



Department of the Prime Minister and Cabinet
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Submission from the **Australian Society of Authors to the **Getting it right: Building AI infrastructure that works for Australia** consultation**

About the ASA

With approximately 4,700 members, the Australian Society of Authors (**ASA**) is the peak body, professional association, community, and voice of Australia's writers and illustrators. Our members are drawn from every sector of the writing and illustrating world, including: novelists, non-fiction writers, children's creators, educational writers, poets, and more.

The ASA is a member of the Attorney-General's Copyright and AI Reference Group Steering Committee and has made many submissions to government in relation to copyright and [artificial intelligence](#). We refer you to these submissions for more information.

We confine our submission to the subjects of the consultation paper which have relevance to the professional careers of authors and illustrators.

Executive summary

The ASA recognises the Australian government's ambition to accommodate frontier AI training in this country. This can be achieved without watering down creators' rights – we simply need to reinforce and enforce our existing law.

By necessity, standards for developing AI in Australia's interests must include upholding copyright law. Copyright is not only how authors earn a living, it underpins the productivity of Australia's \$70 billion creative industries¹ and the livelihoods of the 591,000 Australians employed in the sector.²

Over three years ago, AI companies overseas committed what in Microsoft's own words represents 'the largest theft of labor in human history.'³ Developers took a range of copyright material – much of it from pirate websites – and used it to train generative AI models, which these companies are commercialising and deploying around the world. It has provoked global outrage across the creative industries, consistent condemnation in public

¹ From the Department of Infrastructure, Transport, Regional Development, Communications, Sport, and the Arts [Cultural and Creative Activity research findings](#).

² From the Department of Infrastructure, Transport, Regional Development, Communications, Sport, and the Arts [Cultural and Creative Workforce research findings](#).

³ Jason Koebler, [Doom Loop': OpenAI and Microsoft Admits LLMs Are Destroying the Web and Built on Theft](#).



polling⁴ and, to date, approximately 150 copyright infringement cases in the United States.⁵ By the AI companies' own admission, this practice is unsustainable, poses an 'existential threat' to publishing, and 'threatens the economic stability of those who create the content,'⁶ especially because the AI tools can be used to displace authors' work and dilute the market.

Licensing copyright material for AI training recognises a simple commercial reality: **authors, artists, and publishers are essential suppliers in the AI economy**. The technology sector has a vested interest in claiming licensing is too difficult or expensive. The evidence suggests otherwise: AI companies are already entering licensing agreements where they judge the legal and commercial risks of proceeding without them to be too high, including licensing Australian authors' works.⁷

There remains an opportunity to right the wrongs by strengthening the Australian Copyright Act to compel AI developers to come to the licensing table. The decisions of government now will determine the long term revenue structures of the AI economy and whether creators share in the benefits as recognised suppliers, or become casualties of a parasitic and unsustainable business model.

Australia does not have to choose between AI investment and creators' rights. It can – and must – insist on both.

REQUIREMENTS FOR LARGE DATA CENTRES

Impose no net costs on consumers and communities

1. The ASA supports the government's intention not to impose net costs on consumers and communities from the development of large data centres, as part of minimum requirements.
2. This intention needs to apply to the professional creative community. No net costs should be imposed upon professional creators under any proposal the government considers to facilitate the licensing of data (copyright material) which will be stored in large data centres in Australia.
3. An example of net costs upon professional creators might include opt-out schemes which inappropriately shift the transactional costs and administrative burden to individual creators or rightsholders to manage, should they wish for their work not to be used by AI companies for training. If the transaction costs and administration

⁴ Essential Media, [Views on AI Copyright Law](#).

⁵ ChatGPT is Eating the World, [AI Copyright Case Tracker](#).

⁶ Jason Koebler, [Doom Loop': OpenAI and Microsoft Admits LLMs Are Destroying the Web and Built on Theft](#).

⁷ [LLM Pulse](#) lists licensing deals for both training and grounding, including licensing for the 'long tail, like Reddit. [Copyright Alliance](#) lists all deals for literary works, including the HarperCollins deal which included Australian authors who were paid USD \$2,500 per title.



associated with seeking out copyright licences are too burdensome for the largest technology companies in the world to manage, it is not sensible or fair to expect individual creators on marginal incomes to take the steps to exclude their material.

4. To date, the tech companies the government wishes to incentivise to train models in Australia have been unwilling or unable to abide by *opt-in* arrangements – there is nothing to suggest that they would abide by opt-outs. One needn't look for examples of this only in relation to the creative industries and news media⁸ – the recent hack of Medicare and other government institutions involved OpenAI's model receiving an 'opt-out', and scaling the fence to access the data anyway.
5. If this is, as the tech companies assert, technology gone rogue which is impossible to control, then an opt-out is ineffective because it cannot be observed, and therefore does not deliver control to Australian creatives. If the tech companies can, in fact, program their models to comply with technological protections, then they are clearly choosing not to. Either way, it is obvious that opt-out schemes are impractical and unrealistic in the context of the pattern of behaviour Big Tech has demonstrated to date in relation to observing and respecting Australians' rights.
6. Add to this a context where there is no mandated transparency around training inputs. It would be very difficult for a creator or their publisher to identify when their copyright material is being used and to enforce their rights. Australian authors discovered that their books had been used to train large language models due to reporting in *The Atlantic* on the Anthropic and Meta class action cases in the US.⁹
7. Diminishing Australian copyright law, including through opt-out schemes, imposes net costs on authors and illustrators – who earn on average \$18,200 a year from their creative practice¹⁰ – to protect their material online and to police its use.
8. To ensure the 'no net costs' principle is applied to the Australian creative industries, the AI standards must require AI developers building data centres to demonstrate they have licensed and paid for the required data they need to train their AI models, and will provide ongoing payments to local Australian creators whose work has already been taken and used to train models overseas, without permission or payment.

Engaging meaningfully with local communities and councils

9. The ASA supports meaningful engagement with First Nations peoples and communities, and that engagement must extend beyond Land management to

⁸ robots.txt is supposed to facilitate an opt-out for online content, but there is strong evidence to suggest major tech companies are routinely circumventing the arrangement to train their AI models: Jerome Segura, [Beyond robots.txt: Exposing the cracks in AI agent policy enforcement](#).

⁹ Alex Reisner, [Search LibGen, the Pirated-Books Database That Meta Used to Train AI](#).

¹⁰ Australian Society of Authors, [New survey results show Australian authors earn on average \\$18,200](#).



Traditional Knowledge and Indigenous Cultural and Intellectual Property (ICIP). Supporting Indigenous cultural sovereignty means supporting the ability of Traditional Owners to negotiate permissions to use their cultural material, which will be stored in large data centres when used for AI training. AI developers operating in Australia must respect ICIP by following cultural protocols regarding consultation and consent.

10. The National Cultural Policy, *Revive*, explicitly addressed the harm caused by fake Aboriginal and Torres Strait Islander art, and made a commitment to establish standalone legislation to protect First Nations traditional knowledge and cultural expressions.
11. Generative AI tools may be used to produce and perpetuate fake art, and appropriate Aboriginal and Torres Strait Islanders' art, design, stories, and culture without reference to traditional cultural protocols.¹¹
12. Accordingly, there ought to be positive duties imposed on AI companies to ensure their models do not contain ICIP, unless they can show they have complied with First Nations cultural protocols, both in the acts of ingestion and in safeguarding against inappropriate outputs.

CONDITIONS FOR AI TRAINING

Security, safety and transparency

13. Most AI developers have refused to be transparent about the copyright works which have been scraped or ingested in order to develop their AI models.
14. The government must introduce legislation which requires transparency over all data and copyright works used for training inputs, irrespective of where the generative AI model has been trained.
15. This disclosure should, at minimum, include:
 - a. What data has been used to train the model, including copyright protected material.
 - b. Where the data was obtained – for example, on pirate websites, or through destructive scanning methods.¹²

¹¹ Read more about ICIP and AI in Dr Terri Janke's article, '[Writing and Indigenous Cultural and Intellectual Property in an AI world](#)', and the harm caused by AI-generated fake Aboriginal art in John McMullan and Glen Stasiuk's, '[How AI images are 'flattening' Indigenous cultures – creating a new form of tech colonialism](#).'

¹² Both [Anthropic](#) and [Amazon](#) are destroying books for the purposes of scanning them and using them to train their AI models.



- c. How the data was obtained – for example, via a licence.
- 16. We know this kind of disclosure is feasible for AI companies, as they are already complying with transparency requirements in other jurisdictions.¹³
- 17. Transparency must also apply to all AI-generated outputs. Australians have a right to know when they are engaging with AI-generated content. This is especially important given the significant risks of hallucination, misinformation, and disinformation brought about by generative AI technology. To give consumers clarity and choice a classification system can be introduced to clarify services or goods that are: AI-free; AI-augmented or assisted; and AI-generated.
- 18. Transparency requirements are likely to be sector specific so mandatory industry codes could be developed with industry input, with penalties for non-compliance.

Support Australian writers, musicians, artists and journalists, and others working in the creative and media sectors, to thrive

- 19. The ASA strongly applauded the government's commitment to ensuring Australian creators are able to exercise control and negotiate the terms of payment for their work.
- 20. In order to ensure support for the creative industries, the government must consider both the copyright settings *and* the **impacts upon artists as workers**. The adoption of generative AI is *already* displacing creators' work and diluting the market, and this must be considered alongside any licensing framework proposals and the implementation of fair standards.
- 21. **The ongoing productivity of the creative industries is particularly important for AI developers.** Under the AI companies' own admission, their tools are impossible to build without copyright work.¹⁴ They need copyright material now, and they will need it into the future to train and refine their models. As Microsoft has acknowledged about the current extractive business practices, 'Our AI content strategy has started a "doom loop" that will hurt the performance of our models and the entire web at the same time: It is highly unusual that an end-product threatens the economic foundations of its essential suppliers, but that is the situation we have created for our LLM business with respect to its "content supply chain".¹⁵ **It is not in anyone's interests to disincentivise the creation of copyright work.**
- 22. The government is not powerless to address this.

¹³ See California's [Generative artificial intelligence: training data transparency bill](#).

¹⁴ Dan Milmo, ['Impossible' to create AI tools like ChatGPT without copyrighted material, OpenAI says](#)

¹⁵ Jason Koebler, [Doom Loop': OpenAI and Microsoft Admits LLMs Are Destroying the Web and Built on Theft](#).



COPYRIGHT SETTINGS

23. Copyright law is the foundation upon which creators are able to generate value from their work.
24. An opt-out scheme to incentivise licensing in Australia would not deliver control to Australian creators. To date, overseas AI companies have conducted mass scraping of the world's copyright material to build their generative AI models. This includes taking material from pirate websites – activity for which Anthropic was subject to the largest copyright infringement settlement in history.
25. Even if opt-outs were respected by tech companies for AI training *onshore* – which is highly unlikely given their ongoing conduct – Australian authors' and illustrators' works are still being used offshore. What's more, if the AI models trained here are developed by distilling or otherwise relying upon the models trained overseas, Australian models will include the copyright material that was scraped offshore. Under an opt-out scheme creators aren't opting out of their work being *used*, they're opting out of *being paid*.
26. Instead, we propose the government intervene to compel Big Tech to license copyright work **as a condition of doing business in Australia**. Previously, we have suggested to government this might be achieved through a mandatory code but, if that is unpalatable, we suggest strengthening the Copyright Act.

Onshore training:

27. The law is simple: when copyright works are used for AI training undertaken within Australia, the activity is subject to the Copyright Act and must therefore be conducted with the permission of the copyright owner.
28. For efficiency, permission does not need to be obtained from individual rights holders; collecting societies can represent creators en masse.
29. With respect to onshore training then, the Australian government must simply require multinational companies looking to train here to abide by our laws. No new legislative intervention is required with respect to onshore training.

Offshore training:

30. With respect to AI training which occurs outside Australia, we seek legislative change to address a widely acknowledged injustice that has remained unresolved since the launch of generative AI.

31. Creators have not, to date, pursued legal action against multinational AI companies here. This is primarily because the unauthorised use of copyright material for frontier AI training has occurred outside Australia, and our Copyright Act generally applies only where the infringing act is done in Australia.
32. Accordingly, Australian creators are frustrated: their life's work has been taken and commercialised in a way that is prohibited under Australian law. However, their ability to take action is impaired by the global operations of AI companies.
33. While global companies conducting activities offshore can ignore Australian laws, **this disregard for Australian standards must stop the moment that such companies commence business in this market.**

THREE WAYS TO CLARIFY THE COPYRIGHT ACT 1968

34. **If AI models offered in Australia rely upon unauthorised use of their work, Australian creators must be able to challenge this activity, no matter where the training took place.** We submit that the government ought to clarify the importation provisions and the scope of the reproduction right, and introduce statutory damages into the Copyright Act to achieve this outcome.
35. The government must clarify the Copyright Act to expressly allow rights holders to bring a claim where their works have been copied into an AI model which is then made available in Australia, if such copying would have infringed Australian copyright law had the training occurred here.
36. In principle, this prohibition already exists in the importation provisions in the Copyright Act (sections 37 and 102). Australian copyright law already prohibits importing articles into Australia if the importer knew, or ought reasonably to have known, that the making of the article would, *if the article had been made in Australia by the importer*, have constituted an infringement of copyright. Commercially dealing with an imported infringing article is similarly prohibited. This prohibition applies even if the 'article' did not infringe copyright in the country where it was made. Arguably, therefore, the frontier AI models already offend the Copyright Act.
37. **To put this prohibition beyond doubt, the government must update the importation provisions with AI models in mind.** It can clarify the definition of 'article' in the Copyright Act to expressly include AI models¹⁶ and make clear they are 'imported' when they enter Australia by any means. This would preserve the legislative intent in the AI age: to prevent products that are the result of more lax copyright jurisdictions from entering Australia and harming our copyright owners.

¹⁶ Jani McCutcheon, [Are AI Models Infringing Imported "Articles" under Copyright Law?](#)



38. The second approach is to clarify the scope of the reproduction right under the Copyright Act. As argued by Associate Professor Rita Matulionyte,¹⁷ AI outputs are derived from content absorbed during training and it makes sense to regard the AI model itself as containing the functional equivalent of copies of the training data.¹⁸
39. The government therefore needs to make clear in legislation that AI models will be deemed to contain copies of the copyright works ingested as training data. The reproduction right must guard not only against copying of a work into a training dataset but also expressly against the continued reliance on embedded works within an AI model. Again, we think the reproduction right *already* ought to be regarded as preventing ingestion, but we are calling on the government to cement creators' rights. The fallacious claim of AI companies that AI models do not retain copies of copyright works ought to be nullified at law.
40. The third approach is to introduce statutory damages into the Copyright Act at a level which dramatically increases careful adherence to the law. The more significant the potential damages bill, the greater the deterrent effect of the law. (By way of example, the United States allows fixed statutory damages per work infringed, increased in flagrant cases, without the requirement on the plaintiff to prove exact financial loss. Under that law, Anthropic was facing up to US \$1 trillion in damages before they settled for US\$1.5 billion.)¹⁹
41. These proposed changes to the Copyright Act will increase the pressure on multinational tech companies to license content – rather than scrape or pirate it – to train the AI models they make available in Australia, just as Australian developers are required to seek licences. These changes are not mutually exclusive and could all be applied to protect creators.
42. Our intention in strengthening the Copyright Act is not to spark litigation – which is cost prohibitive for virtually all authors – but to **give local creators the leverage they need to force licensing by Big Tech, irrespective of where they are training their models.**

IMPACT UPON THE PROFESSIONAL CAREERS OF AUTHORS AND ILLUSTRATORS

43. Not only is Big Tech reaping the benefits of Australian authors' and illustrators' creative labour without permission or payment, but the generative AI models they have developed are being used to displace creators' work and dilute their market.

¹⁷ 'Recognising that works that are 'ingested' in AI modules are legally equivalent to copies of works, would be of great significance in protecting the interest of authors and other right holders in the age of AI.' Rita Matulionyte [Reconceptualising the Reproduction Right in the Age of AI](#) or [AI and Copyright Collective Licensing: Australia as a Case Study](#).

¹⁸ This was the conclusion of the Regional Court of Munich in GEMA v OpenAI.

¹⁹ Christa Laser, [Anthropic Faces Billions in Copyright Damages for 7 Million Pirated Works in Bartz v. Anthropic AI Training Decision](#)



44. We are already seeing the harmful impacts upon professional author careers. A flood of AI-generated books are being uploaded to online retailers – to the extent that Amazon had to change its upload policy to a maximum of 3 books per day in 2023, and just this year, reduce this number to 2 books per day.²⁰ 45% of submitted publications were rejected from another book platform, Kobo, on the basis that they were AI-generated.²¹
45. AI-generated knock-offs are being sold on Amazon.²² For example, author Richard Osman has reported on low quality AI-generated books designed to trade off his well known Thursday Murder Club series of books²³ and author Jane Friedman has found at least five books generated by AI which trade off her name and reputation by imitating her work.²⁴ Apart from the financial implications, these are examples of the serious risk to creators of having their moral rights²⁵ infringed as a consequence of generative AI ingestion.
46. We are concerned about AI-generated books misleading consumers and undermining sales of human-authored books.²⁶ ‘A.I. Maverick’ published at least 20 titles in the months of June and July this year on Amazon, including titles that imitate bestsellers. While ‘A.I. Maverick’ is clearly a nod to the nature of those titles, usually, a consumer has no way of knowing which books have been written by humans and which have been generated by AI. After purchase, if the content is low quality, truncated in length, or derivative of bestsellers,²⁷ the consumer may suspect they have purchased an AI-generated book but it’s too late for that fact to inform their purchasing decision. Even if AI-generated books don’t attract high sales, they will still confuse customers, dilute a market in which Australian authors already struggle for visibility, and syphon off a percentage of sales.
47. Because it is cheap and fast to produce and upload to Amazon, low-quality AI-generated content is inevitable. This harms authors and publishers who already survive on very thin margins. Even if it is possible to monitor and challenge such infringements, this will impose new and heavy costs on the book industry.

²⁰ Bill Rosenblatt, [Amazon Slashes Indie Book Upload Limits Here's Why the Music Industry Can't Do the Same](#).

²¹ Ana-Maria Stanciu, [Kobo rejected 45% of self-published books last year, mostly over AI](#). [ht](#)

²² Kevin Maimann, [Authors fighting deluge of fake writers and AI-generated books](#).

²³ For example [The Thursday Murder Club Movie Review: A guide to the Plot, Theme, Cast of a Novel Inspired by Cosy Crime Film](#).

²⁴ Jane Friedman, [I Would Rather See My Books Get Pirated Than This](#).

²⁵ Moral rights in Australia are set out in the Copyright Act 1968 and include the right of attribution, the right against false attribution and the right against derogatory treatment prejudicial to the creators’ reputation.

²⁶ Paul Garvey, [“Amazon’s AI book problem: fake authors flogging sloppy content”](#), *The Australian*, 2 September 2025.

²⁷ For example, *Let Them Rise: Break Free from Limits and Become Yourself* by ‘A.I. Maverick’ covers the same themes as the bestselling self-help book, *The Let Them Theory* by Mel Robbins published in January 2025.



48. Traffic to news and other websites, where authors might build a platform or profile, are significantly dropping since chatbots were launched.²⁸
49. Creators are losing commissions or supplementary sources of income like copywriting or graphic design jobs, which are also crucial professional skills-building opportunities. A recent UK report showed 86% of authors reported a drop in income due to generative AI.²⁹ These disruptions will make professional author and illustrator careers in Australia unsustainable.

The ASA welcomes the opportunity to consult further with the Office of AI on these issues.

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²⁸ Michael Savage, [AI Summaries Causing Devastating Drop in Online News Audiences Study Finds](#).

²⁹ Society of Authors UK, [Brave New World report](#).