4 August 2023

The Hon Ed Husic MP
Technology Strategy Branch
Department of Industry, Science and Resources
GPO Box 2013
Canberra ACT 2601

BY EMAIL - digitaleconomy@industry.gov.au

Dear Minister

CONSULTATION ON SAFE AND RESPONSIBLE AI IN AUSTRALIA

1. As Australia's largest music industry body representing the rights of over 115,000 songwriters, composers and music publishers across Australasia, APRA AMCOS welcomes the opportunity to make a submission to the Department of Industry, Science and Resources (**Department**) consultation on safe and responsible AI in Australia in response to the Discussion Paper released 1 June 2023 (**Discussion Paper**).

2. APRA AMCOS consists of the Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society. The membership is diverse, ranging from unpublished writers to major music publishers. Licensee stakeholders include all major broadcasters and video on demand and music streaming services, as well as businesses such as background music suppliers.

3. APRA AMCOS was one of the leading representative bodies of the Australian contemporary music industry that came together as part of the National Cultural Policy consultation to develop a united plan to revolutionise government policy and investment in the music industry at a critical time in its development. At the centre of this plan was a call for the Australian Government to commit to establishing a new national music development agency – Music Australia - with significant recurrent annual investment and a whole-of-government approach for the industry to realise its local and global potential.

4. The release of *Revive*, the National Cultural Policy on 30 January 2023 was welcomed by the Australian contemporary music industry. The policy showed the government had taken the policy proposals of the contemporary music industry seriously with the establishment of Music Australia and a commitment of the government to maintaining a strong copyright framework that works in concert with other legal and policy mechanisms.

16 Mountain Street   Locked Bag 5000   +61 2 9935 7900   apraamcos.com.au
Ultimo NSW 2007   Strawberry Hills NSW 2012   apra@apra.com.au

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED (APRA) ABN 42 000 016 099   AUSTRALASIAN MECHANICAL COPYRIGHT OWNERS SOCIETY LIMITED (AMCOS) ABN 78 001 678 851

5. We welcome the Prime Minister's vision for the arts, cultural and creative industries outlined in the *Revive*, stating that "Our artists help us celebrate what makes us different, and rejoice in what we share … it is through our many and varied forms of artistic expression that we build our identity as a nation and a people – and that we project our culture to the world."

6. APRA AMCOS has participated fully and openly in many government consultations on legislation which impacts our members in Australia. We have joined both the Australian Government's National Artificial Intelligence Centre and its Responsible AI Network. We have expended considerable resources in gathering evidence, considering issues, preparing submissions, and appearing before the reviewing bodies when required, and would welcome the chance to do so for the Department as it undertakes this consultation on the responsible and ethical use of AI in Australia.

7. We have responded to each of the questions set out in the Discussion Paper but are happy to discuss any other aspects of use of AI in the context of Australia's creative industries, or to provide further information, if it would be of assistance.

Question 1: Do you agree with the definitions in this discussion paper? If not, what definitions do you prefer and why?

8. The Discussion Paper uses the term "governance" to include the regulatory and voluntary mechanisms to address potential risks. APRA AMCOS agrees with a broad definition of governance which incorporates voluntary licensing schemes and industry-driven mechanisms for the protection of human creators, provided that such an approach is founded on legal obligations in respect of transparency, remuneration, and dispute resolution.

9. APRA AMCOS agrees with the definitions of large language model (**LLM**s) and of Generative AI models as those which generate novel content such as text, images, audio and code in response to prompts; and with the definition of Multimodal Foundation Models (**MFMs**) as a type of generative AI that can process and output multiple data types (for example text, images, audio).

10. APRA AMCOS suggests that the Department consider developing definitions of two key elements in this field: cultural risk and transparency.

11. The Department should seek to develop a definition of cultural risk which reflect the concerns of both the international and Australian creative sectors, including Aboriginal and Torres Strait Islander creators. These sectors are uniquely vulnerable to AI risk and will be heavily impacted by the unchecked development and use of Generative AI models.

12. The Department should also develop a definition of transparency in AI which benchmarks how AI developers and users provide sufficient information in respect of the original creative works which have been used to generate AI content.

Question 2: What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?

13. The Discussion Paper's scope is, in short, what ethical and responsible AI would look like. APRA AMCOS submits that existing regulatory approaches in Australia do not address the enormous potential risks posed to the cultural sector by Generative AI.

14. As the major representatives of Australia's songwriters and composers, we emphasise that ethical and responsible AI must at a minimum ensure that human creative practice:

    a) is facilitated and enhanced rather than replaced by Generative AI models;

    b) is assisted and embellished rather than bypassed by automation in Generative AI models; and

    c) is a source of reasonable remuneration to creators now and into the future.

15. Rather than propose specific regulatory mechanisms at this stage of the consultation, APRA AMCOS' submission is that any regulatory framework must have considerations of the protection of Australia's cultural sector at its core.

16. This position is echoed by both peak creative bodies and major commercial players in the market, as seen in the letters recently sent to the Government and **attached hereto as Annexure A**. The signatories to this letter represent a broad cross section of Australian creators, artists, creative industry bodies and rights holders, including such diverse entities as Foxtel Group, the Australian Craft and Design Centres Network, Copyright Agency, the National Aboriginal and Torres Strait Islander Music Office (NATSIMO), and News Corp Australia.

17. As stated in the letter, there are substantial concerns regarding the risks that Generative AI presents to rights holders and creators through the use of content as inputs to, and outputs of, Generative AI and LLMs, as well as significant risks to consumers and audiences – this is what might be defined as cultural risk.

18. Additionally, one of the main concerns put forth in this letter arises from the lack of transparency as to the copyright protected material MFMs are being trained on. Given that these uses are by definition without permission if not transparent, this is, as the letter states, potentially unlawful and certainly unethical.

19. APRA AMCOS reiterates that the unauthorised and unremunerated inputs to, and outputs of, Generative AI present a potentially monumental risk to the livelihoods of Australian creative workers and their audiences, as well as those globally.

20. In some circumstances, unauthorised inputs to and outputs of Generative AI may constitute an infringement of copyright.

21. Even absent infringement, the use of protected material to train MFMs and generate and monetise AI content is a form of unjust enrichment. An underlying principle of the law of restitution in Australia is the prevention or stripping of gains made by a party at the expense of another party in circumstances recognised by the law as unjust or in consequence of an established wrong. The unauthorised use of another person's work to create and monetise content clearly falls into this category and runs counter to the basic principles of equity.

22. Likewise, it is an established principle of the law of equity in Australia that a party should not be able to take advantage of the unlawful acquisition of information or property. The so-called "springboard doctrine" seeks to remedy a situation where a party has through unlawful conduct been able to produce a service or product in a timeframe or manner that would otherwise not have been achievable. It is clear that such principles would apply – either directly or by analogy – to the as-yet

unregulated conduct of training MFMs on material protected by copyright and gaining an advantage through the unlawful use of that material.

23. APRA AMCOS submits that this issue should be a primary focus for the Department's consultation on the use of Generative AI models in Australia.

24. A further concern of APRA AMCOS is the rapid advancement in AI technology which is now allowing the creation of music "deepfakes", tracks which use synthesize AI-trained vocals to imitate recording artists. These vocal imitations are quickly becoming more and more indistinguishable from the original human vocalist, allowing for the creation of unauthorised deepfake songs which go viral, drawing millions of views on platforms like TikTok and hundreds of thousands of plays across streaming platforms in a matter of hours.

25. In APRA AMCOS' view, the ever-increasing quality of the audio being generated, the speed at which deepfake music is going viral, and the opacity of Generative AI deployed to create deepfake music points to a grim future if left unchecked.

26. Deepfake music can be cheap to create and is royalty-free, which runs the risk of incentivising music streaming platforms to allow deepfake music, since no compensation need be paid to writers, performers, publishers, or record labels. In short, the downside of deepfake music is the potential destruction of the music industry in Australia.

27. APRA AMCOS emphasises to the Department that it is abundantly clear that deepfake music is using unauthorised datasets to train MFMs to produce imitations of popular artists. The protected creative work of human practitioners is being used without permission to generate AI content that directly damages and dilutes an artist's profile, brand, market, and economic livelihood.

28. APRA AMCOS submits that the Australian Government has a moral and commercial responsibility to Australia's music creators to prevent the unauthorised and unremunerated use of their music to create AI imitations which cause real harm. The Government must take a strong stance in favour of Australian music artists, their fans, and human creative expression and against imitation and denying songwriters and composers their rightful remuneration.

29. Beyond deepfakes, APRA AMCOS is also concerned more broadly about the effect of AI on how Australians consume creative content – including music – on algorithm-driven social media and streaming platforms.

30. If AI is allowed to take control of the curating of content across social media and streaming using Automated Decision Making and other mechanisms which do not include human oversight, APRA AMCOS submits that effect will be deleterious for Australia's cultural economy. There is little question that the richness and diversity of Australian music available online will be greatly diminished and the new creative musical works made by Australian creators, including First Nations creators, will be swamped by Generative AI content.

31. Further, an AI trained to deliver the most cost-effective and the most imitative music content to users based on music content users have already listened to will be a self-perpetuating spiral into homogeneity that runs entirely counter to the Australian Government's policies aimed at supporting Australian culture and its First Nations peoples.

32. APRA AMCOS has serious concerns in this area and would welcome the chance to consult further with the Department on ways to address these issues.

Question 3: Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.

33. APRA AMCOS reiterates that any initiatives the Australian Government considers implementing outside of a regulatory framework must include core protections for the creative sector. Without these protections, there can be no responsible AI and there can be no ethical AI.

34. It is for this reason that we request the Australian Government establish a special expert group to consider regulation, copyright and other considerations relating to the impact of Generative AI and the critical role of artists and the broader creative sector in the cultural, social and economic life of the nation.

35. Whatever the form non-regulatory initiatives take, Generative AI can only become a trusted and valued part of the creative ecosystem (both in Australia and globally) if it can be demonstrated that it is used in a transparent and fair way which complies with Australian law.

36. Australian creative practitioners and the consumers of Australian creative content are protected by existing legal frameworks around intellectual property, competition, consumer law, and privacy, amongst other areas. Any non-regulatory initiatives undertaken by the Australian Government must support and complement the protections for Australian creatives and consumers currently in place – not undermine them.

37. APRA AMCOS welcomes any opportunity to provide guidance on how non-regulatory initiatives can provide this vital support and protection for Australian songwriters and composers and looks forward to participating in future consultations in this area.

Question 4: Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanisms could achieve and how they could influence the development and uptake of AI in Australia.

38. APRA AMCOS submits that it is imperative that representatives of the creative sector play a central role in in discussions around regulatory and non-regulatory mechanisms which might be put in place to support the use of Generative AI in Australia.

39. Bodies such as APRA AMCOS have a unique place in the Australian cultural economy and are best placed to ensure that the interests of Australian creatives are incorporated into any policies on the use of Generative AI. APRA AMCOS submits that it is only through such consultation with the creative industry that a fair, ethical, and responsible use of AI can be achieved in Australia.

40. As such, a whole-of-government approach should be taken which not only incorporates the regulating of industry and trade more broadly, but also the Government's arts and culture policies and the Attorney-General's Department's consultations on reforms to the *Copyright Act 1968* (Cth).

41. APRA AMCOS emphasises that it is crucial to avoid silos between creative industries and industry and trade more broadly in the coordination of AI governance across government.

Question 5: Are there any governance measures being taken or considered by other countries that are relevant, adaptable and desirable for Australia?

42. As the Discussion Paper details, AI risks are being grappled with in jurisdictions all around the world.

43. Re-emphasising the need to keep the concerns of the cultural sector at the centre of such processes, APRA AMCOS draws the Department's attention to the open letter titled "Global Creators and Performers Demand Creative Rights in AI Proliferation" dated 20 July 2023 and **attached to this submission at Annexure B**. The signatories to this letter represent over 6 million artists, creators, performers and publishers globally.

44. APRA AMCOS echoes the call of these signatories upon governments and decision-makers to commit to developing and adopting policies and legislation that are consistent with the seven principles detailed in the letter:

> 1) *Creators' and performers' rights must be upheld and protected when exploited by AI systems.*
>
> 2) *Licensing should be enabled and supported.*
>
> 3) *Exceptions for Text and Data Mining which do not provide for effective opt-out by rightsholders should be avoided.*
>
> 4) *Credit should be given.*
>
> 5) *Transparency obligations should apply to ensure fairer AI practices.*
>
> 6) *Legal responsibility for AI operators.*
>
> 7) *AI is only an instrument in the service of human creativity, and international legal understandings should reinforce this.*

45. It is APRA AMCOS' view that these principles effectively encapsulate the requirements for responsible and ethical use of AI in the creative sector. These principles provide a roadmap for the Department in seeking to facilitate the use of Generative AI in Australia in a way that protects and supports the ongoing thriving of creative practitioners and the cultural sector at large. APRA AMCOS would be grateful of the opportunity to expand on how these principles might be implemented by the Australian Government.

Question 6: Should different approaches apply to public and private sector use of AI technologies? If so, how should the approaches differ?

46. APRA AMCOS sees significant problems in allowing private entities to effectively dominate the use of LLMs and MFMs to create content.

47. Allowing the ownership of Generative AI platforms by private companies with little to no regulation poses a major risk to Australia's creative economy. Without a degree of regulation which facilitates the collective management of the licensing of Australian content to Generative AI platforms, this very powerful process is effectively locked up and allowed to run unchecked.

48. The incentivising of private entities to enter into licensing arrangements for the use of Australian content is vital to the creative economy. In short, private entities must be a focus for any regulatory framework for the deployment of Generative AI.

49. Aside from this concern, in APRA AMCOS' view there is no meaningful difference between the deployment of AI by public or private entities in terms of regulation and governance.

Question 7: How can the Australian Government further support responsible AI practices in its own agencies?

50. In uses for the services of the State, the Australian Government would be using Australian content under a statutory licence. Provided that sufficient transparency was in place for any AI-related use, the mechanism already exists to provide remuneration to creators where the government has used their works.

51. However, the Australian Government's own cultural policy would suggest that governments should not use AI to create works that are a substitute for cultural product.

Question 8: In what circumstances are generic solutions to the risks of AI most valuable? And in what circumstances are technology-specific solutions better?

52. Given that music can be incorporated into content produced in many different circumstances using a range of technologies for production and distribution, APRA AMCOS submits that a broad approach to AI risk is required as opposed to an approach focused on specific technologies.

Question 9: Given the importance of transparency across the AI lifecycle, please share your thoughts on:

a. where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI?

b. mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.

53. APRA AMCOS submits that transparency is absolutely critical in terms of mitigating the loss of revenue to Australian songwriters and composers that is a real risk carried by Generative AI.

54. It is a fundamental tenet of any fair and ethical AI ecosystem that a songwriter or composer should be entitled to remuneration when their work is used by Generative AI platforms to produce outputs, whether in the form of a licence fee and/or ongoing royalties.

55. This framework already exists under Australian copyright law. In certain circumstances, specific classes of users can rely on a statutory exception from seeking permission to use a copyright work, provided that an agreement is entered for remuneration to be paid to the relevant collecting society.

56. This system generally requires some level of reporting by users to inform the distribution of royalties.

57. Transparency must be a core element of the regulation of Generative AI, in particular in the private sector. Regardless of the specific mechanism for reporting the usage information, the principal requirement is that reporting be mandatory.

Question 10: Do you have suggestions for:

a. Whether any high-risk AI applications or technologies should be banned completely?

b. Criteria or requirements to identify AI applications or technologies that should be banned, and in which contexts?

58. APRA AMCOS' remit is the protecting of and advocating for Australian songwriters and composers. Issues arising around AI applications which the Department has placed at the high end of the risk spectrum are outside this scope and thus we will defer to other stakeholders to address these.

Question 11: What initiatives or government action can increase public trust in AI deployment to encourage more people to use AI?

59. APRA AMCOS submits that the trust of Australians in cultural production will be eroded if the marketplace is flooded with inferior Generative AI content which simply apes the form or style of human creative practice. Australia's songwriters and composers have a world-leading reputation for excellence and this will undoubtedly be diluted and diminished by Generative AI imitations of iconic Australian music. The public support for and celebration of Australia's songwriters and composers can only be preserved if Generative AI music is clearly identified as such through transparency mechanisms.

60. With sufficient transparency in place as to where and when AI has been used to assist in the creation of musical works, the public may more clearly understand and accept where AI can be deployed in a useful and creative way and where human authorship continues to transcend the limitations of AI in creativity.

Question 12: How would banning high-risk activities (like social scoring or facial recognition technology in certain circumstances) impact Australia's tech sector and our trade and exports with other countries?

61. These issues are outside of APRA AMCOS' area of expertise and we defer to the relevant stakeholders to respond.

Question 13: What changes (if any) to Australian conformity infrastructure might be required to support assurance processes to mitigate against potential AI risks?

62. Likewise, APRA AMCOS does not have a view on potential AI risks in Australia's standards and conformity infrastructure.

Question 14: Do you support a risk-based approach for addressing potential AI risks? If not, is there a better approach?

63. APRA AMCOS supports a risk-based approach. As detailed above, the risks posed to the creative sector are sufficiently clear as to be the guide for the Department in facilitating ethical and responsible use of AI in Australia. The risks should be specifically identified in consultation with creative industry bodies and specific measures should be put in place to either substantially mitigate these risks or remove them entirely.

Question 15: What do you see as the main benefits or limitations of a risk-based approach? How can any limitations be overcome?

64. Following on from the above, the risks to the creative sector are clearly apparent and a risk-based approach will allow the Department to address these specific risks head on. APRA AMCOS sees no particular limitation to a risk-based approach being taken by the Department.

Question 16: Is a risk-based approach better suited to some sectors, AI applications or organisations than others based on organisation size, AI maturity and resources?

65. APRA AMCOS submits that the creative sector is particularly vulnerable to negative impacts from Generative AI. The livelihood of songwriters and composers is predicated on their capacity to receive reasonable remuneration for their creative work, and many creatives can find themselves in precarious economic situations when their work is used and monetised without permission.

66. As such, the Australian Government should in all circumstances apply a risk-based approach to the impact of AI on the creative sector in seeking to ensure the responsible and ethical use of AI in Australia. The size and resourcing of music creators is unquestionably dwarfed by that of other industries.

Question 17: What elements should be in a risk-based approach for addressing potential AI risks? Do you support the elements presented in Attachment C?

67. While the elements presented in Attachment C are important, the focus appears to be on ensuring human oversight of the operations of AI in terms of decision-making.

68. APRA AMCOS submits that the identification of the content input into an AI model should also be the subject of oversight through transparency and reporting.

69. As such, the documenting and monitoring of AI systems should include the use of content as input, and impact assessments should be expanded to include the impact on the creative sector through the use of protected material as input.

Question 18: How can an AI risk-based approach be incorporated into existing assessment frameworks (like privacy) or risk management processes to streamline and reduce potential duplication?

70. In our view this question goes to process and currently there are no processes in place for transparency and the mitigation of cultural risk in Generative AI. On this basis, a risk-based approach to AI in respect of the cultural sector should approached from the ground up in consultation with bodies such as APRA AMCOS and its peers.

Question 19: How might a risk-based approach apply to general purpose AI systems, such as large language models (LLMs) or multimodal foundation models (MFMs)?

71. APRA AMCOS sees the primary risk in LLMs and MFMs is the training of these models on materials protected by copyright. This practice must be addressed at a regulatory level so as mitigate the risks to creatives outlined in this submission.

Question 20: Should a risk-based approach for responsible AI be a voluntary or self-regulation tool or be mandated through regulation? And should it apply to:

a. public or private organisations or both?

b. developers or deployers or both?

72. In APRA AMCOS' submission there are core cultural risks carried by Generative AI which should be mitigated through a mandatory AI transparency framework. Such a framework must apply to all uses of existing Australian cultural content for the training of LLMs and MFMs, whether by public or private entities or individuals, and whether by developers or deployers.

73. This would include all who seek to use Australian content as inputs for LLMs and MFMs whether through providing the means to do so in developing AI software or by deploying Generative AI in the market which has been trained on Australian content.

74. With such a framework in place, voluntary licensing schemes could then be entered into to ensure that Australian creatives are protected and reasonably remunerated for their work.

Thank you for the opportunity to respond to the Discussion Paper.

If we can provide further information, or be of assistance in any other way, please do not hesitate to contact Jonathan Carter, Head of Legal & Corporate Services at APRA AMCOS.

Annexure A

Hon Tony Burke MP
Minister for Employment and Workplace Relations, Minister for the Arts
PO Box 6022
Parliament House
Canberra ACT 2600

7 July 2023

Dear Minister

Australian creators, artists, creative industries and rights holders' concerns re Generative AI

The signatories to this letter represent a broad cross section of Australian creators, artists, creative industry bodies and rights holders for which a robust regulatory framework is of utmost importance. Our collective impact is beyond just the financial or technological. We represent the emerging and established artists and creators across every genre and artform, and the professional ecosystem that supports the creation and distribution of homegrown stories, art and composition.

It is with this in mind that we write to you regarding the emergence of generative artificial intelligence platforms, products and services (***Generative AI***). While Open AI's Chat GPT is currently the most well-known example of Generative AI, Generative AI is not limited to text. It also reaches across music, visual art and audio-visual content, and various combinations of these.

We particularly want to raise with you the significant concerns we have regarding the risks Generative AI present to artists, rights holders, and creators through the use of content as inputs to, and outputs of, Generative AI, including foundation and large language models (***LLMs***), and the risks to consumers and audiences.

We welcome the Prime Minister's vision for the arts, cultural and creative industries outlined in the National Cultural Policy *Revive*, stating that "Our artists help us celebrate what makes us different, and rejoice in what we share … it is through our many and varied forms of artistic expression that we build our identity as a nation and a people – and that we project our culture to the world."

For clarity, we are not so much concerned by the technology itself. Technology empowering human expression is of course nothing new. We also acknowledge that there is any number of other useful and important purposes to which artificial intelligence more generally is currently being applied. Indeed, many of the signatories to this letter are using, or exploring the use of machine learning technology in our own businesses to assist, for example in the management of very large volumes of data.

Our concern regarding Generative AI arises from the lack of transparency that most Generative AI has so far demonstrated in terms of acknowledging the content which has been "scraped", "mined", "listened to", "trained on", or to use another word, *copied*, in order to create their outputs. To the extent this conduct involves the reproduction of copyright protected material without permission, it is potentially unlawful and certainly unethical. Similarly, the use of a person's name, image and likeness without permission likely contravenes various other Australian laws. AI tools that are used to copy an artists' voice or authorial style also raise many urgent legal questions. The potential impact of this type of unauthorised use of the work of Australian creators, including First Nations' creators, is deeply problematic.

As you would be aware, other jurisdictions around the world, including the US, UK and Europe, are currently grappling with this issue. There is strong regulatory momentum supporting the position that for Generative AI to become a legitimate, trusted and valued part of the creative industries' global eco-system, emerging operating models will need to become demonstrably transparent, ethical, fair and lawful. This will require a holistic approach extending beyond copyright law to include competition and consumer, and privacy laws.

Australia's strong copyright framework is a sound and essential structural element for the continued growth of local Australian content and voices, and the economic and cultural value to our nation. We have written separately to the Attorney-General regarding upcoming Copyright Roundtables being pursued by the Attorney-General's Department and have conveyed our serious concerns regarding any so-called reform proposals that attempt to create exceptions in the *Copyright Act* to allow the use of content by Generative AI without permission.

In that regard, Australian creators, artists, creative industry bodies and rights holders look forward to participating in the Government's forthcoming public consultation process regarding the risks and rewards of artificial intelligence. However, the framework to support a sustainable cultural and creative ecosystem, extends beyond copyright and a more holistic approach must be taken by government to consider the sustainability of the broader sector.

It is for this reason that we request the Australian Government establish a special expert group to consider regulation, copyright and other considerations relating to the impact of Generative AI and the critical role of artists and the broader creative sector in the cultural, social and economic life of the nation.

This approach will ensure that the vision and intent of *Revive* will be supported by a robust regulatory framework that allows for the technological advancements that will be made during the life of the policy and guarantee the success of Australia's storytellers at home and around the world.

Your sincerely

Australasian Music Publishers Association Limited (AMPAL)
Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA AMCOS)
Australian Craft and Design Centres Network
Australian Directors' Guild (ADG)
Australian Guild of Screen Composers (AGSC)
Australian Independent Record Labels Association (AIR)
Australian Music Centre (AMC)
Australia New Zealand Screen Association (ANZSA)
Australian Publishers Association (APA)

Australian Recording Industry Association and Phonographic Performance Company of Australia (ARIA PPCA)

Australian Screen Directors Authorship Collecting Society (ASDACS)

Australian Screen Editors (ASE)

Australian Society of Authors (ASA)

Australian Writers' Guild (AWG)

Australian Writers' Guild Authorship Collecting Society (AWGACS)

Copyright Agency

FreeTV

Foxtel Group

National Aboriginal and Torres Strait Islander Music Office (NATSIMO)

National Association for the Visual Arts (NAVA)

News Corp Australia

Screenrights

Hon Michelle Rowland MP
Minister for Communications
PO Box 6022
Parliament House
Canberra ACT 2600

7 July 2023

Dear Minister

Australian creators, artists, creative industries and rights holders' concerns re Generative AI

The signatories to this letter represent a broad cross section of Australian creators, artists, creative industry bodies and rights holders for which a robust regulatory framework is of utmost importance. Our collective impact is beyond just the financial or technological. We represent the emerging and established artists and creators across every genre and artform, and the professional ecosystem that supports the creation and distribution of homegrown stories, art and composition.

It is with this in mind that we write to you regarding the emergence of generative artificial intelligence platforms, products and services (***Generative AI***). While Open AI's Chat GPT is currently the most well-known example of Generative AI, Generative AI is not limited to text. It also reaches across music, visual art and audio-visual content, and various combinations of these.

We particularly want to raise with you the significant concerns we have regarding the risks Generative AI present to artists, rights holders and creators through the use of content as inputs to, and outputs of, Generative AI, including foundation and large language models (***LLMs***), and the risks to consumers and audiences.

We welcome the Prime Minister's vision for the arts, cultural and creative industries outlined in the National Cultural Policy *Revive*, stating that "Our artists help us celebrate what makes us different, and rejoice in what we share … it is through our many and varied forms of artistic expression that we build our identity as a nation and a people – and that we project our culture to the world."

For clarity, we are not so much concerned by the technology itself. Technology empowering human expression is of course nothing new. We also acknowledge that there is any number of other useful and important purposes to which artificial intelligence more generally is currently being applied. Indeed, many of the signatories to this letter are using, or exploring the use of machine learning technology in our own businesses to assist, for example in the management of very large volumes of data.

Our concern regarding Generative AI arises from the lack of transparency that most Generative AI has so far demonstrated in terms of acknowledging the content which has been "scraped", "mined", "listened to", "trained on", or to use another word, *copied*, in order to create their outputs. To the extent this conduct involves the reproduction of copyright protected material without permission, it is potentially unlawful and certainly unethical. Similarly, the use of a person's name, image and likeness without permission likely contravenes various other Australian laws. AI tools that are used to copy an artists' voice or authorial style also raise many urgent legal questions. The potential impact of this type of unauthorised use of the work of Australian creators, including First Nations' creators, is deeply problematic.

As you would be aware, other jurisdictions around the world, including the US, UK and Europe, are currently grappling with this issue. There is strong regulatory momentum supporting the position that for Generative AI to become a legitimate, trusted and valued part of the creative industries' global eco-system, their emerging operating models will need to become demonstrably transparent, ethical, fair and lawful. This will require a holistic approach extending beyond copyright law to include competition and consumer, and privacy laws.

Australia's strong copyright framework is a sound and essential structural element for the continued growth of local Australian content and voices, and the economic and cultural value to our nation. We have written separately to the Attorney-General regarding upcoming Copyright Roundtables being pursued by the Attorney-General's Department and have conveyed our serious concerns regarding any so-called reform proposals that attempt to create exceptions in the *Copyright Act* to allow the use of content by Generative AI without permission.

In that regard, Australian creators, artists, creative industry bodies and rights holders look forward to participating in the Government's forthcoming public consultation process regarding the risks and rewards of artificial intelligence. However, the framework to support a sustainable cultural and creative ecosystem, extends beyond copyright and a more wholistic approach must be taken by government to consider the sustainability of the broader sector.

It is for this reason that we request the Australian Government establish a special expert group to consider regulation, copyright and other considerations relating to the impact of Generative AI and the critical role of artists and the broader creative sector in the cultural, social and economic life of the nation.

This approach will ensure that the vision and intent of *Revive* will be supported by a robust regulatory framework that allows for the technological advancements that will be made during the life of the policy and guarantee the success of Australia's storytellers at home and around the world.

Your sincerely

Australasian Music Publishers Association Limited (AMPAL)
Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA AMCOS)
Australian Craft and Design Centres Network
Australian Directors' Guild (ADG)
Australian Guild of Screen Composers (AGSC)
Australian Independent Record Labels Association (AIR)
Australian Music Centre (AMC)
Australia New Zealand Screen Association (ANZSA)
Australian Publishers Association (APA)

Australian Recording Industry Association and Phonographic Performance Company of Australia (ARIA PPCA)

Australian Screen Directors Authorship Collecting Society (ASDACS)

Australian Screen Editors (ASE)

Australian Society of Authors (ASA)

Australian Writers' Guild (AWG)

Australian Writers' Guild Authorship Collecting Society (AWGACS)

Copyright Agency

FreeTV

Foxtel Group

National Aboriginal and Torres Strait Islander Music Office (NATSIMO)

National Association for the Visual Arts (NAVA)

News Corp Australia

Screenrights

Hon Ed Husic MP
Minister for Industry and Science
PO Box 6022
Parliament House
Canberra ACT 2600

7 July 2023

Dear Minister

Australian creators, artists, creative industries and rights holders' concerns re Generative AI

The signatories to this letter represent a broad cross section of Australian creators, artists, creative industry bodies and rights holders for which a robust regulatory framework is of utmost importance. Our collective impact is beyond just the financial or technological. We represent the emerging and established artists and creators across every genre and artform, and the professional ecosystem that supports the creation and distribution of homegrown stories, art and composition.

It is with this in mind that we write to you regarding the emergence of generative artificial intelligence platforms, products and services (**Generative AI**). While Open AI's Chat GPT is currently the most well-known example of Generative AI, Generative AI is not limited to text. It also reaches across music, visual art and audio-visual content, and various combinations of these.

We particularly want to raise with you the significant concerns we have regarding the risks Generative AI present to artists, rights holders and creators through the use of content as inputs to, and outputs of, Generative AI, including foundation and large language models (**LLMs**), and the risks to consumers and audiences.

We welcome the Prime Minister's vision for the arts, cultural and creative industries outlined in the National Cultural Policy *Revive*, stating that "Our artists help us celebrate what makes us different, and rejoice in what we share … it is through our many and varied forms of artistic expression that we build our identity as a nation and a people – and that we project our culture to the world."

For clarity, we are not so much concerned by the technology itself. Technology empowering human expression is of course nothing new. We also acknowledge that there is any number of other useful and important purposes to which artificial intelligence more generally is currently being applied. Indeed, many of the signatories to this letter are using, or exploring the use of machine learning technology in our own businesses to assist, for example in the management of very large volumes of data.

Our concern regarding Generative AI arises from the lack of transparency that most Generative AI has so far demonstrated in terms of acknowledging the content which has been "scraped", "mined", "listened to", "trained on", or to use another word, *copied*, in order to create their outputs. To the extent this conduct involves the reproduction of copyright protected material without permission, it is potentially unlawful and certainly unethical. Similarly, the use of a person's name, image and likeness without permission likely contravenes various other Australian laws. AI tools that are used to copy an artists' voice or authorial style also raise many urgent legal questions. The potential impact of this type of unauthorised use of the work of Australian creators, including First Nations' creators, is deeply problematic.

As you would be aware, other jurisdictions around the world, including the US, UK and Europe, are currently grappling with this issue. There is strong regulatory momentum supporting the position that for Generative AI to become a legitimate, trusted and valued part of the creative industries' global eco-system, their emerging operating models will need to become demonstrably transparent, ethical, fair and lawful. This will require a holistic approach extending beyond copyright law to include competition and consumer, and privacy laws.

Australia's strong copyright framework is a sound and essential structural element for the continued growth of local Australian content and voices, and the economic and cultural value to our nation. We have written separately to the Attorney-General regarding upcoming Copyright Roundtables being pursued by the Attorney-General's Department and have conveyed our serious concerns regarding any so-called reform proposals that attempt to create exceptions in the *Copyright Act* to allow the use of content by Generative AI without permission.

In that regard, Australian creators, artists, creative industry bodies and rights holders look forward to participating in the Government's forthcoming public consultation process regarding the risks and rewards of artificial intelligence. However, the framework to support a sustainable cultural and creative ecosystem, extends beyond copyright and a more wholistic approach must be taken by government to consider the sustainability of the broader sector.

It is for this reason that we request the Australian Government establish a special expert group to consider regulation, copyright and other considerations relating to the impact of Generative AI and the critical role of artists and the broader creative sector in the cultural, social and economic life of the nation.

This approach will ensure that the vision and intent of *Revive* will be supported by a robust regulatory framework that allows for the technological advancements that will be made during the life of the policy and guarantee the success of Australia's storytellers at home and around the world.

Your sincerely

Australasian Music Publishers Association Limited (AMPAL)
Australasian Performing Right Association and Australasian Mechanical Copyright Owners Society (APRA AMCOS)
Australian Craft and Design Centres Network
Australian Directors' Guild (ADG)
Australian Guild of Screen Composers (AGSC)
Australian Independent Record Labels Association (AIR)
Australian Music Centre (AMC)
Australia New Zealand Screen Association (ANZSA)
Australian Publishers Association (APA)

Australian Recording Industry Association and Phonographic Performance Company of Australia (ARIA PPCA)

Australian Screen Directors Authorship Collecting Society (ASDACS)

Australian Screen Editors (ASE)

Australian Society of Authors (ASA)

Australian Writers' Guild (AWG)

Australian Writers' Guild Authorship Collecting Society (AWGACS)

Copyright Agency

FreeTV

Foxtel Group

National Aboriginal and Torres Strait Islander Music Office (NATSIMO)

National Association for the Visual Arts (NAVA)

News Corp Australia

Screenrights

<u>**OPEN LETTER**</u>

Global Creators and Performers Demand Creative Rights in AI Proliferation

20th July 2023

With the proliferation of Artificial Intelligence (AI), artists, creators and performers must be respected, human creativity protected, copyright principles remain robust and fair licensing practices developed and implemented. At the same time, global solutions should be adopted to ensure AI companies remunerate artists, performers and human creators whose works are exploited.

The advancement of AI has been rapid and unprecedented. Globally, governments recognize the scale and potential impacts of the use of AI on our daily lives, and as such have prioritised measures to safeguard the interests of the public at large, while also seeking to preserve innovation and technological progress.

The cultural sector and international creative community will be among those most impacted by unbridled development and open use of generative AI models. Policymakers around the world have heard from creators and performers whose works and performances are being used to train AI without their authorisation, remuneration, or even recognition, often under the guise of "research". There is furthermore a general, societal sense of unease around AI-generated works and the deception of passing off AI works as works of human creativity.

The cultural sector and international creative community acknowledge there are a number of useful and important purposes to which AI more generally is currently being applied. However, in the case of generative AI there is a clear and urgent need for policymakers around the world to take action, adapt and improve current regulatory regimes. It is imperative that the cultural sector and international creative community are at the table in those policy discussions, to ensure their interests are incorporated and, in turn, that AI systems are transparent, ethical, fair and lawful.

The undersigned organisations and entities, which represent over 6 million artists, creators, performers and publishers globally, call upon governments and decision-makers to commit to developing and adopting policies and legislation that are consistent with the following seven principles:

1. **Creators' and performers' rights must be upheld and protected when exploited by AI systems**

AI systems analyse, scrape and exploit vast amounts of data, typically without authorisation. These datasets consist of musical, literary, visual and audiovisual works and performances protected by copyright. Those copyright works and datasets have a value, and creators and performers should be in a position to authorise or prohibit the exploitation of their works and performances and be compensated for such uses.

2. **Licensing should be enabled and supported**

Licensing solutions should be available for all potential exploitation of copyright works, performances and data by AI systems. This would encourage open exchanges between innovators who require the data, and creators and performers who wish to understand how and to what extent their works will be used.

3. Exceptions for Text and Data Mining which do not provide for effective opt-out by rightsholders should be avoided

The introduction of exceptions, including for text and data mining (TDM), that permit AI systems to exploit copyright works and performances without authorisation or remuneration must be avoided. Some existing exceptions should be clarified, in order to provide legal certainty for creators of the underlying data and performers, as well as for AI systems wishing to benefit from such data.

4. Credit should be given

Creators and performers must be entitled to obtain recognition and credit when their works and performances have been exploited by AI systems.

5. Transparency obligations should apply to ensure fairer AI practices

Legal obligations relating to disclosure of information should apply. These should cover (i) disclosure of information on the use of creative works and performances by AI systems, in a sufficient manner to allow traceability and licensing (ii) identification of works and performances generated by AI systems, as such. This will ensure a fair approach towards creators, performers and consumers of creative content.

6. Legal responsibility for AI operators

There should be legal requirements for AI companies to keep relevant records. There should also be effective accountability for AI operators for activities and outputs that infringe the rights of creators, performers and rightsholders.

7. AI is only an instrument in the service of human creativity, and international legal understandings should reinforce this

AI models should be considered as simply an instrument at the service of human creativity. While there is a spectrum of possible levels of interactions between humans and AI to consider when defining the protectability of works and performances, policymakers should make clear that fully autonomous AI-generated works cannot benefit from the same level of protection as human-created works. This topic should be an urgent priority and global discussions should be initiated rapidly.

•••••

Signatory Organisations:

AEPO-ARTIS is a non-profitmaking organisation and the paramount voice of performers' collective management organisations in Europe. Our 38 members represent over 650,000 actors, musicians, dancers, and singers active in the audio and audiovisual sectors. www.aepo-artis.org.

ALCAM, the Latin American Composer and Songwriter Alliance, is an organisation formed only by authors and composers of Latin America. It works daily to promote and create awareness about the legitimate moral and economic

rights of every artist and to promote fair remuneration for their creative work. It is also a platform to unite the interests of creators in Latin America and lobby for their rights and interests. www.alcamusica.org.

AMA, the African Music Academy is dedicated to celebrating the achievements of African music creators.

APMA, the Asia-Pacific Music Creators Alliance, was launched at the World Creators Forum in Beijing in November 2016. It brings together songwriters from across the region and its charter of principles and intentions was signed by creators from 15 countries and territories including Australia, Mongolia, New Zealand, Taiwan, Thailand, South Korea, Japan and Vietnam. APMA helps local artists to unite their voices, understand their rights, develop awareness, and guide organisations to protect creators and their works. www.musiccreatorsap.org.

CIAGP, the International Council of Creators of Graphic, Plastic and Photographic Arts, brings together creators in the field of visual and plastic arts from around the world. The organisation serves as a forum for the exchange of information, ideas, best practices, experiences, and practical advice on the administration of visual authors' rights. It includes tools and activities aimed at promoting the moral, professional, economic, and legal interests of visual authors.

CIAM, the International Council of Music Creators, advocates for the cultural and professional aspirations of music creators. CIAM's mission is to serve as the unified global voice of music creators of all repertoires, and from all regions of the world. CIAM works to support its partner organisations in different regions of the world. www.ciamcreators.org.

CISAC, the International Confederation of Societies of Authors and Composers, is the world's leading network of authors' societies. With 225 member societies in 116 countries, CISAC represents over five million creators from all regions and artistic repertoires, including music, audiovisual, drama, literature, and visual arts. CISAC's President is singer-songwriter Björn Ulvaeus, co-founder of ABBA. CISAC protects the rights and interests of creators worldwide. www.cisac.org.

ECSA, the European Composer & Songwriter Alliance, is a European network whose main objective is to defend and promote the rights of music authors on a national, European, and international level. The Alliance advocates for equitable commercial conditions for composers and songwriters and strives to improve the social and economic development of music creation in Europe. ECSA collaborates with its members located all across Europe and strives to improve the social and economic development of music creation in Europe and beyond. https://composeralliance.org/

IMPF represents independent music publishers internationally. It is the global trade and advocacy body that helps stimulate a more favourable business and entrepreneurial environment for artistic, cultural, and commercial diversity for independent music publishers everywhere and the songwriters and composers they represent. www.impforum.org.

MCNA, Music Creators North America, is an alliance of independent songwriter and composer organizations who advocate for,and educate on behalf of North America's music creator community. In addition, as a member organisation of CIAM, the MCNA works with sister alliances in Europe, Latin and South America, Asia, and Africa to further the interests of music creators throughout the world. www.musiccreatorsna.org.

SCAPR is the international federation representing Performers' Collective Management Organisations (CMOs). SCAPR's main mission is to support, promote, and maintain a worldwide, cross-border system of collecting and distributing performer royalties that is fair, efficient, accurate, transparent, and continually improving. As of today, SCAPR represents 58 CMOs from 42 countries, that collect on behalf of more than 1 million performers. www.scapr.org.