



Joint Select Committee on Artificial Intelligence
PO Box 6100
Parliament House
Canberra ACT 2600

Email: ai.joint@aph.gov.au

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Submission from the **Australian Society of Authors** to the Joint Select Committee on Artificial Intelligence

'It's not copy-charity. It's not copy-privilege. It's not copy-indulgence. It's copyright.'
– Tom Keneally

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.

Executive Summary

The ASA supports the ethical, responsible, and sustainable development of artificial intelligence (AI), **which can only occur through respect for copyright**. Copyright is not only how authors earn a living, it underpins the productivity of the creative industries.

Over three years ago, AI companies overseas committed what in Microsoft's own words represents '[the largest theft of labor in human history](#).' 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 polling](#) and, to date, approximately [150 copyright infringement cases in the United States](#). 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](#).'

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. We are *already* seeing the harmful impacts upon professional author careers. A flood of AI-generated books are being



uploaded to online retailers – [45% of submitted publications were rejected from Kobo on this basis](#). [AI-generated knock-offs are being sold on Amazon](#). Traffic to news and other websites, where authors might build a platform or profile, are [significantly dropping since chatbots were launched](#). 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](#). Australian creators earn just \$18,200 per annum from their creative practice – these disruptions will make professional careers unsustainable.

The government is not powerless to address this. In fact, the government has the right and the obligation to determine what rules we impose on Big Tech in this jurisdiction, irrespective of whether the AI models are trained in Australia or offshore. In this submission we propose a suite of reforms to give the government’s stated public policy regarding ‘the strongest copyright protections’ legislative force.

We recognise 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 the existing law. 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.¹

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

Government Statements on Copyright and AI

1. We applauded the Prime Minister’s speech on AI on 15 July in which he stated, ‘No company should use Australian books, music, art or news to build or train AI without the artist’s control.’
2. Representatives of the government have repeatedly recognised the unauthorised ingestion of Australian authors’ and artists’ copyright works by Big Tech as ‘theft’.
3. Relevantly, [in November 2024, a previous Senate Select Committee on Adopting Artificial Intelligence recommended:](#)
 - 3.1. [Recommendation 8](#): That the Australian Government continue to consult with creative workers, rightsholders, and their representative organisations through the CAIRG on appropriate solutions to the unprecedented theft of their work by multinational tech companies operating within Australia.

¹ [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.



- 3.2. Recommendation 9: That the Australian Government require the developers of AI products to be transparent about the use of copyrighted works in their training datasets, and that the use of such works is appropriately licenced and paid for.
- 3.3. Recommendation 10: That the Australian Government urgently undertake further consultation with the creative industry to consider an appropriate mechanism to ensure fair remuneration is paid to creators for commercial AI-generated outputs based on copyrighted material used to train AI systems.
4. **Despite the above public statements and recommendations, no remedy has been delivered for authors.** It is essential to act now to redress harm and ensure AI implementation is consistent with Australian law and this government's principled statements.

Our Proposal

5. 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 of conduct but, if that is unpalatable, we suggest strengthening the Copyright Act.

6. COPYRIGHT LAW

Onshore training:

- 6.1. 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.
- 6.2. For efficiency, permission does not need to be obtained from individual rights holders; collecting societies can represent creators en masse.
- 6.3. 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:

- 6.4. 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.
- 6.5. 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.



- 6.6. 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.
- 6.7. 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

- 6.8. **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.
- 6.9. The government could 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.
- 6.10. 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.
- 6.11. **To put this prohibition beyond doubt, the government should update the importation provisions with AI models in mind.** It could [clarify the definition of 'article' in the Copyright Act to expressly include AI models](#) 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.
- 6.12. A second approach is to clarify the scope of the reproduction right under the Copyright Act. As argued by Associate Professor Rita Matulionyte,² AI outputs are derived from content absorbed during training and it makes sense to regard

² '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.' Matulionyte, Rita, [Reconceptualising the Reproduction Right in the Age of AI](#) or Matulionyte, Rita, [AI and Copyright Collective Licensing: Australia as a Case Study](#).



the AI model itself as containing the functional equivalent of copies of the training data.³

- 6.13. The government could therefore 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.
- 6.14. A 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.](#))
- 6.15. These proposed changes to the Copyright Act would 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.
- 6.16. 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.**

TRANSPARENCY

- 6.17. We request new transparency obligations be imposed on AI developers via the Copyright Act (or other legislation) so that Australian rightsholders can know if their works were included in datasets relied upon for AI training of models deployed in Australia. Without transparency, Australian creators will continue to be in the dark as to the use of their works and will continue to be unable to enforce their rights or negotiate voluntary licensing.⁴

³ This was the conclusion of the Regional Court of Munich in GEMA v OpenAI.

⁴ Our members only discovered their work had been used to train generative AI models thanks to reporting via *The Atlantic*, which has published a searchable database that allows authors to ascertain whether their work was unlawfully included in the [Books3 dataset](#) and [LibGen dataset](#) respectively.



- 6.18. Transparency is also required to ensure that, into the future, AI developers are respecting those copyright owners who choose **not** to licence their works (a fundamental cornerstone of copyright law).

SUPPORT COLLECTIVE LICENSING FRAMEWORKS

- 6.19. **AI companies are highly capable of licensing.** To claim otherwise is disingenuous. AI companies have built seamless systems to individually contract with millions of users and charge subscription fees. **Similar attention must now be applied to streamlining payment to their suppliers.**
- 6.20. Direct licensing deals with large rights holders have already been negotiated by various AI companies and will continue to develop without any government intervention. We know, however, that only rightsholders of global heft will have sufficient scale to appeal to AI companies for direct deals.
- 6.21. To supplement direct licensing and to represent the interests of smaller rights holders, voluntary collective ‘AI training’ licences must be negotiated with collecting societies. Copyright owners may opt in should they wish to be represented by their relevant collecting society in such deals. We anticipate most authors published by Australian independent publishers will fall into this category.
- 6.22. Given that AI training is necessarily ongoing, it is important for the government to build digital infrastructure now that would support high-volume licensing into the future. As part of its investment into and vision for the AI economy, the government must assist collecting societies to develop sophisticated, searchable databases in formats that allow efficient licensing and delivery of content for AI training. From a tech perspective, a drawback of dealing with collecting societies currently is that they can grant *permission* to AI companies but do not hold the files of copyright material required for training, meaning that AI companies would need to seek file transfers from publishers. [Created by Humans](#) in the US is an example of centralisation of intellectual property available to an interested licensee.

7. CONSUMER LAW

Mandatory labelling for AI-assisted or AI-generated content

- 7.1. 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.



- 7.2. Transparency requirements are likely to be sector specific so mandatory industry codes could be developed with industry input, with penalties for non-compliance.

8. STANDALONE ICIP LEGISLATION

New positive duties to observe ICIP protocols

- 8.1. The National Cultural Policy 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. [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.](#) Supporting Indigenous cultural sovereignty means supporting the ability of traditional owners to deny permission to use their cultural material for AI training.
- 8.2. Indigenous Cultural and Intellectual Property (ICIP) must be respected. AI companies wishing to exploit material containing ICIP will require permission not only from copyright owners but also community cultural leaders, and will need to observe cultural protocols.
- 8.3. 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.

Conclusion

Licensing copyright material for AI training recognises a simple commercial reality: authors, artists, and publishers are essential suppliers in the AI economy. But we are reliant on government intervention to ensure Australian creators are paid for their intellectual property, irrespective of where an AI model is trained.

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.

The ASA welcomes the opportunity to consult further on these issues and to provide more information to the Committee.



Contact:

Lucy Hayward

CEO

AUSTRALIAN
SOCIETY
of AUTHORS

Gadigal Country,

Suite C1.06 22-36 Mountain St, Ultimo NSW 2007

T 02 9211 1004

asauthors.org.au