

**Australian Screen Directors Authorship Collecting Society and
Australian Directors Guild Joint Submission to the Department of Industry, Science and
Resources Safe and Responsible AI in Australia Discussion Paper.**

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About Us

ASDACS

The Australian Screen Directors Authorship Collecting Society (ASDACS) is a copyright collecting society representing the interests of screen directors throughout Australia and New Zealand. It was established in November 1995 and currently has over 1400 members. The primary purpose of ASDACS is to collect, administer and distribute income for screen directors arising from international and domestic secondary usage rights.

ADG

The Australian Directors Guild (ADG) is the industry association and union representing the interests of screen directors throughout Australia. Formed in 1982, it has over 800 members nationally and is registered as an association of employees under the *Fair Work (Registered Organisations) Act (Cth) 2009*.

As noted in the Safe and Responsible AI discussion paper, the ADG and ASDACS acknowledge the significant opportunities that Artificial Intelligence presents to Australia's economic and social progress, particularly within the Medical Science, Engineering, and the Service Industries. However, we echo concerns expressed by the creative sector at large regarding the risks associated with the unfettered use of AI and related programs, in particular the threat this poses to creative rightsholders. The exploitation of creators' works undermines the government's recent National Cultural Policy 'Revive' and its principle of centring the Artist. It also threatens the government's goal of a strong copyright framework for creative rightsholders and building sustainable careers in the creative industries, and its commitment to protecting First Nations arts and culture.

Economic Contribution

The Australian screen industry is an important contributor to the Australian economy. The results of the most recent Australian Bureau of Statistics (ABS) survey on Film, Television and Digital Games covering the 2021/22 financial year¹ revealed that the industry employs over 55,000 people and contributed over \$6 billion to the Australian economy. Among other creatives (such as composers and screen writers), directors are key contributors to audio-visual works. Under the Australian Copyright Act, directors hold moral rights as well as retransmission rights² in a cinematographic work. Internationally, directors have primary rights in 37 countries around the world³ and retain secondary usage rights such as private copying, rental and public lending, simultaneous retransmission by cable or pay TV of primary broadcasts, communication to the public by means of technical equipment, pay-per-view, video on demand, projection in cinemas, sale for private use and use for educational purposes. Since 1995 ASDACS has collected over \$18.7 Million from secondary usage rights on behalf of its' director members that have arisen from the exploitation of their work globally.

Displacement of the Creator

The complete displacement of creators is being realised through the fast emergence of AI Platforms across the globe. AI Platforms offer a free, fast, and readily available service to the masses which can be used to create scripts, images, and film with very little human input. The complete homogenisation of culture, displacement of talent and new ideas, and ultimately the demise of the creative industries is at risk. AI platforms use existing works, raising further questions around the exploitation of these works which are ordinarily protected under the Copyright Act.

Copyright

The creative rightsholder has being displaced through open-source AI platforms such as ChatGPT and Meta, which train Large Language Models (LLM) to data mine copyrighted works and make these available for commercial exploitation for free.

As AI Platforms currently do not declare the source of the data that they mine, they lack transparency. These platforms breach existing copyright laws. They also violate the inalienable moral rights⁴ of authors and creators regarding acknowledgement and attribution of works and avoid compensating creators for the works that AI platforms rely on to be useful and appealing on a large scale.

In the US, copyright lawsuits are fast emerging with authors such as Sarah Silverman and stock photo company Getty Images pursuing cases against AI platforms such as Open AI, Meta and Stable Diffusion for breach of

¹ Australian Bureau of Statistics Film, Television and Digital Games Survey, Australia, 2021-2022: <https://www.abs.gov.au/statistics/industry/technology-and-innovation/film-television-and-digital-games-australia/2021-22-financial-year>.

² Australian Copyright Act Amendment 2005 (Film Directors' Rights) No.130, 2005: <https://www.legislation.gov.au/Details/C2005A00130>.

³ See <http://asdacs.com.au/rights> for the full list of countries whereby directors have copyright in the film.

⁴ Australian Copyright Act 1968 – Sect 189: http://www5.austlii.edu.au/au/legis/cth/consol_act/ca1968133/s189.html.

copyright ⁵. These platforms have trained their models to scrape copyrighted text and images without permission from rightsholders in their LLMs and make these available to reproduce work that is modelled almost exactly to that of the original work.

While well-resourced individuals and companies have the finances to take further legal action against AI platforms, many smaller creative rightsholders do not have the economic means to pursue a law case for breach of copyright. This ultimately disincentivises the creation of new work, as making work publicly available presents a high risk that it will be used without permission and made widely available for use for free in LLM data sets.

The Australian creative industries urgently require greater clarity and mandatory copyright regulation on the use of existing works under copyright to ensure continued support and growth for the creative sector.

Solutions

To minimise the risk open AI sources poses to the industry, ADG and ASDACS support the following solutions:

- **Licenses and Permissions:** In keeping with existing copyright laws, AI applications such as Meta and ChatGPT should be required to obtain licenses and permissions from rightsholders to use copyrighted works in their LLM systems, and to specify the intended uses of these works. This should be enforced through greater mandatory regulation, as many individual rightsholders do not have the financial means to enforce their copyright against well-resourced AI entities.
- **Fairness and Remuneration:** A statutory collection model should be established to administer royalty collection of copyrighted works exploited by AI (through existing copyright collecting societies such as CAL and Screenrights). Block chain technology could be utilised to track the exploitation of a work in the same way existing non-fungible tokens (NFTs) use this technology to track and remunerate creators for the use of their work.
- **Attribution and Transparency:** It should be mandatory for the source of any copyrighted material utilised by LLMs to be clearly identified and any creative contributors on original works be credited in accordance with moral rights laws.
- **Copyright Enforcement:** Rightsholders should be empowered to enforce their copyright through existing means such as takedown notices and other means such as financial penalties for non-compliance to disincentivise the misuse of copyrighted material. Further, ASDACS and the ADG support the establishment of a small claims tribunal to administer penalties for copyright infringements.

The ADG and ASDACS greatly appreciate the opportunity to make as submission.

Please do not hesitate to contact us on the details below should you have any further questions.

Yours Sincerely,



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⁵ Dan Milmo, 'Sarah Silverman sues OpenAI and Meta claiming AI training infringed copyright', *The Guardian*, 10 July 2023: <https://www.theguardian.com/technology/2023/jul/10/sarah-silverman-sues-openai-meta-copyright-infringement>.