For Australians, by AI?

Supporting Safe and Responsible AI in Australia submission

July 2023

A New Approach (ANA)

About A New Approach (ANA)

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A New Approach (ANA) is Australia's leading think tank focused on arts and culture. We believe Australia can become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential.

Through credible and independent public leadership, ANA helps build an ambitious and innovative policy and investment environment for arts, culture and creativity.

We work to ensure Australia can be a great place for creators and audiences, whoever they are and wherever they live.

ANA acknowledges the cultures of Aboriginal and Torres Strait Islander peoples in Australia and their continuing cultural and creative practices in this land.

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Genevieve Lacey (Chair), Ben Au, Julian Canny, Jane Curry, Professor John Daley AM, Damien Miller, Rupert Myer AO, Alison Page, Laura Tingle and Dr Mathew Trinca AM.

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This submission has been prepared by ANA and the opinions expressed do not necessarily represent the views of ANA's funding partners, or advisory groups, or others who have provided input.

Contact: hello@newapproach.org.au

www.newapproach.org.au

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We confirm that this submission can be made public.

A New Approach (ANA)

13th July 2023

Department of Industry, Science and Research

Technology Strategy Branch

DigitalEconomy@industry.gov.au

Safe and responsible applications of artificial intelligence in arts, culture and creativity

A New Approach (ANA) welcomes this opportunity to help strike the right balance between unlocking the potential of artificial intelligence (AI) and mitigating its risks. ANA believes that with the right governance and collaboration, AI can be a part of Australia reaching its full potential as a cultural powerhouse. ANA welcomes the AI investments in the 2023-24 Budget, including extending the National AI Centre and its role in supporting responsible AI usage through developing governance and industry capabilities.[1]

This submission outlines a range of Australian arts, culture and creativity where AI plays a role and explains the impacts of AI on Australians' access to arts and cultural experiences. It also sketches out steps to help Australia become a world leader in safe and responsible AI while securing its potential as a cultural powerhouse.

No matter the artform, content platform or community, the opportunities and risks of AI are real. AI has the potential to affect incentives to create, cultural and social inclusion and freedom of expression in arts, culture and creativity. This is true, not only of generative AI-based chatbots, but of all applications of AI.

This submission provides insights into the known risks of applying AI in arts, culture and creativity, including who they impact and how. It highlights areas where applications of AI already pose risks to Australians and further mitigation (through regulation or other means) would assist. Noting AI continues to broaden scope and deepen impact, this submission poses some approaches to regulation of AI to unlock opportunities while mitigating risks.

With governance of AI that balances incentive to create and freedom of expression with other public interests, Australia can become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential. The federal government has a critical role to play in achieving this potential.

In our role as a philanthropically funded, independent think tank, ANA is available to provide further information about the recommendations outlined in this submission and would welcome the opportunity to discuss them.

Warm regards

Kate Fielding, CEO, A New Approach (ANA)

Key points

1. Arts, culture and creativity are ingrained in Australian life

Australia can become a cultural powerhouse, generating social, economic and environmental benefits. We are home to the world's oldest living cultures. We have globally high rates of cultural attendance and direct creative participation is growing, especially among young people.[2] We have a rich cultural inheritance in our institutions and legal protections of both copyright and freedom of expression. ANA and Treasury research show middle Australians[3] believe cultural participation creates 'agile, skilled, inclusive and resilient'[4] people and communities and helps us connect across generations, cultures, geographies and viewpoints.[5] We have residents from every nation on earth, and Australia is the first English-speaking country in the world to be a migrant-majority nation.[6] Middle Australians have told us they believe arts and culture are fundamental to their way of life and to being human.[7]

2. AI already has major impacts in arts, culture and creativity

While applications of AI are growing and evolving, they already impact Australian arts and cultural life. Some applications, such as chatbots, are more obvious than others but no matter the artform, content platform or community, the opportunities and risks of AI are real. As AI continues to grow and evolve, regulation of AI will need to adapt to unlock opportunities and mitigate risks. For examples of applications of AI in arts, culture and creativty, see the table on the following page.

3. More work is needed to ensure safe and responsible AI arts, culture and creativity

Applications of AI already have major impacts and a broad, risk-based approach is needed to help to safeguard Australians' interests, including in arts, culture and creativity. ANA welcomes the Department's current work on safe and responsible AI, and the National AI Centre's work through the Responsible AI Network. Both will help to coordinate action and put expertise into practice.

In this submission, ANA sets out potential risks and ways to mitigate them. See Answers to discussion paper questions below, which we also submit via the Consultation hub.

Applications of AI in arts, culture and creativity

Application of AI	Potential opportunities	Potential risks
Generative AI (including chatbots) to generate creative works (eg. painting, music, poem) or assist with their generation	Improve the productivity of human creators and create opportunities for new forms of art and culture	Generative AI can displace arts and cultural workers from incentives to create. It can disrupt connections between human creators and creative works, including poor attribution and poor information about who made creative works.
Automated decision making - online content moderation	More efficient regulation of copyright, abhorrent content, misinformation, classification ratings	Blocking and other overregulation of lawful content poses risks to freedom to expression[8] and to content creators' livelihoods and businesses.
Automated decision making - classification of video and games	More efficient classification and therefore more timely availability of film, television, other video and games	Underclassification risks young Australians accessing unsuitable material. Overclassification denies access to young Australians (for classified material) or all Australians (for refused classification material). Misclassification affects audience understanding of what ratings mean.
Automated captioning	More films, television and other video accessible to Australians with hearing disabilities, of schooling age and from migrant or other CALD backgrounds	Low accuracy captioning can exclude, misinform or mislead these people.
Large language model - machine translation of languages	More films, television and other video content accessible to migrants, other CALD background people and Australians with hearing disabilities	Low accuracy translation can misrepresent creators and exclude, misinform or mislead audiences.

Recommendations

ANA makes the following recommendations, grouped by the questions in the discussion paper. The next section provides detailed answers to these questions, providing context for these recommendations.

Recommendation 2A
For existing policies and future proposals that require or permit the use of generative AI, ANA recommends:

- the Department and/or National AI Centre engage with the UK Competition and Markets Authority on its review of AI foundation models.
- policy agencies assess risks to incentives to create, as part of a risk-based approach.
- policy agencies continue to monitor and report on risks that applications of generative AI pose to incentives to create.

Recommendation 2B
For existing policies and future proposals that require or permit the use of automated decision making, ANA recommends policy agencies:

- assess risks to freedom of expression and other human rights recognised in core treaties Australia has signed, as part of a risk-based approach.
- give priority to recognised important forms of expression such as professional news, satire and parody.
- include monitoring and reporting for risks to freedom of expression and other human rights, to make policies evaluation-ready, in line with the Commonwealth Evaluation Policy.
- continue to leverage and commission Australian research on governance of AI and automated decision making.

Recommendation 2C
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to cultural and social inclusion.

Recommendation 2D
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to connections Australians have with arts and culture.

Recommendation 4A
ANA recommends using coordination mechanisms that support policy decisions on AI governance with both AI expertise and portfolio expertise (such as interdepartmental committees, steering committees and cross-jurisdiction bodies at ministerial and official levels).

Detailed answers to discussion paper questions

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?

ANA draws attention to potential risks to public interests relevant to arts, culture and creativity. These risks affect all Australians and their communities but the Australian Government can adapt regulation to help mitigate them. Here, we focus on **four potential risks** that are already apparent:

- to incentives to create
- to freedom of expression
- To cultural and social inclusion
- to connections Australians have with arts and culture

Risks to incentives to create

There are **potential risks to incentives to create** from applications of generative AI. Incentives to create are essential to 'supporting the artist as worker and celebrating artists as creators', under the National Cultural Policy.[9] As world-leading AI researcher and Australian scholar Kate Crawford says 'The most important question is how we are going to ensure that generative AI systems are equitable and that they encourage human flourishing, rather than concentrating power and increasing inequity'.[10] European Commission Vice President Margrethe Vestager says 'Generative AI is a complete gamechanger' that requires accelerated work on a voluntary AI code of conduct.[11] Incentives to create, such as working income and copyright incentives, need to be maintained in the face of generative AI, as a key source of funding for arts and culture activity.[12]

A risk to incentives to create also has potential impacts on productivity. These incentives help support employment in cultural and creative industries, which is linked to productivity. OECD and UNCTAD are highlighting the productivity gains both from and within cultural and creative industries, particularly in the context of COVID-19 recovery.[13] ANA's research program is currently exploring links between productivity and cultural and creative industries, noting some existing research.[14] The OECD reports 'Cultural and creative employment account for up to one in 20 jobs in some OECD countries, and up to one in 10 jobs in major cities.' These jobs are described as 'future proof', with only 10% at high risk of automation vs. 14% in the general workforce.[15]

Risks to incentives to create arise in at least two scenarios. The **first scenario** is where generative AI displaces Australians from arts and cultural work and employment. AI-generated works are already emerging,[16] although it is uncertain how and to what extent applications of AI will displace Australian creators in the future. In addition, large language models and multimodal foundation models often use existing human creations, without remuneration or permission. ANA notes Australia has previously pursued a levy on a disruptive technology, blank audio tapes, to subsidise human creation.[17] ANA is aware that a prominent Dutch researcher has proposed a similar type of levy on AI to subsidise human creation.[18]

The **second scenario** is where human creators use AI to generate works, but the use of AI undermines copyright incentives. ANA notes some AI creation is complementary to creation by Australian creators or assists Australian creators. This may empower creators to be more productive or creative in different ways. This opens up genuinely new opportunities. However, as two Australian law researchers explain, Australian copyright law excludes AI-generated works from copyright incentives, at least in some cases.[19] While this exclusion may be intended to protect the 'humanness' of arts and culture, it also poses a risk to the incentive to create new AI-generated

works. Again, it is unclear how much these works involving AI should attract copyright incentives. However, it is possible AI-generated works might involve enough human creative input to warrant incentives. ANA notes the US Copyright Office has clarified the kinds of AI-generated works that may satisfy the human authorship requirement for copyright protection.[20]

Recommendation 2A

For existing policies and future proposals that require or permit the use of generative AI, ANA recommends:

- the Department and/or National AI Centre engage with the UK Competition and Markets Authority on its review of AI foundation models.[21]
- policy agencies assess risks to incentives to create, as part of a risk-based approach.
- policy agencies continue to monitor and report on risks that applications of generative AI pose to incentives to create.

Risks to freedom of expression

There are **potential risks to freedom of expression** for Australian arts and culture creators, particularly those using digital platforms for content and social media. ANA's research demonstrates freedom of expression is important to middle Australians, who consider it an important democratic value.[22] Our national focus group study highlighted many reasons for this importance from expressing views about one's religion, building confidence and self-esteem for school children.

Digital platforms apply automated decision making, specifically by using discriminative models to automate classification and moderation of content. Automated decision making is used to more efficiently achieve a range of established public policy purposes - such as to separate abhorrent from acceptable content, to distinguish copyright infringing uses from lawful uses, to target misinformation and not information, and to provide classification ratings. However, blocking of lawful content poses risks to freedom to expression.[23] Digital platforms readily admit automated decision making can affect freedom of expression and limitations of existing systems.[24] Likewise, the EU has singled out freedom of expression as a fundamental right that online governance needs to protect.[25]

Recommendation 2B

For existing policies and future proposals that require or permit the use of automated decision making, ANA recommends policy agencies:

- assess risks to freedom of expression and other human rights recognised in core treaties Australia has signed, as part of a risk-based approach.[26]
- give priority to recognised important forms of expression such as professional news, satire and parody.[27]
- include monitoring and reporting for risks to freedom of expression and other human rights, to make policies evaluation-ready, in line with the Commonwealth Evaluation Policy.[28]
- continue to leverage and commission Australian research on governance of AI and automated decision making.

Risks to cultural and social inclusion

There are also **potential risks to cultural and social inclusion** in arts, culture and creativity. These risks affect the majority of Australians - including those who are young, with disability and culturally and linguistically diverse.

There are already many applications of AI with these risks. Here, ANA highlights three examples where good quality applications could better include Australians, but poor quality applications risk excluding them: captioning, classification and language translation. These applications are subject to different regulatory approaches that are not necessarily aligned to risk.

The first example involves **captioning**. Australian regulation and monitoring of captioning quality applies for television content but not other video content.[29] Quality captioning is important because Australians devote an average 16 hours per week to film, television and other video content.[30] It is particularly important for Australians with hearing impairments. Australians with hearing impairments are 'more likely to watch television than Australians without hearing loss' but some feel 'excluded or marginalised... when they experienced poor-quality captioning'.[31] It is also important for young Australians and migrant Australians, as it assists with learning of English and participation in Australian life.[32]

There are real risks to cultural and social inclusion from poor quality captioning, for television and for video generally. According to the Australian Communications and Media Authority (ACMA), AI-based automated captioning cannot yet 'deliver captions of acceptable quality for all broadcast content', in spite of significant advances.[33] The ACMA expressed concerns about the quality of automated captioning when video included noisy audio, speech with accents and multiple speakers. It also pointed out that automated captioning cannot yet consistently indicate speaker changes and position captions appropriately on the screen. A risk-based approach might consider whether the risks of AI-based automated captioning on other online video warrant regulation or transparency obligations.

The second example involves Australian regulation of **classifications** for video content and games provides another example. Classifications ratings are important, given the many hours devoted to video content and games. They help to mitigate risks of material harming or disturbing children and help Australians make informed choices about the video content they watch and the games they play. They account for depictions condoning or inciting violence (particularly sexual violence against women) and demeaning portrayals of people, helping to manage flow-on cultural and social inclusion risks.

Inaccurate automated classifications are common[34] and these pose potential risks to cultural and social inclusion. Australia has approved use of three automated classification tools from the International Age Rating Coalition, Netflix and Spherex.[35] Of these, it is clear that at least the Netflix tool applies AI.[36] A review of the Netflix automated classification tool found it provided a higher rating than the human Classification Board in 20 per cent of instances and a lower rating in 6 per cent of instances.[37] Underclassification may lead to young Australians accessing unsuitable material, such as simulated gambling, sexual content, and depictions of suicide, self harm and substance abuse. Overclassification also denies access to young Australians (for classified material) or all Australians (for refused classification material).[38] The risk is monitored and mitigated to some extent through Department monitoring and auditing of automated classifications. A risk-based approach might also consider whether the residual risk warrants any transparency or other obligations should apply.

The third example involves **translation**. Quality translation helps include many Australians, with Australia being the first English-speaking country in the world to be a migrant-majority nation.[39] In the context of providing public sector information, Australian jurisdictions already recognise machine translation is not fit-for-purpose when dealing with variations in dialect and language (such as context- and cultural-specific references). While the Australian Government recommends agencies use machine translation only after risk assessment and certain

checks, some other jurisdictions advise against machine translation altogether.[40]

Recommendation 2C
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to cultural and social inclusion.[41]

Risks to connections Australians have with arts and culture

There are **potential risks to connections Austalians have with arts and culture** from applications of AI. This has practical consequences for creators, participants and audiences, as well as impacts on how Australians relate to their arts and culture.

When Australians cannot distinguish human creations from creations involving generative AI, this denies audiences and participants knowledge of who made the creative works before them.[42] This can prevent participants and audiences from making decisions about their interactions with creative works based on information about the creator, creating a consumer information problem. Community expectations of how to to attribute creations involving generative AI are developing, but attribution will help maintain Australian connections with arts and culture.[43]

Also, applications of AI may affect Australian engagement with arts and culture. One major Australian survey of over 2000 Australians found low support for the application of generative AI to creative cultural works. Specifically, it found the 'only area with notably lower levels of support is the use of AI to generate culture for popular consumption (such as films, books, music or art)'.[44] The Australian researchers considered a possible explanation was Australian perceptions that culture is 'more human-led'.[45] This echoes a US study of almost 1000 experts in AI, who highlighted concerns about human control over their lives and the importance of ensuring AI will be 'directed at humanness' and 'prioritize people'.[46]

Risks to connections Australians have with arts and culture amplify other risks discussed above. Because effective incentives rely on knowing who the creator is, there can be a flow-on risk to incentives to create. Likewise, because arts and culture help Australians 'understand each other', there can also be a flow-on risk to cultural and social inclusion.[47]

Recommendation 2D
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to connections Australians have with arts and culture.

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.

Yes. Australian Government agencies could systematically and explicitly inform organisations of the types of risks and opportunities to consider in impact assessments. This could include impacts on incentives to create, freedom of expression, cultural and social inclusion and connections Australians have with arts and culture. Providing this information would complement any obligations on providers or users of AI systems to conduct impact assessments. It would help improve the scope and quality of impact assessment.

Australian Government agencies could also use coordination mechanisms that support policy decisions on AI governance by bringing together AI-specific and portfolio-specific expertise. See our answer to question 4 for more information.

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.

Recommendation 4A
ANA recommends using coordination mechanisms that support policy decisions on AI governance with both AI expertise and portfolio expertise (such as interdepartmental committees, steering committees and cross-jurisdiction bodies at ministerial and official levels).

Tapping into both AI expertise and portfolio expertise can help AI governance consider application-specific impacts of AI to Australia, including its arts, culture and creativity. While there is already some coordination of AI expertise,[48] more could be done to coordinate portfolio expertise from the Department and agencies across the Commonwealth. This would tap into knowledge and support consistent policy settings for different AI applications with similar impacts. For applications of AI with unforeseeable or quickly evolving impacts, more responsive but less permanent mechanisms such as interdepartmental committees and steering committees might help to bring in portfolio expertise. For applications of AI with more foreseeable impacts, more permanent mechanisms such clearer or additional responsibilities for existing regulators or cross-jurisdiction bodies might be warranted.

Sources of portfolio expertise on risks relevant to arts, culture and creativity include:

- For risks to freedom of expression, the Office of the Arts (DITRDCA), national cultural institutions,[49] the Human Rights Branch (AGD) and the Australian Human Rights Commission.
- For risks of automated decision making with impacts on cultural and social inclusion, the Classification branch and Consumer Safeguards branch (both DITRDCA), and the Australian Communications and Media Authority. It could also include Screen Australia and national broadcasters providing captioned video (the Australian Broadcasting Corporation and Special Broadcasting Service).
- For risks to incentives to create, the Commercial and Copyright Law branch (AGD), and the Bureau of Communications, Arts and Regional Research and Office of the Arts (both DITRDCA).

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

See our answer to question 4, which applies to AI governance generally.

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

Yes. In principle, ANA supports a risk-based approach, such as the EU approach, as an overall framework for addressing potential AI risks.[50] ANA is ready to provide insights and perspectives to help the Department and other agencies conduct impact assessments and evaluation of potential AI risks.

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

A main benefit of a risk-based approach is its ability to systematically analyse the impacts of AI, including on Australian interests in arts, culture and creativity. The wide-ranging impacts of AI requires a risk-based approach that explicitly considers risks to human rights of Australians, including to freedom of expression. Risks to human rights are currently considered a high risk area in the proposed EU AI Act.[51]

A key limitation of a risk-based approach is that it cannot directly account for risks that are emerging or unforeseeable. The European Commission has explained how a proportionate risk-based framework would involve prohibiting uses of AI with unacceptable risks, regulation for uses with high risks, and limited transparency obligations (such as flagging 'the use of an AI system when interacting with humans') of other applications of AI.[52] An obligation to make applications of AI interactions with humans transparent provides some view of emerging risks, and partly addresses this limitation.[53]

A potential limitation of a risk-based approach is a lack of focus on the opportunities of AI, including applications that help Australia become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential. In line with Australian Government Impact Analysis requirements, impact assessment of AI systems should systematically consider the benefits and costs (including opportunities and risks) of policy options. This dual focus on opportunities and risks is the approach advanced by leaders in other jurisdictions.[54]

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?

ANA provides the following comments on some of the possible elements of a draft risk-based approach set out at Attachment C and Box 4 of the discussion paper.

Regarding **impact assessments**:

- ANA supports a proportionate approach, involving deeper impact assessment for use cases with likely higher impacts, in line with Australian Government Impact Analysis requirements.[55]
- ANA supports setting upfront risk levels for use cases. ANA cautions against assigning a risk level in cases where some assessment of impact is not possible, including for emerging risks which may be 'difficult to forecast'.[56]

- ANA suggests considering impact assessments not only for internal AI systems but also third-party systems. A recent US study highlighted that responsible AI risk assessments by large firms focus on internal AI systems, missing important risks from third-party AI systems.[57] Although a provider of an AI system can assess impacts for known use cases, further impact assessment (by the provider or user) may be required for other use cases.
- ANA also suggests provision of practical materials that guide organisations through impact assessment of applications of AI, such as the EU expert-developed assessment list.[58]

Regarding **notices** and **explanations**, ANA supports transparency of use of AI systems. When notices make clear whether AI has been involved in the making of a creative work, this helps to identify and mitigate risks to incentives to create and to connections Australians have with arts and culture. Likewise, explaining how AI has affected automated decisions helps informs AI users and policymakers whether those decisions are fair. Noting this is a draft approach, ANA would be interested in regulation that ensures explanation translates to contestability and fairness, two of the AI Ethics Principles, for example through complaint and redress mechanisms.[59]

Regarding **human in the loop and oversight assessments**, ANA supports a proportionate approach that focuses on both risks and opportunities. The discussion paper and the Rapid Response Information Report on Generative AI acknowledge human in the loop requirements note may not be appropriate when 'the benefits of the application are dependent on efficiency at scale'. However, even when the benefits are dependent on efficiency at scale, requiring humans in the loop might still be a proportionate policy if the risks are sufficiently high. For example, EU General Data Protection Regulation prevents people from being subject to decisions 'based solely on automated means' with legal or similar effects, without human intervention.[60] Likewise, the eSafety Commissioner has raised concerns about insufficient humans in the loop in moderating online hate on Twitter.[61]

Regarding **monitoring and documentation**, ANA supports building in mechanisms to monitor use cases and reassessing risk levels from time to time to account for changing uses. Examples of changing uses include Twitter's revised approach to moderating online hate[62] and the use of a generative AI to the 'create and sell life-like child sexual abuse material'.[63] This approach would be in line with the Australian Centre for Evaluation and the government's renewed focus on evaluation planning. This would also help surface risks created by ongoing use of AI and of policy responses, and inform risk mitigation. ANA notes that the May 2023 compromise text of the proposed EU AI Act has expanded the lists of prohibited and high risk applications of AI, from the 2021 lists cited in Attachment B of the discussion paper.[64]

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)?

See our answer to question 14, regarding transparency and impact assessment of third-party AI systems, and our answer to question 17, regarding elements in a risk-based approach. See also our answer to question 2, which highlights the risks of generative AI applications (such as LLMs and MFMs) to incentives to create and to connections Australians have with arts and culture.

Endnotes

1 Australian Government (2023). Budget 2023-24 - Budget Paper No. 2.

2 Australians are keen cultural consumers. 82 percent of Australians report attending cultural events and venues over a year compared to 64 percent in the European Union. Drawn from Australian Bureau of Statistics (ABS) (2019) 4114.0 Attendance at Selected Cultural Venues and Events, Australia, 2017–18 and Eurostat (Statistical Office of the European Union) (2019). 'Cultural participation', Cultural Statistics.

3 See ANA's middle Australia series, a three-year national focus group study on attitudes towards arts, culture and creativity amongst people from low- and middle-income households in regional or outer suburban locations. These people are politically unaligned, predominantly living in swinging federal electorates, from a range of cultural backgrounds and not working in arts and culture. See ANA middle Australia series.

4 The Treasury (2022). Jobs + Skills Summit Issues Paper.

5 Drawn from Trembath, J. L. and Fielding, K., August 2021. *The next generation of voters: Young middle Australians talk arts, culture and creativity.* Insight report no. 2021-02. Produced by A New Approach (ANA). Canberra, Australia; Vivian, A. and Fielding, K., September 2022. *Lifelong: Perceptions of arts and culture among Baby Boomer middle Australians.* Insight report no. 2022-02. Produced by A New Approach (ANA). Canberra, Australia. See ANA middle Australia series.

6 See ABS (2022). Snapshot of Australia. See also ABS (2022). Australia's Population by Country of Birth.

7 ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*.

8 Freedom of expression is important to middle Australians. Our focus group research highlighted reasons for this importance from expressing views about one's religion, building confidence and self-esteem for school children. See ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*.

9 'Centrality of the artist' is one of five pillars of this policy. Australian Government (2023). *Revive: A place for every story, a story for every place.*

10 Professor Crawford has advised 'moderated a symposium on the subject at the White House and has advised the European Commission and the United Nations'. Egea, A. (2023). 'Kate Crawford: 'We need to have a much more comprehensive form of AI governance''. El Pais.

11 US Department of State (2023). Secretary Antony J. Blinken and U.S.-EU Trade and Technology Council Ministerial Co-Chairs at a Joint Press Availability.

12 In 2020 (or most recent year of available data), OECD countries on average spent 1.35% of total GDP for the purposes of recreation, culture and religion; Australia spent 0.98% of its GDP, placing us ahead of other English-speaking countries (the United States (US) and United Kingdom (UK)) yet 23rd out of 31 OECD countries. Australia has remained below the OECD average from 2017 to 2020. Data sourced from OECD (2023), General government spending (indicator), accessed 26 January 2023.

13 OECD (2022). The Culture Fix: Creative People, Places and Industries. Local Economic and Employment Development (LEED). UNCTAD (2018). Creative Economy Outlook: Trends in International Trade in Creative Industries.

14 The OECD and a UK-commissioned report cite claims that creative services employment in certain EU regions correlates with increased labour productivity. OECD (2022). The Culture Fix: Creative People, Places and Industries. Frontier Economics (2020). Productivity and the arts, heritage and museum sectors.

15 OECD (2022). The Culture Fix: Creative People, Places and Industries.

16 For example, US entities have applied to register AI-generated material for copyright purposes. US Copyright Office (2023). Works Containing Material Generated by Artificial Intelligence.

17 See Copyright Act 1968 (incorporating amendments up to Act No. 105 of 1992), section 135ZZP. The Federal Court ruled this levy was invalid on specific constitutional grounds. See Australian Tape Manufacturers Association Ltd and Others v The Commonwealth of Australia [1993] HCA 10. A future levy could be designed to respond to the Federal Court's concerns.

18 The researcher is a State Committee copyright adviser to the Dutch Minister of Justice. See Senftleben, M. (2023). Generative AI and Author Remuneration.

19 White, C. and Matulionyte, W. (2020). Artificial Intelligence: Painting the Bigger Picture for Copyright Ownership. 30 Australian Intellectual Property Journal 224.

20 USCO (2023). Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence.

21 UK Competition and Markets Authority (2023). AI Foundation Models: Initial review.

22 See ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*. Likewise, the Australian Human Rights Commission (AHRC) has highlighted the importance of freedom of speech. See AHRC (2015). Traditional Rights and Freedoms – Encroachments by Commonwealth Laws – Final Report.

23 Apart from blocking, digital platforms can also implement a range of responses, limiting access to content, demonetising content, suspending user accounts and cancelling user accounts.

24 For example, Facebook and Michigan State University researchers have developed AI-detection of deepfakes but Facebook's deepfake removal policy excludes parody and satire. See Meta (2021). Reverse engineering generative models from a single deepfake image. See also Meta (2020). Enforcing Against Manipulated Media. Likewise, a YouTube representative said YouTube's content regulation system did not 'understand' the context around content. European Commission (2019). Fourth meeting of the Stakeholder Dialogue on Article 17 of the Directive on Copyright in the Digital Single Market.

25 The European Commission emphasises regulation of online disinformation must 'strictly respect freedom of expression and include safeguards that prevent their misuse, for example, the censoring of critical, satirical, dissenting, or shocking speech.' See European Commission (2018). Communication COM/2018/236 Tackling online disinformation: a European Approach. See also Directive 2019/790 on Copyright in the Digital Single Market, article 17(7) and European Commission (2020). Impact Assessment accompanying Digital Services Act.

26 For legislation and disallowable legislative instruments, this assessment is already required. Attorney-

General's Department (AGD) (c2018). Statements of Compatibility.

27 The Australian Government's draft legislation to combat misinformation excludes professional news content, satire and parody. DITRDCA (2023). Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 - Guidance Note.

28 Australian Government (2023). Australian Centre for Evaluation to measure what works.

29 Broadcasting Services (Television Captioning) Standard 2013.

30 Further, there are an average 3 hours of weekly viewing of 'user generated content or short form online video services such as Tik Tok and Instagram Reels'. ACMA (2023). How we watch and listen to content.

31 ACMA (2023). Use and experience of consumer captioning.

32 Gernsbacher, M. (2015). 'Video Captions Benefit Everyone'. Policy Insights from the Behavioural and Brain Sciences.

33 ACMA (2023). Consultation Paper: Proposal to remake the Broadcasting Services (Television Captioning) Standard 2013.

34 For example, see Department of Communications and the Arts (DoCA) (2019). Monitoring program for the Netflix Classification Tool 2018-19.

35 Australian Classification (c2022). Classification Tool ratings.

36 The Stevens Review also explains the Netflix Classification Tool involves human review by content experts to tag content, an algorithm developed by Netflix converting tags to Australian classifications, and Department monitoring and auditing of automated classifications. Stevens, N. (2020). Report on the review of Australian classification regulation.

37 DoCA (2019). Monitoring program for the Netflix Classification Tool 2018-19.

38 Stevens, N. (2020). Report on the review of Australia classification regulation.

39 See ABS (2022). Snapshot of Australia. See also ABS (2022). Australia's Population by Country of Birth.

40 For example, see

- Department of Home Affairs (2019). Australian Government Language Services Guidelines.
- Victorian Department of Premier and Cabinet (2019). Multilingual information online.
- New South Wales Multicultural Health Communication Service (2020). Position Statement: Use of machine translation to communicate with culturally and linguistically diverse communities.
- US Department of Justice Limited English Proficiency Committee (2021). Improving Access to Public Websites and Digital Services for Limited English Proficient Persons.

41 Existing Australian regulation of use of AI in arts and culture include the approval required prior to use of automation- or AI-based systems for classification of video content and games. It also includes the standard for quality of captioning of television content (which applies to captioning generally and is not AI-specific). Examples of where there is little regulation of use of AI in arts and culture include:

- Quality of captioning of non-television video content
- Private sector use of machine translation of language
- Automated decision making by online platform to block access to content
- Machine translation of language in arts and culture (noting there is sector-wide guidance for public sector use of machine translation of language)

42 Attribution of human authorship and human performership is an established part of copyright policy in Australia and other countries, including a requirement against false attribution. Copyright Act 1968, part IX. A recent national copyright roundtable highlighted 'broad agreement' that any quotation exception protects moral rights through 'appropriate attribution'. AGD (2023). Second roundtable on copyright. An Australian qualitative study of reuse practices also found 'One of the most important norms for creators is proper attribution'. Pappalardo, K., Aufderheide, P., Stevens, J. and Suzor, Nicolas. (2017). Imagination foregone: A qualitative study of the reuse practices of Australian creators.

43 For example, regulation could potentially extend copyright policy (tied to the rights of attribution and against false attribution) or consumer law (for example, the protection against false or misleading representations regarding the supply of goods sufficient).

44 Only 4 in 10 surveyed Australians 'somewhat' or 'strongly' supported use of AI in 'culture', compared to almost 8 in 10 for 'health', 'medicine', 'environmental challenges' and 'crisis response'. Selwyn, N., Cordoba, B., Andrejevic, M. and Campbell, L. (2020). AI for social good? Australian public attitudes toward AI and society.

45 Selwyn, N., Cordoba, B., Andrejevic, M. and Campbell, L. (2020). AI for social good? Australian public attitudes toward AI and society.

46 Pew Research Center (2018). Artificial Intelligence and the Future of Humans.

47 ANA's focus group research also found arts and culture 'bring communities together, encourage unity in diversity, and increase acceptance of differences across society.' ANA (2020). A view from middle Australia: Perception of arts, culture and creativity.

48 ANA recognises government investments into AI-specific expertise, such as the CSIRO Responsible AI Network, National AI Centre, the Australian Research Council funded ADM+S Centre of Excellence and the Australian National University School of Cybernetics. ANA notes the ADM+S Centre has just joined Responsible AI UK. Dela Cruz (2023). ADM+S joins new Responsible AI UK network.

49 For a list of these institutions, see Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) (2021). Impact of our National Cultural Institutions. ANA notes the Australian Council of the Arts is becoming Creative Australia.

50 We note the proposed EU AI Act risk levels for applications of AI are draft. We note existing EU regulation

in this space includes the Digital Services Act and General Data Protection Regulation.

51 European Parliament (2023). Press release: AI Act: a step closer to the first rules on Artificial Intelligence.

52 European Commission (2021). COM/2021/206 Proposal for an AI Act.

53 The EU has already introduced a similar obligation for 'prominent markings' to provide some transparency on deepfakes and similar manipulated images, audio and videos. Regulation (EU) 2022/2065 Digital Services Act.

54 President Biden's recent speech on AI specifically highlights opportunities and risks. The White House (2023). Remarks by President Biden on Seizing the Opportunities and Managing the Risks of Artificial Intelligence. Likewise, the UK Secretary of State for Science, Innovation and Technology highlights the importance of 'getting regulation right so that innovators can thrive and the risks posed by AI can be addressed'. Department for Science, Innovation and Technology (2023). A pro-innovation approach to AI regulation.

55 Department of the Prime Minister and Cabinet (2023). Australian Government Guide to Policy Impact Analysis.

56 Bell, G., Burgess, J., Thomas, J., and Sadiq, S. (2023). Rapid Response Information Report: Generative AI - language models (LLMs) and multimodal foundation models (MFMs). Australian Council of Learned Academies.

57 Large firms were those with $US100m+ annual revenue. MITSloan Management Review and Boston Consulting Group (2023). Building Robust RAI Programs as Third-Party AI Tools Proliferate.

58 High-Level Expert Group on Artificial Intelligence (2020). Assessment List for Trustworthy Artificial Intelligence (ALTAI) for self-assessment.

59 DISR (c2022). Australia's AI Ethics Principles.

60 European Commission (c2016). Can I be subject to automated individual decision-making, including profiling?.

61 eSafety Commissioner (2023). eSafety demands answers from Twitter about how it's tackling online hate.

62 eSafety Commissioner (2023). eSafety demands answers from Twitter about how it's tackling online hate.

63 The Stable Diffusion generative AI generates images in response to word prompts, and was intended for use in art or graphic design. Crawford, A. and Smith, T. (2023). 'Illegal trade in AI child sex abuse images exposed'. BBC News.

64 European Parliament (2023). Press release: AI Act: a step closer to the first rules on Artificial Intelligence.