

Response to Department of Industry, Science and Resources: Proposals paper for introducing mandatory guardrails for AI in high-risk settings

20 September 2024

Introduction

Thank you for the opportunity to respond to the Department's Proposals paper for introducing mandatory guardrails for AI in high-risk settings (Proposals Paper).

We support the introduction of mandatory guardrails.

We have commented on some aspects of the proposal below. In summary:

- the principles for designating an AI system as high risk should explicitly include the risk of undermining the objectives of the National Cultural Policy (Revive), including the sustainability of Australia's creative industries and their value to Australian society; and
- the obligations in Guardrail 3 to obtain data legally and disclose data sources should be accompanied by explicit obligations to disclose the basis on which any third party copyright material was obtained and used legally.

Government needs to address use of Australians' content in offshore AI development

There are opportunities for responsible AI development in Australia to be assisted by, and to benefit, Australia's creative industry sector and all the people associated with it. Some of our members, however, remain highly distrustful of AI because of unauthorised use of Australians' content for training large language and diffusion models in other countries. The Australian government needs to address this to gain the trust of these members, and their support for responsible development in Australia.

The Australian government should introduce a law or mechanism that would compensate Australians whose content has been used for AI development offshore without consent or compensation. We will provide the Department with further information about this.

Submission to Attorney General's Department on transparency connected to copyright

We are preparing a submission to the Attorney General's Department on transparency connected to copyright.

Our position is that the Copyright Act should *not* be amended to add new transparency requirements to those currently in the Act, for reasons that include:

- AI-related transparency requirements affect matters other than copyright rights; and
- compliance may be increased if the requirements are centralised (e.g. into stand-alone AI legislation and associated regulations and communications).

Issues in the Proposals Paper

Principles for high risk

The proposed principles include adverse legal effects. The use of other people's content for AI development is high risk, as indicated by the number of court cases relating to this issue.

The principles should also explicitly identify as high risk any developments that undermine the objectives of the National Cultural Policy (Revive) including because they harm:

- people working in Australia's creative industries, at an individual or collective level;
- First Nations culture; and/or
- Australian society, via reduction in creative expression that reflects Australian stories and experiences.

Guardrail 3: Protect AI systems, and implement data governance measures to manage data quality and provenance

We are pleased to see the proposal for measures to ensure that data is legally obtained, and that data sources are disclosed.

Under Australian law, the fact that material is 'publicly available' does not, of itself, mean that it can be used for AI development, deployment (or anything else) without a licence. However, data sources containing copyright material can be easily obtained legally in Australia, including under licensing arrangements. We would be pleased to work with the Government on this.

Given that the use of other people's content for AI development is high risk (as indicated by the number of court cases), there should also be explicit requirements that organisations:

- have policies and procedures on copyright compliance; and
- as part of their disclosure obligations, disclose how any third party copyright content was legitimately sourced, which may include:
 - openly licensed for that development or deployment (e.g. covered by a relevant Creative Commons licence, or owned by an Australian government and openly licensed for AI development in Australia)
 - allowed by a public interest exception (including a statutory licence)
 - out of copyright
 - specifically licensed for the development or deployment (but the organisation may not need to disclose the actual content: for example if the licensing was commercial in confidence)

These additional requirements will help to build trust and confidence in Australia's creative industries in Australian AI development.

Disclosures relating to offshore development

In tandem with requirements relating to development in Australia, the Government also needs to address the use of Australians' content in offshore development of AI, including training, as this is a major contributor to lack of trust and confidence.

The Government should introduce a law or mechanism that would deliver compensation to Australians whose content has been used offshore without authorisation or compensation. Such a law would require disclosure from organisations operating in Australia about their use of Australians' content offshore, including content that Australians have not authorised for online publication such as the Books3 dataset.¹

Guardrail 6: Inform end-users regarding AI-enabled decisions, interactions with AI and AI-generated content

In our submission to the Attorney General's Department on copyright-related transparency, we will say that the Copyright Act should not be amended to introduce transparency requirements that are additional to those currently in the Act. As noted above, the reasons include:

¹ Content that Australians have authorised for online publication is not licensed for AI development merely because it is 'publicly available'.

- AI-related transparency requirements affect matters other than copyright rights; and
- compliance may be increased if the requirements are centralised (e.g. into stand-alone AI legislation and associated regulations and communications)

Indigenous Cultural and Intellectual Property (ICIP)

We are very pleased to see, and strongly support, the Government's proposed approach to issues for First Nations Australians, including Indigenous Cultural and Intellectual Property (ICIP).

Harmonisation and interoperability

We were pleased to see the recognition of Australia's local needs and context, including ICIP.

Australia's copyright framework complies with international standards. It also has features that are particular to Australia, such as very broad statutory licence schemes for the education and government sectors that can support ethical local AI development, including the government's role as an exemplar. These elements have not hindered international trade and interoperability, and will not hinder development that is beneficial to Australians.

The introduction of AI-related copyright exceptions to benefit multinational companies would be a 'race to the bottom' that the Government rightly wishes to avoid.

Voluntary AI Safety Standard and government funding

The Proposals Paper sets out some areas in which the government is funding AI development.

The Voluntary AI Safety Standard should be mandatory for recipients of government funding.

We are happy to work with the government to assist funding recipients ensure that data containing copyright material is obtained and used legally in accordance with copyright obligations.

Government procurement

As part of its procurement processes, the Government should require potential suppliers to disclose any use of Australians' content in connection with the relevant service or product, whether that occurred in Australia or offshore.

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 statutory licence schemes in the Copyright Act that allow uses of content for education and government purposes without the permissions usually required, but subject to fair compensation. These schemes can allow AI-related uses of content. We also manage licensing arrangements for the business sector.