



**Australian Writers' Guild  
Australian Writers' Guild Authorship Collecting Society**

**Parliament of New South Wales  
Portfolio Committee No. 1 – Premier and Finance  
Inquiry into artificial intelligence (AI) in New South Wales**

20 October 2023

*We acknowledge we live and work on Aboriginal land. We pay our respects to Elders past and present. We thank them for their custodianship of land and waterways, stories, and song, and pay our respects to the oldest storytelling civilisation in the world.*

## WHO WE ARE

The Australian Writers' Guild (**AWG**) represents Australia's performance writers: 2500 playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers nationally. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees such as the Theatre, Television and Games committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society (**AWGACS**) is a not-for-profit collecting society for screenplay authors. With more than 2,000 members and 32 partnerships with overseas collective management organisations, AWGACS has collected more than \$25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS continuously advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

## Executive summary

Artificial intelligence (**AI**) has many exciting possibilities for efficiency and assisting non-creative decision making in our industry – as it does in all parts of our economy. However, it also has the potential to be an existential threat to the Australian creative sector, our audiences and the communities we build. The need for regulation is urgent. When the landmark National Cultural Policy, *Revive*, was released earlier this year, the Federal Government's message was loud and clear: artists are central to our shared culture. Artists would and should be returned to the heart of creative decision-making, as part of a robust and flourishing democracy. This can only work if the relationship between creators and audiences is protected, recognising it as a core part of a successful society. It was gratifying to see that sentiment shared by the NSW Government in its 'A New Look at Culture' consultation.

As the representatives of Australia's authors and creatives, it is our view that safe and responsible AI:

- Ensures creative products do not harm or exploit consumers;
- Facilitates and assists creative workers, rather than replacing them or their practice;
- Ensures artists can continue to derive a fair income from their creative works;
- Protects and strengthens copyright frameworks designed to deliver good outcomes for Australian artists and creative workers.

The use of AI by corporate content producers threatens to replace well-developed, thoughtfully realised Australian screen drama, theatre and interactive content with an endless churn derivative work driven purely by profit owned by non-creatives. A failure to regulate AI thoughtfully may see it supplant our talented Australian creatives – including writers of all genres and mediums, as well as directors, composers, editors, sound designers and industry creatives and technicians.

Like many other industry organisations across screen, literature, visual arts and music we have grave concerns about the risks generative AI platforms, products and services present to the livelihoods of Australian creative workers and their audiences.

In particular, we are concerned with the unauthorised and unremunerated inputs to, and outputs of, generative AI, including large language models (**LLMs**). We also have concerns regarding the use of automated decision making (**ADM**) in games and interactive projects. Major international studios and video game publishers are already embracing this technology. By cutting creative people out of the creative process, companies may cut costs and increase profit. However, the resulting lack of authenticity and craft in the productions will see homogenisation and consolidation, and a marked contraction in quality. This will inevitably result in a reduction of the economic contribution of the creative sector. Livelihoods will be at risk and the next

generation of diverse Australian creative talent will lose their opportunity to enter the industry altogether.

In September, we released a position paper on the impact of AI on our sector (**Appendix A**). We continue to contribute to the Federal Government's work as it considers the regulation of AI to the extent that it impacts the creative sector.

Again, there are useful and important purposes to which AI more generally is currently being applied, particularly in scientific fields. We support those applications, and our submission does not canvas them. In these instances, we can see a clear need and benefit to the use of AI: where human ability falls demonstrably short, and AI can be relied upon to produce a beneficial output. No such use case exists in the creative industries. There is no failure of Australian artists to generate works people want to engage with.

We assert that AI should be regulated to prevent it from subsuming the work of workers in creative industries. Creativity is fundamentally and exclusively a human endeavour. It must not be permitted to replace creativity, and there is no need for it to do so.

AI can make the non-creative parts of our industry more streamlined, more efficient, and more effective. It is a tool that can make us more confident, more competitive, and more innovate in the pursuit of our cultural sovereignty. The industry can benefit from the efficiencies generated by assisted non-creative decision-making, so long as those savings are reinvested into quality creative work. AI can support creativity, but it cannot replace it. Good writing, in the broad sense of the word that it encapsulates 'authorship', is human writing. If the function of storytelling is to add to the rich fabric of our society, then good writing must be human writing.

Claire Pullen  
**Group CEO**  
**AWG & AWGACS**

## 1. Current and future impact of AI technology in the creative industry

Generative AI is already being adopted in the creative sector. It is being used by art departments in the screen sector as a way to quickly generate visual content that would ordinarily be a task given to an entry-level practitioner.

Both ADM and LLM technology are being used in the development of video games. Large games companies like Ubisoft and Square Enix are hiring smaller writing teams, in some cases dramatically smaller, and reducing the number of voice actors employed as a direct (and desired) outcome of AI use.

These trends foreshadow how the creative industries as a whole will be affected by unregulated generative AI. It is our position that the Australian creative sectors require the implementation of unambiguous guidelines, reinforced by rigorous, forward-looking legislation to provide strong protections.

There are already few opportunities for emerging screenwriters to gain a foothold in the small local industry. It is intensely competitive, with few entry points. One such entry point is the position of a 'notetaker' in a writers' room (i.e. groups of writers that come together to develop a television series or workshop an episode script). Note-taking is an entry-level (paid) job that allows a new writer to contribute to a show and learn about the creative process from experienced writers. From here, notetakers may progress through a number of roles including script coordinator, staff writer, story or script editor, and eventually are given the chance to write their own script. All the steps prior are training for the next, and are the process by which show runners and senior writers hone their craft to produce the stories we love.

As one writer said:

*"As a mid-career writer, I've been plugging away in the wings, refining my work, and waiting to see if luck will turn my way. Screenwriting is my vocation, my livelihood, and my passion. In the ten years or so since I entered the industry, writing has been my full-time job. I have navigated this precarious industry carefully and at considerable personal sacrifice."*

If writers' rooms are recorded and automated, it seems likely note-taking will be the first role to be cut, thus eliminating one of the few possible entry-points into the industry that new writers still have. This phenomenon will repeat many times across the screen and interactive sectors – affecting emerging writers and narrative designers, directors, actors, set designers, composers, cinematographers, screen and sound editors – and the professional development of the next generation of Australian creative talent will be stunted as AI becomes more and more commonplace.

Generative AI could reduce the screenwriter's job to simply reading and reviewing drafts, generated from a derivative outputting of other people's work. This might work for now while we have an established stable of experienced writers who have spent a career honing their craft, but once that generation of writers is gone we will not have enough fresh talent to replace them, if AI is permitted to take over the writers' room. It is for this reason AI was such a critical component of the Writers' Guild of America strike action, which was recently successful in establishing industry regulations on the use of AI in the United States.

These regulations include a prohibition on AI being used to "write or re-write literary material" and a rejection of AI produced work being "considered source material". This has the effect of prohibiting AI-generated material from undermining a writer's credit or other rights. The regulations also allow writers to choose to use AI in their writing, subject to consent by the production company, but a production company cannot require a writer to use AI in performing their writing services. Production companies similarly must be transparent about the use of AI in any material provided to writers.

These regulations restrict the use of AI in the American screenwriting industry and uphold transparency and the creator's agency as integral parts of the developing sphere of generative AI in the creative sector. It is our hope that this progress will continue to spread cross borders.

## **2. Risks to the creative sector – AI and copyright law**

### **(a) AI and copyright infringement**

Australia's strong copyright framework is a sound and essential structural element for the continued growth of local Australian content, including drama and games. It is of significant economic and cultural value to our nation. We are strongly opposed to any suggestion that generative AI systems should be allowed to use copyrighted works without remuneration being paid to the authors of those works, and/or allowed to use works without the permission of its creatives. As noted in the Australian Human Right Commissions' Final Report on human rights and technology, the first step should be to apply our existing laws more effectively.

There is currently little transparency when generative AI "scrapes", "mines", "listens to", "trains on", or to use another word, *copies*, existing artistic work in order to create its outputs. LLMs have access to enormous datasets, comprised of both text and

media, that are publicly and “freely” (and potentially unlawfully) available and on which AI can be trained.<sup>1</sup>

Major film and games studios will of course have access to much more data than that accessible online. It is unclear whether the authors whose work is scraped by generative AI have given express permission for this usage. In our view it is highly unlikely that they are being paid for those uses, and it is unlikely they have authorised such use of their work.

It was revealed earlier this month that companies like Meta, EleutherAI, and Bloomberg have used ‘Books3’ dataset to train their language models. The dataset contained approximately 183,000 pirated books, plays and other literary works used to train generative AI systems without the permission of their authors which included many Australian writers and AWG members. This unauthorised use of existing artistic works is, quite simply, a copyright infringement. The US Authors Guild has recently filed a class action for copyright infringement against ChatGPT creator OpenAI over its use of pirated book datasets. There are also author class action suits pending against Meta and Google.

Australian copyright law intends for artists to be remunerated for the use of their existing works, and grants them control over their artistic or authorial voice (and future works in this voice). This same principle applies for directors, composers, musicians, authors and other creatives who have spent a lifetime of creative practice developing their distinctive body of work. It is for this reason that the artists’ permission must be sought, and an absolute right of refusal rests with them.

### **(b) Fair remuneration of artists**

In a standard performance writer or editor’s agreement, a writer may agree to assign the copyright in their original work to a production company in exchange for, at the very minimum, fair remuneration and an appropriate credit. This is the basic transaction of the screen industry. What we are currently seeing, however, is generative AI circumventing this transaction by ‘scraping’ writers’ – and other artists’ – work without permission from the original authors, without any payment or appropriate credit.

---

<sup>1</sup>Websites like Kaggle and Convokit publish datasets for precisely this purpose. See for example:

- Kaggle’s “Movie scripts corpus”: <https://www.kaggle.com/datasets/gufukuro/movie-scripts-corpus>
- Kaggle’s “Movies dataset”: <https://www.kaggle.com/datasets/rounakbanik/the-movies-dataset>
- Convokit’s “Movie dialog corpus”: <https://convokit.cornell.edu/documentation/movie.html>

In some cases, writers might assign their copyright subject to certain restrictions (for example, around their creative control over the work), or rights might be assigned to a producer or production company for certain uses of a work (with additional payments being due should the producer seek to exploit the work beyond those agreed uses).

No creative's agreement grants production companies the right to use their work to train generative AI platforms in order to generate new 'works' (and we contend that it is not as simple as an assertion that a writer sold their rights, and therefore the rights holder can use it to train AI). The rights in an authors' work were not purchased for this purpose and, in most cases, the proposed exploitation did not even *exist*.

All other regulatory questions being satisfied (which at present they are not), in these circumstances an additional payment must be paid to the original authors for any new commercial exploitation of their work, even if the output has been produced by a generative AI platform, subject to them giving permission for it to be used at all. Such terms would also need to be part of future contracts across creative industries.

Since any 'successful' AI output requires successful (human) input, the commercial success of any AI generated content is also **directly** tied to the substantive success of the original works that are scraped by the model. In simpler terms: generative AI could only 'write' a successful screenplay because it is replicating successful screenplays written by people. There is likely very limited commercial utility in training AI on unknown works from unknown writers. Therefore, an original author who consents for their work to be used should be entitled to ongoing payments when their work is used by generative AI platforms to produce outputs that are commercially exploited.

### **(c) First Nations works and 'cultural assets'**

Of particular sensitivity and import is the application of generative AI to First Nations stories. We support the legal recognition and protection of "cultural assets" and "traditional cultural expressions" owned by First Nations Traditional Owners as proposed in the Productivity Commission's [Report on Aboriginal and Torres Strait Islander visual arts and crafts](#) (Productivity Commission Report).

Our current copyright framework does not adequately account for the collective and community ownership of First Nations dreaming and storylines, and we look forward to collaborating with the Attorney General's department as they work to address this issue.

We wish to note in this submission that it is entirely possible in our current settings (for example) for a generative AI to be trained on Aboriginal art or stories, to generate a fake "Dreaming story", and be made and distributed internationally and in



Australia, to the benefit and profit of non-First Nations entities, without regard to cultural protocols or remuneration. It should be clear that this would be profoundly offensive, as well as leaving unanswered all the questions currently being asked and dealt with by the proposed copyright reforms touching on First Nations storytelling.

#### **(d) The role of the funding agencies**

Screen NSW Terms of Trade states at clause 1.2 that:

*“Screen NSW also expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:*

- *Paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including Key Creatives, cast and crew;*
- *Respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property rights.”*

As the Committee would be aware, the majority of businesses that employ Australian creatives are at least partially reliant on state and federal government funding and tax concessions. It is a key enforcement tool not available in many workplaces.

Clause 1.2 of Screen NSW’s terms of trade clearly intends to ensure that funding recipients must respect the intellectual property rights of third parties and ensure that creative workers are fairly remunerated for the exploitation of their intellectual property.

Any funding recipient that uses AI as a replacement (in whole or in part) for work that has traditionally been done by a creative worker necessarily contradicts these terms of trade.

#### **Recommendations:**

- **No state funding for AI projects:** State and territory funding agencies must not fund any creative projects that use AI technology as a replacement (in whole or in part) for work that has traditionally been done by a creative worker at least until the copyright concerns raised in this submission are addressed by the federal government.
- **Active disclosure:** Any person or company applying for Screen NSW funding must, throughout the grants process, have obligations to actively disclose any use of AI technology.

- **Transparency:** Any creative content, including audio-visual content that is created with the assistance of AI, must include declaration that artificial intelligence technology has been used. This must be applied broadly not just to – for example – scripted performance content but advertising, especially political advertising. Active transparency to inform consumers should be the overarching goal. This is consistent with the Australian Government’s AI Ethics Principles, which include a “transparency and explainability” principle to promote “responsible disclosure” so that people know when they are being significantly affected by the use of AI.

### **3. Risks to the creative sector – AI and games**

AI use in video games presents a number of significant risks not just to the creative workers involved in these projects but to the audience for these games: the consumers.

#### **(a) Age classification and harmful content**

The classification and age rating of games that use AI is an immediate concern. In games that use AI, players are able to input any content via text and speech, that may then accidentally or deliberately cause the game to break classification rules. Alternatively, video game AI might ‘hallucinate’ offensive or harmful content in the same way that generative AI chatbots are currently being observed to do.<sup>2</sup> Whether it is player feedback or an AI ‘malfunction’ there is a real risk of a video game producing feedback for players that is, at best, untruthful and defamatory; at worst, offensive or genuinely harmful. A game notionally rated PG might generate elements that put it in an MA15+ or R18+ classification category based on user input into a generative AI function.

We understand that the Australian, state and territory governments are working on reforming the National Classification Scheme with a specific focus on games (gambling-like content in computer games, a mandatory minimum classification for games). This is a timely opportunity to ensure that the revised National Classification Scheme is future-proofed against games that utilise AI in the ways that we are currently seeing and expect to see much more of in the coming months.

#### **(b) Vulnerable users and private information**

AI-based characters in video games will be developed to have ‘human’ qualities, as already seen in ChatGPT and Bing Chat’s mimicry of a knowledgeable friend with a

---

<sup>2</sup> See Pranshu Verma and Will Oremus ‘ChatGPT invented a sexual harassment scandal and named a real law prof as the accused’, [The Washington Post](#), 5 April 2023; Karen Weise and Cade Metz ‘When A.I. chatbots hallucinate’, [The New York Times](#), 9 May 2023.

pleasant outlook. This presents a risk to players who develop a sense of trust with these characters and become comfortable with disclosing information (including personal information) to the game. It is unclear if this information will fall within existing privacy regulation, or if AI programs will ‘know’ not to disclose this information to other users. Strict measures must be in place to ensure that video game players understand and are aware of the kind of information they disclose to generative AI video games. Developers of these games must make legal disclosures about how that data is captured and stored. This risk is heightened in combination with the unreliability of AIs, as well as any use of biometric feedback. NSW privacy regulations should be extended to the private sector and should be used to regulate the use of AI in different areas, including gaming.

### **(c) Biometric feedback**

Furthermore, all games are able to record behavioural feedback by players, while some games might incorporate the use of biometric feedback (in the same way that wearable physical fitness monitors and activity trackers such as smartwatches and Fitbits do) to track heart rate/breathing and eye movements in order to keep players engaged. Video game content will be designed to be more intense as players are acclimated to the stimulation and the addiction to such stimulation is easily exploitable. Additionally, an AI may be able to know when a player is vulnerable to exploitation even as the player themselves may not.

The danger posed by the use of biometric feedback has been recognised in other jurisdiction’s approaches to regulation of AI, with the EU’s proposed “AI Act” requiring that “natural persons” be “notified when they are exposed to an emotion recognition system”.

Such biometric information is "sensitive data" under Australian privacy legislation. We therefore see the use of this technology as raising similar privacy concerns to the use of facial recognition software in supermarkets<sup>3</sup> and major stadiums<sup>4</sup>.

The use of biometric feedback is a further danger to players when video games utilise “dark design patterns” that entice players to keep playing a game<sup>5</sup> and/or when games include ‘gambling’ features (like loot-boxes) or predatory in-app purchases. Dangers of this kind have been prioritised in the EU, with AI systems involving cognitive behavioural manipulation of vulnerable groups (including children) to be banned if the “AI Act” is passed, as they are considered to pose an

---

<sup>3</sup> Jarny Blakkarly, ‘Kmart, Bunnings and The Good Guys using facial recognition technology in stores’, [Choice](#), 12 July 2022.

<sup>4</sup> Jarni Blakkarly, ‘Facial recognition technology in use at major Australian stadiums’, [Choice](#), 5 July 2023.

<sup>5</sup> See Zagal, José P; Björk, Staffan; Lewis, Chris, [‘Dark Patterns in the Design of Games’](#) (2013).

unacceptable risk. Without sufficient understanding of, or control over AI systems used in video games, the potential for such manipulation of vulnerable groups is rife.

### **Recommendations:**

- **Classification:** The Australian, state and territory governments should ensure that the National Classification Scheme addresses the use of LLM AI in the production of games and agrees that all such games must be rated R18+ unless all content can be verified. All games using LLM and ADM AI to generate content at runtime must be refused classification until new certification or processes exist to adequately judge and classify these experiences, with guarantees they can maintain content appropriate to the classification. They must be labelled that 'AI has been used', and results are uncertain and cannot be guaranteed.
- **Gambling and in-app purchases:** An immediate ban on AI used in games with gambling mechanics, and those with in-app purchases of resources used for in-game economies.
- **Opt in:** Players must be given the option of not having their data and information captured and stored. Players must be shown a statement clarifying capture and use of information every time they load and exit the game. Notices regarding the capture and use of this information must be shown at point of purchase.
- **Privacy:** A mandatory sector code of conduct should be quickly implemented to ensure that games do not deceive players into revealing personal information. The code should be endorsed by the state and territory funding agencies.

### **4. Conclusion**

We welcome the advent of AI and assistive tools into the non-creative aspects of our industry. Accounting, payroll, administrative, production tasks can, and should, be automated where efficiencies can arrive. This frees up scarce production budgets, government incentives and industry support to be spent on the thing that makes these works enticing: the creative.

As creatives we suggest the government should approach generative AI with the question: "where is the demonstrated failure this will fix?"

This is the question that should be answered before AI is part of any creative process. In our view profit maximisation is not a sufficient justification to replace creative workers, particularly where the replacement of administrative and other non-

creative functions could be done without the infringement of artists' copyright and moral rights.

Leaving aside the substantive issues around harm to consumers, our industry, and workers, AI has no work to do in replacing creative workers. We have an available, trained and skilled workforce, ready to be put to work.



President Shane Brennan      Emeritus President David Williamson

Level 4, 70 Pitt Street Sydney NSW 2000

t. 02 9319 0339   f. 02 9223 8933   admin@awg.com.au   [www.awg.com.au](http://www.awg.com.au)   ABN. 38 002 563 500

## **APPENDIX A**

### **Artificial intelligence in performance and interactive writing**

The Australian Writers' Guild asserts that art in all its forms is an expression of our humanity; that good writing is human writing; that the art and craft at the core of great writing results from human endeavour, experience, and aspiration, and often from application across many years.

The Australian Writers' Guild's primary purpose is to affirm and defend the right of every Australian writer and narrative designer to have the value of their work recognised and protected through copyright, and properly remunerated through just and binding industrial agreements.

Artificial Intelligence (**AI**) is, by its nature, iterative and derivative, and it is 'trained' by scraping from work or works that have come before, most often without consent, acknowledgement, or payment to the original artists.

The Australian stage, screen, performance, broadcast, and interactive content sectors are essential Australian industries, stimulating enormous investment and economic activity, while employing huge numbers of Australian artists and workers.

Australian productions are an indispensable projection of Australian identity globally, augmenting and promoting tourism and investment, along with providing opportunities for soft diplomacy. They represent critical tools and expressions of our cultural sovereignty.

The unregulated use of AI by corporate content producers – including the major international studios and major video game publishers – represents a clear and present danger to Australian writing, and consequently a significant dilution of the critical functions we perform.

The Australian Writers' Guild seeks recognition of the threat to Australian culture; to Australian Indigenous culture; to Australian creative ambitions; to Australian theatre, screen, broadcast and interactive content, and their evolution; and most pressing, to Australian creative employment, now and into the future.

In response, it is our position that the Australian creative sectors require the implementation of unambiguous guidelines, reinforced by rigorous, forward-looking legislation to provide strong protections.

### **Safe and responsible AI:**

- Ensures creative products do not harm or exploit consumers;
- Facilitates and assists creative workers, rather than replacing them or their practice;
- Ensures artists can continue to derive a fair income from their creative works;
- Protects and strengthens copyright frameworks designed to deliver for Australian artists and creative workers.

### **The dangers:**

AI and its supporting technology are developing with exponential speed.

The imminent threats are:

- The degradation and loss of Australian culture in general in its primary and most accessible forums.
- The appropriation and erosion of the world's oldest living cultures: Australian Indigenous culture.
- The replacement of thoughtfully developed and realised Australian screen drama, theatre, and interactive content with an endless churn of derivative work driven purely by profit and owned by non-creatives.
- The wholesale displacement of artists and creative workers.
- The loss of livelihoods for Australian creative workers.
- A devastating erosion of the skill base of Australian creatives.
- The evaporation of viable and meaningful career pathways for Australian creatives.
- The stunting of vital initiatives addressing inclusivity in Australian cultural endeavours – and in particular, the theatre, screen, and interactive sectors. In some instances, closing off the opportunity to enter those sectors altogether.
- The risks to audiences when video games that utilise AI expose them to potentially harmful or offensive content.
- The breaches of audience privacy that will result when video games capture, or encourage players to disclose, personal information.
- The increased effectiveness of “dark design patterns” in video games which entice players to continue playing a game, particularly those games that include gambling features like loot-boxes or predatory in-app purchases.

## **Broader context:**

It should be acknowledged that there are many useful and important purposes to which AI more generally is currently being applied. Where AI is utilised in service of a demonstrable improvement in the outcomes of health and/or social services, its considered and timely use can bring about an increase – or halt the decrease in – standards of living, and/or quality of life.

Creativity and art are fundamentally and exclusively human endeavours.

Art in all its many forms is the fruit of creativity. It has – and has had – primacy in societies as a result of its power to express what most people struggle to express, and to do so in ways that unite populations in the shared experience of it.

By cutting artists and creative workers out of the creative process, companies may cut costs and increase profit. However, the resulting lack of authenticity and craft in the productions will see homogenisation and consolidation, and a marked contraction in quality. The audience experience of Australian screen, stage, audio and interactive arts will also be diminished, and in turn their power to provoke, to unite – to heal – will be blunted. A downturn in audience engagement will follow, and ultimately a splintering of the very industries that corporations are attempting to wring value from in employing AI.

Many of these same corporations are offshore entities that will do this damage to Australian creative industries while also contributing minimal tax.

AI is in a sense a self-defeating prophesy when it comes to the arts in general, and particularly when applied to performance writing.

In the process, it will destroy value that has only grown across decades, it will extinguish jobs and career paths, and strangle culture.

At its worst, and left unregulated, AI will steal Indigenous culture and IP.

Of course, AI can make the non-creative parts of any industry more streamlined, more efficient, and more effective. It is a tool that, when wielded ethically and strategically, can make us more confident, more competitive, and more innovative in the pursuit of our cultural sovereignty and expression. Performance writing can benefit from the efficiencies generated by assisted non-creative decision-making, so long as those savings are reinvested into quality creative work.

AI can support creativity, but it cannot replace it.

Good writing is human writing.



## Features of the appropriate regulation of AI:

- **First Nations:** specific consideration must be given to risks that generative AI platforms present to First Nations cultural assets.
- **Searchability:** Only public domain works should be accessible to generative AI platforms for 'scraping', and search and other platforms should have a positive obligation to remove copyrighted works, or works where the provenance is uncertain. Fines and other sanctions should apply to platforms that do not do this.
- **Out of copyright and public domain works:** When a work that is publicly available for free use, or out of copyright, is part of a 'new' work via AI, the preferred outcome is someone can and should benefit from the staging and production of the work, but cannot own it, or has only some form of limited licence, and the produced work should be considered another public domain work.
- **Authorial control:** Authors of works that are currently protected by copyright must opt in to having their works used by AI. It should be incumbent on the owners and/or developers of the AI systems to seek permission for that use and the creative should have an absolute right of refusal. Conversely, nothing in the law should prevent an author training a generative AI platform on their own original work for their own use.
- **Notice and takedown:** Should owners and/or developers of the AI systems knowingly infringe on a copyright owner's work, then financial penalties should apply. The burden of proof must rest with the owners and/or developers of the AI systems.
- **Protection of moral rights:** Any author whose work is 'scraped' to produce a generative AI output must be credited appropriately, after their permission is given for use. Should any other person falsely claim authorship of – or fail to appropriately credit – a generative AI output then the original artist(s) should have a legal claim against that person for a breach of their moral rights.
- **Transparency:** Any creative content, including audio-visual content that is created with the assistance of AI, must include declaration that AI technology has been used in its creation. This must be applied broadly not just to – for example – scripted performance content but advertising, especially political advertising. For interactive content, players must be shown a statement clarifying capture and use of information every time they load and exit the game. Notices regarding the capture and use of this information must be shown at point of purchase.
- **Fair remuneration:** Where an author's work is used by a generative AI platform to produce an output ("derivative work"), and the author has given

permission for that work to be used, then the author must be paid for that use. If that derivative work is then used to produce audio-visual content, then further remuneration and royalties should be payable by the owner of the audio-visual content to the original author each time the audio-visual content is broadcast, communicated or accessed.

- **Subsequent use:** Where a derivative work is exploited commercially by a third party, then the original author or authors of the source material should be entitled to remuneration with each transmission or viewing of the derivative work. Any entity that commercially exploits the derivative work must make payments to the relevant collecting society. The collecting society would then distribute the payments to the original authors whose work has been used to generate the derivative work.
- **Strong creative industries leadership:** Major games studios are currently the most enthusiastic about adopting AI technology. A peak industry body for games, interactive and artificial intelligence is urgently needed. This new body – Interactive Australia – would operate alongside Creative Australia, Screen Australia and the state agencies.
- **Classification:** All interactive content using AI during production must be rated R18+ unless all content can be verified. All video games using AI to generate content at runtime must be refused classification until new certification or processes exist to adequately judge and classify these experiences, with guarantees they can maintain content appropriate to the classification. The interactive content must be labelled – i.e. that ‘AI has been used’ – and include a warning that the results and outputs are uncertain and cannot be guaranteed to comply with relevant age restrictions.
- **Player opt in:** Players must actively opt in to having their data and information captured and stored. Active disclosures must be made by the content to them that include clear notices regarding the nature of the data and information captured and how it is used by the game they are playing.
- **Player privacy:** A mandatory sector code of conduct should be quickly implemented to ensure that video games do not deceive players into revealing personal information.
- **Gambling and in-app purchases:** AI should be prohibited in video games with gambling mechanics, and those with in-app purchases of resources used for in-game economies.