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CISAC Response to Australian Government Productivity Commission Inquiry on Harnessing Data and Digital Technology

The International Confederation of Societies of Authors and Composers (“CISAC”) provides this submission in response to the Australian Government Productivity Commission’s five pillar productivity growth agenda, particularly its Interim Report on Harnessing data and digital technology.¹

CISAC is the leading worldwide organisation of authors’ societies, representing more than 5 million creators from all geographic areas and all artistic repertoires (including music, audiovisual, drama, literature, and visual arts) through our 228 member organisations in 111 countries. The diversity of our membership, along with our longstanding history of safeguarding the interests of creators internationally, permits us to advocate on the behalf of a significant number of affected parties in the search for a consensus on many pressing copyright and authors’ rights related issues.

In 2024, CISAC produced two submissions for the Australian Government related to its reform efforts in the Artificial Intelligence (“AI”) sector, drawing particular attention to the impact of AI on creators.² In 2023, CISAC produced an open letter³ endorsed by several international creative industry organisations, which highlights seven key principles on AI and copyright for governments to consider in the interest of supporting balanced outcomes for creators in the AI age. In further supporting the conclusions reached in these documents, we now provide a response to the Productivity Commission’s Interim Report, specifically its request for feedback on use of copyrighted materials for AI model training.⁴

1) Unregulated AI development poses significant risks for creators.

As the Productivity Commission is responsible for providing recommendations which enhance productivity and economic growth in Australia, it is crucial that it understands the clear and significant impact of AI on the creative industries.

The risks posed by unregulated development of AI technologies, especially its potential impact on the creative sector, should not be understated. Artists relying on their unique repertoires of work to establish their careers are particularly at stake; there is an alarming ease in the process of an average user instructing an AI software to replicate the characteristics, style, and elements of existing works. At present, artists are also unaware of whether or not their works are being used to train AI models, as the process of gathering data on their works is often not disclosed, collected

¹ Australian Government Productivity Commission (2025), “Interim Report: Harnessing Data and Digital Technology”. Available at: <https://www.pc.gov.au/inquiries/current/data-digital/interim>. (hereinafter “Interim Report”).

² CISAC (2024), “CISAC Comments to the Australian Select Committee on Adopting Artificial Intelligence (AI).” 30 April 2024. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=09c99efe-e425-4409-8cfa-374b1b368b46&subId=756366>; CISAC (2024), “CISAC’s Response to Australian Government Consultation on Introducing Mandatory Guardrails for AI in high-risk settings”. 1 October 2024. <https://consult.industry.gov.au/download/fil30e797a6c4581c1e7867c>.

³ CISAC (2023), “7 key Principles for policymakers when adopting AI policies and legislation”. Available at: <https://www.cisac.org/Newsroom/articles-lobbying/global-creators-and-performers-demand-creative-rights-ai-proliferation>.

⁴ • Are reforms to the copyright regime (including licensing arrangements) required? If so, what are they and why? The PC is also seeking feedback on the proposal to amend the Copyright Act 1968 (Cth) to include a fair dealing exception for text and data mining.

• How would an exception covering text and data mining affect the development and use of AI in Australia? What are the costs, benefits and risks of a text and data mining exception likely to be?

• How should the exception be implemented in the Copyright Act – for example, should it be through a broad text and data mining exception or one that covers non-commercial uses only?

• Is there a need for legislative criteria or regulatory guidance to help provide clarity about what types of uses are fair?

through automated processes such as web scraping and database extraction. Such unauthorised uses of works do not respect copyright, nor the moral and fundamental rights guaranteed to creators, as recognised for decades under existing international and national law.

AI is further positioned to “cannibalise” the traditional revenue streams of creators. In 2024, CISAC commissioned the first global economic study on the impacts of generative AI on creative industries, focused on music and audiovisual repertoires.⁵ The results were clear: By 2028, it is estimated that 24% of music creators' and 21% of audiovisual creators' revenues will be at risk, resulting in a cumulative loss of €22 billion for creators in these sectors over 5 years. This includes losses which are the result of the substitutive effect of generative AI outputs on the marketplace which compete with the consumption of traditional works. These figures show that creative and cultural workers will need protections if they are expected to survive in the AI age.

The best way forward for both the creative and AI industry is to ensure that creators are able to license the works, and that AI developers respect current copyright laws and pay creators a fair share for the use of their works throughout the AI value chain.

2) Australia's current law is already fit-for-purpose in the AI age, and that the introduction of a new exception such as a Text and Data Mining Exception (“TDM Exception”) will not lead to additional growth or investment in AI.

In the Productivity Commission's Interim Report, the possibility of introducing a new exception has been promoted. However, there are several misconceptions about the introduction of a TDM exception that should be addressed. First, regarding TDM exceptions for “non-expressive” use, the Productivity Commission cites the following:

“In its report on Copyright and the Digital Economy, the Australian Law Reform Commission recommended amendments to enable text and data mining by adopting a fair use approach to copyright exceptions (box 1.6) – or, failing that, through a new fair dealing exception. It explained: ‘There has been growing recognition that data and text mining should not be infringement because it is a ‘non-expressive’ use. Non-expressive use leans on the fundamental principle that copyright law protects the expression of ideas and information and not the information or data itself (2013, p. 261).’”

The idea is that “non-expressive use” means that the protected work is not used for its underlying expressive quality, i.e., the work is not being consumed as a work, but as data. However, the US Copyright Office has already reached the opposite conclusion:

“...some argue that the use of copyrighted works...is not for expressive purposes. We view this argument as mistaken. Language models are trained on examples that are hundreds of thousands of tokens in length, absorbing not just the meaning and parts of speech of words, but how they are selected and arranged at the sentence, paragraph, and document level—the essence of linguistic expression. Image models are trained on curated datasets of aesthetic images because those images lead to aesthetic outputs. Where the resulting model is used to generate expressive content, or potentially reproduce copyrighted expression, the training use cannot be fairly characterized as ‘non-expressive.’”⁶

When data is purposefully selected, “cleaned”, and filtered, training AI requires deliberate decisions on what materials are used or not to train the AI model. This selection process cannot be characterised as the mere use of protected works as input data. Therefore, a TDM exception based on “non-expressive” uses of works may fail to represent the reality of AI training processes, and would not lead to the Productivity Commission's desired results.

Additionally, TDM exceptions are increasingly being challenged at both the national and regional level, due to their lack of tangible results in attracting AI investment, and difficulties in their enforcement. Through CISAC's contact with representatives of the governments of Singapore and Japan, it has become clear that broad TDM exceptions have not led to additional AI investment in either country, nor has it provided legal certainty for AI developers.

⁵ PMP Strategy and CISAC (2024), “Study on the economic impact of AI in music and audiovisual industries”. Available at: <https://www.cisac.org/services/reports-and-research/cisacpmp-strategy-ai-study>.

⁶ US Copyright Office (2025), “Copyright and Artificial Intelligence Part III: Generative AI Training (Pre-Publication Version).” Pgs. 47-48. Available at: <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-3-Generative-AI-Training-Report-Pre-Publication-Version.pdf>.

Even TDM exceptions which are narrower in scope do not lead to better outcomes for creators. For creators in the EU for example, opting out of the use of their works for TDM purposes does not guarantee that their works are not used in practice.⁷ The “robots.txt” standard, which is a protocol used for web crawlers to omit certain webpages from its web scraping and data-gathering activities, is considered by rightsholders as an unacceptable format for opt-outs due to its inefficiency and opacity, as well as the fact that TDM activities are not solely based on web crawling. Moreover, for authors and their societies that do not make their works available to the public themselves, they have no control over all instances of their works appearing online, making the “opt-out” technically impossible to exercise. These and other criticisms are raised in the European Parliament Committee on Legal Affairs’ “Report on Generative AI and Copyright Training, Creation, Regulation”⁸, as well as by numerous academics actively challenging the efficacy of TDM exceptions as a viable regulatory solution.⁹

In the UK, a similar consultation which took place earlier this year concerning the introduction of a broader TDM exception was met by strong opposition by rightsholders and other politicians,¹⁰ causing the UK government to pause its plans on reform.

Through these examples, it is evident that the introduction of a TDM exception may not facilitate growth in either the creative sector or the technology sector of Australia. These discussions further highlight that the legitimacy and scope of TDM exceptions are far from settled, and that there is growing recognition that Generative AI training raises qualitatively different issues from earlier, narrower forms of text and data analysis. CISAC recommends that the Australian government take into consideration ongoing international developments in this area, and to prioritise enforcement of its current copyright laws to encourage licensing rather than introduce a new exception at this stage.

3) Licensing enables the best balance of interests between creators and AI developers.

The most balanced solution for creators and AI developers involves supporting fair licensing practices with creators at the negotiation table. AI developers already have many resources and choices in how and where they can obtain data in order to train their models and create new services. As AI developers invest in personnel, infrastructure, and electricity, so should they invest in the data they use for training their models.

To help establish new bridges for such licensing to occur, Collective Management Organisations (CMOs) – which represent numerous creators and works – have consistently been proactive (and successful) in opening licensing negotiations with users. Such organisations are familiar with developing diverse licensing solutions to meet the very specific needs of new markets and new market players, and have historically adapted to many different business models, including in the age of large-scale industrial copying. This was the case when streaming services emerged more than ten years ago and now, almost all streaming services – including User-Generated Content platforms – are fully licensed and can freely use a large worldwide repertoire to attract consumers to their services. Collective management infrastructures also already exist, which can be used to collect and distribute royalties, even in the face of new and complex licensing terms and limitations.

Furthermore, a developing AI company can make the decision to negotiate with copyright rightsholders to obtain a richer and “cleaner” dataset to work with – and creators can be able to benefit from such innovation. Hence, with

⁷ Art. 4, Copyright in the Digital Single Market Directive 2019/790, OJ L 130, 17 May 2019 (providing for an exception to the reproduction right for Text and Data Mining (TDM) purposes, even when commercial use is involved but only when access to the protected works was lawful).

⁸ European Parliament (2025), “Report on Generative AI and Copyright Training, Creation, Regulation.” Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU\(2025\)774095_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf) (“While Article 4 of the Directive on Copyright in the Digital Single Market...permits text and data mining (TDM) by default—unless rightsholders opt out via machine-readable means—this exception fails to provide any form of compensation. As a result, a structural “value gap” has emerged between the commercial benefits accrued by AI developers and the lack of financial return for the human creators whose works underpin these systems.”)

⁹ Rosati, E. (2021), “Copyright and the CDSM Directive: A Commentary,” Oxford University Press, pg. 60 (discussing Art. 4 of the Copyright in the Digital Single Market Directive and highlighting the legal uncertainty around rightsholder opt-out in the context of large-scale TDM and AI training); Maria Ziaja, G. (2024), “The Text and Data Mining Opt-Out in Article 4(3) CDSMD: Adequate Veto Right for Rightsholders or a Suffocating Blanket for European Artificial Intelligence Innovations?,” 19 J. Intell. Prop. L. & Prac. 453 (arguing that the Art. 4 opt-out introduces uncertainty and may hinder AI development in the EU); Alonso, E. and Lucchi, N. (2025), “AI And Copyright ‘Hallucinations’: Does the Text and Data Mining Exception Really Support Generative AI Training?” EIPR vol. 47, issue 9, pgs. 515-526, Available at SSRN: <https://ssrn.com/abstract=5401059> (arguing that the application of “TDM rules to GenAI training introduces structural imbalances, both doctrinal and distributive, that risk entrenching platform asymmetries, weakening authorial agency, and threatening cultural diversity”).

¹⁰ Guardian, [‘British novelists criticise government over AI “theft”](#), 14 January 2025.

responsible data sourcing practices driven by licensing, innovation can thrive without the need of introducing a TDM exception.

Ultimately, CISAC strongly recommends against the broad application and/or introduction of copyright exceptions that would permit AI systems to commercially exploit copyrighted works, and recommends the Productivity Commission to focus its efforts on promoting fair licensing practices between rightsholders and AI companies.

We thank Australia's Productivity Commission for providing CISAC with the opportunity to provide its views on these important issues, and look forward to continuing this important exchange to ensure that creators' interests are sustained in the AI age.