



Submission in response to Safe and responsible AI discussion paper

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About us

- 1 This submission is made on behalf of the Australia New Zealand Screen Association (ANZSA). The ANZSA represents the film and television content and distribution industry in Australia and New Zealand. Its core mission is to advance the business and art of filmmaking, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all services. Members of ANZSA include: Village Roadshow Limited; Motion Picture Association; Walt Disney Studios Motion Pictures; Netflix Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; and Warner Bros. Pictures International, a division of Warner Bros. Entertainment Inc., and Fetch TV.

General comments

- 2 We thank the Government of Australia and the Department of Industry, Science and Resources for the opportunity to provide comments on the discussion paper titled *Safe and responsible AI in Australia* (“the discussion paper”). We welcome the Department’s forward-looking approach in opening the consultation, and for the opportunity for interested parties like ANZSA and our members to share our input. We encourage the Government to continue providing frequent and transparent opportunities for public input on the topic of artificial intelligence (“AI”)¹ regulation, so that interested stakeholders can continue providing feedback on this pressing and important issue. We also urge the Government not to rush to regulate AI or to impose new and hasty rules on the use of AI. Further development of regulation, if and when there is a demonstrated need to regulate, should be done in close consultation with all relevant stakeholders, including interested industry representatives.
- 3 We note the acknowledgement in the discussion paper that “the range of contexts in which AI can be used, and for different purposes, may necessitate context-specific resources”, and that the consultation “does not seek to consolidate or replicate the development of existing general or sector-specific regulations and governance initiatives across the Australian Government.” Any broad new AI regulation with application across multiple sectors will also run the risk of overlapping with existing regulation, causing regulatory uncertainty, which would create a heavy compliance burden and disincentivize business investment.
- 4 Governments should consider carefully, and in consultation with relevant stakeholders and informed by an assessment of risk and potential for harm, the need for a regulatory framework for AI. If such a framework is found to be necessary, any obligations must be proportionate to the potential for harm. Any burdensome requirements will add another layer of compliance

1 We note that AI is a term used broadly but covers many technologies. Generative AI refers to a subset of artificial intelligence that learns patterns from data and, when directed by a person through “prompting”, produces content based on those patterns. This contrasts with “traditional AI” systems that are used to predict outcomes or generate insights.

burden on companies and could have major unintended consequences, including providing a strong disincentive to further investment for content creators. Broadly speaking, the creative sector flourishes best in a context of light-touch regulation that encourages ease of doing business, both domestically and internationally.

- 5 In this regard, we support the Government's consideration of a risk management approach that "caters to the context-specific risks of AI" and "allows for less onerous obligations for lower risk AI uses". We note (in Box 4, page 32 of the discussion paper) that the Government considers the use of "AI-enabled recommendation engines to enable personalised online shopping recommendations based on users' browsing history, preferences and interests" as a low-risk use case, with a "limited, reversible or brief" impact that should allow for fewer or no obligations for its use.

AI can support human creativity

- 6 ANSZA member companies are already using or plan to use AI to support the creation and delivery of a wide range of works that bring benefits (both economic and cultural) to society. Recent advances in AI technology, including the rise of generative AI tools like Midjourney and Dall-E, are leading to major and complex debates around the copyright implications of this technology; and to intensifying pressure to regulate the use of AI, both in Australia and in other jurisdictions around the world. However, we note that notwithstanding these substantial developments, the AI field is still in a relatively nascent stage – there are still further developments to come.
- 7 AI is an enabling tool that can complement aspects of filmmaking process, the audience viewing experience, and fan engagement. We would note that the use of AI is not novel and has been employed as a tool in the production process, particularly in the context of special effects. For example, "traditional AI" has been used in a number of ways in production, such as to predict resource usage, optimization of shooting schedules, and predicting complexity of VFX shots. AI is also used in fairly routine post-production work like colour correction, detail sharpening, de-blurring, or removing unwanted objects. Some are more involved, like aging and de-aging an actor.
- 8 Across each of these examples, it is clear that AI use cases across the screen industry are inherently low risk to consumers. They do not present the same level of harm as generating manipulated media for the purposes of misleading or deceiving a consumer. Instead, it is a valuable tool in the production process that is becoming increasingly important to present visually compelling experiences for audiences.
- 9 The rapid availability of generative AI has added additional layers of possibility as well as complexity. Notably, we do not believe it will replace human creativity. Instead, ANZSA members believe AI and generative AI will serve to free up humans from the most rote parts of their work, allowing them to concentrate their limited time and effort on the most creative aspects.

Differentiating the use of AI in curated VOD services versus user generated content services

- 10 Several ANZSA members operate, or are planning to operate, video-on-demand (VOD) services in Australia which offer large and diverse catalogues with human-curated and professionally produced content. This human curation element is crucial; ANZSA's members comply with existing regulation to ensure that viewers are appropriately informed about the content they are about to watch, or which they allow their children to watch. These VOD services use various recommendation systems (some of which could be enhanced by AI) to help viewers find content that most closely suits their interests. ANZSA submits that the use of AI within this framework is inherently low risk.
- 11 This contrasts with user generated content services which do not curate their content offering and as a result the risk of adverse outcomes by purely AI-driven recommendation processes is greater in this situation. ANZSA submits that regulation should recognise the differentiation between VOD services and providers of user generated content in terms of content responsibility, consumer interest and creative-led freedom of expression, particularly with respect to public policy concerns about the potential use of AI in promoting misinformation and distributing harmful content via digital platforms.
- 12 The recommendation systems used in VOD services pose little or no risk of the type that warrant regulation. VOD services' recommendation engines should therefore clearly be considered very low-risk uses of AI, with few or no obligations imposed on their use.

AI and Copyright

- 13 ANZSA members, and the creative community more broadly, rely on strong and effective copyright legislation and policy to protect their production of and investment in creative content, which is enjoyed around the world. Such copyright policy is of utmost importance to the creative community and requires considerable attention from the relevant experts, especially given the host of issues that AI has brought up in relation to intellectual property.
- 14 As the discussion paper notes, the Attorney-General's Department (AGD) is already in the process of organizing Ministerial Roundtables on copyright, including an upcoming one scheduled for August 2023 on the implications of AI for copyright law. Given the sectoral expertise of the AGD, copyright policy should fall under its remit and the process coming out of the Ministerial Roundtables. ANZSA and its members are currently participating actively in the Ministerial Roundtables.
- 15 This AI consultation led by the Department of Industry, Science and Resources should have a broader remit addressing other issues. Should a report be released following this consultation, it should also note that copyright-related AI issues fall outside the Department's purview and will be addressed by the AGD.

16 We thank the Department again for providing the opportunity to provide our comments on this important topic. We are happy to meet to discuss these comments.

Paul Muller

CEO Australia New Zealand Screen Association