SHOPPING CENTRE COUNCIL OF AUSTRALIA

15 August 2023

Technology Strategy Branch
Department of Industry, Science and Resources
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By email: DigitalEconomy@industry.gov.au

Safe and Responsible AI in Australia

We welcome the opportunity to respond to the Department's Discussion Paper *Safe and Responsible AI in Australia*. The SCCA is the national industry group for owners and operators of shopping centres.

We note that the closing date for submissions was Friday, 4 August 2023. Due to other commitments we were unable to make a submission by that date. We respectfully request that this submission is accepted and considered as part of the Department's consideration and advice to Government on this issue.

OVERVIEW

We are cognisant that the Department's consultation – and any policy or regulation that may flow from it – may impact our sectors' use of equipment and technologies (including AI) associated with shopping centre operations. Generally, the technologies used by our sector are not the new or emerging technologies that the Discussion Paper is focused on; rather have been used by our sector for long periods of time.

The equipment and technologies used in shopping centre operations and management are for the legitimate purposes of:

- **Ensuring community safety and security**, i.e. CCTV for passive monitoring, to retrospectively identify known suspects of crimes, or track vulnerable people who may need police or community intervention.
- **Legitimate, unobtrusive business uses**, i.e. digital screens (which employ facial detection, not recognition), guest Wi-Fi, and foot traffic counts, to obtain consumer insights and improve service offerings.

Most of these technologies should not be considered as being AI technologies per se, however we acknowledge that these applications will continue to evolve and be adapted to address modern challenges including operational efficiency (e.g. the use of AI applying to CCTV to determine certain crowd movement or behaviours).

It is our primary position that AI and its use is not itself an issue that broadly warrants additional regulation that could give rise to unintended consequences. Rather, how its use applies in relevant circumstances and interacts with issues such as privacy legislation.

Our submission seeks to explain and clarify how these technologies are used by our sector, noting that the use of these technologies has been the subject and focus of other government consultations.

For the Department's awareness, the SCCA has been involved in the Commonwealth Government's *Review of the Privacy Act 1988*. We have made several submissions and discussed aspects of this submission with the Attorney-General's Department. We have also recently submitted on the Queensland Government's consultation regarding their proposed *Civil Surveillance Reforms*.

We are also actively engaged with law enforcement agencies including on issues such as national security, retail crime, youth crime and anti-social behaviour.

RECOMMENDATIONS

Accordingly, we recommend that:

1. The Department engages with sectors such as ours to ensure a wholesome understanding of the equipment and technologies used in our sector, including AI and its application along with the evolution of relevant issues.
2. The Department understands the interaction with other Government policies and laws in relation to our sector's equipment and technologies, including (but not limited to) privacy and surveillance device regulation and the issues such as engagement with law enforcement agencies.
3. The Department notes our preference for only measured and necessary regulatory intervention, but that if any regulatory regime is pursued it can be tailored accordingly (e.g. similar to the notion of APP Codes) and not give rise to unintended consequences or an overly burdensome regulatory framework.

KEY ISSUES

The Discussion Paper refers to various uses of AI and of new and transformative technologies that are not typically used in a shopping centre environment. That being said, a variety of technologies are used in shopping centres and the way that these technologies are used may mean that our sector is captured by any future regulation of AI in Australia.

As such, we seek to offer a high-level explanation of the use and application of some of the key technologies in our sector. Before any regulatory action is taken that may impact the use of these technologies and the way that these technologies are applied in the shopping centre environment, we respectfully request that the Department consult further and obtain a complete understanding of the legitimate and long-standing accepted (and beneficial) use of such technology. In many instances, the use of these technologies should not raise any AI related concerns and should be governed primarily by other laws such as privacy laws.

CCTV

CCTV is a prominent and well-known technology used in shopping centres and shopping centre car parks. CCTV records activities in a shopping centre (i.e. crowd movement and vehicles entering a shopping centre space), with footage generally maintained only for a period of time unless it is required to be reviewed (e.g. in the event of an accident, crime or safety incident, a missing person or child), or for use in police investigations or coronial inquiries if required.

- The use of CCTV in this context is not covert and is well understood by the community who often expects this technology to be employed.
- The purpose of CCTV in shopping centres is to ensure the security and safety of people in a shopping centre, including in deterring and detecting a potential terrorist attacks noting that shopping centres are recognised as 'crowded places' under *Australia's Strategy for Protecting Crowded Places from Terrorism*.[1].
- CCTV fulfils a passive monitoring function and as such does not violate an individual's privacy.
- Acceptance of its usage is a fair and reasonable condition of entry of which customers are notified through signage and therefore consent should always be considered as being implied merely by an individual entering the shopping centre.
- An individual is not expressly identified and is not linked to data, beyond the capacity to retrospectively search for a face in footage if needed (for example, for a police investigation).

The shopping centre sector is acutely aware of privacy-related concerns that some customers may hold. However, we consider that the use of CCTV is responsible, considered and understood, appropriate consents are obtained, and this information is managed and stored appropriately. As such, CCTV in and of itself, should not be considered AI.

1 ANZCTC, *Australia's Strategy for Protecting Crowded Places from Terrorism,* 2023.

Exceptions

We note that the way CCTV footage is used in the shopping centre environment continues to evolve and that CCTV footage can (but is not yet widely) used to incorporate elements of AI. An example of this is the potential use of CCTV footage for research purposes and as a self-harm prevention measure. We would wish to discuss this further with the Department.

Other technologies

Other technologies are used by our members to gain insights on consumer activity and to support retailers. Any future regulation must be targeted so as not to inadvertently capture technologies that should not be considered AI or if they are considered AI, play an important role in gathering insights and information. The insights gained from these technologies are sometimes provided to regulatory bodies as indicators of consumer and business confidence and help to inform government.

Digital screen technology

Digital screen technology is used by some members to give brands and retailers a way to measure audience engagement when shoppers are within a centre. These screens are an industry audience measurement tool that utilises image processing software to aggregate demographic data on a completely anonymised basis of people passing a screen (pertaining to age, gender, mood (from very happy, happy, neutral, happy to very happy) etc.

This technology is not facial recognition, rather facial detection; the technology does not identify or retain images of individuals and does not have the capability to recognise individuals.

Consequently, the SCCA submits that digital screens, utilised by shopping centres and as described above, are a considered and reasonable use of technology as:

- No individual is identified as digital screens measure facial detection of customers.
- There is no link to other data and no images of individuals or personal data is recorded or stored.
- There is no capacity for an individual to be identified or for their personal data to be 'breached', and as such their privacy cannot be compromised.

We would welcome further discussion with the Department about the use of this

technology. *Foot traffic insights*

Foot traffic is an important indicator that determines a shopping centre's success and is used widely by both lessors and retailers. One tool that shopping centres use to measure foot traffic is via a beam or camera that helps shopping centres understand visitor patterns as they walk through a centre. The purpose of this is to function as 'people counters' and provide foot traffic and movement insights.

This technology is used by other entities and sectors as well; for instance, the Queensland Department of Transport and Main Roads lists that the methods/technologies used to obtain walking and pedestrian data include "automated counts from video", "thermal cameras" and "active infrared".[2]

Foot traffic insights are often shared with governments and regulators to help inform policy decisions and serve as an important indicator of consumer and business confidence. The Australian Bureau of Statistics often relies on and utilises foot traffic insights as part of its analysis and reporting.

The SCCA submits that foot traffic counts are a considered and reasonable use of technology as:

- No individual is identified as beams and cameras utilise facial detection to monitor crowd movements and composition. As this technology collects quantitative data only, it is not 'personal information'.

[2] Queensland Government Department of Transport and Roads, Walking Data, 2023

- There is no link to other data and no data is recorded or stored. There is no capacity for an individual to be identified or for their data to be 'breached', as such their privacy cannot be compromised.

We do not expect that the collection of foot traffic insights would be considered AI and so expect that our members' continued use would not be limited or affected by the regulation of AI.

ANPR

ANPR is a system that some shopping centres employ to manage their car parks. ANPR reads a vehicles number plate on entry, which allows the parking facility to track when a car enters and exits a car park and allows shopping centre operators to effectively manage their car parks and provide customers with a streamlined service.

These systems can also be linked to determine the number of spaces left in a car park, and thus let customers know when a car park is full, or how many and where available spaces are located. Consent (as a condition of entry) is obtained by way of a written notice at car park entrances.

In a shopping centre, this data can be useful to help management understand the start and end of a customer's shopping experience (how long a person stays at a centre), informing planning and investment decisions accordingly. This data is and can be shared with police for investigative purposes, with appropriate documentation.

We do not expect that the use of ANPR data would be considered AI and so expect that our members' continued use would not be limited or affected by regulation.

Guest Wi-Fi

Many shopping centres (and other public spaces) offer their customers access to free Wi-Fi while onsite. Clear consent and terms and conditions are typically agreed to. This allows a centre to track a user's movements through a shopping centre (only when connected) and web browsing content, both of which for the specific purpose of obtaining customer insights.

We do not expect that the use of Guest Wi-Fi would be considered AI and so expect that our members' continued use would not be limited or affected by regulation.

CONCLUSION

We welcome the Government's efforts to consult widely on the regulation and governance of AI in Australia. Our industry is generally apprehensive about additional government regulation and intervention, noting that regulation creates risk and that overregulation can stifle innovation and investment.

However, if the government does propose to regulate AI in the future, any regulation must be widely consulted on and should be risk profiled and tailored, so that any unintended consequences are limited and the regulation does not inadvertently capture circumstances and technologies that are not the target of any AI regulation.

Our sector welcomes further engagement and consultation on this matter, and respectfully requests that we are notified and included in future consultation on the regulation of AI in Australia.

Yours sincerely,

James Newton
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