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Response to Department of Industry Discussion Paper: Safe and responsible AI in Australia

July 2023

Introduction

Thank you for the opportunity to participate in this review.

As the Discussion Paper notes, this is one of many processes that the Government is undertaking with a view to harnessing the potential benefits of artificial intelligence (AI) for Australian society, and managing the potential threats.

We and our members recognise the potential for AI to do good in a range of areas, including to reduce inequalities. At the same time, there is huge potential for adverse consequences for people who work in Australian creative industries, including educational publishing. The Government's National Cultural Policy was widely and warmly welcomed by people working in Australia's creative industries, including because it has been introduced as a whole-of-government policy. Although not mentioned in the Discussion Paper, the objectives and aspirations of the National Cultural Policy are key considerations for the Government's next steps. These include measures to address concerns among First Nations people about maintaining authenticity in relation to their culture, and control over how aspects of their culture is used by others. Governments and other policy makers need to bear these in mind when considering how AI can be harnessed for social good.

Our members' concerns largely relate to generative AI applications that have been 'trained' on other people's content without disclosure and without appropriate compensation. This has given rise to widespread alarm in the creative sector, and legal proceedings in other countries. There are longer term consequences for the sustainability of quality content. There are also issues relating human rights. Under the United Nations Universal Declaration of Human Rights, these include the right of authors to the protection of the moral and material interests resulting from any scientific, literary or artistic production.

About us

We are a not-for-profit company with nearly 40,000 members, who are primarily writers, artists and publishers. Among other things, we are appointed by the Australian government to manage schemes in the Copyright Act that allow people in the education and government sectors to copy, adapt, share and store text and images, without the permissions that would otherwise be required. In return, the education and government sectors pay copyright fees to people who create content, which we negotiate, collect and distribute. We also manage licensing for other sectors, including for the business sector, and people who use reproductions of artistic works. In 2021–22, we distributed $95m in copyright royalties. Those payments contribute to investment in future quality content for Australians, including Australian students.

The statutory licence schemes that we are appointed by the Government to manage are very broad in scope. The statutory licence for governments allows governments to use any content for 'government purposes', coupled with fair compensation arrangements. The statutory licence for education allows education institutions to copy, adapt and share content for education purposes, again coupled with fair compensation arrangements.

The current agreements covering the application of the statutory licences in these sectors do not cover the use of content for AI, but statutory licence framework allows for agreements on the use of

content for AI in appropriate circumstances. Governments should, of course, demonstrate best practice in this regard, including in relation to disclosures and compensation.

Members' concerns about AI

We are currently conducting a survey of our members. Over 1,000 members have responded so far. The interim results indicate that two thirds of our members are concerned about the implications of artificial intelligence (AI) for their profession or business. One in four have mixed feelings.

Amongst members who are concerned about the implications of AI for their profession or business, the top five concerns were:

- Use of content without permission
- Lack of transparency about the source of AI outputs
- Use of generative AI content without sufficient ethical and legal frameworks
- Lack of transparency about what content has been used to train or develop AI
- Lack of fair compensation for creators and publishers of content used to train or develop AI

Responses to some of the questions in the Discussion Paper

Potential gaps in approaches

What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?

There are risks associated with lack of transparency regarding content used to train generative AI applications, and with the provenance of outputs. There are also risks associated with failure to compensate creators of content used to develop these applications. It is not clear if these risks can be mitigated using existing regulatory approaches.

There should not be any changes to regulatory frameworks, including copyright legislation, that would make it even easier to use other people's content without disclosure or compensation.

Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.

The Government should not use AI technologies that have been developed using other people's content without disclosure and without compensation.

Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanisms could achieve and how they could influence the development and uptake of AI in Australia.

The next steps in this process need to take account of the objectives and aspirations of the National Cultural Policy.

Responses suitable for Australia

Are there any governance measures being taken or considered by other countries (including any not discussed in this paper) that are relevant, adaptable and desirable for Australia?

We support the principles set out in the Open Letter to Policy Makers from CISAC (International Confederation of Societies of Authors and Composers)[1] and the Open Letter to Generative AI Leaders from the Authors Guild.[2]

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[1] https://www.cisac.org/Newsroom/articles/global-creators-and-performers-demand-creative-rights-ai-proliferation
[2] https://actionnetwork.org/petitions/authors-guild-open-letter-to-generative-ai-leaders

We also note the risks recognised by the UK Parliament's Communications and Digital Committee, in its report 'At risk: our creative future'.[3]

Target areas

How can the Australian Government further support responsible AI practices in its own agencies?

The Government agencies should not use AI technologies that have been developed using other people's content without disclosure and without compensation.

Given the importance of transparency across the AI lifecycle, please share your thoughts on:

a. where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI?

There should be transparency requirements regarding the use of other people's content in the development of AI applications, particularly for generative AI. Transparency is also required regarding the outputs of generative AI, including the fact that the content is AI-generated, and how it was generated.

b. mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.

There are different options for achieving this, and we do not currently have a view about what would work best.

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[3] https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/125/12502.htm