Australian Publishers Association submission to

Minister Husic's consultation on responsible use of Artificial Intelligence (AI)

1. Preamble and key elements in this submission

Key elements in this submission

- Who is the APA and what is the value of publishing
- Publishing in Australia
- How AI is changing practices in the publishing industry
- Challenges for publishers on the AI road
- Key regulatory issues for publishers
    - Copyright
    - Science and research
- An ethical and effective approach to regulation
    - An ethical framework driven by principles
    - Adaptation of existing legislation
    - Global alignment of regulation
    - Coordination of regulation and policy

Preamble

Artificial intelligence (AI) offers transformative opportunities and efficiencies. Australian publishers, represented by APA members, have integrated AI innovations to enhance marketing strategies and gain valuable consumer insights. However, the absence of proper regulation, especially concerning generative AI, poses significant threats to creators, creative industries (including publishing), and our culture.

Authors and publishers play a vital role in shaping Australian culture, education, and science, acting as conduits for global knowledge dissemination. Nevertheless, creative sectors are vulnerable to AI-driven disruptions, risking essential skills erosion, talent displacement, and compromised cultural productions. Lack of transparency, including copyright infringement, undermines incentives for creative works, potentially impacting creator-driven industries. Unchecked AI development may result in job losses, introduce biases into knowledge, and replace human-generated content.

In light of these risks, APA members welcome the Government's consideration of ethical and responsible AI development. Regulation, particularly concerning copyright, is crucial to ensure transparency, ethical practices, fairness, and adherence to the law in utilising generative AI.

The APA supports

- the development of an ongoing ethical framework to guide policy and regulation.
- the enactment of regulation to prevent massive copyright infringement that will undermine authors and publishers. We believe regulatory settings should incentivise AI to enter into mutually beneficial arrangements with creators and right holders (including publishers), such as expanding licensing opportunities for original content. We think this would be in keeping with the Government's commitments to creators and copyright under *Revive: the National Cultural Policy*.
- the development of policies to uphold the integrity of science, research, and knowledge.

2. **Who is the APA and what is the value of publishing:**

The Australian Publishers Association (APA) is the voice of the Australian book and publishing industry. We represent over 200 publishers who produce over 90% of Australia's $2 billion annual turnover. Our members publish a wide range of works: including trade (or consumer) books; digital, hybrid, and traditional print learning materials; print and digital journals; and scholarly monographs. We are committed to supporting the Australian publishing industry and ensuring that it continues to thrive.

Publishers play a crucial role in bringing meticulously prepared works to diverse markets. They commission skilled authors, ensuring quality through peer review and editorial enhancements. Publishers handle production, promotion, distribution, and digital accessibility.

Their impact extends beyond individuals, providing significant positive externalities to the nation. Books and published works shape and sustain the modern world, fostering growth in individuals and empowering engagement with knowledge, history, national identity, and self-understanding. Reading is a fundamental cultural and educational practice, underpinning personal and national development, stimulating exploration of ideas, knowledge, and civic involvement.

3. **Publishing in Australia:**

The Australian publishing industry is modern and integrated into global publishing and reading culture. Annually, around 20,000 new Australian books (print and electronic) are published, along with tens of thousands of international titles in Australian editions or imports. Over 1.4 million book and serial titles are kept available to cater to diverse reader needs, including families, students, educators, researchers, and industry professionals.

The industry can be divided into two basic categories: trade and education. **Trade publishing** in Australia, featuring a mix of over 200 independent Australian publishers and the Australian branches of international publishing houses, caters to a diverse readership. This sector covers an array of genres, from literary fiction, to children's books, to cookbooks and self-help books. Despite the challenges brought on by massive digital change, the Australian trade publishing industry remains robust. Electronic formats, including audiobooks, have experienced notable growth, yet traditional print book sales continue to thrive.

Educational and STM publishing caters to Australian schools, VET (Vocational Education and Training) institutions, and universities. The education and STM (scientific, technical and medical) sectors offer a diverse array of products – including learning materials, assessment tools, scholarly works, and research journals – in mostly (but not exclusively) in digital formats.

4. **How AI is changing practices in the publishing industry.**

The integration of AI in the publishing industry is in its early stages but has significant potential to transform aspects of book creation, marketing, and distribution. Publishers use AI to enhance product quality, efficiency, and efficacy. Key applications of AI in publishing include:

- **Marketing and sales:** AI enables targeted advertising, personalised recommendations, and performance tracking, leading to more efficient audience engagement and increased sales.

    Example: A trade publisher in Australia utilises AI to deliver personalised reading experiences, recommending books, generating summaries, and curating reading lists.

- **Content discovery:** AI analyses vast datasets, identifying patterns and providing content recommendations for users, making it easier to find relevant materials.

    Example: Another publisher uses AI to enhance metadata accuracy, detecting and correcting errors in book titles, authors, and ISBNs.

- **Workflow Automation:** AI automates tasks like proofreading, formatting, and indexing, saving time and allowing publishers to focus on more skilled work.
- **Customisation of learning resources:** Educational publishers use AI to personalise learning experiences by analysing student data. AI adapts content and assessments based on individual needs, like an AI language platform adjusting lessons to proficiency and interests. This approach boosts engagement, accelerates learning, and improves retention, revolutionising education.

5. Challenges for publishers on the AI road

The emergence of AI in the publishing industry presents both challenges and transformative opportunities. While some threats endanger the sector's survival, other challenges impede the positive take up of AI's potential.

- **Absence of legal certainty:** The absence of legal or regulatory certainty hampers investment, innovation, and market stability. Publishers are reluctant to invest in new content in markets where that content may be pirated by AI, or where publishers will find themselves in unfair competition with the products of generative AI.

    As the government is aware, generative AI technologies rely on copyrighted writings and publications, often sourced from piracy websites. These technologies train on the creations and ideas of original authors without compensation to those creators.

    To uphold fairness, creators and rights holders should be compensated for the use of their work by AI systems. Government support for AI as a transformative force should include regulations ensuring transparency, obtaining permission, and providing remuneration for content used. The use of AI technologies developed with others' content, without disclosure or compensation, should be avoided or regulated by the Government.

- **High upfront investment**: The initial investment costs for AI solutions can be significant, acting as a barrier for small-to-medium publishers seeking to embrace AI in their own business practices. Publishers are pro-innovation – there are clear business benefits to using AI tools in some settings – but cost barriers (and legal uncertainty) has meant that only the largest international publishers have had the capacity to integrate AI into their business models.
- **Technical expertise**: Limited availability of AI skills and expertise within publishing can hinder the smooth implementation and integration of AI solutions with existing IT infrastructures and workflows.
- **Data management complexity**: AI systems generate vast amounts of data, posing challenges in effectively managing and interpreting this data.

6. Key regulatory issues for publishers

a. ISSUE ONE: Copyright and AI legal frameworks:

The use of AI presents opportunities but also raises concerns for copyright holders, and we urge governments to balance innovation with the interests of rights holders and creators through appropriate regulations.

Generative AI engines, relying on copyrighted material from vast datasets, may lead (and indeed has already led) to unauthorised and uncompensated use of copyrighted works. Generative AI companies, operating as commercial enterprises, should not exploit copyrighted works without transparency, authorisation, remuneration, or acknowledgment – otherwise the interests of the creators and rights holders are undermined. And beyond trespasses against creator rights, unregulated generative AI has the potential to destroy the remaining markets for copyrighted material.

We commend the Government's statements in ***Revive***, the new whole-of-government cultural policy, which emphasise the significance of a robust copyright framework in promoting local content, culture, and the economy. We seek the support of legislators and policy makers in preserving and safeguarding this framework.

The APA recommends the following provisions in relation to copyright:

I. Mandated transparency in the use of content by AI is crucial

Transparency is a vital requirement in AI regulation to safeguard copyright holders and creators. By disclosing the content ingested and used by AI engines, potential copyright breaches can be identified, protecting intellectual property rights. Moreover, transparency ensures fair distribution of AI benefits, building confidence that users, creators, and rights holders are not unfairly exploited. Transparent and ethical use of AI tools fosters trust between creators, right holders (such as publishers), the generative AI sector, and users – thus enhancing confidence in the content consumed and promoting responsible AI practices.

The APA notes that the draft of the EU AI Act mandates foundation models to declare the use of copyright-protected works during training of LLMs, exemplifying the commitment to transparency. We believe that in developing Australian regulations that the requirement for transparency should extend beyond merely revealing the purpose of AI tools (as has been proposed in some territories) to instead encompass the disclosure of information sources.

II. ***The principle of permission is vital in AI development to ensure fair compensation and respect for creators and rights holders***.

Obtaining permission from copyright holders before using their work in the training of LLMs safeguards against potential exploitation and undervaluation. Protecting creators' rights fosters continued production of high-quality content.

III. Remuneration for creators and rights holders is essential to support the ongoing production of high-quality content.

The existing unremunerated appropriation of authors' and publishers' works constitutes a disregard for copyright law and undermines the incentives for future creative and intellectual endeavours. It is imperative that creators and rights holders receive just compensation for the use of their works.

If creators are not fairly remunerated, creative markets may suffer from decreased motivation, talent drain, declining quality, and limited diversity. Fair compensation sustains a vibrant cultural ecosystem. Without it, there may be a decline in the production of new Australian works and a concomitant erosion of Australian cultural identity. Without remuneration, economic impacts and innovation stagnation may arise, along with increased piracy and copyright infringement. Fair compensation is essential for a vibrant and sustainable creative industry.

IV: Extension of existing licensing practices within existing copyright law can guide AI-related adaptations without requiring new exceptions.

Licensing is an effective way to address the interests of creators and rights holders while accommodating AI's evolving use of copyright-protected works. It allows existing copyright legislation to be adapted for workable arrangements between creators, AI engines, and users. Introducing new exceptions in the Copyright Act for AI-training purposes is unnecessary and unwarranted.

It should be noted that publishing, particularly educational publishing, already benefits from licensing arrangements supporting AI-generated content development particularly in academic publishing (including the scientific, technical and medical publishing sector). AI licensing can bring numerous benefits to publishers, creators and ultimately users:

- Remuneration for creators and rights holders
- Improved content quality: AI identifies errors and creates engaging materials.
- Cost savings: AI automation reduces time and expenses in content creation and licensing.
- Increased audience reach: AI translates content into multiple languages, ensuring global accessibility.
- IP protection: AI licensing ensures fair compensation for publishers and authors.

Accordingly, we propose a three-step path to effective licencing:

1. Uphold the existing licensing frameworks, leveraging direct (and where appropriate collective models) that have proven effective in meeting market requirements.

2. Develop a framework delineating responsibilities in AI development, including AI developers' obligation to seek licensing or permissions for copyright-protected works.
3. Evaluate the need for new AI-specific licensing schemes based on market demands and the nature of AI-generated content, whether voluntary or compulsory.

b. ISSUE TWO: *Threats to the integrity of science and research*

Scientific, technical and medical publishing – alongside scholarly and educational publishing – have long-standing roles in educating the global population, maintaining the scientific and historical record, and protecting knowledge from malign or unintended distortion. Generative AI has the potential to undermine the corpus of human knowledge by amplifying societal biases, perpetuating stereotypes, spreading false information, and introducing inaccuracies.

Guarding against bias is paramount as algorithms influence decision-making in all domains–from science to social policy. Despite efforts to eliminate bias from datasets, it can persist due to various factors. Publishers – via peer review, the use of high quality data, and vetted information – can contribute to the safeguarding of knowledge and the unbiased training.

While this is currently in the hands of the universities and the major research -oriented publishers, governments must also play a role in protecting knowledge by ensuring transparent training data for AI. Human oversight and scrutiny of AI-generated content are essential. Human involvement ensures greater accuracy, impartiality, and high-quality content. Peer review processes remain vital for evaluating new research and knowledge. Government policy should reflect this.

For further coverage of the ethical issues involved in scholarly communication we point the consultation to STM's AI Ethics in Scholarly Communication: https://doi.org/10.6084/m9.figshare.14572353.v1 and to the submission from Wiley APAC.

7. An ethical and effective approach to regulation

Beyond the specific issues listed above, the APA urges the Government to include the following elements in its approach to the regulation of AI to best ensure transparency, fairness, and effectiveness.

a. **An ethical framework resting on sound principles:** Establishing a well-defined ethical framework is crucial for all stakeholders in AI development. It ensures developers understand their responsibilities and gives creators confidence in their rights' protection. Safeguarding copyright holders and creators allows equitable sharing of AI's benefits. A principles-based approach – such as the five principles articulated by the UK government (1) "safety, security, and robustness," (2) "appropriate transparency and explainability," (3) "fairness," (4) "accountability and governance," and (5) "contestability and redress," – is recommended. The APA recommends a sixth overriding principle emphasising the value of human creativity and authorship. Publishers uphold the significance of human authorship, recognising the invaluable role of writers and artists in the creative economy. AI must be used responsibly to avoid undermining creators' contributions and the cultural and economic value of their work.

b. **Leveraging existing legal frameworks:** Instead of introducing new AI-specific legislation, we propose, where possible, that the government use or adapt existing legal frameworks, such as copyright, privacy, data protection, and product liability laws. This pragmatic approach facilitates the wider application of content licensing practices that have already proven effective.

c. **Global alignment:** Australian AI regulation should align with the best practices emerging globally. By harmonising our approach with global standards, we can create a conducive environment for innovation and collaboration while maintaining ethical standards. We commend the G7's efforts and welcome the EU's initial work. However, we express concern about developments in the regulation of AI in Japan and Singapore, where the implementation of broad text and data mining exceptions will harm publishers and other creators. These exceptions allow for the widespread use of text and data mining technologies without proper authorisation, potentially leading to unauthorised access and use of publishers' content. These provisions leave publishers vulnerable to infringement and loss of control over their works.

d. **Coordination of federal government efforts**: As AI will have an impact across our economy and society, the APA stresses the need for coordination of various government bodies. It is not clear whether, in due course, the Government will require a single entity to oversee the various issues related to the development and regulation of AI, or whether coordination among several bodies would be more effective. However, it is evident that goal-driven, risk-based policy-making and regulation are necessary. The Government must be prepared to act as the regulator since the AI industry has shown little interest in imposing ethical limits on itself.

   The participation of expertise from industry is vital. The APA, like the Australian Society of Authors, believes that a special expert group is needed to address the vulnerability of creators across the arts–as policy will require a sector-specific response. The protection of the integrity of science, research, and knowledge also warrants a special expert group relating the integrity of science and research. This should include input from STM publishers, who have long been concerned with overseeing the research record and addressing issues of information quality including the impact of misinformation campaigns.

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