Commissioners Stephen King and Julie Abramson
Productivity Commission

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15 September 2025

Submission from the Australian Society of Authors in response to *Harnessing Data and Digital Technology Inquiry Interim Report*

About the ASA

The Australian Society of Authors (**ASA**) welcomes the opportunity to make a submission to the Productivity Commission in response to its *Harnessing Data and Digital Technology Interim Inquiry Report* (**Interim Report**).

With approximately 4,200 members, the ASA is the peak body, professional association, community, and voice of Australia's writers and illustrators. Our members are drawn from every sector of the writing and illustrating world, including: novelists, non-fiction writers, children's authors and illustrators, historians, graphic novelists, crime writers, science fiction writers, educational writers, biographers, poets, journalists and more.

Scope of Submission

This submission responds to Information Request 1.1, and the relevant copyright issues raised. In response to Recommendations 1.2 and 1.3 we refer to [our submission to the Department of Industry, Science, and Resources' consultation on Introducing Mandatory Guardrails for AI in High-Risk Settings](). We make no submission in relation to the draft recommendations on privacy regulation or digital financial reporting.

Executive Summary

1.   The ASA supports the ethical, responsible, and sustainable development of artificial intelligence, which in our view relies upon the appropriate licensing of copyright work. Both direct and collective licensing appropriately recognise the value of copyright works, which have directly enabled the commercial utility of AI technologies.
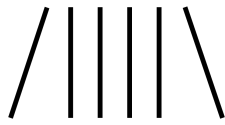
2. In our submission, the approach taken in the Interim Report is partial. The Interim Report does not acknowledge the extent to which freely using copyright works for training AI models is deeply contested and litigated worldwide, and, crucially, does not offer any analysis of the productivity of the copyright industries. As such, the proposal to introduce a text and data mining (**TDM**) exception for AI training reads as ill-considered, and blind to both the consequential economic impact on creators and cultural implications for Australians.

3. The ASA **opposes** the introduction of a TDM exception on the basis that a TDM exception is unnecessary and unjustified. It would destroy emerging legitimate licensing markets, *decrease* productivity, breach our obligations under international treaty, undermine Indigenous Cultural and Intellectual Property, contradict commitments made under the National Cultural Policy, and legitimise parasitic and unsustainable business models.

4. The ASA submits that the Australian Government has already made its position clear: it supports copyright as the pay packet of Australia's creators. The Government should underline this position by introducing new legislation covered in a mandatory Code of Conduct, which sets fair ground rules for offering generative AI models in this market. Those ground rules should be designed to arrest the information asymmetry and profound unequal bargaining power between creators and Big Tech and to bring about voluntary licensing solutions.

5. This Code of Conduct should require AI developers, as a condition of doing business in Australia, to:

   ● disclose the copyright works which have been used to train AI models,
   ● pay ongoing fair compensation to Australian creators whose works have already been ingested – and from whom it is too late to seek consent – for as long as their work remains ingested in the models,
   ● ensure that any use of Australian copyright material to train AI models is subject to licensing arrangements.

Background

1. The Australian copyright industries generate an economic value of $124 billion, the equivalent of 6.8% of gross domestic product (GDP).[1]

2. As recognised by the Productivity Commission's Interim Report, generative AI has been rapidly adopted around the world, upending the business models of the creative industries. Large language models such as ChatGPT, Copilot, Gemini, Claude, Midjourney, and Stable Diffusion have trained on billions of data points including the literary and artistic works of Australian writers and artists.

3. It is uncontested that this training has occurred without the permission of Australian copyright holders and that, with respect to books, training inputs were primarily unlawfully obtained from pirated sources, such as the Books3 dataset, which contains at least 183,000 books, and Library Genesis (or LibGen) an online pirate library which contains more than 7.5 million books and 81 million research papers.[2]

4. To the best of our knowledge, the copying of these training datasets has occurred in the US and, as such, is subject to US law. Around 50 cases have been filed in the US against AI developers for copyright infringement and the outcome of nearly all of those cases remain unclear.

5. Had this AI training occurred in Australia, it would constitute a breach of the copyright owners' exclusive rights under the *Copyright Act 1968* and would therefore be unlawful.[3] As the Productivity Commission notes, however, copyright law applies in the jurisdiction in which copying takes place, so overseas AI developers are not obliged to respect rights under Australian law.

6. Accordingly, Australian creators are frustrated: their life's work has been taken – from pirate sites – and monetised, in a way that is prohibited under Australian law. However, their ability to take action is impaired by the global operations of AI companies. In the absence of practicable legal remedies, authors are now reliant on Government intervention.

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[1] PwC, *The economic contribution of Australia's copyright industries – 2006-2018*, report commissioned by Australian Copyright Council, June 2020.
[2] Alex Reisner, "The Unbelievable Scale of AI's Pirated-Books Problem", The Atlantic, 20 March 2025
[3] We refer to the submission made by the Australian Copyright Council which sets out a detailed explanation of why scraping of copyright material for AI training constitutes copyright infringement.

Questions posed by Productivity Commission

7.   The Productivity Commission has specifically sought feedback on the issue of copyrighted materials being used to train AI models, asking:

   ● whether reforms to the copyright regime (including licensing arrangements) are required?

   ● whether the *Copyright Act 1968 (Cth)* should be amended to include a fair dealing exception for text and data mining?

8.   In this submission, we answer those questions by setting out:

   ● The response from authors, the Australian public, and a Parliamentary Inquiry on the issue of copyright works being used to train AI models

   ● What is missing from the Interim Report

   ● Our opposition to a TDM exception

   ● Our proposal for a Code of Conduct.

Australian authors' response to their copyright works being used to train AI models

9.   The ASA is currently conducting a national survey of authors and illustrators and we will be happy to share the results once finalised. As of 15 September, we have received approximately 400 responses, which provide:

   ● 98% of respondents believe AI companies should ask for permission to use copyright works for AI training.

   ● 92% of respondents want to be compensated for the AI training that has included their copyright works without their consent.

10.   Since the launch of generative AI in late 2022, Australian authors have consistently expressed their opposition, frustration, and dismay at the violation of their property rights.[4] In and around March this year, the ASA heard from almost 1,900 members reporting some 12,000 books had been included in the LibGen dataset used by Meta to train its generative AI, after *The Atlantic* published a dataset search tool.[5]

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[4] See, for example, "ASA response to use of Australian books to train AI" (September, 2023) and "Australian authors' books included in AI training dataset" (March 2025).
[5] Alex Reisner, "Search LibGen, the Pirated-Books Database That Meta Used to Train AI", The Atlantic, 20 March 2025.

11.   By way of example, Australian authors have said:

Richard Flanagan: "I felt as if my soul had been strip mined and I was powerless to stop it."[6]

Trent Dalton: "I feel like I just came home to find my house robbed. There's nothing in my house as valuable to me as the real human thought and the deep human feeling that I put into those books that these literary looters have plundered … That's how personal it is for me. I describe it (plundering authors' books for artificial-intelligence models) as creepy.''[7]

Hannah Kent: "I feel completely gutted. It feels a little like my body of work has been plundered."[8]

Tim Ayliffe: "Losing control of copyright so artificial intelligence can steal my novels is deeply disturbing. Technology has an important role to play in improving lives. But it cannot be allowed to replace the things that make us human, like creativity and truly original thought. Governments underestimated the negative impact of social media and they're about to make the same mistake with AI."[9]

Kate Kruimink: "We can't be productive if our work is being stolen to train the machine that essentially is meant to replace us. What is creative work for? It's a deeply human endeavour, and to me it's based on the principle of human exchange. The meaning of the work — my writing, for example — is not only in its consumption, it's also in its creation. If you try to cut that exchange in half, I think you remove the soul of what it is."[10]

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[6] Kelly Burke, "'Biggest act of copyright theft in history': thousands of Australian books allegedly used to train AI model", The Guardian, 29 September 2023.

[7] Rosemary Neill, "Boy Swallows Universe author Trent Dalton wanted to 'vomit' when told his books were on pirate database", The Australian, 8 August 2025.

[8] Nicola Heath, "Authors outraged to discover Meta used their pirated work to train its AI systems", ABC News, 28 March 2025.

[9] Caroline Overington, "Livid authors take up their pens to fight off the 'AI beast'", The Australian, 6 August 2025.

[10] Nicola Heath, "Australian authors challenge Productivity Commission's proposed copyright law exemption for AI", ABC News, 13 August 2025.

Toby Walsh: "As both an author and AI researcher, I understand and appreciate both sides of this issue. A copyright exception is not needed to train new AI models. There are plentiful datasets of text which are out of copyright or where consent has been given. And tech companies have demonstrated they're perfectly able and willing to license training data. I value our creative industries. While we might need to tweak intellectual property law to deal with technological change, the fundamental issue remains – we should not endorse the theft of their intellectual property."[11]

Andy Griffiths: "Authors spend thousands of unpaid hours creating their work on a speculative basis. Authors don't get paid a salary: the only means of remuneration for their creative labour is through copyright law. We don't ask for special favours, just fair compensation for our efforts—something that one might hope a commission dedicated to productivity might actually be interested in protecting."[12]

12. This point must be grasped: authors feel they are losing rightful compensation for exploitation of their work, but also something even more fundamental. What is being lost is the recognition that we *need writers* who produce our national culture, "the archives of our collective imagination."[13]

Australian public response to copyright and AI models

13. Research by KPMG[14] shows that Australians are more worried than excited about AI. 82% of global respondents feel that "loss of privacy or intellectual property" is a moderate to high risk of AI use. 77% of respondents are unsure online content can be trusted as it may be AI-generated.

14. According to a survey conducted by Essential Research, Australians do **not** think that tech companies should be given free access to creative content. 82% of respondents said, "copyright laws should not be changed and should continue to protect creative content so artists are compensated for use of their creations."[15]

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[11] Provided directly to the ASA.
[12] Provided directly to the ASA.
[13] Anna Funder and Julia Powles, "Tech companies are stealing our books, music and films for AI. It's brazen theft and must be stopped", The Guardian, 10 September 2025.
[14] Gillespie, N., Lockey, S., Ward, T., Macdade, A., & Hassed, G. (2025). *Trust, attitudes and use of artificial intelligence: A global study 2025*. The University of Melbourne and KPMG.
[15] Essential Research, part of Essential Media Communications, "Views on AI copyright law", Essential Report 27 August 2025.

Parliamentary Inquiry's recommendations on copyright and AI training

15. The Senate Select Committee inquiring into the Adoption of AI in Australia recommended:

    - That the Australian Government continues to consult with creative workers, rightsholders, and their representative organisations through the CAIRG on appropriate solutions to the **unprecedented theft of their work by multinational tech companies** operating within Australia.
    - That the Australian Government requires the developers of AI products to be **transparent** about the use of copyrighted works in their training datasets, and that the use of such works is **appropriately licenced and paid for**.
    - That the Australian Government urgently undertake further consultation with the creative industries to consider an appropriate mechanism to ensure **fair remuneration** is paid to creators for commercial AI-generated outputs based on copyrighted material used to train AI systems.[16]

16. The ASA submits that a new TDM exception would be vehemently opposed by Australian authors and illustrators, unsupported by the general public based on survey evidence, and wholly contradictory to the Senate Select Committee's recommendations to the Government on this issue.

What is missing from the Productivity Commission's Interim Report?

17. In our submission, the Interim Report contains omissions as follows.

    Acknowledgement of piracy

18. While the Interim Report acknowledges that the datasets used to train AI models contain books, it omits to mention that AI training has predominantly relied upon **unlawfully sourced** copies of books. Recently, a proposed settlement in *Bartz v Anthropic* was put forward by the parties for Court approval[17] and included an agreement by Anthropic to pay a US$1.5 billion settlement to members of the class

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[16] Select Committee on Adopting Artificial Intelligence, Commonwealth of Australia 2024
[17] *Bartz v Anthropic* (2025), Notice Of Settlement, Joint Stipulation For Stay, And [Proposed] Order, Case No.: 3:24-cv-05417-WHA

action for the use of pirated books to train their generative AI system. The terms of the settlement are yet to be approved.[18]

Copyright licensing is an efficient solution for access

19. The Interim Report positions Australia's technology-neutral copyright law as a 'barrier' – apparently because copyright requires creators to be paid – which is an astonishing framing of a legal entitlement. Crucially, the Interim Report fails to acknowledge the obvious point: that AI developers may readily access *paid* content and are already starting to do so.

Productivity for the creative industries

20. The Interim Report does not consider the potential boost to productivity which will flow from licensing copyright works for generative AI training.

   We note that this licensing market has already commenced. HarperCollins confirmed an agreement with Microsoft to allow "limited use of nonfiction backlist titles for training AI models." The publisher consulted with authors, including Australian authors, about this opt-in arrangement, offering USD $2,500 per title for a three-year licence. Educational publishers are also entering into licensing deals with AI companies,[19] as are news media organisations.[20]

21. To ignore the economic significance of emerging licensing markets for the creative industries is to view productivity through a narrow lens.

22. We are at a moment of opportunity: as AI models evolve, data will continue to be the key input. To capitalise on this earning potential, the Australian Government should insist copyright works are paid for. If copyright works are given away for free now, we will have lost the ability to appropriately monetise this essential Australian resource into the future.

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[18] Proposed terms were for Anthropic to pay rightsholders US$3,000 for each book it obtained from pirated datasets, and destroy each copy. The judge has requested further information from the parties before approving the settlement.
[19] Please refer to the Australian Publishers Association's submission for more detail on AI licensing deals in educational publishing.
[20] A list of global licensing deals to AI companies is recorded by Copyright Alliance and can be viewed at their website: AI Licensing for Creative Works

Impact of generative AI on incentives to create

23. The Interim Report fails to acknowledge a critical concern: that AI systems freely exploit Australian creators' intellectual property to then generate competing content that *reduces visibility and earnings for Australian creators*.

24. **Substitution concern:** Google has launched a Gemini Storybook App to replace children's books with AI-generated stories,[21] generative AI is taking the place of voice actors for audiobooks,[22] and AI-generated knock offs are being sold on Amazon. For example, author Richard Osman has reported on low quality AI-generated books designed to trade off his well known *Thursday Murder Club* series of books[23] and Jane Friedman has found at least five books generated by AI which trade off her name and reputation by imitating her work.[24] Apart from the financial implications, these are examples of the serious risk to creators of having their moral rights[25] infringed as a consequence of generative AI ingestion. In addition, supplementary sources of income for authors, such as copywriting, short-form freelance writing, and some graphic design and illustration tasks, are shrinking due to the adoption of generative AI. These jobs not only provide vital income to creators, they offer professional skills-building opportunities.

25. **Dilution of market and damage to customer confidence**: We are concerned about AI-generated books misleading consumers and undermining sales of human-authored books.[26] 'A.I. Maverick' published at least 20 titles in the months of June and July this year on Amazon, including titles that imitate bestsellers.[27] While 'A.I. Maverick' is clearly a nod to the nature of those titles, usually, a consumer has no way of knowing which titles have been written by humans and which titles have

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[21] Joanne O'Sullivan, "Google Launches Personalized Gemini Storybook App to Industry Concern", Publishers Weekly, 21 August 2025.

[22] Books+Publishing, "HarperCollins UK partners with AI company on audiobooks", 23 April 2024.

[23] For example *The Thursday Murder Club Movie Review: A guide to the Plot, Theme, Cast of a Novel Inspired by Cosy Crime Film*.

[24] Jane Friedman, "I Would Rather See My Books Get Pirated Than This (Or: Why Goodreads and Amazon Are Becoming Dumpster Fires)", 7 August 2023.

[25] Moral rights in Australia are set out in the *Copyright Act 1968* and include the right of attribution, the right against false attribution and the right against derogatory treatment prejudicial to the creators' reputation.

[26] Paul Garvey, "Amazon's AI book problem: fake authors flogging sloppy content", The Australian, 2 September 2025.

[27] For example, *Let Them Rise: Break Free from Limits and Become Yourself* by 'A.I Maverick' covers the same themes as the bestselling self-help book, *The Let Them Theory* by Mel Robbins published in January 2025.

been generated by AI. After purchase, if the content is low quality, truncated in length, or derivative of bestsellers, the consumer may suspect they have purchased an AI-generated book but it's too late for that fact to inform their purchasing decision. Even if AI-generated books don't attract high sales, they will still confuse customers, dilute a market in which Australian authors already struggle for *visibility*, and syphon off a percentage of sales.

26. Because it is cheap and fast to produce and upload to Amazon, low-quality AI-generated content is inevitable. This harms authors and publishers who already survive on very thin margins. It will also impose new costs on the book industry to monitor and take action where possible.

27. **Fewer clickthroughs:** AI chatbots are substituting for human-created content. Google's 'AI Overviews' and ChatGPT's search results are both keeping users on their own platforms, where the world's content can be synthesised and served up to users for free or low cost. Traffic to news, magazine and journal sites has dropped since AI chatbots were launched.[28]

28. We won't ensure the survival of long-form journalism or writing as a career – whether for fiction or nonfiction, educational texts or science journals, biographies or graphic novels – unless there is an economic return to those who *make those things*. **A parasitic economy is an unsustainable economy**. The reasonable solution to this problem is licensing, to ensure a return to the individuals and intermediaries (publishers) who invest in the cost of creation.

Overstating Text and Data Mining permissibility around the world

29. In our view, the Productivity Commission overstates the extent to which a TDM exception *allows for generative AI training* in other jurisdictions around the world. TDM exceptions in Europe, Japan, and Singapore were not conceived with the intention of facilitating copying for AI training; in fact they were introduced *prior to the emergence of generative AI*.

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[28] Michael Savage, "AI summaries cause 'devastating' drop in audiences, online news media told", The Guardian, 24 July 2025: "Sites previously ranked first can lose 79% of traffic if results appear below Google Overview". Isabella Simonetti, "News Sites Are Getting Crushed by Google's New AI Tools", The Wall Street Journal, 10 June 2025.

30. Commentary suggests that the TDM exception in the European Union's *Directive on Copyright in the Digital Single Market* will **not** accommodate copying of works for generative AI training. Text and data mining uses large-scale data to find patterns and trends with the goal of extracting insights. Generative AI also uses large-scale data, but to generate outputs on the basis of statistical probability, thereby achieving plausible (but not necessarily factually accurate) expression. The difference is: "TDM finds patterns; GenAI synthesises new expressions."[29] The analysis of information may be permitted by a TDM exception but the *generation of expressive outputs* is prejudicial to a copyright owner's legitimate interest and it is far from clear that European courts will permit this.

31. A study commissioned by the European Parliament concludes that: "The current EU text-and-data mining (TDM) exception was not designed to accommodate the expressive and synthetic nature of generative AI training, and its application to such systems risks distorting the purpose and limits of EU copyright exceptions."[30]

32. The Interim Report asserts that "the recent case of *Kneschke v. LAION* endorsed the view that the TDM exception extends to cover AI training". We disagree; this case only ruled on the preparatory step of downloading material from the internet to set up a training dataset by a non-profit organisation for research purposes. It did not rule on the legality of using the plaintiff's artistic work to train an AI model under the TDM exception.[31]

33. Even in Singapore, where the Copyright Act does include a broad TDM exception, it's on the condition that the AI developer has lawful access to the material (ie. training on pirated content is not permitted).[32]

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[29] European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs Directorate-General for Citizens' Rights, Justice and Institutional Affairs, *Generative AI and Copyright*, July 2025, p.38

[30] European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs Directorate-General for Citizens' Rights, Justice and Institutional Affairs, *Generative AI and Copyright*, July 2025, p.43.

[31] Robert Kneschke v. LAION e.V., Case No. 310 O 227/23, Hamburg Regional Court, Germany, 27 September 2024.

[32] Section 244, Copyright Act 2021, Singapore Statutes Online.
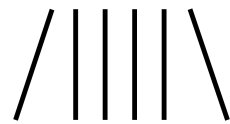
34. In Japan, the Japan Agency for Cultural Affairs has confirmed that their TDM exception doesn't cover AI training to generate materials similar to copyright works within the training dataset, nor for implementation of retrieval augmented generation (RAG).[33]

35. In the UK, the position is more nuanced and unsettled than the Interim Report indicates. Alongside considering an expansion of the TDM exception, the UK government is also explicitly aiming to "enhance right holders' control of their material and their ability to be remunerated for its use."[34]

36. Accordingly, we submit that the Interim Report gives an overly broadview of TDM exceptions worldwide, and their capacity to facilitate training for generative AI.

Our opposition to a TDM exception

37. The ASA does not support the introduction of a new text and data mining exception for the following reasons:

**(a)   A TDM exception would legitimise theft**

The *desire* of Big Tech to exploit content for free cannot be conflated with a legally recognised *interest* in copyright works. Such work is not owned by them, nor was it commissioned by them. Tech lobbyists now seek to legitimise industrial-scale theft by pointing to the broad benefits of AI.

An analogy is stealing your neighbour's land, then building a grocery store on that land and denying your neighbour's objections by claiming it is for the good of the community to offer groceries for sale. It may be highly convenient for the neighbourhood to enjoy a new grocery store but your neighbour is still entitled to control over their private property and to collect rent, should they agree that you may use it.

As the Minister for the Arts Tony Burke recently said at a book industry conference: "You deserve protection from theft, as every Australian deserves protection from

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[33] Japan Copyright Office, Copyright Division, Agency for Cultural Affairs, Japan, "General Understanding on AI and Copyright in Japan", May 2024.
[34] Copyright and AI: Consultation, Presented to Parliament by the Secretary of State for Science, Innovation and Technology by Command of His Majesty, December 2024.
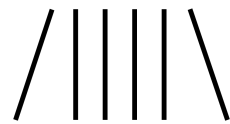
theft. …Use of your work for a commercial purpose, for example, for which you have not authorised, is theft. That's what it is."[35]

(b) A TDM exception is not in the national interest

It is not in Australia's national interest to enrich multinational companies - which pay very little tax in Australia[36] - at the expense of Australian workers. In no other context has the Productivity Commission suggested what amounts to wage theft as a path to greater productivity.

Just as giving away electricity or rent for free will boost the bottom line of a company, so too would a TDM exception enlarge the profits of multinational AI companies. But *profits* are different to *productivity* and, over the long term, this strategy is flawed as productivity would be *reduced*. A TDM exception would transfer assets from the Australian creative sector to the overseas tech sector, which will erode the earning capacity of writers, contribute to job displacement, and be a disincentive to investment in human creation. This in turn will leave AI companies with only low-quality synthetic data to train on, degraded AI models, and loss of consumer interest in generative AI products (along with fewer Australian books and educational products).

> "Just as abolishing slavery and unpaid overtime forces firms to think harder about how to use labour more efficiently, forcing AI companies to pay for the texts they are using to train their algorithms would force the tech giants to think harder about what garbage the algorithms are being fed. Children don't get smart by reading nonsense on the internet; nor does ChatGPT. Making all knowledge freely available to AI algorithms creates no incentive for someone to develop algorithms that are only fed on reputable texts. Put simply, forcing AI companies to pay for high-quality data would force them to use data more productively."[37]
>
> - Economist and CEO of the Australia Institute, **Richard Denniss**

[35] The Hon Tony Burke, Minister for the Arts, Speech given at BookUp Conference, 7 August 2025.
[36] Sam Buckingham Jones and John Kehoe, "The tech giants reaping billions – and complaining about Australia", The Australian Financial Review, 6 May 2025.
[37] Richard Denniss, "Economic round table recycles broken ideas", The Saturday Paper, 23-29 August 2025.

(c) A TDM exception is not necessary

Multinational tech companies have agitated for a TDM exception to escape paying rightsholders, but these companies comprise the largest and wealthiest sector on the global stock market by market capitalization. **They do not need the financial assistance of a public policy intervention to make resources available to them for free**. It is simply absurd to suggest that tech companies which are spending billions of dollars on computing power, and paying sign-on bonuses of US$100 million to individual staff,[38] cannot afford to pay for licences.

In Australia, we understand sovereign AI models are being developed with no impediment from copyright laws.[39] In our experience, licensing is accepted by Australian companies as fair.

(d) A TDM exception erroneously ascribes a zero value to authors' work

We know the work of writers and artists is a key economic input of AI models, as acknowledged by the Productivity Commission itself. According to AI researchers, "[t]he most prized data … is high-quality information, such as published books and articles, which have been carefully written and edited by professionals."[40] Introducing a TDM erroneously ascribes a zero value to this content, which is inconsistent with the value evidenced by licensing deals already taking place in the market.

If we give away Australian copyright works for free now – by embedding a TDM exception into copyright law – we eliminate the opportunity of ever capitalising on this valuable resource.

(e) A TDM exception reduces incentives to create

Copyright is how authors earn their living and writing careers are exceptionally marginal.[41] If we reduce economic returns from copyright, there will be a devastating loss of professional writers and diversity of perspectives, as only people of

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[38] Melissa Heikkilä, Clara Murray and Cristina Criddle, "'Sign-on bonuses of $150m': AI talent war heats up", The Australian Financial Review, 2 July 2025.
[39] For example, Matilda, a large language model by Maincode.
[40] Frenkel, S. et. al. (2024) "How Tech Giants Cut Corners to Harvest Data for A.I.", The New York Times, 6 April 2024.
[41] Macquarie University researchers found that authors earn, on average, $18,200 p.a. from their creative practice. Zwar J, Crosby P, and Throsby D. 2022 National Survey of Australian Book Authors. Industry Brief No. 3: Authors' Income. Sydney: Macquarie University.

independent means will be able to afford to create. A TDM exception also reduces incentives for publishers to invest in new work, damaging cultural production, education, research, and innovation.

(f) A TDM exception is not consistent with commitments made in the National Cultural Policy

The National Cultural Policy, *Revive*, committed to a robust copyright framework and recognition of artists as workers, entitled to be paid for their work.[42]

(g) A TDM exception which allows training for generative AI is not compliant with the Berne Convention

Australia is a signatory to the Berne Convention. Any new exception to our copyright law must satisfy the three-step test set out in the Berne Convention.

Exceptions to copyright must:

- only apply in special cases
- not conflict with a normal exploitation of the work
- not unreasonably prejudice the legitimate interests of the copyright owner.

A TDM exception which allows copyright works to be used for the purpose of training generative AI fails the three step test in the following ways:

- large scale ingestion is not a special case; it's widespread and systematic, affecting nearly every creator in Australia
- the exception would undermine licensing opportunities which conflicts with the copyright owner's normal exploitation of their work
- the ability of generative AI to create substitutable works – or even works that dilute the market – conflicts with the copyright owner's normal exploitation of their work and is prejudicial to their interests
- the scale, opacity, and extractive quality of generative AI deeply prejudices the legitimate interests of the copyright owner.[43]

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[42] Commonwealth of Australia 2023, *Revive: a place for every story, a story for every place – Australia's cultural policy for the next five years*. pp.19, 57, 58.
[43] This view is supported by the Policy Department for Justice, Civil Liberties and Institutional Affairs in its report to the European Parliament, *Generative AI and Copyright*, July 2025, pp.43-44.

**(h) A TDM exception ignores Indigenous Cultural and Intellectual Property**

In 2022, the Productivity Commission recommended cultural sovereignty for Aboriginal and Torres Strait Islander artists. This recommendation is now contradicted by the proposal in the Interim Report for a TDM exception. Supporting Indigenous cultural sovereignty means supporting the ability of traditional owners to **deny** permission to use their cultural material for AI training. Generative AI tools may be used to produce and perpetuate inauthentic and fake art, and appropriate Aboriginal and Torres Strait Islanders' art, design, stories and culture without reference to traditional cultural protocols.[44]

Our proposal for a Code of Conduct

38.   In its Interim Report, the Productivity Commission acknowledges concerns that "AI developers can too easily sidestep existing licensing and enforcement mechanisms". In response, the Productivity Commission contemplates the option of "**policy measures to better facilitate the licensing of copyrighted materials, such as through collecting societies**".[45] We support this option, which would:

   a.   ensure that authors **consent** and **are paid** when their copyright works are used for generative AI training,

   b.   help level the playing field between local and overseas AI developers,

   c.   increase productivity in both the creative and AI sectors.

39.   To insist upon licensing, authors need the Government to set clear, enforceable ground rules for AI companies operating in this market. The sheer power of Big Tech and the ubiquity of their products has paralysed the Australian government (and other governments around the world) from tackling behaviour they have acknowledged is egregious. But, in fact, the Government is far from powerless. It has the right – and the obligation – to determine what rules we impose on Big Tech in this jurisdiction.

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[44] John McMullan and Glen Stasuik, "How AI images are 'flattening' Indigenous cultures – creating a new form of tech colonialism", The Conversation, 13 March 2025. Fake Indigenous art images have already been found for sale on Adobe and Shutterstock.
[45] Productivity Commission 2025, Harnessing data and digital technology, Interim report, Canberra, August, p.25.
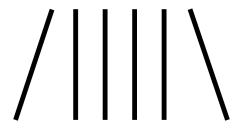
40.   As Anna Funder and Julia Powles write, "The rub for the government is that much of the mistreatment of Australian creators involves acts outside Australia. But this is all the more reason to reinforce copyright protection at home. We aren't satisfied with "what happens overseas stays overseas" in any other context – whether we're talking about cars or pharmaceuticals or modern slavery. Nor should we be when it comes to copyright."[46]

41.   The Government should introduce a new *mandatory* Code of Conduct which governs the relationships between AI companies and Australian copyright owners of works ingested for AI training. Codes of Conduct are prescribed across a range of industries in Australia, in order to provide frameworks and minimum standards for ethical conduct.[47]

42.   The Code of Conduct ought to apply to all AI companies operating in the Australian market. It should be designed to arrest the information asymmetry and profound unequal bargaining power between creators and Big Tech and to bring about voluntary licensing solutions.

43.   The Code must require:

   a. **Transparency**: Currently, the AI economy is slowed and frustrated by opaqueness. With mandated transparency, licensing can flow and consumers can be informed. Reasonable obligations include:

       ○ an obligation to disclose training data and where it was sourced;

       ○ an obligation to disclose to users when an AI system is being used to interact with them;

       ○ an obligation to disclose to users when content is AI generated, by clear labelling or watermarking.[48]

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[46] Anna Funder and Julia Powles, "Tech companies are stealing our books, music and films for AI. It's brazen theft and must be stopped", The Guardian, 10 September 2025.
[47] See the Australian Competition and Consumer Commission Industry codes.
[48] These obligations are already set out in voluntary guardrails recommended by *Safe and responsible AI in Australia consultation – Australian Government's interim response*, Australian Government Department of Industry, Science and Resources. In our submission, they ought to be made mandatory.

b. **Negotiated permission:** Multinational AI companies carrying on business in Australia must negotiate with copyright owners for permission to use their work for AI training purposes in the future, whether by direct licence or voluntary collective licence.[49] This would act as a signal from the Government that creators' rights cannot be bypassed and that licensing is the mechanism that will deliver desirable content to AI companies and economic sustainability to creators. (Local AI startups are already required to licence copyrighted works for AI training under the Copyright Act.)

c. **Protections for individual creators:** Licensing revenue must actually flow to the original authors whose copyright work has been exploited. Minimum percentage entitlements to authors must be established upfront so that any intermediary – such as a collecting society or publisher – is required to deliver the full benefit of new licensing revenue to creators, subject only to a small agency fee.

d. **Past use:** With respect to Australian copyright material which has *already* been ingested to train AI models offshore, and for which consent was not sought, the relevant AI company must pay to each relevant Australian copyright owner fair compensation which continues for as long as the work remains ingested in the AI model.

e. **Compliance with First Nations Protocols:** The Code must include an obligation on AI developers to observe Indigenous Cultural and Intellectual Property Protocols.

44. To support the Code, significant penalties for non-compliance should be included.

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[49] A voluntary collective licence is typically administered by a collective management organisation (collecting society) authorised by copyright owners to negotiate on their behalf and collect and distribute royalties. Authors are not *compelled* to participate but may voluntarily do so.
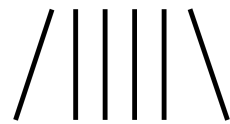
Conclusion

Authors across the globe are outraged by the greatest act of copyright theft in history. Their work has been ingested into generative AI models, without permission, in a way which is difficult – if not impossible – to reverse. Against their will, their property has fed technology which is disrupting and diminishing the market for their work and eroding the value of writing itself. The productivity of the copyright industries is being actively diminished.

If this unauthorised use of copyright material for AI training is not checked by Government, overseas AI companies will enjoy unfair market advantages by exploiting unpaid labour. Additionally, we will face a future where our confidence in the truth and integrity of our information systems is severely undermined, and Australian cultural output is starved of originality and sustainability.

We risk significant cultural, social and economic harm.

We request the Productivity Commission **not** proceed with its proposal for a TDM exception as it is unnecessary and harmful. Instead, we support the sustainable solution that provides the most benefits to Australians: **licensing**. Some AI developers, such as OpenAI, have agreed to some very limited licensing but this has not been rolled out systematically or comprehensively. In fact, Big Tech's past conduct makes clear they will favour unpaid extractive practices, including reliance on pirated material, if they can get away with it.

To address this, we propose the Government introduce **a mandatory Code of Conduct.** This Code of Conduct should require AI developers, as a condition of doing business in Australia, to:

- disclose the copyright works which have been used to train AI models,
- pay ongoing fair compensation to Australian creators whose works have already been ingested – and from whom it is too late to seek consent – for as long as their work remains ingested in the models,
- ensure that any use of Australian copyright material to train AI models is subject to licensing arrangements.

The Government has one chance to right past wrongs and prepare Australia for a *sustainable* future of AI innovation. We urge the Government to embrace this opportunity, support Australian creators and their livelihoods, set clear standards for operating AI models in this jurisdiction, and safeguard Australians against misconduct by Big Tech.

We welcome the opportunity to consult further on these issues and our suggested solution.

Lucy Hayward

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