COPYRIGHTAGENCY

Submission to House Standing Committee on Employment, Education and Training into the Digital Transformation of Workplaces

21 June 2024

Our brief submission focuses on 'appropriate safeguards or regulatory interventions to guide responsible implementation in the workplace, including the digital skills and resources necessary for employers to appropriately utilise these technologies' (paragraph e of the terms of reference) as it applies to workplace tools that enable the use of Generative Artificial Intelligence (Gen AI) tools.

Issues relating to safe and responsible development, deployment and use of Gen AI tools have been the subject of a number of government and parliamentary inquiries, including the inquiry by this Committee into the use of Gen AI in the Australian education system (in which we participated). Our particular concern is that activities related to Gen AI that use other people's content should involve mechanisms that fairly compensate the creators of that content for the value that they have contributed.

Australia's copyright system is well set up to enable the use of other people's content in ways that are ethical and equitable, including via copyright licensing arrangements. This system will assist the development of sovereign data capabilities, and the reflection of Australian experience and culture in future Gen AI developments in Australia. Arguments made by multinational companies to water down Australia's copyright system should be resisted. Below, we have set out some common claims, and why they are wrong.

The Australian Government should be using various mechanisms to ensure that the use of other people's content in connection with Gen AI functionality and tools is ethical and equitable. This includes:

- mechanisms to ensure that there is compensation to Australian creators for the unauthorised use of their works in the overseas development of Large Language Models (LLMs), particularly when the language models form the basis of products and services that are offered in Australia
- encouraging, facilitating and requiring (e.g. in connection with government funding) that use of other people's content in connection with Gen AI is ethical and equitable, and educating Australians about how to do this
- requiring Gen AI developers to be transparent about the content that they have used

About us and our members
We are a not-for-profit organisation with 40,000 members, who are primarily writers (including journalists), artists (including photographers, illustrators and cartoonists) and publishers (including in the educational, academic and news media publishing sectors).

We are appointed by the Australian government to manage special schemes in the Copyright Act that allow uses of content for education and government purposes, as they apply to text and images. These schemes apply to any content, from anywhere in the world, in any format (including print and online). We also manage licensing arrangements for the business sector that allow uses of content from Australia and from other countries, under our arrangements with more than 70 similar organsiations in other countries.

We collect and distribute around $100m in copyright fees each year, contributing to support for Australia's creative industries.

Copyright and AI reference group

As the Committee is aware, copyright-related AI issues are being reviewed by the Attorney General's Copyright and AI Reference Group (CAIRG). This group includes representatives from more than 60 stakeholder organisations, including from the creative industries, technology companies, education sector and library sector. We have found the process to be thorough, and well-coordinated with AI-related activities in other portfolios.

Responses to arguments for watering down Australia's copyright system

Large multinational companies are pushing for Australia's copyright legislation to be watered down to benefit them. Their proposals are not in the best interests of Australian society, and should be resisted. These same companies have demonstrated an unwillingness to pay for content that increases their profits, including news media content.

Below are responses to arguments that these companies have been making.

Claim	In fact
Australia's copyright legislation is a 'grey area'	It is not. It sets out when someone needs permission (a licence) to use someone else's content, including in connection with AI. It also sets out the requirements for copyright protection, including where a creator is using a technological tool. AI is not a technological development that requires or warrants changes to Australia's copyright legislation.
	As the Business Council of Australia said in its submission on Safe and Responsible AI:
	In Australia, the development, use, and outcomes of AI are regulated by technology-neutral laws of general application [including copyright].
	…
	This remains appropriate: Australia has a mature legislative and regulatory environment that provides protections, guardrails, and avenues of recourse. This technology-neutral approach ensures regulatory focus remains – appropriately – on the harms, not the technology.
Australia's copyright system is a barrier to development of AI models	There is a vast range of content available for lawful use by AI developers, including under efficient and fair licensing arrangements.
	The cavalier approach to the use of other people's content by billion-dollar companies based in Silicon Valley should not be used as a blueprint, anywhere.
	The UK's recent rejection of a broad text and data mining (TDM) exception indicates that such an exception is not required for innovation in the UK, and is not compatible with support for creative industries.

Claim	In fact
AI training is like reading a book	This analogy (like similar analogies that have been made before by tech companies seeking to develop commercial products using other people's content) is inapt and inaccurate. Training for Generative AI uses the *expression* of facts and ideas in other people's content (e.g. the way that an author has written about a particular topic), which is protected by copyright.
	Generative AI tools are designed to produce new content that expresses facts and information (e.g. in writing) in ways that mimic human-created content. The quality of the outputs (e.g. well-written text) is increased by the quality of the material that the models are 'trained' on. Language models are dependent upon well-written content (by human professional writers) to 'learn' how to write well.
Australia is out of step with international developments	Australia's copyright system is something to be proud of. It includes world-leading provisions, such as those enabling efficient and fairly compensated use of content in the education and government sectors. Its importance to Australia's creative industries was recently reiterated in the National Cultural Policy.
	In the UK, the Government has recently rejected calls by the tech sector for a broad 'text and data mining' exception, and has made clear that AI development should not be subsidised by the creative industries.
	In Japan, the Government is considering scaling back the very broad exception for AI, given concerns for the creative industries.
	In the US, billion-dollar companies used other people's content without their permission or payment to develop commercial products, arguing that their actions were allowed in the US by the notoriously uncertain 'fair use' provision. It is by no means clear that the exception does apply, as indicated by more than 24 court cases in train, and AI developers are now looking to licensing.
Copyright isn't the right model for creators' interests	Copyright is one mechanism for creators to be properly compensated, where AI developers are operating ethically and fairly to acquire lawfully-sourced content. There are others, which may apply in other circumstances. A mechanism similar to the news media bargaining code could apply, but it is not a replacement for creators' copyright rights.
Licensing is not viable	Licensing for AI is already happening. For example, there have now been several deals between OpenAI and major news media companies. Scholarly publisher Wiley recently announced a $23m deal for licensing content for training by a large AI developer.
	Licensing of large volumes of content, including via not-for-profit copyright management organisations, has been a feature of Australia's copyright landscape for more than 100 years. There are efficient large-volume licensing mechanisms in place for a large range of activities, such as media monitoring and music streaming.

Claim	In fact
Rightsholders would not get much money from a licensing regime	Solutions for uses of masses of content have been in place for a very long time, including collective licensing by copyright management organisations. The market for licensing content for AI development is just starting to emerge. The value of third-party content to AI developers is clear. AI development will occur at many levels: not just the foundation models, but tools and applications built with smaller, curated datasets. Collective licensing means that the aggregate of payments from multiple sources can make a material difference to people working in the creative industries.
Licensing schemes will impede small developers	AI developers expect to, and do, pay for all other inputs. They do not ask hardware manufacturers, software providers or data centres to subsidise their activities. It is supremely unfair that the creative industries be asked to subsidise AI development. Licensing solutions are available to AI developers, big and small. Some local AI development will receive government assistance, for example as direct funding or taxation arrangements. Australian governments should remind recipients of their obligations to only use legitimately sourced content, and provide information about how to ensure this (including via licensing). The organisations making this claim are huge multinational companies. Their market power is not created by Australia's copyright system. It needs to be addressed by measures in Australia's competition regulation framework, such as the news media bargaining code.