

If we accept the premise that AI will be good for Australia, and we take the AI companies at their word that copyrighted and creative works are essential to the building of AI models, then surely it must follow that a remuneration scheme is essential to maintaining the livelihoods of creators and authors: not just to ensure they are fairly compensated for the exploitation of their work on AI platforms, but so they can keep producing the high-quality works that AI requires. Without this there is a significant threat to Australian creative innovation and economic growth in the creative sectors, and also the development of future AI models, as these models require the input of high-quality text.

It is unclear why the Productivity Commission considers licensing to be outside the scope of the Interim Report. In our previous submission, we described the creation of a statutory royalty system that would address creator concerns. Other non-statutory licensing scheme models are available all over the world and could be replicated here. There are also several royalty collecting societies in Australia, all familiar with licensing and collecting and distributing to creators.

Since its inception, AWGACS, the secondary royalty collection society for Australian and New Zealand screenwriters and authors, has collected and distributed over $33 million to creative workers. ASDACS, the secondary royalty collection society for Australian and New Zealand screen directors, has collected and distributed $21 million since its founding. This income for creators and taxation revenue derived from it is at risk if companies continue to deploy AI systems unchecked.

To allow creators to further monetise their work and increase their productivity, we suggest an expansion of copyright legislation similar to new laws introduced by Denmark. Creators, as well as ordinary citizens, should be able to own and license their voice, face, and likeliness, and this should be extended to 'style' for creative workers. Noting the notorious theft of Scarlett Johannessen's voice,[9] 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.[10] 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.

2. There is no case for a text and data mining (TDM) exception

We reject the introduction of any TDM exception – or any other new fair dealing exception – in the Australian *Copyright Act*. The *Copyright Act* is fit for purpose in its current

[9] Bobby Allyn, "OpenAI Pulls AI Voice That Was Compared to Scarlett Johansson in the Movie Her," *NPR*, 20 May 2024. <https://www.npr.org/2024/05/20/1252495087/openai-pulls-ai-voice-that-was-compared-to-scarlett-johansson-in-the-movie-her>

[10] Garry Maddox, "Forgive Me If I'm Not Doing Cartwheels: Scepticism Over AI Payment Breakthrough," *The Sydney Morning Herald*, 18 August 2025. <https://www.smh.com.au/culture/books/forgive-me-if-i-m-not-doing-cartwheels-scepticism-over-ai-payment-breakthrough-20250818-p5mnqm.html>

composition, albeit noting some current limitations around protecting creative workers in the face of AI. As the Productivity Commission is aware, there are only a limited number of jurisdictions with TDM exceptions, and some of these are trying to unwind them. No TDM exceptions have been made into law since 2021 anywhere in the world that we are aware of. Even the USA, with their more permissive 'fair use' regime, is subject to active litigation around AI infringement and the question of whether LLMs are infringement is not yet settled, though the recent Anthropic settlement suggests the question will be answered in favour of the creative workers.[11] In correspondence (**attached**), we have asked the Productivity Commission to provide a list of the jurisdictions that it considers to have a like system to TDM or 'fair use' and, where it is available, the relative size and health of those jurisdictions' creative industries before and since the TDM exception or introduction of its fair use doctrine. As we noted, we do not see the US 'fair use' regime to be one that permits unrestricted access to copyright materials, especially in light of the litigation occurring there.

It is worth noting also rightsholders would not say 'fair use' does what the Productivity Commission claims it does in the Interim Report.

What counts as 'fair'?

The Interim Report states that a TDM exception would not be a:

'blank cheque' for all copyrighted materials to be used as inputs into all AI models…the use must also be considered 'fair' in the circumstances – this requirement would act as a check on copyrighted works being used unfairly, preserving the integrity of the copyright holder's legal and commercial interests in the work.[12]

We note first that one of the matters avoided by the Interim Report is the question of how the 'fairness' of a use would be tested. Under current law, this is a matter for the courts, and we presume the same would be true under a fair dealing TDM exception. Creators are not now, and would never be, in a position to contest the use of their works by a big tech company, be it foreign or domestic. It is a nonsense to suggest there is any equity in a regime that requires, say, a playwright (paid a commissioning fee of $17,000 for six months' work) to contest a matter in court with a tech company. In practical terms, the Interim Report proposes a system whereby copyright no longer functionally exists for Australian creators.

It is also unclear how a requirement to use a work 'fairly' would act as a 'check' on AI companies. While these companies and big tech boosters claim our current system is too restrictive, they also concede they have used works anyway – so our current, 'too restrictive' system is clearly not restricting them in any way. These two positions are in tension and both cannot be true. It seems the Productivity Commission is simply advocating for the removal of legal risk for those companies who have already infringed works or those who wish to in the future. As the Interim Report explains in Box 1.6,[13] there are a number of 'fairness factors' set out in the *Copyright Act.* We consider below how the 'fairness' factors set out in the

[11] Blake Brittain, "Anthropic Settles Class Action from US Authors Alleging Copyright Infringement," *Reuters*, August 26, 2025 <https://www.reuters.com/sustainability/boards-policy-regulation/anthropic-settles-class-action-us-authors-alleging-copyright-infringement-2025-08-26/>
[12] Interim Report, 28.
[13] Interim Report, 26.

Copyright Act might apply to any infringement by an AI company, attempting to take advantage of a TDM exception. It is difficult to see how an intentional copyright infringement committed by a multi-billion-dollar offshore AI company – knowingly taking advantage of internet piracy rather than paying a license fee in many cases – could be considered 'fair' under a hypothetical 'fair use' TDM provision.

Fairness factor	AI company infringement
The purpose and character of the dealing	The primary motive of an AI company in infringing copyright works is for its own commercial benefit. The companies that own and develop these models – some of the richest companies in the world – knowingly and willingly engage in copyright infringement and have been shown to take advantage of illegal databases of pirated works to facilitate mass infringement.
Nature of the work	A LLM or any generative AI model is trained on all kinds of copyrighted works available online, including works made available illegally, and all other audio-visual materials, text and image-based materials including First Nations cultural assets.[14]
Whether the work can be obtained within a reasonable time at an ordinary commercial price	It is standard practice in the creative industries to assign or license rights. Individual payments per work are often small. Individual artists, their representatives, and the companies that own copyright are well-versed in negotiating uses of copyright work for commercial prices.
The effect of the dealing upon the potential market for, or value of, the work	AI companies use artists' own works to train models that displace them in creative markets. 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.[15] It has recently been used to replace visual effects (VFX) artists.[16] Voice actors have reported losing more than 20 per cent of their income with the rise of voices created by AI, trained on those actors' own voices.[17]

[14] 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>

[15] See, e.g., 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*,20 April 2024. <https://www.theguardian.com/culture/2024/apr/20/artificial-intelligence-ai-movies-tv-film>

[16] Mark Sweney, "Netflix Uses Generative AI in One of Its Shows for First Time," *The Guardian*, 18 July 2025 <https://www.theguardian.com/media/2025/jul/18/netflix-uses-generative-ai-in-show-for-first-time-el-eternauta>

[17] Maddox, n 10.

	As Dr Yuvaraj has argued in his submission: "The magnitude of these risks far surpasses that of persistent, ongoing infringement by unauthorised reproduction and distribution of creative works like books, songs, movies, videogames and more: as impactful as that type of infringement is, it still generally leaves room for original creators in creative markets. AI, meanwhile, threatens to herald wholesale shifts in creative markets and consumption, built *on* the labour of creators while in large part shifting market demand away from those creators."[18]
The amount and substantiality of the work that was copied.	The copyrighted work is copied, in its entirety and instantaneously

Clearly, a fair dealing TDM exception for non-commercial uses will not have the effect that the Productivity Commission intends it to – unless the intention is to make it too hard for artists to contest the use of their work.

In fact, it is our strong suspicion that the Productivity Commission is **aware** that a non-commercial fair dealing would not work in the context of AI. We note that the repeated, positive references in the Interim Report to 'fair use' – in the context of the Productivity Commission's historical support of this doctrine – will encourage stakeholders to make submissions relating to, and supporting, 'fair use'. This Interim Report makes it difficult to believe the Productivity Commission's public comments that it is only "seeking feedback" and not endorsing any one position. We expect that the Productivity Commission will ultimately find evidence that a non-commercial fair dealing exception is unviable, leaving it no choice but to recommend either a commercial TDM exception or restate its ongoing support for a 'fair use' exception.

Assuming the Productivity Commission genuinely considers a non-commercial fair dealing TDM exception to be a realistic solution for the tech companies, we note that it will still be incumbent on artists to establish evidence that an infringement of their work has occurred.

One of the many silences in the Interim Report is transparency. There is currently little transparency around the creative works included in data sets that are used to train generative AI. Even in cases where Australian creatives can identify the infringers, questions of jurisdiction arise because many of these corporations or individuals are offshore 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

[18] Dr Joshua Yuvaraj, 'Reforming Australian Copyright Law to Address Artificial Intelligence Training: Response to the Productivity Commission's Interim Report (Harnessing Data and Information Technology, August 2025)'24.

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.[19] 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.[20] An effective disclosure model would need to be implemented before creators have the confidence that they can reliably understand whether, and how, their works have been used to train AI, as a precursor to deciding whether to enforce their rights.[21]

For the avoidance of doubt, we oppose any TDM exception for **commercial** purposes, which would be tantamount to creating a de facto 'fair use' defence. We anticipate and oppose any recommendation to modify the factors that go to determining 'fairness' – i.e. to stretch the legal definition so as to enable tech companies to avoid their *existing* legal obligations.

Enforcement

As we have argued, an AI company's infringement of a creative worker's copyrighted work to train a generative AI model is never 'fair' under Australian copyright law.

Yet even the introduction of a **general non-commercial** TDM exception should be avoided as it would create an unnecessary risk for creative workers. Even if the TDM exceptions did **not** apply to AI companies, these companies would still seek to take advantage of the defence and creative workers would be forced to seek formal redress through the courts.

Without transparency and disclosure obligations, the courts cannot operate as the appropriate forum for addressing these questions.

Furthermore, creative workers – gig workers who may make less than minimum wage for creative activities and sit outside many of the employment protections Australians take for granted – would then be forced to bear the monetary and non-monetary costs of litigation. Few cases for copyright infringement are brought before the courts[22] and fewer still are brought by individual creative workers. Any TDM exception – or any similar exception introduced for the convenience of tech companies – will further disenfranchise creators, who are already in much weaker bargaining positions relative to AI companies.

Fair use

As a US-style 'fair use' exception is not supported by the Australian Government, we do not intend to discuss it in detail in this submission. In any case, we do not believe the Interim Report has adequately explained why a 'fair use' exception might be relied upon by AI

[19] 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). <https://arxiv.org/abs/2303.08774>
[20] 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.
[21] Yuvaraj, 29.
[22] Ibid, 42-43.

companies when it acknowledges, in Box 1.7, that its application in the US is contested and, as mentioned, the recent class action against Anthropic has settled in favour of the authors/copyright holders. The creative sector is familiar with, and regularly protests against, the Productivity Commission's intellectual property agenda but to put forward 'fair use' *now* as a speculative legal defense for the tech industry is particularly unconvincing

The position is predictably echoed by the Tech Council of Australia in its public appearances (of course it insists that those same principles shouldn't apply to those companies' proprietary code).[23] The chair of the Tech Council mischaracterised the US position by claiming that "all transformative technologies have a broad fair use exemption" in the face of dozens of ongoing lawsuits against AI companies in which the applicability of the defense has been disputed.

Firstly, we do not accept that an AI company copying a play, novel or script in its entirety to put it into a LLM should be considered a 'transformative' use at all. Even if the product (the generative AI platform itself, not the outputs) might eventually have public utility, the initial infringing acts performed by AI companies do not.

Secondly, the 'fair use' doctrine is often simplified in policy discussions to consider only the 'transformative' element of the derivative product. Its proponents do not properly consider the other factors that go to establishing fairness, namely: the nature of the copyrighted works, the amount and substantiality of the portion used, and the effect of the use upon the potential market for or value of the work. The US Supreme Court has identified the fourth factor – i.e. "the effect of the use upon the potential market for or value of the work" – as "undoubtedly the single most important element of fair use."[24] A similar principle is applied in the Australian context, as discussed above. In *Kadrey et al. v. Meta Platforms, Inc.*, the court rejected as a "ridiculous" notion that "adverse copyright rulings would stop this technology in its tracks". It understood that "[t]hese products are expected to generate billions, even trillions, of dollars for the companies that are developing them. If using copyrighted works to train the models is as necessary as the companies say, they will figure out a way to compensate copyright holders for it."[25] The tech industry's line – that copyright law will stifle 'innovation' – has dominated the Productivity Commission's thinking on these questions and this is reflected in the unwarranted sense of panic (coupled with an unwarranted sense of optimism in the public benefits of AI) in its Interim Report.

As noted in the previous section, it is our belief that the Interim Report is soliciting views that will confirm the Productivity Commission's pre-established position that Australia should adopt a 'fair use' defence to copyright infringement.

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[23] Sarah Ferguson (interviewer) and Scott Farquhar (Tech Council of Australia chair), *"*Could Australia Benefit from the Revolution in AI?" ABC News, 7.30, 12 August 2025, video and transcript (ABC) <https://www.abc.net.au/news/2025-08-12/could-australia-benefit-from-the-revolution-in-ai/105645406>

[24] *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508 (2023).
[25] Ibid, 3-4.

Updating and enforcing existing copyright frameworks

The Productivity Commission has made the observation that copyright infringement existed before AI. It has downplayed any concerns that AI will result in *new* concerns that require new legislation. In part we agree that legislation exists to prevent some harms (but not others, as we explain below, for which standalone AI legislation is required).

In the case of copyright, under Australian law:

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

In our view, the Productivity Commission should be proposing a way to retrieve the lost productivity inherent in stolen work and coming up with ways to facilitate licensing. Creative works are inherently productive, via licensing. They are made once but generate economic activity including taxation revenue over and over again with re-broadcasting, replaying, and reuse.

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 sales[26] and $930 million in screen productions (both television and movies).[27] The uptake of artificial intelligence threatens to erode this economic activity. To use the example of writers (as categorised by the Australian Bureau of Statistics), there are approximately 6,000 authors, screen writers, script and book editors in Australia, earning approximately $553 million per year.[28] 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.

The Productivity Commission should have modelled just how much has already been lost to creators, citizens and taxpayers through the infringements that have already taken place.

3. Case study: First Nations cultural assets

In previous submissions, we have supported the legal recognition and protection of ‘cultural assets’ and ‘traditional cultural expressions’ owned by First Nations Traditional Owners. This legal recognition is particularly urgent with the advent of AI. As the Productivity Commission

[26] Live Performance Australia, *Live Performance Industry in Australia: 2023 Ticket Attendance and Revenue Report*, 11 October 2024.
[27] Screen Australia**,** *Drama Report 2023/24: Key Findings*, 11 April 2025.
[28] Australian Bureau of Statistics, *Survey of Employee Earnings and Hours, May 2023 (customised report)*, 2024.

has previously recommended, Australia should introduce "new legislation to formally recognise the interests of Aboriginal and Torres Strait Islander communities or groups (such as a mob or clan, language group, outstation or town) in their traditional cultural assets (such as traditional stories, sacred symbols and unique motifs) as they are expressed in visual arts and crafts ('cultural rights legislation')."[29]

As the Productivity Commission stated in 2022, 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.

We note the Productivity Commission is now entirely silent on First Nations stories and 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. [30] AI companies must be compelled to share data confirming whether or not their AI platforms have been trained on Australian works, including First Nations works. Without such transparency, all LLMs must be assumed to be infringing Australian and First Nations works 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. This is not a question of copyright but one that would be regulated by standalone AI legislation.

Further, there remains the risk, as with all AI models, of replicating bias and harmful stereotypes based on input material. 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.

4. Legislative reform

(a) **Consent**

Under Australian law, 'authors'[31] 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

[29] Productivity Commission, *Aboriginal and Torres Strait Islander Visual Arts and Crafts: Study Report*, November 2022, 16.
[30] Vyver and Jash, n 14.
[31] 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.

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). 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.

These legislative provisions were incorporated into the *Copyright Act* in 2000 under the *Copyright Amendment (Moral Rights) Act 2000* to fulfil Australia's international obligations under Article 6*bis* of the Berne Convention and to acknowledge "the great importance of respect for the integrity of creative endeavour."[32]

Strengthening Australian creative workers' moral rights – and ensuring that their creative rights are enforced – is in keeping with the Australian Government's national cultural policy. Expanding moral rights (at a minimum) to voice, likeness and style is a logical progression in the face of AI.

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.

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 or that someone has generated a text using his name as a prompt.

[32] House of Representatives, Copyright Amendment (Moral Rights) Bill 1999, Second Reading Speech (8 December 1999). <https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/1999-12-08/0016/hansard_frag.pdf;fileType=application%2Fpdf>

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 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.

Alternatively, we support calls for the introduction of a new moral right extended to include the right *not* to have their works copied to train any software model without consent. As Yuvaraj argues:

> Consent is a key part of any potential expansion of moral rights to cover AI training. Moral rights regimes in Europe and elsewhere allow creators to withdraw works from circulation where they no longer accord with their beliefs, for example, upon indemnifying the intermediary for resulting loss. An analogous process could be applied to consent; a creator may consent to the use of their work to train an AI model, but may withdraw that consent at any time. In this context, extending moral rights protection against AI training would begin to redress the relational imbalance between creators and AI companies. [33]

He also argues that:

> Penalties for infringing this moral right would also need to be substantial enough discourage AI companies, which would necessitate a departure from court trends not to award particularly high moral rights damages. […] Any such right would also need to be expressly insulated against defences and/or exceptions to ensure their effectiveness.[34]

(b) **Transparency**

We support a broad transparency obligation, in line with current EU proposals, that obliges AI corporations to publicly disclose the titles of all works used as data for training, particularly where those works are protected by copyright law. For example, there could be a search function within the model itself that confirms whether or not an artist's work has been used to train it.

To give artists confidence that their work has *not* been used without their consent, or where their consent has been revoked, prompt restrictions should be implemented (i.e. a prompt to 'write a screenplay in the style of X'') in the same way that a privacy warning is generated when a LLM is used to search a person's contact details. Businesses must be required to disclose when any creative content, including audio-visual content, is created with the assistance of AI. These disclosure obligations should be applied broadly not just to – for example – scripted performance content but advertising, especially political advertising. This might take the form of a label, credit or stamp on the final output.

[33] Yuvaraj, 50.
[34] Ibid, 47-48.

(c) **Payment**

If an artist's work has been 'scraped' by an LLM, or AI music generator, then a payment should be made to that artist. 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 in the model, then the author must be paid for that use (output) and each subsequent 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.

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' and directors' income.

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.

We note here there is substantial scope for expanding whose work is captured by such a license. During the Senate inquiry, it became clear that companies like Amazon and Google had the capability of scraping copyrighted material available on "the open internet" in many different formats including "web documents and code ... image, audio, and video data along with text".[35] 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."[36] 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 they have scraped the copyrighted works of screenwriters, directors, and composers (screen authors for copyright purposes) as has already been discussed.

However, in addition to that, these 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

[35] Google, Answers to Written Questions on Notice from Senator Tony Sheldon (9 September 2024) (received 20 September 2024) in Senate Select Committee on Adopting Artificial Intelligence, Interim Report (Appendix 1 – Submissions and Additional Information)
[36] 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).

artist or production designer. These aspects of an audio-visual production are not currently protected by copyright, yet AI still copies that work and has the effect of shifting market demand away from those creative workers.

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.

5. Mandatory guard rails and standalone AI legislation

We oppose Draft recommendation 1.3 and support **standalone AI legislation.** In September 2024, the Department of Industry, Science and Resources (DISR) circulated a paper outlining options for a set of mandatory guardrails for AI in high-risk settings that could be adopted by the Australian Government.[37]The options canvassed included adapting existing regulatory frameworks to introduce additional guardrails on AI or creating new frameworks such as an Australian AI Act. It was proposed that the previously published voluntary guidelines should be turned into mandatory regulations for AI development and application.

In our submission to DISR, we supported the introduction of mandatory AI regulations but noted that the focus of the guardrails appears to be on the protection of end users, and not the protection of those harmed by the use of their content as an input. We argued that Australian creative workers are not actors in a supply chain in any meaningful way. To create a value chain that allows creative workers to meaningfully participate, their work must first be valued as something that AI companies cannot steal to use as a free input.

[37] Department of Industry, Science and Resources, *'*Safe and Responsible AI in Australia: Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings'*,* September 2024.

WHO WE ARE

The **Australian Writers' Guild** (AWG) is the professional association for Australian screen and stage writers across film, television, theatre, radio and interactive media. We represent over 2,600 performance writers in Australia and we have fought to improve professional standards, conditions and remuneration for Australian stage and screen writers for more than 60 years. Our vision is to see stage and screen writers thrive as a dynamic and integral part of Australian storytelling: shaping, reflecting and enhancing the Australian cultural voice in all its diversity.

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 Directors Guild** (ADG) is the national association and union representing the interests of film, television and online screen directors, documentary makers and animators. We promote excellence in Australian screen direction, collaboration between directors and others in the screen industry, and provide professional support to our members. Australian directors work with writers, producers, designers, cinematographers, editors and sound designers to put Australian stories on the screen.

The **Australian Screen Directors Authorship Collecting Society** (ASDACS) is a copyright collecting society representing the interests of screen directors throughout Australia and New Zealand. It was established in November 1995 and currently has over 1450 members. The primary purpose of ASDACS is to collect, administer and distribute income for screen directors arising from international and domestic secondary usage rights.

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.

The **Australian Guild of Screen Composers** (AGSC) is a community of professional screen composers, dedicated to supporting both emerging and established Australian screen composers in film, television, gaming or related industries. Our role is to advocate, support and increase recognition for Australian screen composers.

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 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 Screen Sound Guild** (ASSG) represents the profession of sound in film, television, and other screen and media industries. Members include those who work in production (location sound during principal photography) and post-production (sound editing and mixing). Our members are highly skilled and well-regarded, with many of them recipients of numerous Australian and international awards.

The **Australian Association of Voice Actors** (AAVA) is a not-for-profit association for those who work as Voice Actors and those who facilitate and draw income from the Voice Acting industry in Australia, including Casting Directors, Agents & Management, Audio Engineers, Sound Recordists, Creative Agencies, Suppliers of Audio Gear, and Studios. AAVA is a proud member of United Voice Artists (UVA) a worldwide group of Voice Acting Guilds, Unions and Associations.

Attachment A

Joint Submission to Productivity Commission consultation on 'Harnessing data and digital technology'

5 June 2025

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.

What challenges do you face in accessing or using AI? How can these challenges be overcome?

Australia's strong copyright framework is a sound basis for the continued growth of local Australian content and the future growth of Australian intellectual property. Both are of significant economic and cultural value to our nation.

We are strongly opposed to any suggestion that AI systems should be allowed to use copyrighted works without permission from, or remuneration being paid to, the authors of those works. It must be noted that this is current state of play, and there have been public concessions from the developers of AI models that these models rely on infringed content.

LLMs, and AI music generators 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. 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. We refer you to the proceedings of the Senate Committee on Adopting Artificial Intelligence, where this point was covered extensively,

Any Australian businesses that use Large Language Models (LLMs) and other AI technology, including AI music generators, are therefore 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. Furthermore, any output that is based on the infringing material – or any output that is generated by 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.

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.

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. 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'.

This is also widespread in the music industry. In June 2024 multiple record companies such as Universal, Capitol records, Sony music and others are suing Suno AI and Udio AI for copyright infringement.

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, though enforcement is critical to maintaining the integrity of Australia's intellectual property and our copyright framework.

The issue of the historical copyright infringement can partly be addressed by:

(i) ensuring that the creative workers whose work has been stolen are fairly remunerated
(ii) ensuring that the creative workers are aware that the infringement has taken place and
(iii) requiring their opt in to be sought before inclusion in models, with an appropriate compensation model and
(iv) Some sort of compensatory and rectification regime for infringements that have already taken place, including the removal of work from models.

Payment

If an artist's work has been 'scraped' by an LLM, or AI music generator, then a payment should be made to that artist. 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.

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' and directors' income. Since their inception, AWGACS and ASDACS have collected more than $54 million combined in secondary royalties and distributed the monies owed to screen authors from Australia, New Zealand and around the world

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.

Transparency

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. 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.

Consent

The vast majority of the copyright infringement has already taken place. In those cases, payment must be made to the rightsholders whose copyrighted work has been illegally exploited. Moving forward, rightsholders 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.

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.

Do you have any concerns about using AI? What are the reasons for your answer? What can be done to lower your level of your concerns?

It is worth paying attention to recent research that has shown that the economic effects of AI technology by businesses may be overstated. A study from the University of Chicago and the University of Copenhagen showed that "despite substantial investments, economic impacts remain minimal ...] AI chatbots have had no significant impact on earnings or recorded hours in any occupation, with confidence intervals ruling out effects larger than 1%".

One of the key findings made by APRA AMCOS in its AI and Music report was that by 2028, 23% of music creators' revenues would be at risk due to generative AI – an estimated cumulative total damage of over half a billion AUD$ (AUD$519 million).

Setting aside the question of whether or not this technology actually works reliably, and the question of whether it will have the economic impact that its proponents and investors claim it will, there is still the unresolved question that this technology has been built on the stolen work of creative workers around the world.

The theft has already taken place but the idea that Australian businesses should continue to use the compromised technology, while the workers whose creative work was stolen and used to train that technology go uncompensated is not acceptable. In our previous response, we have described the creation of a statutory royalty system that would address these concerns.

Moving forward, any creative content, including audio-visual content, that is created with the assistance of AI, must include a 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.

We also have concerns about the use of ADM (**Automated Decision Making**) and LLM technology in the development of video games. 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. 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. 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.

A 2025 Yale study has also argued that it is impossible to automatically detect LLM hallucination in models only trained on correct outputs (i.e. the models cannot be trained to detect failure).

All interactive content using AI during production must be rated R18+ unless all content can be verified. Players must actively opt in to having their data and information captured and stored. Active disclosures must be made by the content to them that include clear notices regarding the nature of the data and information captured and how it is used by the game they are playing.

The ability to generate highly realistic representations of real people is fast becoming trivial. While the capability to misrepresent people has always been present in our industry, certain techniques (such as mimicking a person's voice) to generate entirely new dialogue without their consent will make misrepresenting the truth cheap and easy thing to achieve.

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. These trends foreshadow how the creative industries as a whole will be affected by unregulated generative AI. Automated tools have a disproportionate impact on emerging and junior post production crew. Certain roles such as transcribing, translating and captioning are either already obsolete or severely diminished. There are tools emerging that will displace junior editors working in content such as social media production and promotional material. This paid entry-level work is an essential step stone to a sustainable, future career. It is during this time that experience and networks are built. 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. AI technology will reduce these opportunities further still.

We are generally opposed to the use of AI in the creative industries, though we accept that AI can make some of the non-creative parts of our industry more streamlined (e.g. accounting, contracting, scheduling- all administrative functions that do not encroach on creative work, nor have any bearing on intellectual property creation and ownership). We also acknowledge that there are many useful and important purposes to which AI more generally is currently being applied, particularly in scientific fields. 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.

However, to reiterate, we do not think that AI technology should be put to any purpose at all until the law addresses the concerns of the creative workers whose work has been infringed to train the technology, and the sovereign risk to Australia's economy this infringement represents.

Attachment B

13 August 2025

Dr Stephen King and Ms Julie Abramson

Productivity Commission

Level 8, 697 Collins Street

VIC 3008, Australia

By email: stephen.king@pc.gov.au; julie.abramson@pc.gov.au

Cc: yvette.goss@pc.gov.au; ohnmar.ruault@pc.gov.au

Dear Dr King and Ms Abramson,

I write to you on behalf of the Australian Writers' Guild (AWG) and the Australian Writers' Guild Authorship Collecting Society (AWGACS). The Writers' Guild is the professional association representing writers for stage, screen, audio and interactive and has protected and promoted their creative and professional interests for more than 60 years. AWGACS was established in 1996 as the copyright collecting society for screen authors from Australia and Aotearoa New Zealand. Since then, we have collected over $33 million dollars for members and authors from around the world. Together, these organisations represent just under 5,000 creative workers all over Australia and New Zealand Aotearoa.

We are lucky enough to work closely with our creative Guild and collecting society colleagues, representing editors, directors, sound designers, production designers, cinematographers, voice actors, musicians, and composers, on matters relating to artificial intelligence (AI).

AWG and AWGACS, along with our industry colleagues, intend to make submissions to the Productivity Commission following the release of its interim report last week. Having attended a webinar on Monday 11 August with you, we seek the answers to the following questions to better inform our position and the information we will put to you. All these relate to things said during the webinar or public comments made in media appearances. We do not intend for these to be read as a transcription of your remarks (though some are direct quotes) but write to seek clarity on the Productivity Commission's views, research and approach. Having this information will allow us the better inform the Productivity Commission.

1. **Some of the public debate has been 'misleading'.** In your view, who has been misleading, and in what way? Who has been mislead? What arguments have been

made publicly that are, in your view, incorrect? Which public assertions or misunderstandings would you seek to correct? We refer to the attached brief list of our media from the last week on the matter of your interim report.

2. **Other jurisdictions have text and data mining (TDM) exceptions and copyright works this way all around the world, ie enables data scraping without licensing**. So far as we are aware, there are only a limited number of jurisdictions with TDM exceptions, and some of these are trying to unwind them. So far as we are aware, there have been no TDM exceptions made into law since 2021 anywhere in the world. Can you please provide a list of the jurisdictions the Productivity Commission considers to have a like system to TDM or 'fair use', and where it is available (we presume this is work and research you already have to hand, given the seriousness of this question for the creative industries) the relative size and health of those jurisdictions' creative industries before and since the TDM exception or introduction of its fair use doctrine. Please note that we do not consider the USA to be such a jurisdiction, as even their more permissive 'fair use' regime is the subject to active litigation around AI infringement and the question of whether LLMs are infrigement is not yet settled there.

3. **Only individual harms should be addressed or considered when considering a TDM or 'fair use'.** It may be that the Productivity Commission intends to examine sectoral, industry or community interests in its final report, but the webinar did not canvas this. Near the beginning of the webinar, it was suggested that only individual harms (copyright infringement, privacy breaches, and thus to our mind potentially deepfake pornography or other abusive material) could or should be addressed where AI causes such harm.

a. Will the Productivity Commission consider industry, sectoral or community harms when drafting its final report, and if so, how?

b. Relatedly, do you envisage the only form of redress available to individuals or communities, industries or sectors would be court action or some other form of enforcement litigation?

4. **AI will deliver many billions of benefit to the Australian community, and some specific amount individually in the order of $4,000 per Australian (over a decade)**. How has the Productivity Commission accounted for the loss of value to the economy when considering the damage to the creative industries in Australia, or has it presumed there will be no loss, ie is this figure a net or a gross amount relative to the creative industries?

   Relatedly, is it the Productivity Commission's view that this amount (approximately $4,000 over ten years) will actually be delivered to each individual Australian? Note this is a yes or no question.

5. **AI copying is not infringement but AI produced outputs may be**. This sentiment was expressed during the webinar of Monday 11 August, in which you referred to 'training' data as not being infringing. Can you confirm this is your understanding, and/or the position of the Productivity Commission, ie that scraping or taking works is not copyright infringement? If you have legal advice to this effect, can you please make it available to us?

6. '**An Australian AI poetry app'.** This was referred to a number of times as a desirable outcome from AI. We would like to hear more on this, an expanded explanation of why this is an outcome to be sought and how it will increase productivity. Would you see a similar utility or desirability in an 'Australian plays' app, or an 'Australian songs' app? What would its uses be and how would it make Australia more productive? Who would use this app, and what for?

7. **Moral rights.** We were unable to find any reference to the moral rights of creators in your interim report. Does the Productivity Commission intend to address the moral rights of creators (as contemplated by Part IX of the *Copyright Act 1968*)?

8. **Consultation with the creative sector.** In your webinar you referred to consultation that took place with the creative sector. If this was in addition to the submission process prior to the interim report, can you please advise which bodies or individuals were involved in this, when this took place, and how you accounted for speaking to the sector? If none took place beyond the submission process, please feel free to confirm this.

Creative workers are among the Australians most impacted by the unscrupulous and unlawful harvesting of copyrighted materials as well as the theft of images, voices, and AV products by foreign multi-nationals. We attach our correspondence to several foreign-owned tech companies following on from their evidence to the Senate inquiry last year, seeking answers on their treatment of creative works and workers.

We would welcome your reflections on how these workers, our members, are to seek redress for the infringement that has already taken place, and some indication of how you account for the lost productivity this represents. Having such an indication would allow our members to properly understand how their work and our industry is incorporated into the Productivity Commission's modelling and recommendations, and better inform our submissions to you.

Best,

Claire Pullen
Group CEO
AWG & AWGACS

Attachment C

28 August 2024

By email only: llongcroft@google.com

Dear Ms Longcroft,

I write in relation to your company's recent appearance before the Senate Select Committee on Adopting Artificial Intelligence (**the Committee**) on 16 August 2024.

The Australian Writers' Guild (**AWG**) represent Australia's performance writers, in screen, theatre, podcasting, musical theatre, comedy, interactive and audio formats. Our members' work is often available online in whole or in part– whether uploaded by our members themselves, or by the production companies that commissioned them, or via a public broadcaster – and the copyright in this work or subject matter is owned by our members, the production companies that engage them, or in some form of joint ownership. Our members' income is derived from the creation, sale and ongoing exploitation of the copyright in their literary work and their audiovisual work. Our members' work may also be available through a subscription or other free platform-broadly speaking, 'online'.

Google's representatives told the Committee that the company 'trains' its artificial intelligence (**AI**) models on "anything available online" and any "publicly available information culled off the open web". It is unclear whether Google considered audiovisual content that was accessible via a free catch-up or video on demand service like ABC iView or SBS on Demand was "publicly available" for the purposes of training its AI models. When asked whether your company used the text from books to train its AI models, your representative responded by stating that "anything on the web is publicly available."

Your representatives did not explain why they believed that just because something is available to the public via a search engine that it was free to use without permission from its copyright owners, or that no compensation was owed to the artists whose work has been so exploited. There was also no reference to, or dealing with, the question of copyrighted content being pirated or made unlawfully available "on the web".

Our members' work may be uploaded online illegally: specifically, by way of pirated books, plays and other pirated material. You would no doubt be aware of this due to the US class action suit pending against your company in connection with the Books3 database, where it was revealed that thousands of pirated works were input without consent, credit or compensation. For the sake of clarity, we note that Australian works, including the works of our members, are among those unlawfully used by Books3.

When Google told the Committee that the company 'trains' its generative AI models on "anything available online" we presume this must also include pirated materials. Your

representatives stated that “egregious material” would be removed from your platforms, without describing what “egregious material” is.

As you may be aware, copyright infringement does not rely on the unauthorised exploitation of a whole of a work, and it may also be that your company is facilitating or encouraging infringement by ‘training’ its AI on publicly available promotional material.

In the Senate inquiry, Google put the position that any potential breach of copyright law is justified by the supposed ‘public benefit’ of the technology: a self-serving argument when Google stands to profit from those potential breaches. As you are aware, there is neither a “fair use” or “text and data mining” exception to copyright infringement (contested legal doctrines even in jurisdictions where they do exist) in Australia. The AWG strongly opposes any relaxation of the “fair dealing” exceptions to copyright infringement which apply to very limited categories of use. It is worth also noting that, in Australia, a person or company cannot commit copyright infringement for a commercial purpose and then rely on these exceptions. A copyright infringement for profit is never a ‘fair dealing’.

If Google’s goal is the ‘responsible development’ of AI systems then surely the first step is to respect the rights of Australian copyright owners, like our members, whose work is used as ‘training data’. This requires consent, compensation and credit.

On this basis, I write to seek you advise:

1. How our members (and other creative workers) can opt out of having your platform ‘train’ its AI models on their works or materials, so I can advise members how to do so;

2. What data you will make available to creative representatives and creators, so they can be confident their work has not been input into ‘training’ data sets;

3. If your company does not permit an opt out of material being used to ‘train’ AI without consent, credit and compensation, we seek your advice on how you currently avoid issues of copyright infringement in Australia of Australian and New Zealand-Aotearoa works and materials;

4. What your plans are to remunerate creators whose work is being input to the benefit of your company with or without their consent;

5. How you define ‘egregious material’ and the steps that are taken to ensure it is not input into AI models;

6. How you ensure your search engine is not used to enable or facilitate ‘scraping’ or ‘training’ by other AI models not operated by you;

7. How you safeguard the moral rights of creators, either in your own AI use or the access of AI models via your platforms;

8. What if any warranties users of your platforms are offered by you against secondary liability from infringement, if it is conducted by, with, or using your platforms;

9. Critically, how you safeguard Indigenous Cultural and Intellectual Property (ICIP) from infringement and inappropriate use, and what protocols are in place for managing appropriate use of First Nations works.

Please note that a general reply referring to terms of service and/or statements of commitments to protecting the arts and/or copyright is not the information we seek. We are after the specifics of your engagement with users and creators to ensure our members rights are protected.

Claire Pullen

Group CEO
AWG & AWGACS

Attachment D

28 August 2024

By email only: mlevey@amazon.com

Dear Mr Levey,

I write in relation to your company's recent appearance before the Senate Select Committee on Adopting Artificial Intelligence (**the Committee**) on 16 August 2024.

The Australian Writers' Guild (AWG) represent Australia's performance writers, in screen, theatre, podcasting, musical theatre, comedy, interactive and audio formats. Our members' work is often available online – whether uploaded by our members themselves, or by the production companies that commissioned them, sold on the platforms that your company owns, or via a public broadcaster – and the copyright in this work or subject matter is often owned by our members, the production companies that engage them, jointly owned, or some combination of these. Our members' income is derived from the creation, sale and ongoing exploitation of the copyright in their work.

Amazon told the Committee that it 'trained' its artificial intelligence (**AI**) models on "licensed data sets, open-source data sets, and *publicly available materials*" (emphasis ours). This is of concern to us: noting that Amazon did not say from whom data may be licenced nor what 'open source' sets are in play, Amazon did not explain why it believed that because something is available to the public meant that it was free to use without permission from its copyright owners or that no compensation was owed to the creators whose work has been thus exploited. A direct copyright infringement can occur even if the owner of a copyright-protected literary or cinematographic work agrees to make that work accessible on the internet in one form or another. It is unclear whether Amazon considered audiovisual content that was accessible via a free catch-up or video on demand service like ABC iView or SBS on Demand was "publicly available" for the purposes of 'training' its AI models.

There are also times when our members' work may be uploaded online illegally: specifically, by way of pirated e-books, plays and other pirated material. You would no doubt be aware of the class action suit pending against a number of US AI developers in connection with the Books3 database, in which thousands of pirated works have been used to 'train' generative AI systems. For the sake of clarity as to why we raise this, our members works have been included among those so infringed by Books3. Books3 is publicly available and/or 'open source', but that does not mean that the contents are free of copyright and subsequent obligations to copyright holders.

Amazon's representatives asserted that copyright is not "meant to protect" acts like reading a book or listening to a song and "learning" from it. We agree, however this is not what accessing a copyrighted work is, in the context of 'training' AI.

This is a self-serving analogy when applied to a piece of technology, owned by a company, and monetised to the benefit of that company. It is also worth pointing out that – whether it is a human or AI – a reproduction of a third party's copyrighted work without the consent of its owner is an infringement of copyright.

We note that when the Committee pressed Amazon about whether Amazon benefiting monetarily from the use of copyright-protected material would be a contravention of its responsible use policy, Amazon's representatives agreed with the Committee that it would.

In Australia, there is no "fair use" or "text and data mining" exception to copyright infringement (and these legal doctrines are contested even in jurisdictions where they do exist). In Australia, we have very specific 'fair dealing' exceptions to copyright infringement[i]. Infringing on copyright for a commercial purpose is never a 'fair dealing'.

We also note that there is already a statutory framework in place in Australia that allows certain entities to use copyright protected material, for specific purposes such as education, such as in the analogy offered by your representative at the Senate inquiry, where remuneration is paid[ii]. Organisations like the Australian Writers' Guild Authorship Collecting Society (**AWGACS**) collect this remuneration and distribute it to the authors of television and film scripts.

If Amazon's goal is the 'responsible development' of AI systems then surely the first step is to disclose the steps taken to respect the rights of Australian copyright owners, like our members, whose work may have been used as 'training data'. This requires consent, compensation and credit.

On this basis, I write to seek you advise:

1. How our members (and other creative workers) can opt out of having your company and platforms 'train' its AI models on their works or materials, so I can advise members how to do so;

2. What data you will make available to creative representatives and creators, so they can be confident their work has not been input into 'training' data sets;

3. If your company does not permit an opt out of material being used to 'train' AI without consent, credit and compensation, we seek your advice on how you currently avoid issues of copyright infringement in Australia of Australian and New Zealand-Aotearoa works and materials;

4. What your plans are to remunerate creators whose work is being input to the benefit of your company (with or without their consent);

5. How you safeguard the moral rights of creators, either in Amazon's own AI use or the access of AI models via your platforms;

6. How you ensure your search engine is not used to enable or facilitate ‘scraping’ or ‘training’ by other AI models not operated by you;

7. How you safeguard the moral rights of creators, either in your own AI use or the access of AI models via your platforms;

8. What if any warranties users of your platforms are offered by you against secondary liability from infringement, if it is conducted by, with, or using your platforms;

9. Critically, how you safeguard Indigenous Cultural and Intellectual Property (ICIP) from infringement and inappropriate use, and what protocols are in place for managing appropriate use of First Nations works.

Please note that a general reply referring to terms of service and/or statements of commitments to protecting the arts and/or copyright is not the information we seek. We are after the specifics of your engagement with users and creators to ensure our members rights are protected.

Claire Pullen

Group CEO
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