

Response to CAIRG Copyright and AI Consultation Paper

December 2025

Introduction

Thank you for the opportunity for feedback on the issues outlined in the Copyright and AI Consultation Paper.

We and our members reiterate our support for the Australian Government's leadership on policy and regulatory settings for AI development in Australia, including its commitment to Australia's creative industries. The Government's position is not only welcome in the Australian context, but is also influential in the international context, and aligns with a history of policy leadership on copyright issues.

We have confined our response to the matters covered by the Consultation Paper, but we will be engaging separately on related issues, including compensation to Australians for the unauthorised use of their works for AI training in other countries.

Summary of position

As far as we are aware, there has been no market failure in relation to licensing of text and images for ethical AI development in Australia.

We and our members continue to pursue opportunities for licensing for AI-related activity in Australia, and that is now assisted by the clarity provided by the Government's announcement on text and data mining (TDM). Among other things, we have approached AI developers in connection with a range of projects to discuss their licensing needs.

If there are actual (rather than hypothetical) scenarios that are raised with the Government (as part of this consultation process or in the future), then we would want an opportunity to address them. It is difficult to do that speculatively, given the vast range of AI related activities, and the rapid pace of change. Licensing solutions will vary according to a range of factors including the scale of the project, types and amount of content, range of rightsholders, type of use (e.g. training, fine-tuning or contextual datasets), and any negative consequences of the use for relevant rightsholders.

The Government has made clear that Option 1 (status quo) is a genuine option. If, however, it reaches a view (now or in the future) that there is market failure and that Government intervention to address that market failure is warranted, then we would want the opportunity to ensure that the intervention works as well as possible for rightsholders as well as being effective for licensees.

There are non-legislative actions that the Government can take to support licensing for AI development and activity in Australia. They include:

- as part of the Government's policy to be [exemplars for safe and responsible use of AI](#), demonstrate its commitment to fair compensation for the use of other people's content
- support for licensing in Government guidelines for ethical AI development
- in Government procurement requirements: ensure that AI products and services are based on legally sourced content
- in conditions for government funding for AI development: explicit requirements for legally sourced content
- guidelines on how to ensure that content is legally sourced (including under licensing arrangements)
- tax incentives to encourage the use of licensed Australian content in Australian AI development

Below we have provided information about how licensing works in Australia, to provide context for the Government's considerations.

How copyright licensing works under the current settings in Australia

The current settings allow for a vast range of licensing solutions to meet the needs of licensees.

They are broadly:

- 'direct' licences from single rightsholders to licensees (that cover a single work, or many works), including:
 - publisher's subscription for multiple works
 - 'open' licences, such as Creative Commons licences, and open licences given by Governments (mostly under Creative Commons licences)
- 'voluntary' collective licences (a large number of rightsholders authorise a copyright management organisation to include their content in collective licences)
- statutory (compulsory) licences (rightsholders cannot refuse a licence, but are entitled to fair compensation)

A licensee, or licensee sector, can have a combination of licences to meet its various needs.

For example, in the school sector, schools (and peak bodies for the school sector) have direct licences (e.g. subscription licences, and 'open' licences such as Creative Commons licences), and voluntary collective licences (such as the AMCOS sheet music licence), as well as the benefit of the education statutory licence for education activities that teachers would otherwise require permissions for (including for material available online that is not directly licensed for use in schools).

Statutory licences in Australia's Copyright Act

While the statutory licence schemes for the education and government sectors are the best known, the Copyright Act contains other statutory licence schemes for commercial activities:

- retransmission of free-to-air broadcasts (managed by Screenrights under government appointment)
- making a copy of a sound recording for the purposes of broadcasting (s107)
- public playing of sound recordings (s108)
- broadcast of sound recordings (s109)
- recording of musical works (s55)

The statutory licence for broadcast of sound recordings is controversial, because it includes historic 'caps' on licence fees that do not reflect current circumstances, and that pre-empt consideration of value by the Copyright Tribunal.

Most of the activities allowed under the statutory licences are now covered by commercial arrangements. All statutory licences can be reviewed by the Copyright Tribunal if commercial negotiations fail. Those negotiations effectively take place under the 'shadow' of the statutory licence, whereby the parties are aware of the 'fallback' regulatory provisions.

The statutory licence schemes in the Copyright Act vary in a number of respects including:

- which content and rightsholders they cover
- what activities they allow
- limitations in scope
- conditions of licence
- whether there are accompanying provisions that allow circumvention of technological protection measures

Education statutory licence scheme

The education statutory licence scheme allows any form of reproduction or communication, for educational purposes, of text, images, print music or broadcast content. It does not cover non-broadcast audiovisual content (such as films that have not been broadcast) or computer programs.

The main limitation in scope for the scheme (as it applies to text, images and print music) is activities that would unreasonably prejudice a rightsholder (harm to a rightsholder that is not addressed by compensation). An example is the use of material that contains Indigenous Cultural or Intellectual Property (ICIP) without following the protocols that have been established by First Nations people.

The education statutory licence scheme allows teachers to use any content from any source (including online) that they would otherwise need permission for. This includes material that is accessible by circumventing a technological protection measure (TPM).

Efficiencies

The scheme provides administrative efficiencies and liability minimisation for the education sector, the collecting society, and rightsholders.

For the education sector, teachers do not have to:

- worry about liability for infringement
- waste time checking permissions settings for the content that they are using (e.g. subscription terms, or terms of use for material that they can access online)
- check if the material is pirated (e.g. teachers copy and share lyrics from infringing websites under the education statutory licence)
- waste time seeking to identify or locate rightsholders.

For the collecting society, administration is more efficient than voluntary licensing, which requires management of rightsholder participations and withdrawals, and included and excluded content. If the withdrawals become substantial, then the licence can become unviable (to the detriment of the licensee and the remaining participating rightsholders).

For rightsholders, the efficiencies of a statutory licence deliver better returns (lower administrative costs), and also liability minimisation if there is uncertainty about rights control for the activities covered by the statutory licence (e.g. if there is ambiguity under contractual arrangements for the creation of the content).

Requirements for reliance on the education statutory licence scheme

The education institution must give a remuneration notice to the collecting society undertaking to pay equitable remuneration. It can do this without knowing what equitable remuneration will be.

Coverage of AI-related activities

The education statutory licence covers any form of reproduction or communication for educational purposes, and can therefore apply to AI-related activities for education. For example, it applies to inclusion of third party material in a prompt for an AI tool or chatbot, provided it is solely for educational purposes (e.g. there are measures to ensure that the material is not captured by the provider of the tool).

The statutory licence is also sufficiently broad to cover other AI-related activities, subject to fair compensation.

Valuation

The Copyright Regulations set out factors for the Copyright Tribunal to consider when determining equitable remuneration. These factors allow for different valuation of different types of content, different types of use, and different types of education institution (e.g. for-profit and not-for-profit).

The factors also influence fee negotiations. For example, in our negotiations with the school sector we have agreed that certain classes of material available on websites will be excluded from valuation discussions, but teachers are nevertheless covered by the immunity from liability under the statutory education licence for *all* material that would otherwise require permission.

In considering the application of the scheme to AI-related activity, the nature of that activity (compared to other activities that are also allowed by the scheme) is a relevant factor.

Contribution to sustainability and diversity of education resources

The compensation paid by the education sector under the education statutory licence scheme contributes to the sustainability and diversity of Australian education resources. This includes payments to people involved in creating educational resources who may not be in a position to enter direct licensing arrangements with education authorities or education institutions. This can be because the cost and complexity of direct licensing is prohibitive for them.

Part of the policy underlying the scheme, as reflected in the factors for equitable remuneration, is adequate incentive for the production of educational works.

Government statutory licence

The government statutory licence scheme is broader than the education statutory licence scheme in that it applies to all content and all copyright activities.¹

It can apply to any AI-related activity that is for government purposes, provided it is associated with fair compensation.

Licensing of content available online

The licences that we manage cover a vast array of different types of content, including 'traditional' types of publications (like books, journals, magazines and newspapers), that are often available in both print and digital formats, as well as other types of material that are largely 'born digital' and published online.

For example, our licence for media monitoring organisations covers both newspaper articles (traditionally 'press clips'), as well as webscraping.

The education statutory licence allows teachers to copy and share education resources like worksheets, activity sheets, lesson plans, trial exams, and fact sheets, where the use is not directly licensed. These are often available online.

Our members include a large number of rightsholders for material copied and shared by licensees, other than 'traditional' publications.

There is a public interest in encouraging people to publish material online, where it can be viewed. Part of the incentive is being able to set the terms of use. Those terms can range from 'view only', to 'private use only' to Creative Commons licences to unrestricted open licences.

The copyright system provides a framework whereby a person who invests in content creation (including time and expertise) has an opportunity to be compensated for the value of that content to others (who have chosen to use ready-made content rather than invest in their own).

The value of different types of content can, of course, vary enormously, depending on a range of factors. For example, for AI training, professionally produced publications are more valuable than, say, online chat.

¹ However, unlike the education statutory licence, it is not accompanied by a TPM circumvention exemption.

Considerations for licensing for AI development in Australia

The considerations will vary, depending on the scale and type of activity. For example, the considerations for a dataset for training a language model from scratch are different to those for fine-tuning or for retrieval augmented generation.

We are now offering an extension of our Annual Business Licence that allows staff of corporations to use news media content in prompts for enterprise-level AI tools. We are planning to extend this 'prompt licence' to other types of content. In developing this licence, the following were key considerations for rightsholders:

- the material cannot be used for any other purpose (e.g. captured by the AI tool provider for its own development or purposes)
- the licensee cannot use the licence to replace an available subscription or product
- protocols (and plans for legislation) regarding the use of material that contains Indigenous Cultural and Intellectual Property (ICIP)
- the licence does not override prohibitions in the Copyright Act against circumventing technological protection measures or removing rights management information
- the licence cannot be used to create products that can be sold

These are considerations and concerns that also apply to other AI-related licensing. Other considerations include:

- that the material is not pirated (like the LibGen dataset used by Anthropic)
- whether the project involves the use of a model (such as a language model) that was developed offshore using Australians' content without compensation
- that if outputs compete with human-authored works, then human authors (whose works were used for the training and/or retrieval that enables the outputs) are compensated
- measures to prevent re-use of content for other purposes (including infringing purposes)
- for large rightsholders, different concerns for some types of content compared to others (e.g. books v journals; 'backlist' v recent publications)
- different concerns for different types of AI-related activity (e.g. training, fine-tuning, contextual datasets)

Incentives to enter licensing arrangements

A major issue can be a lack of incentive on the part of an AI developer to enter into a licensing arrangement, particularly where there is no transparency regarding the content that the developer has used, or is using, and the developer perceives the risk of proceeding without a licence to be small.

Similar issues have, of course, arisen in connection with tech companies' use of Australian news media content.

One proposal that has arisen, in connection with [considerations in France](#), is reversal of the onus of proof to establish a presumption of use of cultural content by AI providers instead of creators having to prove their content has been used.

Consultation questions on licensing

Option A: status quo

We are not aware of any licensing needs for Australian AI development that are currently unmet. If there are claims of such needs as part of this process or otherwise, we would want an opportunity to address them.

Licensing for AI development is still relatively nascent. We have outlined above some of the key issues and concerns.

We have also listed non-legislative steps that the Government could take in the introduction.

Option B: statutory licence

As far as we are aware, there are no current scenarios that would warrant consideration of a statutory licence. If, however, scenarios are presented to the Government, then we would want an opportunity to respond to them.

We have outlined the operation of current statutory licence schemes above. If the Government comes to the view, in the future, that there is market failure and that Government intervention to address that market failure is warranted, then we would want the opportunity to ensure that the intervention works as well as possible for rightsholders as well as being effective for licensees.

Option C: extended collective licence framework

Extended Collective Licensing (ECL) would deliver limited benefits for licensing of text and images, given the voluntary licensing arrangements that we have established. The administrative costs would be disproportionate to the value of any additional content for inclusion in the licence.

Consultation questions on Generative AI outputs

Issue A: potential uncertainty regarding copyright protection

In Australia, where there is no registration process, this issue is most likely to arise in infringement proceedings: the respondent may assert that the work, or the part of the work that the respondent has used, lacks sufficient originality.

This is a fact-based assessment, looking at evidence relating to how the work was created, and the user's actions.

The issue may also arise in connection with warranties that creators are asked to provide, for example in publishing contracts. This may be best addressed by the company that is seeking the warranty providing guidelines to assist the warrantor.

Issue B: Fair resolution of infringement cases relating to AI outputs

We do not have any information in relation to this issue.