# CAG Submission in response to the Department of Industry, Science and Resources’ Safe and Responsible AI in Australia Discussion Paper

The Schools and TAFE Copyright Advisory Groups (**CAG**) welcome the review by the Department of Industry, Science and Resources (**the Department**) and the opportunity to make a submission in response to the [discussion paper on safe and responsible artificial intelligence (AI) in Australia](https://consult.industry.gov.au/supporting-responsible-ai) (**the** **Paper)** released in June 2023.

CAG acknowledges that this review is not the forum to address the full breadth of intellectual property issues raised by the development of AI systems and tools. However, CAG believes it is essential to highlight a number of important copyright issues raised by the creation and use of Artificial Intelligence (**AI**) technologies in education and skills training.

**About CAG**

The Schools Copyright Advisory Group reports to Australian Education Senior Officials Committee (**AESOC**) and is comprised of senior representatives from the Commonwealth, State and Territory Departments of Education, all Catholic Education Offices and Independent Schools Australia. The TAFE Copyright Advisory Group is the peak body responsible for copyright policy and administration for the Australian TAFE sector (other than in Victoria).

Together, CAG represents the almost 9,550 primary and secondary schools in Australia and their approximately 4 million students and over 285,000 TAFE students.

CAG is responsible for the management of copyright issues across schools and TAFEs, including the provision of copyright advice and management of obligations under educational statutory licences (schemes established in the *Copyright Act 1968* to facilitate educational uses of some types of content, and appropriate remuneration for copyright owners).

CAG is assisted by the National Copyright Unit (**NCU**), a small secretariat based in Sydney.

The sector invests a significant amount of resources into promoting respect for copyright amongst students and teachers, as well as the broader community. Some of the copyright education initiatives undertaken by the NCU include:

* the [Smartcopying website](https://smartcopying.edu.au/)[[1]](#footnote-1), the official guide to copyright issues for Australian schools and TAFEs, which includes guidelines, information sheets, education resources and links to copyright presentations
* delivery of a comprehensive copyright education program (in 2022 the NCU delivered 32 free copyright webinars to 956 school and TAFE teachers and three seven-week Copyright 4 Educators programs)
* provision of extensive copyright advice to administering bodies and schools.

**AI and Education**

CAG agrees that AI is capable of delivering unprecedented benefits to the Australian economy and society. It agrees that Australia must act quickly to adapt and reform its legal and regulatory frameworks to ensure the safe and legitimate use of AI technologies.

AI is an emerging technology that presents unique risks and challenges for nearly every industry, including the education and skills sectors. Educators are, and will continue to be, at the forefront of the shift to AI technologies. They will be training students, the future workforce, to arm them with the skills to create, implement and harness the opportunities of AI technologies.

In particular, the use of AI is changing the way teachers create and customise teaching and learning materials and the way in which students engage with content generally, both in the classroom and at home. For example, AI tools can create tailored tutoring experiences for students that cater to a particular year level or educational need. AI is already being used in schools and TAFEs to:

* refresh older learning materials
* make content accessible for students with a disability
* create quizzes, study guides and other supplementary learning materials
* develop courses on machine learning to improve student digital literacy skills and create job ready candidates.[[2]](#footnote-2)

**The role of copyright law in AI regulation**

CAG is pleased to see copyright law identified in the Paper as one of a handful of areas considered fundamental to the lawful and responsible use of AI technologies[[3]](#footnote-3).

We note that the Paper does not seek to address *all issues* related to the governance of AI and provides a summary of initiatives across government considering the ethical, legal and regulatory challenges posed by AI. In relation to copyright, the Paper includes a reference to the Attorney-General’s copyright roundtables. CAG is a participant in the copyright roundtables and is actively working with the Attorney-General’s Department in ensuring copyright law is ready to support AI and ensure its safe and legitimate use by Schools and TAFEs.

CAG submits that while copyright is not the focus of this Review, it is fundamental to AI’s governance framework. This submission provides a high-level summary of the copyright challenges faced by education in its adoption of AI.

Over recent months, the NCU has provided general copyright advice and support to schools and TAFEs in their use of generative AI tools. It has published an information sheet for both [schools](https://smartcopying.edu.au/using-generative-ai-platforms-in-schools/)[[4]](#footnote-4) and [TAFE](https://smartcopying.edu.au/using-generative-ai-platforms-in-tafes/)[[5]](#footnote-5) on its [Smartcopying](https://smartcopying.edu.au/)[[6]](#footnote-6) website, and has presented at various committees considering the impact of AI in education. The NCU has provided specific guidance on:

* a teacher using AI to re-write portions of a text into simple English suitable for students with learning difficulties
* a teacher using OpenAI to generate images for use in a maths quiz
* a department of education staff member requesting assistance on how to attribute content generated by AI.

In each of these cases, the NCU has been unable to provide definitive copyright advice due to the lack of clarity regarding the legal status of these platforms and the processes they employ to generate new content or modify existing works.   
  
For example, Australian copyright law does not provide any exceptions that would allow AI platforms to use third party material and datasets for machine learning.[[7]](#footnote-7) It is difficult to expect schools and TAFEs to teach students how to interact with and/or build a machine learning system or tool if they are not able to do so legally under Australian copyright law.

This lack of clarity is not just a feature of AI. It is uncertain how Australia’s outdated copyright laws apply in relation to other forms of digital teaching, from displaying text on interactive whiteboards, to the use of newer technologies such as teaching via Zoom.

Australia’s copyright exceptions have been drafted with particular technologies in mind for reproducing and disseminating works. As technology changes they can easily become redundant within a short timeframe. For instance, provisions that were introduced into the Copyright Act in late 2006 are no longer fit for purpose, as many of them were specifically designed to deal with the new technologies of the day - the iPod and centralised DVD players.[[8]](#footnote-8) These provisions are now straining to cope with newer technologies, such as displaying text on interactive whiteboards or teaching via Zoom. The most innovative and ground-breaking technologies of the 21st century are still not clearly covered by an exception that would undoubtably allow their use in Australian schools and TAFEs.

In order to facilitate this transition and provide the support and confidence needed by teachers and students alike in engaging with AI, copyright law must be flexible, robust and technology neutral. Unfortunately, the Australian Copyright Act is desperately outdated and lacks the requisite agility to reflect modern and dynamic teaching practices.

There is no doubt that technology will continue to evolve and change. We see this with the explosion of generative AI. And we will no doubt see this with the next wave of innovation. However, Australian copyright law is already lagging behind.

This need to ensure copyright laws are flexible enough to address advances in technologies has been considered by numerous previous law reform enquiries, for example, the [ALRC](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_alrc_122_2nd_december_2013_.pdf), [Productivity Commission](https://www.pc.gov.au/inquiries/completed/intellectual-property/report/intellectual-property.pdf) and [Copyright Modernisation Consultation](https://www.infrastructure.gov.au/have-your-say/copyright-modernisation-consultation) reviews. AI is just the latest example of this important issue.

It is imperative that changes are made to ensure Australia has an optimal legal framework for the safe and legitimate use of AI technologies in Australian schools and TAFEs. Fundamental to this is the objective of ensuring the appropriate use of copyright materials in the public interest, including education. This is enshrined in our international obligations, including the WIPO Copyright Treaty.[[9]](#footnote-9)

## CAG encourages the Department to recommend that:

## Australia’s copyright laws are updated to adequately support the creation and development of AI tools, so schools and TAFEs have legal certainty in using those tools with staff and students

## the use of AI in Australian schools and TAFEs is covered by an appropriate mix of public interest exceptions and licences so that teachers can teach with confidence

## copyright laws are updated to reflect new methods of digital teaching and learning, as recommended by the ALRC and Productivity Commission (eg it is currently unclear whether a teacher could demonstrate how to use a generative AI tool such as ChatGPT or Dall-E in a Zoom lesson with students, as the law allowing teachers to demonstrate copyright content to students specifically refers to teaching in class, or otherwise in the presence of an audience)[[10]](#footnote-10).

**Avoiding bias in AI tools used or developed in education**

A significant challenge for the application of AI is the potential for unwanted bias or misleading or erroneous outputs. Inaccuracies in AI systems due to algorithmic bias or the training of models on incomplete datasets is one of the biggest dangers of AI in education.[[11]](#footnote-11)

AI systems depend on robust and quality datasets to write, improve and test algorithms to ensure accurate and fair outputs that minimise the risks of bias or incompleteness in results. For example, Amazon stopped using a specific hiring algorithm after finding it favoured applicants based on words like “executed” or “captured” that were more commonly found on men’s resumes.[[12]](#footnote-12)

Another source of bias is flawed data sampling, in which groups are over or underrepresented in the training data. For example, Joy Buolamwini from MIT working with Timnit Gebru found that facial analysis technologies had higher error rates for minorities and particularly minority women, potentially due to unrepresentative training data.[[13]](#footnote-13)

As discussed above, machine learning that is carried out on online material may infringe Australian copyright law. In order to avoid the risk of infringement, you would need to train your AI system on public domain[[14]](#footnote-14) data only or on a select dataset where permissions could be secured.

Other risk factors for bias include the age or scope of the dataset, such as only training on data from countries with more flexible copyright systems (for example, US-based material) or using older public domain data. Many older data sets or scientific studies do not represent a diverse sample, for example excluding women or people with diverse backgrounds. In all of these cases, the risk of bias is significantly increased, particularly for Australian users of AI.

Access to quality datasets is imperative to prevent significant harm from biased datasets and to ensure the safe and responsible adoption of AI. Copyright exceptions ensuring fair, practical and efficient access to rich datasets are necessary to serve the public interest and mitigate the potential of bias in our AI systems.

**Licensing is not a complete solution**

There have been discussions as to whether these issues should be dealt with by licensing.[[15]](#footnote-15) However, requiring that machine learning only be conducted on materials that are licensed is not the solution. If schools and TAFEs are restricted to platforms that utilise only a small, licensed dataset (eg, a school or TAFE may only be able to afford to purchase access to a limited data set), there is an increased risk of bias, as machines are not being trained on a broad range of materials that encompass different views.

The school and TAFE sectors remain committed to ensuring that licence fees are paid for ‘consumptive uses’[[16]](#footnote-16) of copyright materials. However, we need to preserve and promote the public interest in utilising non-prejudicial educational uses of materials, such as training machines on large datasets for the use of AI technology in schools and TAFEs.

Currently this is not the case. For example, new technologies have resulted in:

* ***A kind of ‘digital scope creep’***: where technological change has meant that activities that used to be covered by public interest exceptions, and therefore free to do in a ‘chalk and talk’ classroom, have either become infringing, or now require a licence due to the use of digital technologies in teaching. That’s before we even think about whether the law allows the educational use of machine learning and AI so students can be taught the digital skills they need.  
    
  This also means it is hard to advise teachers as different copyright rules may apply depending on the technology or copyright material used, even though the teaching activity is the same public interest activity it has always been.
* ***A kind of ‘licensing scope creep’:*** where the statutory licence now covers not just novels, textbooks and art works, but also free information sheets, general web information, screenshots and memes. Teachers love the educational statutory licences as they allow them to easily use some types of content with students without worrying about copyright permissions.  
    
  However, the scope of the educational licence in Australia also means that education budgets pay for all copying and communication of works - even when those works are made freely available on the internet for free public consumption and with no expectation of payment.

We need to preserve both public interest uses *and* licensing in our copyright system.

**Responding to the Paper’s questions**

In addition to the general copyright observations provided above, CAG comments on the following questions posed by the Paper:

1. Do you have suggestions on the 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 (discussion question 4).
2. Are there any governance measures being taken or considered by other countries (including any not discussed in this paper) that are relevant, adaptable, and desirable for Australia (discussion question 5)?
3. Should different approaches apply to public and private sector use of AI technologies? If so, how should the approaches differ (discussion question 6)?
4. Given the importance of transparency across the AI lifecycle, please share your thoughts on:
   1. where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI
   2. mandating transparency requirements across the private and public sectors, including how these requirements could be implemented (discussion question 9).

# 1. Do you have suggestions on the 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.

CAG encourages the Department to recommend a whole-of-government approach to the development of policies related to AI. As the paper highlights, AI regulation touches on a wide range of policy areas, managed by various government departments and agencies. It is essential that these various policy-making entities work together to ensure Australia has a flexible and fit-for-purpose framework to address the challenges and opportunities presented by AI.

CAG commends the excellent work being conducted by the Attorney-General and the Attorney-General’s Department in progressing a number of copyright reform issues as part of the current roundtable process. However, it is also essential that broader policy issues relevant to the Government’s technology and innovation agendas, education and cultural policies be addressed when considering copyright reform.

Various copyright law reviews and reports have found that copyright reform is imperative to ensure education remains abreast of new digital technologies and opportunities:

* The 2013 ALRC Copyright and the Digital Economy Report noted:

*“… the existing exceptions for educational use of copyright material are due for reform. New exceptions are needed to ensure educational institutions can take full advantage of the wealth of material and new technologies and services now available in the digital age…. Education should not be hampered or stifled by overly prescriptive and confined exceptions. Licences should not be required for fair uses of copyright material that do not harm rights holders and do not reduce the incentive to produce educational material.”[[17]](#footnote-17)*

* The 2016 Productivity Commission’s Intellectual Property Arrangements report endorsed the ALRC’s recommendations for copyright reform, and noted that rather than hindering innovation and creativity as claimed by some participants, IP reform would also invigorate innovation as:
* Australian firms will be able to take full advantage of opportunities in cloud computing solutions
* medical and scientific researchers will be able to better utilise text and data mining
* universities will have the flexibility to offer Massive Open Online Courses
* the education sector will avoid paying millions of dollars each year to use materials that are freely available online.[[18]](#footnote-18)
* A key finding of the 2018 Gonski 2.0 Report was:

*“a modern education system must be complemented by policies which support an adaptive, innovative and continuously improving education system.”[[19]](#footnote-19)*

Schools and TAFEs are still waiting for government to implement the key recommendations of the ALRC and Productivity Commission.[[20]](#footnote-20) It is critical that these issues are addressed to ensure an appropriate legal framework underpins the use of AI in the Australian education system.

# 2. Are there any governance measures being taken or considered by other countries (including any not discussed in this paper) that are relevant, adaptable and desirable for Australia?

Australia is currently out of step with other jurisdictions that have a legal framework underpinning the use of digital technologies, including AI, in education. These uses of materials are recognised as ‘fair use’ in some countries or are covered by a specific text and data mining exception in others. Neither provision exists in Australia.

Table 1 below lists examples of international approaches.

**Table 1: International Approaches**

|  |  |
| --- | --- |
| **Jurisdiction** | **Text & Data Mining (TDM) exception or likely permissible under a Fair Use exception** |
| **United Kingdom** | Text and Data Mining Exception[[21]](#footnote-21) |
| **Israel** | Likely permissible under Fair Use[[22]](#footnote-22) |
| **Singapore** | Text and Data Mining Exception[[23]](#footnote-23) |
| **USA** | Many aspects likely permissible under Fair Use[[24]](#footnote-24) |
| **Japan** | Text and Data Mining Exception[[25]](#footnote-25) |
| **European Union** | Text and Data Mining Exception[[26]](#footnote-26) |

One way of solving the current problems related to AI is to introduce a specific purpose exception into the Copyright Act, such as a text and data mining exception. However, this may not set Australia’s legal framework up to deal with the next iteration of generative AI, or the wave of innovation after that.

We need a significant break to past approaches. As Kim Weatherall noted to the *ALRC Inquiry into Copyright and the Digital Econom*y:

*“the limited, specific approach to drafting exceptions and their crabbed interpretation by Australian courts is not working and does not give appropriate weight to the public interest in access to and dissemination of copyright material.*”[[27]](#footnote-27)

A more flexible approach would be to adopt the ALRC’s recommendation for a fair dealing exception for non-consumptive uses, and/or a fair dealing exception for educational uses. CAG encourages the Department to consider this more practical, adaptive and forward-thinking approach.  
  
**Ensuring educational institutions don’t pay to use freely available AI tools**

The scope of the educational statutory licence in Australia means that education budgets pay for all copying and communication of works - even when those works are made freely available on the internet for free public consumption, and with no expectation of payment. Without an appropriate copyright exception, we run the risk that schools would likely be required to pay licence fees under the statutory licence when students use AI platforms to generate ordinary search query results, or for non-harmful uses of AI platforms. This could lead to the situation where Australian schools are required to pay licence fees when a student or teacher asks ChatGPT a question, despite this being a free activity all over the world.

Singapore recently brought in an exception to allow educational institutions to use freely available internet materials.[[28]](#footnote-28) In doing so, Singapore is well ahead of Australia in making its copyright law fit for the digital word. The new law clarifies that teachers and students can use freely available online materials for educational purposes. This would include use of general-purpose AI systems such as when students or teachers use services like ChatGPT as a search or research tool in lessons.  
  
We submit the recent Singapore exception is a good model for Australia to consider. CAG requests the Committee recommend that Australia introduce a new exception into the Copyright Act to permit the use of freely available internet materials by educational institutions, including the freely available outputs of AI queries.

# 3. Should different approaches apply to public and private sector use of AI technologies? If so, how should the approaches differ?

CAG notes that in examining this question in the context of copyright reform, the ALRC found that the most important question to address was whether a particular use of copyright content was ‘fair’, rather than to specifically determine whether public or private uses of content would be permitted or not-permitted.[[29]](#footnote-29) There could be some commercial uses that are deemed ‘fair’ (for example, commercial news organisations are currently permitted to use content for reporting the news, or criticism or review, as long as the intended use is fair). A similar approach may be usefully adapted to the regulation of AI.

**Public interest exceptions for educational uses**

Education is universally acknowledged as being a core public interest. This cannot be ignored when determining appropriate limitations and exceptions to copyright. Simultaneously, we recognise the importance of appropriate licensing for the use of copyright works where these are cultural products (for example sound or image generation).

The WIPO Copyright Treaty recognises:

“*the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention.”[[30]](#footnote-30)*

This international context led to the Terms of Reference for the Copyright and the Digital Economy Review expressly acknowledging the importance of education as a public interest. They include a direction that the ALRC should have regard to: “*the general interest of Australians to access, use and interact with content in the advancement of education, research and culture.*”[[31]](#footnote-31)

The ALRC noted:

*“It is sometimes argued that where a licence is available, unremunerated exceptions should not apply. ...In the ALRC’s view, the availability of a licence is an important consideration, both in crafting exceptions and in the application of fair use—but it is not determinative. Other matters, including questions of the public interest, are also relevant.”[[32]](#footnote-32)*

While we acknowledge that a discussion of the outputs of generative AI technologies is outside the scope of this Review, it is critical to ensure that public interest exceptions apply to outputs of AI where appropriate, such as where the output is generated or used for a non-consumptive or general education purpose, or informative in nature. Examples of these types of uses include a student using an AI tool such as ChatGPT to generate an explanation on a difficult mathematical problem, or in art class to turn their own artworks into the style of a variety of famous artists.

A different approach may be required where a company uses an AI platform trained on a commercially available photographic database, where the tool is provided with specific prompts requiring it to generate an image. For example, the marketing manager of a company might prompt an AI tool to generate an image designed to be included in an advertisement “in the style of Annie Liebowitz”, or to write a song to accompany the company’s social media campaign “in the style of Australian band Gang of Youths”. These would more clearly be consumptive uses of copyright content.

To ensure an appropriate balance, it is critical that public interest exceptions are implemented for educational non-commercial uses, whilst consumptive uses remain subject to licensing where applicable.

# 4. Given the importance of transparency across the AI lifecycle, please share your thoughts on:

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

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

# CAG is a strong advocate of transparency and supports measures that will ensure appropriate governance at all stages of the AI process. Transparency in the governance and operation of AI will provide accountability of AI platforms that will help improve public trust and confidence. As noted in the discussion paper, transparency and accountability are identified in Australia’s AI Ethics Principles[[33]](#footnote-33) and play an important part in supporting responsible AI that aligns with public expectations. One significant and longstanding concern for CAG is the lack of transparency in statutory licensing arrangements for the educational use of copyright material. CAG has serious concerns about the deficiencies in the current governance arrangements for declared collecting societies and the practical consequences of these deficiencies.

For example, the Copyright Agency is the declared collecting society for the statutory licence established by s 113P of the Copyright Act *1968*. This licence enables the educational copying of text and image in schools and TAFEs. Australian schools are currently the largest licensees of the Copyright Agency under the statutory licence and represent approximately 42% of its revenue.[[34]](#footnote-34)

CAG’s concerns stem largely from the lack of transparency in the management and distribution of funds collected by Copyright Agency under this statutory licence scheme. In particular, CAG wishes to ensure that distribution occurs in a manner that ensures authors appropriately benefit from the monies paid by the school sector and how public funds (that are unable to be distributed to authors) are otherwise handled by Copyright Agency. Ensuring transparency and accountability about the expenditure of public funds is essential, given educational licence fees are paid from public funds, and in the case of independent and catholic schools, from members of the Australian community.

For example, the Copyright Agency’s ‘Future Fund’ in the past amassed as much as $15.5 million collected from public education budgets and from Catholic and Independent schools, for works where a copyright owner could not be identified for payment, or the distribution otherwise may not have met Copyright Agency’s distribution rules. This is instead of being paid to Australian authors and publishers or returned to education budgets[[35]](#footnote-35). In Copyright Agency’s most recent annual report, the Future Fund sits at $7.3 million.[[36]](#footnote-36) Other than noting their use of this money for taking actions in litigation, communications, research and advocacy[[37]](#footnote-37), there is little information in either the Directors’ Reports or the Annual Reports to explain how monies that were classified as undistributed funds were subsequently distributed.

Neither the Code of Conduct for Copyright Collecting Societies (**Code**), nor the existing legislative framework applying to collecting societies, provide any mechanism for the school and TAFE sectors to have these concerns addressed. For example, when CAG raised a number of transparency issues in a regular review of the collecting society code of practice, the Code Reviewer in the October 2015 *Supplementary Report of the Code Reviewer* concluded that it would take an “investigation far broader than that which is expected of the triennial review and than that which I am capable”[[38]](#footnote-38) in order to reach the correct decision. In consequence, no recommendation was made.

A deficient Code has enabled this lack of transparency of Copyright Agency’s operations. We also note that the guidelines for the declaration of collecting societies were last reviewed in April 2001, and refer to provisions that are no longer in the *Copyright Act 1968*. CAG submits fit-for-purpose governance arrangements need to be in place to address this lack of transparency.

These issues were considered by the Productivity Commission in its 2016 Review of Australia’s Intellectual Property (IP) System[[39]](#footnote-39).The Commission examined the IP system in detail and made recommendations on how it can be improved[[40]](#footnote-40). In particular, the Commission considered the importance of transparency in licensing and recommended that the governance and transparency arrangements for collecting societies be strengthened. The Commission stated:

*“in the Commission’s view the ACCC should undertake a comprehensive review of Australia’s collecting societies and the current code of conduct.”[[41]](#footnote-41)*

It is imperative that these concerns be addressed and rectified to enable robust transparency before assessing whether any copyright licensing arrangements may be suitable for AI (noting the importance of ensuring a mix of licensing and public interest exceptions as noted above).

We urge the Department to recommend a governance review of the existing licensing arrangements and guidelines for declaration of collecting societies as a priority. This is essential to guard against existing transparency concerns being transferred to licensing arrangements in the AI space. It will be essential in garnering public confidence and trust in AI as well as ensuring that AI platforms operate with legitimacy and the requisite accountability.

Thank you for taking the time to consider these detailed views. Please contact me if you would like further information on any of the issues raised in this submission.

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1. <https://smartcopying.edu.au/> [↑](#footnote-ref-1)
2. For example, the NSW Institute of Applied Technology has recently introduced an ‘Introduction to Artificial Intelligence’ course, see https://store.training.tafensw.edu.au/product/introduction-to-artificial-intelligence/. See also their microskill course ‘Responsible Artificial Intelligence:<https://store.training.tafensw.edu.au/product/responsible-artificial-intelligence/?_ga=2.234301150.1344238210.1688526259-497552872.1688526255>. [↑](#footnote-ref-2)
3. Department of Industry, Science and Resources, ‘Safe and Responsible AI in Australia’ Discussion Paper, June 2023, page 3. [↑](#footnote-ref-3)
4. <https://smartcopying.edu.au/using-generative-ai-platforms-in-schools/> [↑](#footnote-ref-4)
5. <https://smartcopying.edu.au/using-generative-ai-platforms-in-tafes/> [↑](#footnote-ref-5)
6. <https://smartcopying.edu.au/> [↑](#footnote-ref-6)
7. For example, in its 2013 report, ‘*Copyright in the Digital Economy*’ the ALRC noted that ‘there is no exception in the Copyright Act that covers data and text mining. Where the data or text mining processes involve the copying, digitisation, or reformatting of copyright material without permission, it may give rise to copyright infringement’, p 262. [↑](#footnote-ref-7)
8. Robert Burrell, Michael Handler, Emily Hudson and Kimberlee Weatherall, ALRC Inquiry into Copyright and the Digital Economy Submission in response to Issues Paper No. 42 (14 December 2012), p 10. [↑](#footnote-ref-8)
9. See [https://www.google.com/url?q=https://www.wipo.int/wipolex/en/text/295166&sa=D&source=docs&ust=1688357623829981&usg=AOvVaw2Gg\_jfqK25Nl8nJG1paUYc](https://www.wipo.int/wipolex/en/text/295166). [↑](#footnote-ref-9)
10. See *Copyright Act 1968* s 28. [↑](#footnote-ref-10)
11. Safe and Responsible AI in Australia - Discussion Paper. Department of Industry, Science and Resources pp 7-8. [↑](#footnote-ref-11)
12. <https://www.google.com/url?q=https://slate.com/business/2018/10/amazon-artificial-intelligence-hiring-discrimination-women.html&sa=D&source=docs&ust=1688097650940485&usg=AOvVaw044ILLdWUlVJGhd5DAcsjv>. [↑](#footnote-ref-12)
13. <https://news.mit.edu/2018/study-finds-gender-skin-type-bias-artificial-intelligence-systems-0212>. [↑](#footnote-ref-13)
14. Generally, copyright in Australia lasts for the lifetime of the author plus 70 years. When works enter the public domain it means they are no longer in copyright and are literally public property. [↑](#footnote-ref-14)
15. For example, Creative Commons supports broad access and use of copyright works, including openly licensed content, to train AI in the public interest see<https://creativecommons.org/2021/03/04/should-cc-licensed-content-be-used-to-train-ai-it-depends/>. Note, also, News Corp chief executive Robert Thomson specifically raised the issue of compensation by insisting that AI firms will need to pay publishers for the right to use its technology on ‘proprietary’ content, see<https://www.afr.com/companies/media-and-marketing/news-corp-in-talks-with-ai-firm-about-compensation-20230308-p5cqcp>. [↑](#footnote-ref-15)
16. Examples of ‘consumptive uses’ include: a teacher uploading an article from a journal to their school or TAFE learning management system for their class to access; a teacher photocopying a chapter of a textbook to hand out in class; a teacher downloading a map from a website to hand out to students. [↑](#footnote-ref-16)
17. See ALRC *Copyright and the Digital Economy* Final Report, available at<https://www.alrc.gov.au/publication/copyright-and-the-digital-economy-alrc-report-122/>. [↑](#footnote-ref-17)
18. Productivity Commission inquiry report no 78, *Intellectual Property Arrangements* (2016), Overview of Report 27. [↑](#footnote-ref-18)
19. Department of Education and Training, *Through Growth to Achievement: Report of the Review to Achieve Educational Excellence in Australian Schools* (2018) 13. [↑](#footnote-ref-19)
20. The Exposure Draft *Copyright Amendment (Access Reform) Bill 2021* was released for public consultation prior to the last election. The Bill would have addressed some of the issues raised by the ALRC and Productivity Commission but did not address many of the issues raised in this submission and by the ALRC and Productivity Commission. [↑](#footnote-ref-20)
21. The UK has a text and data mining exception, which allows copies of copyright works to be made for the purpose of non-commercial research. [↑](#footnote-ref-21)
22. Likely permissible under Fair Use, following an opinion from the Israeli Ministry of Justice. Israel’s fair use provision, section 19 of the Copyright Act, is modelled on the fair use provision in the U.S. Copyright Act, 17 U.S.C. § 107. [↑](#footnote-ref-22)
23. Singapore has an expanded exception in the Singapore Copyright Act that allows for text and data mining (the ‘Computational Data Analysis Exception’). [↑](#footnote-ref-23)
24. However, note the scope of any permission is currently under legal challenge, see <https://www.theguardian.com/books/2023/jul/05/authors-file-a-lawsuit-against-openai-for-unlawfully-ingesting-their-books>. [↑](#footnote-ref-24)
25. Japan was one of the first jurisdictions to amend its copyright legislation to meet future demands in AI and big data. Japan’s copyright laws have permitted machine learning techniques since 2009. It was the first country in the world to update its copyright laws to enable text and data mining by introducing a new Article 47(7), which authorised text and data mining by all users and for all purposes (commercial and non-commercial). [↑](#footnote-ref-25)
26. Articles 3 and 4 of the DSM Directive permit reproduction of copyrighted works and extraction of information from databases where the user performing TDM has “lawful access” to the protected work. Lawful access is described as “access to content based on an open access policy or through contractual arrangements between rightsholders and research organisations or cultural heritage institutions, such as subscriptions, or through other lawful means. Article 4 permits reproductions of, and extractions from, “lawfully accessible works” for TDM for any purpose provided that this activity has not been “expressly reserved by rightsholders in an appropriate manner”. [↑](#footnote-ref-26)
27. ALRC Inquiry into Copyright and the Digital Economy - Submission in response to Issues Paper No. 42, p, 10. [↑](#footnote-ref-27)
28. The new law clarifies that teachers and students can use freely available online materials for educational purposes, including home-based education, see <https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/20211007?DocDate=20211007>. [↑](#footnote-ref-28)
29. ALRC, *Copyright and the Digital Economy*, pp 239 - 240, [10.72]-[10.76]. See especially [10.74] where the ALRC noted: “Under fair use, a commercial use is less likely to be fair, but the commerciality is not determinative”. [↑](#footnote-ref-29)
30. See [https://www.google.com/url?q=https://www.wipo.int/wipolex/en/text/295166&sa=D&source=docs&ust=1688357623829981&usg=AOvVaw2Gg\_jfqK25Nl8nJG1paUYc](https://www.wipo.int/wipolex/en/text/295166). [↑](#footnote-ref-30)
31. ALRC, *Copyright and the Digital Econom*y, Terms of Reference. [↑](#footnote-ref-31)
32. ALRC, *Copyright and the Digital Economy*, p 194. [↑](#footnote-ref-32)
33. Safe and Responsible AI in Australia - Discussion Paper. Department of Industry, Science and Resources pg 14, which references the 8 AI Ethics principles that make up Australia’s AI Ethics Framework. See <https://storage.googleapis.com/converlens-au-industry/industry/p/prj2452c8e24d7a400c72429/public_assets/Safe-and-responsible-AI-in-Australia-discussion-paper.pdf> [↑](#footnote-ref-33)
34. Copyright Agency Annual Report 2021-22, p 9. [↑](#footnote-ref-34)
35. Copyright Agency 2015/2016 Directors’ Report and Financial Report (Copyright Agency 2015/2016 Directors’ Report), p 26. Available at <https://static-copyright-com-au.s3.amazonaws.com/uploads/2015/04/TCA4906-Copyright-Financials-30-June-2016.pdf>. [↑](#footnote-ref-35)
36. As at 30 June 2022, see Copyright Agency Annual Report 2021-22, p 37. [↑](#footnote-ref-36)
37. Copyright Agency Annual Report 2021-22, p 35. [↑](#footnote-ref-37)
38. Lindgren K Supplementary Report of the Code Reviewer (The Hon K E Lindgren AM, QC, formerly a Justice of the Federal Court of Australia) upon a Review of the Operation of the Code of Conduct of the Copyright Collecting Societies of Australia October 2015, p 50. [↑](#footnote-ref-38)
39. <https://www.pc.gov.au/inquiries/completed/intellectual-property#report>. [↑](#footnote-ref-39)
40. See the Commission’s Inquiry Report: <https://www.pc.gov.au/inquiries/completed/intellectual-property/report>. [↑](#footnote-ref-40)
41. Ibid p 160. [↑](#footnote-ref-41)