

Response to Treasury: Review of AI and the Australian Consumer Law

19 November 2024

Introduction

Thank you for the opportunity to respond to the 'Review of AI and the Australian Consumer Law Discussion Paper'. We have recently made a submission to the Department of Industry Science and Resources (DISR) on its proposals paper for introducing mandatory guardrails for AI in high-risk settings.¹

In our submission to DISR, we said:

- 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.

We are also a member of the Copyright and Artificial Intelligence Group (CAIRG) managed by the Attorney-General's Department. In relation to copyright and AI, our position is:

- the current Australian copyright framework is fit for purpose for AI-related activities that occur in Australia and does not need to be amended (e.g. it enables licensing arrangements that support AI development and deployment in Australia, and also support Australia's creative industries); and
- the government should introduce a new law that would compensate Australians whose works have been used for training AI models offshore (such as Large Language Models), where the training output (e.g. language model) is used for products and services available in Australia.

Australian Consumer Law

Australia's consumer law should ensure that:

- users of digital platforms are not compelled, by non-negotiable terms of use, to license digital platforms to use copyright works uploaded to the platforms for AI-related activities (such as training AI models); and
- consumers are given sufficient information to make informed choices about whether or not to acquire or consume works that have been produced using AI (for example, to assist them to identify books written by human authors).

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 schemes in the Copyright Act that allow uses of content for education and government purposes, as they apply to text and images. We also manage licensing arrangements for the business sector that allow uses of content, including news media content.

¹ <https://consult.industry.gov.au/ai-mandatory-guardrails/submission/view/23>