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INQUIRY INTO ARTIFICIAL INTELLIGENCE (AI) IN NEW SOUTH WALES

Organisation: A New Approach

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A New Approach (ANA)

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Premier and Finance Committee
Legislative Council
Parliament of New South Wales
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Inquiry into Artificial Intelligence (AI) in New South Wales

A New Approach (ANA) welcomes this inquiry. ANA is Australia's leading think tank focused on arts and culture. Through credible and independent public leadership, ANA helps build an ambitious and innovative policy and investment environment for arts, culture and creativity. We work to ensure Australia can be a great place for creators and audiences, whoever they are and wherever they live.

To assist the Committee, we are pleased to share:

- our forthcoming Analysis Paper *Friend, foe or frenemy: Foreseeable impacts of AI on arts, culture and creativity*. This paper shows Australians are already using AI throughout arts, culture and creativity, with real risks and opportunities. It also highlights a range of impacts on incentives to create, connections people have with arts and culture, freedom of expression as well as cultural and social inclusion.

- our submission to the federal consultation on Supporting Safe and Responsible AI in Australia. This submission complements the short form paper by sketching out steps to help Australia become a world leader in safe and responsible AI while securing its potential as a cultural powerhouse.

In our role as a philanthropically funded, independent think tank, ANA is ready to provide further information and would welcome the opportunity to discuss. We confirm that this submission can be made public from 31 October 2023, the release date for our forthcoming Analysis Paper.

Warm regards,

Kate Fielding, CEO, A New Approach (ANA)

Friend, foe or frenemy

Foreseeable impacts of AI on arts, culture and creativity

October 2023

A New Approach (ANA)

Contents

Acknowledgements

About ANA

A New Approach (ANA) acknowledges the cultures of Aboriginal and Torres Strait Islander peoples in Australia and their continuing cultural and creative practices in this land.

ANA is Australia's leading think tank focused on arts and culture. Through credible and independent public leadership, ANA helps build an ambitious and innovative policy and investment environment for arts, culture and creativity. We work to ensure that Australia can be a great place for creators and audiences, whoever they are and wherever they live.

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The Analysis Paper series

This paper is the fourth in our Analysis Paper series, which involves short investigations of a specific idea or area of interest. Find all of our work at www.newapproach.org.au

About this Analysis Paper

ANA Paper No. 2023-04, October 2023

This report was written by Dr. Alan Hui and Kate Fielding from A New Approach (ANA). Cite as: Hui, A. & Fielding, K., October 2023. 'Friend, foe or frenemy'. Analysis Paper No. 2023-04. Produced by A New Approach (ANA). Canberra, Australia.

ANA thanks the people who generously reviewed this paper for their time and excellent feedback. The opinions in this Analysis Paper do not necessarily represent the views of ANA's funding partners, the individual members involved in the governance or advisory committees, or others who have provided input.

Key points

Australians are already using AI throughout arts, culture and creativity

People and organisations in Australia are already using artificial intelligence (AI) as creators, participants and audiences in arts, culture and creativity. Like their peers around the globe, Australian creators already apply generative AI as a creative tool across forms and mediums. Distributors and regulators are applying other forms of AI across places and platforms. Some do this with caution, and others with zeal.

While use of generative AI is a hot topic, other applications of AI also matter for arts and culture. For years, AI has been shaping Australian arts and cultural experiences, particularly through content recommendation and moderation on platforms and apps. Machine translation and automated captioning are already enabling wider groups of people in Australia to access audio and video. These and many other applications of AI affect who can see, hear and experience arts and culture.

Part 1 - Applications of AI provides examples of AI that Australians are applying in arts, culture and creativity. This illustrates the breadth and variety of applications that deserve attention when considering the impacts of AI (discussed in Part 2), both in the context of applying AI and considering policy and regulatory options.

Applications of AI already present real risks and opportunities for arts, culture and creativity

Australians already have initial views of AI, particularly generative AI. There are indications that many Australians do not support applying generative AI in arts and culture, at least not yet. A survey of over 2000 Australians showed low support for the application of generative AI to creative cultural works. Specifically, the researchers found the 'only area with notably lower levels of support is the use of AI to generate culture for popular consumption (such as films, books, music or art)'.[1]

ANA expects Australian attitudes towards AI in arts and culture will evolve as people better explore how AI is used (beyond well-known applications of generative AI) and the likely impacts. Two decades ago, few could have predicted how people would use the internet and social media and the range of impacts. Early enthusiasm about the opportunities for democratising participation and connecting communities was joined by later concerns about online safety and misinformation. Early concerns about privacy and local identity were followed by an understanding of benefits for remote work and education during COVID-19. These examples from the internet and social media suggest impacts of AI will continue to emerge and evolve as developers create and further develop AI systems, and people make new applications of AI.

Nonetheless, ANA observes that impacts of AI on arts, culture and creativity are evident now. In this paper, ANA sets out impacts on:

- incentives to create
- connections people have with arts and culture
- freedom of expression
- cultural and social inclusion

Part 2 - Impacts of AI discusses key foreseeable impacts of AI, which deserve attention from people and organisations considering whether and how to apply AI, and how to balance the risks and benefits of deploying AI within creative and cultural industries. Understanding such impacts also plays an important role for policymakers considering whether and how to regulate. Noting this is rapidly changing space, ANA will release a further Analysis Paper in 2024. This paper will provide an update on new applications of AI in arts and culture, changes to impacts and emerging contexts.

Coordinated governance can help unlock opportunities and mitigate risks

In ANA's view, Australia should consider a broad, risk-based approach to help safeguard the interests of Australians (and people in Australia, more broadly). This paper shows that even the foreseeable impacts of AI on arts, culture and creativity spread far and wide. When people and organisations apply an AI system, they want to know that the system will be 'fit for the particular purpose', to borrow a concept from consumer law.[2]

ANA welcomes efforts from all governments in Australia to design and implement appropriate AI governance. Examples of coordination of governance and governance options include:

- The **Copyright and AI roundtable**, hosted by the Attorney-General's Department, the federal department with portfolio responsibility for copyright. This roundtable involved agencies with a stake in copyright and AI (Department of Industry, Science and Resources, the Australian Competition and Consumer Commission, IP Australia) as well as stakeholders from cultural institutions, creative industries and technology firms.
- National AI Centre's **Responsible AI Network**, which draws together Australian Industry Group, Australian Information Industry Association, the Committee for Economic Development of Australia, CSIRO's Data61, Gradient Institute, Standards Australia, The Ethics Centre, The Human Technology Institute at UTS, and the Tech Council of Australia.
- The **AI Working Group of the Intellectual Property Policy Group**, a standing group which includes representatives of federal agencies involved in intellectual property policy.
- **Consultations on AI policy by federal, state and territory governments and parliaments**, including on AI governance matters. This includes recent efforts from the Department of Industry, Science and Resources and the NSW Parliament.

For more details on our views on AI governance, see ANA's recent submission to the Department of Industry, Science and Resources.[3]

People have an important role in developing, applying and evaluating AI

It is no coincidence that each example of AI in this paper features people. As leading Australian AI researchers have emphasised, Australians (and people generally) are responsible for AI – for its development, its application and the impacts that follow.[4] Behind each story of 'artificial' intelligence are the people who develop systems and the people who apply those systems to create, mediate, distribute and regulate art and culture.

Naturally, developers of AI systems bear responsibility for important decisions that create direct impacts and affect the scale and types of downstream impact. This is true for developers within providers of AI systems and those in other organisations adapting third-party AI systems. For example, developers of machine learning systems choose training datasets for AI, affecting what systems learn (including any foundational biases). Those developers are also responsible

for obtaining any permission and paying any fees for copyright-protected uses of creations.[5]

However, users of AI systems also play a role. Australians and Australian organisations using AI systems have responsibility for the impacts of their applications of AI. As the Gradient Institute and the CSIRO National AI Centre say, procuring a third-party AI system does not 'absolve them [the procurer] of responsibility for how the system operates'.[6] When selecting and applying AI systems, people are inevitably making decisions. Which AI system to use? Which outputs from generative AI to select? How to arrange the outputs of generative AI in a compelling and cohesive way? How to evaluate and fine tune the application of AI? User decisions like these work in tandem with developer decisions to impact how Australians experience arts and culture.

Putting 'the right people' in the development, application and evaluation of AI is essential to addressing risks and securing opportunities for arts, culture and creativity. As Kate Crawford said in her Royal Society lecture:

> "I'm going to be honest about my concern – it's very real – that if we keep this conversation just within the technical community we are not talking to the right people. We're certainly not including an interdisciplinary space, but more importantly, we're not including the people who are being affected by these systems."[7]

By highlighting impacts on diverse groups of people involved in arts, culture and creativity, **Part 2 – Impacts of AI** demonstrates applications of AI have impacts beyond developers and users of AI.

Part 1: Applications of AI

This Part outlines how people in Australia and organisations are applying AI throughout arts, culture and creativity, including in:

- creation of arts and culture
- discovery of content via search engines
- preservation of language and heritage
- automated content recommendation and moderation on digital platforms
- automated speech recognition, captioning and transcription
- machine translation of text and speech
- classification ratings in video and games

This is to help illustrate the breadth and variety of applications that deserve attention when considering the impacts of AI (discussed in Part 2), both in the context of applying AI and considering policy and regulatory options.

Generative AI in the creation of arts and culture

There are abundant **Australian examples** of generative AI applied across forms and mediums, platforms and places.[8] This complements many well-aired examples of generative AI systems that people around the world are using to create and assist creation of text, images, audio and video.

Game developers have been applying **generative AI in games** to build new experiences each time a game is played. For example, Adelaide-based studio We Have Always Lived in the Forest released 'darkwebSTREAMER', an internet-horror role-playing simulation game.[9] The developers of the game applied generative AI to generate non-player characters and storylines unique to each playing session.

Generative AI has also been applied in **choreography**. One example saw the Sydney Opera House host 'Beyond Black', involving the Korea National Contemporary Dance Company performing moves created with generative AI.[10] Media art group SLITSCOPE trained an AI on motion capture footage of eight dancers performing choreography by Shin Changho to create new choreography for the dance company to perform.

Australian machine learning experts have contributed to prominent applications of **generative AI in film**. For example, a machine learning team from University of Adelaide worked with Australian visual effects studio Rising Sun Pictures to develop video deepfakes for Marvel Studios' Shang-Chi and the Legend of the Ten Rings.[11] This enabled the film's combat scenes to feature the faces of actors on the bodies of stunt performers.

Australian creators are also responsible for some prominent applications of **generative AI in music**. The examples discussed here see generative AI complement a variety of human contributions, including lyrics, singing, instrument playing and arrangement:

- In creating Cold Touch, Australian creator Kito co-wrote lyrics with two writers.[12] One of the writers also sang the lyrics, which were rendered to mimic the voice of Canadian creator Grimes. The mimicry was achieved by applying the Grimes AI tool, which was trained using recordings of Grimes' voice.[13] Kito arranged and produced the recording, with assistance from a fellow music producer. While there have been concerns about unauthorised use of tracks to train AI to mimic performers,[14] Grimes willingly contributed vocals to train Grimes AI. She also made the tool available for others to use, on the condition of attribution and shared master recording royalties.
- To create the winning entry in the Eurovision AI Song Contest, Australian music technology firm Uncanny Valley applied generative AI in several ways. The creators used generative AI tools to generate melodies, lyrics and vocals, and create a synth instrument from sampled sounds of Australian fauna.[15] They selected and arranged the melodies and lyrics into a song, complemented them and blended human vocals with AI-generated vocals.[16]

In a recent study by Australian education researchers, around half of students and four in five academics reported using **generative AI for university purposes**.[17] Students reported using generative AI mainly as a tool, for example to brainstorm or as a study partner, but fewer than one in 10 used AI-generated content in submitted assessments. About two in three academics said generative AI would change the way they assessed students but three in four disagreed that their university was ready for generative AI use. Some Australian universities now permit the use of generative AI in assignments, subject to disclosure or other requirements.[18] This includes one university making an AI-based writing assistant available to 5000 students.[19]

The National Gallery of Victoria (NGV) provides an Australian example of **generative AI in an audiovisual artwork**. The NGV commissioned the continuously changing 3D audiovisual work 'Quantum memories' from new media artist Refik Anadol, displayed in its foyer in 2020. The work involved a generative AI trained 'from two hundred images linked to nature from publicly available internet resources'.[20] The artist's webpage for the artwork credits over a dozen of creators involved in the making of the artwork, and the team responsible for the generative AI.[21] Likewise, audio-specialist agency Eardrum curated a selection of applications of generative AI at the Powerhouse Museum, including a live-created radio play, art projections, a live art exhibition and poetry.[22] The radio play involved a team of people creating different aspects of the radio play with different AI tools, in live time.[23] Like the Eurovision AI Song Contest example above, the radio play saw people applying multiple generative AI systems in their creative workflow and choosing how to bring it together into a cohesive work.

Increasingly, Australian creators (and Australians generally) can use **generative AI in off-the-shelf software applications**. Several generative AI tools are already widely available:

- Grammarly provides generative AI-based writing feedback across several office software suites and social media apps.[24]
- Adobe Photoshop includes the Adobe Firefly generative AI which enables users to create or modify images with text prompts.[25]
- GitHub, the platform enabling software developers to store, manage and share code, now includes Github Copilot which provides coding suggestions to developers in several programming languages.[26]
- Microsoft is incorporating Copilot generative AI into its Office software suite.[27]

Newsrooms in Australia and around the world are applying some **generative AI in news**. News Corp Australia applies generative AI to create 3000 weekly articles on local weather, fuel prices and traffic conditions.[28] ANA is also aware of several overseas examples. Associated Press has automated corporate earnings stories and video transcription for some years.[29] A partnership with OpenAI to further explore generative AI in news will see Associated Press license part of its news archive to OpenAI and tap into OpenAI's technology and expertise.[30] There are also reports that Google is testing a generative AI tool to help journalists create headlines and stories, and has pitched it to outlets including The New York Times, The Washington Post and The Wall Street Journal.[31]

Generative AI in audiobooks is also emerging, with some publishers applying text-to-speech tools provided by digital platforms. For many decades, audiobooks have provided book access to people with print disabilities, such as vision impairments and physical dexterity issues. More recently, audiobooks have found a wider audience, being used when travelling, commuting and exercising. Google Play Books enables publishers in Australia to create and sell auto-narrated audiobooks, including in Australian English.[32] Apple Books also provides auto-narrated audiobooks to audiences in Australia via the Apple Books app.[33]

There are also examples of **generative AI in architecture and design**, especially to brainstorm ideas. Australian firms Techne and Gray Puksand are applying Midjourney to aid exploration of ideas through generation of images based on word prompts. Representatives of both firms emphasise that while the use of Midjourney frees up staff time, they are not intended to substitute for architects or designers.

Australians are not only applying generative AI systems, but also **developing generative AI systems**. For example, researchers from The University of Sydney created the Reframer system which enables people 'interact directly through manual drawing'.[34] The researchers found that people sometimes used Reframe as a tool and sometimes had 'mixed initiative interactions' with the system where it acted 'on their own without being directly instructed'.[35]

AI in search engines used to discover content

Search engines are the most common way for Australians to find new content, according to the 2023 annual consumer survey commissioned by the Attorney-General's Department.[36] This makes the application of generative AI-based chatbots in search engines an important development in how Australian audiences seek and access online content across all forms. There are now options to use generative AI based chatbots on both Google Search and Microsoft Bing, the most popular search engines used by Australians.[37]

Several cultural institutions are applying machine learning to extract text from content to make it easier to find content. Libraries are applying machine learning to extract data about their collections, such as geographic information, time periods and names.[38] Likewise, the Australian Broadcasting Corporation applied machine learning to improve search results by extracting metadata from text and audio content.[39] Once extracted, this data was combined with search engines on their websites to help Australians find the material within their collections.

AI in preservation of language and heritage

Machine learning is currently being used to help preserve and revive endangered languages. For example, researchers at the ARC Centre of Excellence for the Dynamics of Language applied machine learning to build models for 12 Australian First Nations languages.[40] This parallels an effort in New Zealand to use machine learning to preserve Māori as a living language. Te Hiku Media developed a Māori automated speech recognition tool and an app to improve Māori pronunciation, including by addressing the impact of English on second-language Māori speakers.[41]

Another example is the Sydney Jewish Museum's use of AI to create 'interactive biographies' with Holocaust survivors.[42] Visitors to the museum have been able to 'speak' with simulations of three survivors that answer questions about the survivors' experiences.

A further example is the use of machine learning to catalogue Aboriginal rock art in Far North Queensland. Researchers from two Australian universities developed an AI tool to more quickly identify and catalogue, after approaching local Indigenous rangers and elders.[43]

AI in automated content recommendation and moderation

Over 7 in 10 (71%) of Australians used digital platforms 'to engage with the arts in 2022'.[44] When digital platforms use AI to automate content recommendation and content moderation, this directly influences how Australians engage with arts and culture. While content recommendation aims to suggest relevant content to users, and content moderation aims to reduce or prohibit access to unwanted content, many applications of AI serve both functions.

Digital platforms are **applying AI to automate content recommendation** to provide relevant content to users in Australia and around the world. For example, music and podcast streaming service provider Spotify explains that machine learning 'touches every aspect of Spotify's business', including to 'help listeners discover content via recommendations and search' and 'generate playlists'.[45] Likewise, Netflix applies machine learning to not only recommend content to users but also guide investment in content production.[46]

Digital platforms are **also applying AI to automate content moderation**, aiming to reduce provision of content where it might be unlawful or be inconsistent with community guidelines. This spans many purposes:

Purpose	Examples
Promoting online safety and applying community guidelines	Meta (the operator of Facebook and Instagram) applies machine learning models to assess whether 'a piece of content is hate speech or violent and graphic content' with some human verification.[47] Likewise, the gaming livestreaming platform Twitch uses a machine learning model that 'reviews custom Emote submissions and automatically approves a large chunk of the static emotes'.[48] Twitch also retains safety specialists to review some Emotes.
Identifying and reducing access to copyright material	AI is often applied to identify copyright-protected text, audio, video and images, enabling decisions to limit or prevent access. YouTube's Content ID system applies machine learning to detect use of copyright material.[49] Music identification firm Pex applies machine learning and neural networks to identify music across most popular digital platforms.[50]
Combating misinformation	While generative AI and AI-based content recommendation systems can contribute to misinformation, AI is also being applied to combat misinformation.[51] For example, Meta highlights the role of AI in tackling misinformation across its apps, including to detect fraud and inauthentic spam accounts.[52]
Promoting privacy	One example is YouTube applying machine learning to identify videos that clearly target young audiences, to enhance privacy of children by limiting data collection and use on those videos.[53]

AI in automated speech recognition, captioning and transcription

Captioning of video has been commonly used in entertainment, news and education for many years, providing a text version of speech (and other sound) that is synchronised to video. Quality captioning is important because Australians devote an average 16 hours per week to film, television and other video content.[54] While captioning is best known for improving access for people with hearing impairment, it can also benefit students in all levels of education, and people from culturally and linguistically diverse backgrounds.

Increasingly, AI is **applied to automate captioning** (an example of automated speech recognition), including for:

- video on television and digital platforms. Digital platforms often provide automated captioning for video content, both for user uploaded content and for paid video content.[55] This can help meet captioning quantity requirements for broadcast television programs.[56]
- live events, both via video and on-site. Automated speech recognition can struggle in these situations, which often have noise and multiple speakers. To make automated speech recognition more accurate and to meet captioning quality standards, it is common for people working as 'respeakers' to repeat what they hear into speech recognition software.[57]
- videoconferencing software and captioning apps, both in work and education.[58] During COVID, schools and universities used automated captioning, mainly via video conferencing software.[59]

Beyond captioning, automated speech recognition is also used for automated transcription of audio and video. Transcriptions not only provide a written record of speech, but also aid audio and video editing. Several content editing suites automated transcription, making it easier for audio and video editors to find and navigate sound and footage.[60] There are also third-party automated transcription tools.[61]

Machine translation in text and speech

The 2021 Census confirmed Australia is the first English-speaking country in the world to be a migrant-majority nation, and over one in five people in Australia speak a language other than English at home.[62] Many people in Australia use translation to discover and experience audiovisual arts, culture and creativity content in alternative languages. Likewise, many content producers and creators use translation to extend the audience for their creations. Translation enables some people to understand

English content in a preferred language, and others to understand non-English content in English. For example, it has been common for years to have 'subbed' versions of anime with alternative language captions (also known as 'subtitles'), and 'dubbed' versions with speech in an alternative language.

There are widespread **applications of AI for machine translation**. Microsoft provides Translator machine translation for use in its Office suite, Teams videoconferencing software and other software, between over 100 languages.[63] Meta has released an AI translation model covering 200 languages, which it intends to apply to its platforms Facebook and Instagram, and Wikipedia (through a partnership with the Wikimedia Foundation).[64] YouTube is providing auto-translated captions on videos across several languages, including on mobile devices.[65] In the last year, YouTube has progressively made AI-based automated dubbing more available to creators and users.[66]

Classification ratings in video and games

Classification ratings are important, given the many hours devoted to video content and games. Classifications support informed decisions by people in Australia about the video content they watch and the games they play.

Australia has approved use of three automated classification tools from the International Age Rating Coalition, Netflix and Spherex.[67] Of these, it is clear that at least the Netflix tool applies AI.[68] The Netflix Classification Tool involves human review by content experts to tag content, an algorithm developed by Netflix converting tags to Australian classifications, and the federal department responsible for classification policy monitoring and auditing of automated classifications.

Part 2: Impacts of AI

Foreseeable impacts of existing applications of AI

As we saw in Part 1, AI is already deployed pervasively across arts, culture and creativity but the capabilities and applications of AI systems are still evolving. As a result, at least some impacts are not evident now. Even where there are impacts, risks and opportunities continue to emerge. In Part 2, we explore some of the likely impacts of existing applications of AI on:

- incentives to create
- connections people have with arts and culture
- freedom of expression
- cultural and social inclusion

These impacts deserve time and attention from people and organisations considering whether and how to apply AI. Understanding the impacts informs how to mitigate the risks and realise benefits of deploying AI within cultural and creative industries. It also informs policymakers considering whether and how to regulate.

Impacts on incentives to create

AI, especially generative AI, impacts incentives to create. Remuneration for working and copyright incentives are two incentives to create. In the face of generative AI, these incentives need to be maintained and adapted, as a key source of revenue for arts and culture activity. As world-leading AI researcher and Australian scholar Kate Crawford says:

> 'The most important question is how we are going to ensure that generative AI systems are equitable and that they encourage human flourishing, rather than concentrating power and increasing inequity'.[69]

Leaders across the globe highlight the importance of harnessing and shaping the potential impacts of generative AI. Leaders in the United States (US) and Europe also focussed on generative AI, when announcing their intentions to pursue a voluntary AI code of conduct. European Commission Vice President Margrethe Vestager said, 'Generative AI is a complete gamechanger' that requires accelerated work from governments.[70] At the same event, US Secretary of State Anthony Blinken said, 'we feel the fierce urgency of now, particularly when it comes to generative AI'.[71] Likewise, the Australian Minister for Industry and Science has said 'people have seen the leaps and bounds especially around generative AI that's occurred and want to know that we get that balance right'.[72]

One way to understand the impacts on copyright incentives is to consider impacts that are **'upstream' and 'downstream'** of the application of generative AI. A study commissioned by the European Commission distinguished between 'upstream' impacts where copyright materials are used as an input to generative AI and 'downstream' impacts associated with outputs of generative AI.[73] As ANA's recent Insight Report *To Scale* highlighted, the 'changing global regulatory environment of artificial intelligence' could affect copyright licence fees and other inflows to arts, culture and creativity.[74]

Groups representing copyright owners and creators of copyright-protected text, images, music and video have raised strong concerns about **'upstream'** impacts. These groups are particularly concerned that generative AI compromises copyright incentives to create, particularly the use of copyright materials to train generative AI without permission or payment and lack of transparency of AI-related uses.[75] Concerned copyright right owners have already sued developers of generative AI systems in several US litigations.[76] Likewise, the proposed EU AI Act would require generative AI providers to 'make publicly available a sufficiently detailed summary of the use of training data protected under copyright law'.[77]

In addition, the study commissioned by the European Commission raises a role for AI-based collective licensing and rights management, which would build on existing applications of AI in automated content recommendation and

moderation. As we noted in *To Scale*, in 'the long run, the study suggests a cross-sector rights data network is needed, partly to carry out efficient data management and licensing'.[78]

Researchers in Australia have also considered 'downstream' issues - whether copyright protects creations involving generative AI.[79] These researchers consider instances where US and Australian copyright laws give incentives to might developers of generative AI systems, users of generative AI, or both. While the researchers confirm that copyright laws are unlikely to protect the AI itself as a copyright creator, they highlight scenarios where neither developers nor users contribute sufficiently to warrant copyright protection.

Another way to understand impacts on incentives to create is through the economics lenses of **complements and substitutes**. A challenge for policymakers is to distinguish applications of AI that substitute for human creation from those that are complements. As the authors of the Rapid Response Information Report on Generative AI say:

> 'The fact that a machine may perform one or more relevant tasks does not mean that job replacement will necessarily occur, indeed the strongest business cases for investment in AI are likely to emphasise the creation of additional value to products or services rather than savings in labour costs. In these cases, technologies such as generative AI are likely to both create new jobs and augment existing ones by enhancing human decision-making skills.'[80]

Among the examples of generative AI in the creation of arts and culture discussed in Part 1, there are likely to be a combination of complements and substitutes. Some applications of generative AI enable genuinely novel forms of creation. For example, consider the live and interactive applications of generative AI mentioned above, including the radio play generated in live time and the continuously changing audiovisual artwork in a gallery. For applications of generative AI are truly complementary to other human creation, there may be less reason to be concerned about substitution. In fact, these may be opportunities that enhance the incentive to create, by enabling new forms of creation, the creation of more material or the creation of higher quality material.

For applications of generative AI that truly substitute for human creation, there are several potential policy responses. While banning such applications is certainly an option, there are many others:

- **subsidising human creation**. Australia pursued such a levy on blank audio tapes, which were considered a threat to copyright interests in recorded music.[81] One prominent European researcher has proposed a similar type of levy on AI to subsidise human creation.[82]
- **providing transparency about applications of generative AI**, to inform choices based on whether people used generative AI in creations. See the next section for examples of transparency.
- **denying authorship to AI-generated works**. This ensures any recognition, responsibility and financial incentives associated with authorship remain with human creators. While practices vary and are evolving, several major research publishers currently take this approach.[83]

Impacts on connections people have with arts and culture

There are potential impacts on connections Australians have with arts and culture from applications of AI. This shapes how Australians relate to their arts and culture, whether they are creators, audiences or other participants. When Australians cannot distinguish human creations from creations involving generative AI, this prevents them from knowing who made the works before them, and how. This presents both a creator attribution and a consumer information problem.

Automated tools to distinguish between human creation and generative AI remain works in progress. In early 2023 OpenAI released its 'AI classifier' as a 'work-in-progress' tool to distinguish between text written by humans and by generative AI.[84] The tool was based on a language model trained on pairs of human-written and AI-written text. Just six months later, OpenAI withdrew the tool, citing 'its low rate of accuracy'.[85] Content identification firm Pex argues developing these tools will become harder, especially as human creators use generative AI as a tool: 'the lines between these will be increasingly blurred as musicians continue to use AI to assist the songwriting process'.[86]

Two policy options that help maintain people's links with arts and culture are:

- **attribution of human creators.** Australian copyright law already provides certain authors and performers a right to have their copyright creations or performances attributed to them. To ensure correct attribution, this is complemented by a right against false attribution. Some digital platforms already include automated attribution systems for recorded music.[87] Researchers at the Queensland University of Technology have raised concerns about the accuracy of automatic attributions on one digital platform.[88]

- **transparency about the use of generative AI.** For example, the draft European Union AI Act proposes transparency obligations for disclosure of content generated by AI.[89] The US has recently obtained a commitment from major AI firms to develop 'robust technical mechanisms to ensure that users know when content is AI generated, such as a watermarking system'.[90]

Because generative AI-transparency and human attribution systems are often AI-based systems, they may introduce further downstream impacts like the ones discussed in this paper. When such tools have low accuracy, they may create new risks. False attribution to a human creator might hide a deepfake and increase the impact of misinformation. Equally, false markings about the use of a generative AI might deny a writer or a photographer attribution, effective copyright protection and remuneration. Any systems for transparency and attribution should also account for evolving community expectations of how to attribute creations involving generative AI.

Impacts on freedom of expression

Freedom of expression is important to Australians but faces impacts when content moderation and content recommendation are automated. ANA's research indicates freedom of expression is important to people in middle Australia, who consider it an important democratic value.[91] Our national focus group study highlighted many reasons for this importance from expressing views about one's religion, building confidence and self-esteem for school children. Consistent with the view of the Australian Law Reform Commission, ANA considers the right to freedom of expression is essential to arts and culture, but not absolute.[92]

As Part 1 outlined, digital platforms are applying AI to automate content moderation and content recognition. Both have widespread impacts on freedom of expression. The Australian Human Rights Commission recognises:

> 'a competing tension on where to draw the line between freedom of expression and content moderation. This is a line where reasonable minds may differ—however moderation should not unduly impact free speech, nor should hateful content be allowed to prosper under the guise of freedom of expression.'[93]

Likewise, as one digital platform puts it:

> 'There's a risk of erring too much on one side or the other. If the [content moderation] technology is too aggressive, it will remove millions of non-violating posts. If it's not aggressive enough, it... will fail to take action on the content.'[94]

There are two common approaches to safeguarding freedom of expression from content moderation:

- **Ex ante** safeguards, which aim to ensure lawful and certain types of expression remain unaffected by content moderation. Having a 'human in the loop' in the training and testing is a safeguard across many AI-based content moderation systems. There are also specific safeguards in different policy spaces. For example, the Australian voluntary misinformation code carves out parody, satire, professional news, educational content and other important forms of expression from misinformation regulation (unless it is propagated via 'inauthentic behaviours').[95] An EU copyright directive requiring digital platforms to moderate content also requires EU countries to ensure that platform users can rely on copyright exceptions for expressions for purposes such as criticism, review and parody.[96]
- **Ex post** safeguards, which help to restore freedom of expression when content moderation goes too far. This includes complaint and redress mechanisms, as well measures for transparency and accountability when users disagree with digital platform decisions.

There is a third approach, which can help to reduce this tension. This is for digital platforms to make greater use of 'non-removal remedies' in their content moderation systems.[97] Examples include redacting content, including a warning, disabling comments, reducing searchability or visibility of the content.[98] These approaches can avoid impacts on freedom of expression from content removal which one researcher describes as a 'blunt instrument'.[99] They also avoid some unintended impacts of removal, such as perceptions of censorship, the deletion of comments (often conversations about arts and culture), and erasure of a public record of what people said.[100]

Impacts on cultural and social inclusion

The application of AI has impacts on the cultural and social inclusion in arts, culture and creativity. These impacts affect most people in Australia, but in different ways. Some impacts can exclude people in Australia based on age, gender identity, disability, or cultural and linguistical background.

In some applications, the risks for cultural and social inclusion are well established. There are ample examples of potential bias from **generative AI**. For example, a study by researchers at Queensland University of Technology and Washington State University found several biases when prompting a text-to-image tool to generate images of various journalistic roles.[101] Using Midjourney, the researchers found many roles were presented as light skinned.[102]

'News analyst', 'news commentator' and 'fact checker' were presented as older men. 'Journalist', 'reporter' and'correspondent' were presented as women in urban environments.[103]

In other applications, the risks and opportunities depend on how AI is applied. Accurate **captioning** is important to people in Australia, assisting their inclusion not only in Australian cultures and society, but also in civic life and democratic participation. The Australian Communications and Media Authority recognises improvements in automatic captioning but emphasises the continuing need for human input to ensure accuracy.[104] Human input is particularly important when captioning live broadcast television content, including news and current affairs. People with hearing impairment are 'more likely to watch television than Australians without hearing loss' but some feel 'excluded or marginalised... when they experienced poor-quality captioning, particularly when they missed important details in news coverage'.[105]

Accurate **classifications** empower viewers to find the content for them and enjoy a safe viewing experience. Conversely, inaccurate automated classifications pose risks to cultural and social inclusion. Australia has approved use of three automated classification tools.[106] Of these, at least the Netflix tool is an application of AI.[107] A review of the Netflix tool found it provided a different classification rating to the human Classification Board in one in four instances: higher in 20 per cent of instances and lower in 6 per cent of instances.[108] Ratings that are too high deny access to arts and culture experiences for young Australians (for material with a classification) or all Australians (when material is 'refused classification'). Ratings that are too low can create an unsafe or unpleasant environment, giving young Australians access to unsuitable material and exposing people to violent, abhorrent or other objectionable content that they would not choose to watch.

There are also applications where it is unclear whether overall impacts are desirable. Consider, for example, applications of AI to preserve Indigenous languages. There is national recognition that Aboriginal and Torres Strait Islander languages are in a 'critical and precarious state' and require 'conservation and revitalisation'.[109] However, applications of AI in this space can have mixed impacts. When OpenAI released an **automated speech recognition** tool for the Māori language, Indigenous New Zealanders expressed concern about a non-Māori organisation using over 1,000 hours of recorded Māori speech to create the tool.[110] On one hand, the developers of the tool used traditional cultural expressions without the endorsement of the Māori community. On the other hand, the tool may help to salvage Indigenous languages. Australia's recently released plan for Indigenous languages highlights the need to 'support communities to build and be custodians of language resources and materials'.[111] The plan also recognises a need to 'invest in community-led technological development for language solutions'.[112] Such impacts deserve attention as Australia considers how to protect traditional cultural expressions and traditional knowledge while respecting Indigenous communities and their cultures.

Conclusions and next steps

This paper demonstrates the depth and diversity of existing applications of AI in arts, culture and creativity. Australians are applying AI as a tool to create across forms and mediums, and digital platforms are using applying AI to recommend and moderate content. While impacts are likely to evolve over time, some impacts are tangible now. We can see impacts on incentives to create and on freedom of expression. We can recognise changes to how people connect with arts, culture and creativity, and the uneven impacts for different Australians.

ANA welcomes efforts from all governments in Australia to design, implement and support appropriate AI governance. Coordinated governance can help to safeguard the interests of Australians in arts, culture and creativity, and secure their participation in society and culture. ANA highlights the important role Australians have in shaping the impacts of AI. Putting the right people in the development, application and evaluation of AI is essential to addressing risks and securing opportunities for arts, culture and creativity.

Applications and impacts of AI will continue to evolve as Australians learn and explore possibilities and impacts. Already, Australian educational institutions are accounting for AI, its applications and its impacts as they train the next generation of Australian participants in arts and culture.[113] ANA is watching closely and will continue to deliver an independent, evidence-led view of AI impacts on arts, culture and creativity. In 2024, ANA will release a further Analysis Paper on AI to provide an update on new applications, new sources of impacts and emerging contexts.

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For Australians, by AI?

Supporting Safe and Responsible AI in Australia submission

July 2023

A New Approach (ANA)

About A New Approach (ANA)

About A New Approach (ANA)

A New Approach (ANA) is Australia's leading think tank focused on arts and culture. We believe Australia can become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential.

Through credible and independent public leadership, ANA helps build an ambitious and innovative policy and investment environment for arts, culture and creativity.

We work to ensure Australia can be a great place for creators and audiences, whoever they are and wherever they live.

ANA acknowledges the cultures of Aboriginal and Torres Strait Islander peoples in Australia and their continuing cultural and creative practices in this land.

ANA Board

Rupert Myer AO (Chair), Sue Cato AM, Cass O'Connor, Catherine Liddle, Craig A. Limkin PSM and Genevieve Lacey. Board Associates 2023: Astrid Jorgensen OAM and Daniel Riley.

ANA Reference Group

Genevieve Lacey (Chair), Ben Au, Julian Canny, Jane Curry, Professor John Daley AM, Damien Miller, Rupert Myer AO, Alison Page, Laura Tingle and Dr Mathew Trinca AM.

ANA Partners

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This submission has been prepared by ANA and the opinions expressed do not necessarily represent the views of ANA's funding partners, or advisory groups, or others who have provided input.

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Submitted by: A New Approach (ANA) July 2023

We confirm that this submission can be made public.

A New Approach (ANA)

13th July 2023

Department of Industry, Science and Resources

Technology Strategy Branch

DigitalEconomy@industry.gov.au

Safe and responsible applications of artificial intelligence in arts, culture and creativity

A New Approach (ANA) welcomes this opportunity to help strike the right balance between unlocking the potential of artificial intelligence (AI) and mitigating its risks. ANA believes that with the right governance and collaboration, AI can be a part of Australia reaching its full potential as a cultural powerhouse. ANA welcomes the AI investments in the 2023-24 Budget, including extending the National AI Centre and its role in supporting responsible AI usage through developing governance and industry capabilities.[1]

This submission outlines a range of Australian arts, culture and creativity where AI plays a role and explains the impacts of AI on Australians' access to arts and cultural experiences. It also sketches out steps to help Australia become a world leader in safe and responsible AI while securing its potential as a cultural powerhouse.

No matter the artform, content platform or community, the opportunities and risks of AI are real. AI has the potential to affect incentives to create, cultural and social inclusion and freedom of expression in arts, culture and creativity. This is true, not only of generative AI-based chatbots, but of all applications of AI.

This submission provides insights into the known risks of applying AI in arts, culture and creativity, including who they impact and how. It highlights areas where applications of AI already pose risks to Australians and further mitigation (through regulation or other means) would assist. Noting AI continues to broaden scope and deepen impact, this submission poses some approaches to regulation of AI to unlock opportunities while mitigating risks.

With governance of AI that balances incentive to create and freedom of expression with other public interests, Australia can become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential. The federal government has a critical role to play in achieving this potential.

In our role as a philanthropically funded, independent think tank, ANA is available to provide further information about the recommendations outlined in this submission and would welcome the opportunity to discuss them.

Warm regards

Kate Fielding, CEO, A New Approach (ANA)

Key points

1. Arts, culture and creativity are ingrained in Australian life

Australia can become a cultural powerhouse, generating social, economic and environmental benefits. We are home to the world's oldest living cultures. We have globally high rates of cultural attendance and direct creative participation is growing, especially among young people.[2] We have a rich cultural inheritance in our institutions and legal protections of both copyright and freedom of expression. ANA and Treasury research show middle Australians[3] believe cultural participation creates 'agile, skilled, inclusive and resilient'[4] people and communities and helps us connect across generations, cultures, geographies and viewpoints.[5] We have residents from every nation on earth, and Australia is the first English-speaking country in the world to be a migrant-majority nation.[6] Middle Australians have told us they believe arts and culture are fundamental to their way of life and to being human.[7]

2. AI already has major impacts in arts, culture and creativity

While applications of AI are growing and evolving, they already impact Australian arts and cultural life. Some applications, such as chatbots, are more obvious than others but no matter the artform, content platform or community, the opportunities and risks of AI are real. As AI continues to grow and evolve, regulation of AI will need to adapt to unlock opportunities and mitigate risks. For examples of applications of AI in arts, culture and creativity, see the table on the following page.

3. More work is needed to ensure safe and responsible AI in arts, culture and creativity

Applications of AI already have major impacts and a broad, risk-based approach is needed to help to safeguard Australians' interests, including in arts, culture and creativity. ANA welcomes the Department's current work on safe and responsible AI, and the National AI Centre's work through the Responsible AI Network. Both will help to coordinate action and put expertise into practice.

In this submission, ANA sets out potential risks and ways to mitigate them. See Answers to discussion paper questions below, which we also submit via the Consultation hub.

Applications of AI in arts, culture and creativity

Application of AI	Potential opportunities	Potential risks
Generative AI (including chatbots) to generate creative works (eg. painting, music, poem) or assist with their generation	Improve the productivity of human creators and create opportunities for new forms of art and culture	Generative AI can displace arts and cultural workers from incentives to create. It can disrupt connections between human creators and creative works, including poor attribution and poor information about who made creative works.
Automated decision making - online content moderation	More efficient regulation of copyright, abhorrent content, misinformation, classification ratings	Blocking and other overregulation of lawful content poses risks to freedom to expression[8] and to content creators' livelihoods and businesses.
Automated decision making - classification of video and games	More efficient classification and therefore more timely availability of film, television, other video and games	Underclassification risks young Australians accessing unsuitable material. Overclassification denies access to young Australians (for classified material) or all Australians (for refused classification material). Misclassification affects audience understanding of what ratings mean.
Automated captioning	More films, television and other video accessible to Australians with hearing disabilities, of schooling age and from migrant or other CALD backgrounds	Low accuracy captioning can exclude, misinform or mislead these people.
Large language model - machine translation of languages	More films, television and other video content accessible to migrants, other CALD background people and Australians with hearing disabilities	Low accuracy translation can misrepresent creators and exclude, misinform or mislead audiences.

Recommendations

ANA makes the following recommendations, grouped by the questions in the discussion paper. The next section provides detailed answers to these questions, providing context for these recommendations.

Recommendation 2A
For existing policies and future proposals that require or permit the use of generative AI, ANA recommends:

- the Department and/or National AI Centre engage with the UK Competition and Markets Authority on its review of AI foundation models.
- policy agencies assess risks to incentives to create, as part of a risk-based approach.
- policy agencies continue to monitor and report on risks that applications of generative AI pose to incentives to create.

Recommendation 2B
For existing policies and future proposals that require or permit the use of automated decision making, ANA recommends policy agencies:

- assess risks to freedom of expression and other human rights recognised in core treaties Australia has signed, as part of a risk-based approach.
- give priority to recognised important forms of expression such as professional news, satire and parody.
- include monitoring and reporting for risks to freedom of expression and other human rights, to make policies evaluation-ready, in line with the Commonwealth Evaluation Policy.
- continue to leverage and commission Australian research on governance of AI and automated decision making.

Recommendation 2C
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to cultural and social inclusion.

Recommendation 2D
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to connections Australians have with arts and culture.

Recommendation 4A
ANA recommends using coordination mechanisms that support policy decisions on AI governance with both AI expertise and portfolio expertise (such as interdepartmental committees, steering committees and cross-jurisdiction bodies at ministerial and official levels).

Detailed answers to discussion paper questions

Question 2 – What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?

ANA draws attention to potential risks to public interests relevant to arts, culture and creativity. These risks affect all Australians and their communities but the Australian Government can adapt regulation to help mitigate them. Here, we focus on **four potential risks** that are already apparent:

- to incentives to create
- to freedom of expression
- To cultural and social inclusion
- to connections Australians have with arts and culture

Risks to incentives to create

There are **potential risks to incentives to create** from applications of generative AI. Incentives to create are essential to 'supporting the artist as worker and celebrating artists as creators', under the National Cultural Policy.[9] As world-leading AI researcher and Australian scholar Kate Crawford says 'The most important question is how we are going to ensure that generative AI systems are equitable and that they encourage human flourishing, rather than concentrating power and increasing inequity'.[10] European Commission Vice President Margrethe Vestager says 'Generative AI is a complete gamechanger' that requires accelerated work on a voluntary AI code of conduct.[11] Incentives to create, such as working income and copyright incentives, need to be maintained in the face of generative AI, as a key source of funding for arts and culture activity.[12]

A risk to incentives to create also has potential impacts on productivity. These incentives help support employment in cultural and creative industries, which is linked to productivity. OECD and UNCTAD are highlighting the productivity gains both from and within cultural and creative industries, particularly in the context of COVID-19 recovery.[13] ANA's research program is currently exploring links between productivity and cultural and creative industries, noting some existing research.[14] The OECD reports 'Cultural and creative employment account for up to one in 20 jobs in some OECD countries, and up to one in 10 jobs in major cities.' These jobs are described as 'future proof', with only 10% at high risk of automation vs. 14% in the general workforce.[15]

Risks to incentives to create arise in at least two scenarios. The **first scenario** is where generative AI displaces Australians from arts and cultural work and employment. AI-generated works are already emerging,[16] although it is uncertain how and to what extent applications of AI will displace Australian creators in the future. In addition, large language models and multimodal foundation models often use existing human creations, without remuneration or permission. ANA notes Australia has previously pursued a levy on a disruptive technology, blank audio tapes, to subsidise human creation.[17] ANA is aware that a prominent Dutch researcher has proposed a similar type of levy on AI to subsidise human creation.[18]

The **second scenario** is where human creators use AI to generate works, but the use of AI undermines copyright incentives. ANA notes some AI creation is complementary to creation by Australian creators or assists Australian creators. This may empower creators to be more productive or creative in different ways. This opens up genuinely new opportunities. However, as two Australian law researchers explain, Australian copyright law excludes AI-generated works from copyright incentives, at least in some cases.[19] While this exclusion may be intended to protect the 'humanness' of arts and culture, it also poses a risk to the incentive to create new AI-generated

works. Again, it is unclear how much these works involving AI should attract copyright incentives. However, it is possible AI-generated works might involve enough human creative input to warrant incentives. ANA notes the US Copyright Office has clarified the kinds of AI-generated works that may satisfy the human authorship requirement for copyright protection.[20]

Recommendation 2A

For existing policies and future proposals that require or permit the use of generative AI, ANA recommends:

- the Department and/or National AI Centre engage with the UK Competition and Markets Authority on its review of AI foundation models.[21]
- policy agencies assess risks to incentives to create, as part of a risk-based approach.
- policy agencies continue to monitor and report on risks that applications of generative AI pose to incentives to create.

Risks to freedom of expression

There are **potential risks to freedom of expression** for Australian arts and culture creators, particularly those using digital platforms for content and social media. ANA's research demonstrates freedom of expression is important to middle Australians, who consider it an important democratic value.[22] Our national focus group study highlighted many reasons for this importance from expressing views about one's religion, building confidence and self-esteem for school children.

Digital platforms apply automated decision making, specifically by using discriminative models to automate classification and moderation of content. Automated decision making is used to more efficiently achieve a range of established public policy purposes - such as to separate abhorrent from acceptable content, to distinguish copyright infringing uses from lawful uses, to target misinformation and not information, and to provide classification ratings. However, blocking of lawful content poses risks to freedom to expression.[23] Digital platforms readily admit automated decision making can affect freedom of expression and limitations of existing systems.[24] Likewise, the EU has singled out freedom of expression as a fundamental right that online governance needs to protect.[25]

Recommendation 2B

For existing policies and future proposals that require or permit the use of automated decision making, ANA recommends policy agencies:

- assess risks to freedom of expression and other human rights recognised in core treaties Australia has signed, as part of a risk-based approach.[26]
- give priority to recognised important forms of expression such as professional news, satire and parody.[27]
- include monitoring and reporting for risks to freedom of expression and other human rights, to make policies evaluation-ready, in line with the Commonwealth Evaluation Policy.[28]
- continue to leverage and commission Australian research on governance of AI and automated decision making.

Risks to cultural and social inclusion

There are also **potential risks to cultural and social inclusion** in arts, culture and creativity. These risks affect the majority of Australians - including those who are young, with disability and culturally and linguistically diverse.

There are already many applications of AI with these risks. Here, ANA highlights three examples where good quality applications could better include Australians, but poor quality applications risk excluding them: captioning, classification and language translation. These applications are subject to different regulatory approaches that are not necessarily aligned to risk.

The first example involves **captioning**. Australian regulation and monitoring of captioning quality applies for television content but not other video content.[29] Quality captioning is important because Australians devote an average 16 hours per week to film, television and other video content.[30] It is particularly important for Australians with hearing impairments. Australians with hearing impairments are 'more likely to watch television than Australians without hearing loss' but some feel 'excluded or marginalised... when they experienced poor-quality captioning'.[31] It is also important for young Australians and migrant Australians, as it assists with learning of English and participation in Australian life.[32]

There are real risks to cultural and social inclusion from poor quality captioning, for television and for video generally. According to the Australian Communications and Media Authority (ACMA), AI-based automated captioning cannot yet 'deliver captions of acceptable quality for all broadcast content', in spite of significant advances.[33] The ACMA expressed concerns about the quality of automated captioning when video included noisy audio, speech with accents and multiple speakers. It also pointed out that automated captioning cannot yet consistently indicate speaker changes and position captions appropriately on the screen. A risk-based approach might consider whether the risks of AI-based automated captioning on other online video warrant regulation or transparency obligations.

The second example involves Australian regulation of **classifications** for video content and games provides another example. Classifications ratings are important, given the many hours devoted to video content and games. They help to mitigate risks of material harming or disturbing children and help Australians make informed choices about the video content they watch and the games they play. They account for depictions condoning or inciting violence (particularly sexual violence against women) and demeaning portrayals of people, helping to manage flow-on cultural and social inclusion risks.

Inaccurate automated classifications are common[34] and these pose potential risks to cultural and social inclusion. Australia has approved use of three automated classification tools from the International Age Rating Coalition, Netflix and Spherex.[35] Of these, it is clear that at least the Netflix tool applies AI.[36] A review of the Netflix automated classification tool found it provided a higher rating than the human Classification Board in 20 per cent of instances and a lower rating in 6 per cent of instances.[37] Underclassification may lead to young Australians accessing unsuitable material, such as simulated gambling, sexual content, and depictions of suicide, self harm and substance abuse. Overclassification also denies access to young Australians (for classified material) or all Australians (for refused classification material).[38] The risk is monitored and mitigated to some extent through Department monitoring and auditing of automated classifications. A risk-based approach might also consider whether the residual risk warrants any transparency or other obligations should apply.

The third example involves **translation**. Quality translation helps include many Australians, with Australia being the first English-speaking country in the world to be a migrant-majority nation.[39] In the context of providing public sector information, Australian jurisdictions already recognise machine translation is not fit-for-purpose when dealing with variations in dialect and language (such as context- and cultural-specific references). While the Australian Government recommends agencies use machine translation only after risk assessment and certain

checks, some other jurisdictions advise against machine translation altogether.[40]

Recommendation 2C
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to cultural and social inclusion.[41]

Risks to connections Australians have with arts and culture

There are **potential risks to connections Austalians have with arts and culture** from applications of AI. This has practical consequences for creators, participants and audiences, as well as impacts on how Australians relate to their arts and culture.

When Australians cannot distinguish human creations from creations involving generative AI, this denies audiences and participants knowledge of who made the creative works before them.[42] This can prevent participants and audiences from making decisions about their interactions with creative works based on information about the creator, creating a consumer information problem. Community expectations of how to to attribute creations involving generative AI are developing, but attribution will help maintain Australian connections with arts and culture.[43]

Also, applications of AI may affect Australian engagement with arts and culture. One major Australian survey of over 2000 Australians found low support for the application of generative AI to creative cultural works. Specifically, it found the 'only area with notably lower levels of support is the use of AI to generate culture for popular consumption (such as films, books, music or art)'.[44] The Australian researchers considered a possible explanation was Australian perceptions that culture is 'more human-led'.[45] This echoes a US study of almost 1000 experts in AI, who highlighted concerns about human control over their lives and the importance of ensuring AI will be 'directed at humanness' and 'prioritize people'.[46]

Risks to connections Australians have with arts and culture amplify other risks discussed above. Because effective incentives rely on knowing who the creator is, there can be a flow-on risk to incentives to create. Likewise, because arts and culture help Australians 'understand each other', there can also be a flow-on risk to cultural and social inclusion.[47]

Recommendation 2D
For existing policies and future proposals that require or permit the use of AI, ANA recommends policy agencies consider whether regulation (or its absence) is proportionate to risks to connections Australians have with arts and culture.

Question 3 – Are there any further non-regulatory initiatives the Australian Government could implement to support responsible AI practices in Australia? Please describe these and their benefits or impacts.

Yes. Australian Government agencies could systematically and explicitly inform organisations of the types of risks and opportunities to consider in impact assessments. This could include impacts on incentives to create, freedom of expression, cultural and social inclusion and connections Australians have with arts and culture. Providing this information would complement any obligations on providers or users of AI systems to conduct impact assessments. It would help improve the scope and quality of impact assessment.

Australian Government agencies could also use coordination mechanisms that support policy decisions on AI governance by bringing together AI-specific and portfolio-specific expertise. See our answer to question 4 for more information.

Question 4 – Do you have suggestions on coordination of AI governance across government? Please outline the goals that any coordination mechanisms could achieve and how they could influence the development and uptake of AI in Australia.

Recommendation 4A
ANA recommends using coordination mechanisms that support policy decisions on AI governance with both AI expertise and portfolio expertise (such as interdepartmental committees, steering committees and cross-jurisdiction bodies at ministerial and official levels).

Tapping into both AI expertise and portfolio expertise can help AI governance consider application-specific impacts of AI to Australia, including its arts, culture and creativity. While there is already some coordination of AI expertise,[48] more could be done to coordinate portfolio expertise from the Department and agencies across the Commonwealth. This would tap into knowledge and support consistent policy settings for different AI applications with similar impacts. For applications of AI with unforeseeable or quickly evolving impacts, more responsive but less permanent mechanisms such as interdepartmental committees and steering committees might help to bring in portfolio expertise. For applications of AI with more foreseeable impacts, more permanent mechanisms such clearer or additional responsibilities for existing regulators or cross-jurisdiction bodies might be warranted.

Sources of portfolio expertise on risks relevant to arts, culture and creativity include:

- For risks to freedom of expression, the Office of the Arts (DITRDCA), national cultural institutions,[49] the Human Rights Branch (AGD) and the Australian Human Rights Commission.
- For risks of automated decision making with impacts on cultural and social inclusion, the Classification branch and Consumer Safeguards branch (both DITRDCA), and the Australian Communications and Media Authority. It could also include Screen Australia and national broadcasters providing captioned video (the Australian Broadcasting Corporation and Special Broadcasting Service).
- For risks to incentives to create, the Commercial and Copyright Law branch (AGD), and the Bureau of Communications, Arts and Regional Research and Office of the Arts (both DITRDCA).

Question 7 – How can the Australian Government further support responsible AI practices in its own agencies?

See our answer to question 4, which applies to AI governance generally.

Question 14 – Do you support a risk-based approach for addressing potential AI risks? If not, is there a better approach?

Yes. In principle, ANA supports a risk-based approach, such as the EU approach, as an overall framework for addressing potential AI risks.[50] ANA is ready to provide insights and perspectives to help the Department and other agencies conduct impact assessments and evaluation of potential AI risks.

Question 15 – What do you see as the main benefits or limitations of a risk-based approach? How can any limitations be overcome?

A main benefit of a risk-based approach is its ability to systematically analyse the impacts of AI, including on Australian interests in arts, culture and creativity. The wide-ranging impacts of AI requires a risk-based approach that explicitly considers risks to human rights of Australians, including to freedom of expression. Risks to human rights are currently considered a high risk area in the proposed EU AI Act.[51]

A key limitation of a risk-based approach is that it cannot directly account for risks that are emerging or unforeseeable. The European Commission has explained how a proportionate risk-based framework would involve prohibiting uses of AI with unacceptable risks, regulation for uses with high risks, and limited transparency obligations (such as flagging 'the use of an AI system when interacting with humans') of other applications of AI.[52] An obligation to make applications of AI interactions with humans transparent provides some view of emerging risks, and partly addresses this limitation.[53]

A potential limitation of a risk-based approach is a lack of focus on the opportunities of AI, including applications that help Australia become a cultural powerhouse whose compelling creativity is locally loved, nationally valued and globally influential. In line with Australian Government Impact Analysis requirements, impact assessment of AI systems should systematically consider the benefits and costs (including opportunities and risks) of policy options. This dual focus on opportunities and risks is the approach advanced by leaders in other jurisdictions.[54]

Question 17 – What elements should be in a risk-based approach for addressing potential AI risks? Do you support the elements presented in Attachment C?

ANA provides the following comments on some of the possible elements of a draft risk-based approach set out at Attachment C and Box 4 of the discussion paper.

Regarding **impact assessments**:

- ANA supports a proportionate approach, involving deeper impact assessment for use cases with likely higher impacts, in line with Australian Government Impact Analysis requirements.[55]
- ANA supports setting upfront risk levels for use cases. ANA cautions against assigning a risk level in cases where some assessment of impact is not possible, including for emerging risks which may be 'difficult to forecast'.[56]

- ANA suggests considering impact assessments not only for internal AI systems but also third-party systems. A recent US study highlighted that responsible AI risk assessments by large firms focus on internal AI systems, missing important risks from third-party AI systems.[57] Although a provider of an AI system can assess impacts for known use cases, further impact assessment (by the provider or user) may be required for other use cases.
- ANA also suggests provision of practical materials that guide organisations through impact assessment of applications of AI, such as the EU expert-developed assessment list.[58]

Regarding **notices** and **explanations**, ANA supports transparency of use of AI systems. When notices make clear whether AI has been involved in the making of a creative work, this helps to identify and mitigate risks to incentives to create and to connections Australians have with arts and culture. Likewise, explaining how AI has affected automated decisions helps informs AI users and policymakers whether those decisions are fair. Noting this is a draft approach, ANA would be interested in regulation that ensures explanation translates to contestability and fairness, two of the AI Ethics Principles, for example through complaint and redress mechanisms.[59]

Regarding **human in the loop and oversight assessments**, ANA supports a proportionate approach that focuses on both risks and opportunities. The discussion paper and the Rapid Response Information Report on Generative AI acknowledge human in the loop requirements note may not be appropriate when 'the benefits of the application are dependent on efficiency at scale'. However, even when the benefits are dependent on efficiency at scale, requiring humans in the loop might still be a proportionate policy if the risks are sufficiently high. For example, EU General Data Protection Regulation prevents people from being subject to decisions 'based solely on automated means' with legal or similar effects, without human intervention.[60] Likewise, the eSafety Commissioner has raised concerns about insufficient humans in the loop in moderating online hate on Twitter.[61]

Regarding **monitoring and documentation**, ANA supports building in mechanisms to monitor use cases and reassessing risk levels from time to time to account for changing uses. Examples of changing uses include Twitter's revised approach to moderating online hate[62] and the use of a generative AI to the 'create and sell life-like child sexual abuse material'.[63] This approach would be in line with the Australian Centre for Evaluation and the government's renewed focus on evaluation planning. This would also help surface risks created by ongoing use of AI and of policy responses, and inform risk mitigation. ANA notes that the May 2023 compromise text of the proposed EU AI Act has expanded the lists of prohibited and high risk applications of AI, from the 2021 lists cited in Attachment B of the discussion paper.[64]

Question 19 – How might a risk-based approach apply to general purpose AI systems, such as large language models (LLMs) or multimodal foundation models (MFMs)?

See our answer to question 14, regarding transparency and impact assessment of third-party AI systems, and our answer to question 17, regarding elements in a risk-based approach. See also our answer to question 2, which highlights the risks of generative AI applications (such as LLMs and MFMs) to incentives to create and to connections Australians have with arts and culture.

Endnotes

1 Australian Government (2023). Budget 2023-24 - Budget Paper No. 2.

2 Australians are keen cultural consumers. 82 percent of Australians report attending cultural events and venues over a year compared to 64 percent in the European Union. Drawn from Australian Bureau of Statistics (ABS) (2019) 4114.0 Attendance at Selected Cultural Venues and Events, Australia, 2017–18 and Eurostat (Statistical Office of the European Union) (2019). 'Cultural participation', Cultural Statistics.

3 See ANA's middle Australia series, a three-year national focus group study on attitudes towards arts, culture and creativity amongst people from low- and middle-income households in regional or outer suburban locations. These people are politically unaligned, predominantly living in swinging federal electorates, from a range of cultural backgrounds and not working in arts and culture. See ANA middle Australia series.

4 The Treasury (2022). Jobs + Skills Summit Issues Paper.

5 Drawn from Trembath, J. L. and Fielding, K., August 2021. *The next generation of voters: Young middle Australians talk arts, culture and creativity.* Insight report no. 2021-02. Produced by A New Approach (ANA). Canberra, Australia; Vivian, A. and Fielding, K., September 2022. *Lifelong: Perceptions of arts and culture among Baby Boomer middle Australians.* Insight report no. 2022-02. Produced by A New Approach (ANA). Canberra, Australia. See ANA middle Australia series.

6 See ABS (2022). Snapshot of Australia. See also ABS (2022). Australia's Population by Country of Birth.

7 ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*.

8 Freedom of expression is important to middle Australians. Our focus group research highlighted reasons for this importance from expressing views about one's religion, building confidence and self-esteem for school children. See ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*.

9 'Centrality of the artist' is one of five pillars of this policy. Australian Government (2023). *Revive: A place for every story, a story for every place.*

10 Professor Crawford has advised 'moderated a symposium on the subject at the White House and has advised the European Commission and the United Nations'. Egea, A. (2023). 'Kate Crawford: 'We need to have a much more comprehensive form of AI governance''. El Pais.

11 US Department of State (2023). Secretary Antony J. Blinken and U.S.-EU Trade and Technology Council Ministerial Co-Chairs at a Joint Press Availability.

12 In 2020 (or most recent year of available data), OECD countries on average spent 1.35% of total GDP for the purposes of recreation, culture and religion; Australia spent 0.98% of its GDP, placing us ahead of other English-speaking countries (the United States (US) and United Kingdom (UK)) yet 23rd out of 31 OECD countries. Australia has remained below the OECD average from 2017 to 2020. Data sourced from OECD (2023), General government spending (indicator), accessed 26 January 2023.

13 OECD (2022). The Culture Fix: Creative People, Places and Industries. Local Economic and Employment Development (LEED). UNCTAD (2018). Creative Economy Outlook: Trends in International Trade in Creative Industries.

14 The OECD and a UK-commissioned report cite claims that creative services employment in certain EU regions correlates with increased labour productivity. OECD (2022). The Culture Fix: Creative People, Places and Industries. Frontier Economics (2020). Productivity and the arts, heritage and museum sectors.

15 OECD (2022). The Culture Fix: Creative People, Places and Industries.

16 For example, US entities have applied to register AI-generated material for copyright purposes. US Copyright Office (2023). Works Containing Material Generated by Artificial Intelligence.

17 See Copyright Act 1968 (incorporating amendments up to Act No. 105 of 1992), section 135ZZP. The Federal Court ruled this levy was invalid on specific constitutional grounds. See Australian Tape Manufacturers Association Ltd and Others v The Commonwealth of Australia [1993] HCA 10. A future levy could be designed to respond to the Federal Court's concerns.

18 The researcher is a State Committee copyright adviser to the Dutch Minister of Justice. See Senftleben, M. (2023). Generative AI and Author Remuneration.

19 White, C. and Matulionyte, W. (2020). Artificial Intelligence: Painting the Bigger Picture for Copyright Ownership. 30 Australian Intellectual Property Journal 224.

20 USCO (2023). Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence.

21 UK Competition and Markets Authority (2023). AI Foundation Models: Initial review.

22 See ANA (2020). *A view from middle Australia: Perception of arts, culture and creativity*. Likewise, the Australian Human Rights Commission (AHRC) has highlighted the importance of freedom of speech. See AHRC (2015). Traditional Rights and Freedoms – Encroachments by Commonwealth Laws – Final Report.

23 Apart from blocking, digital platforms can also implement a range of responses, limiting access to content, demonetising content, suspending user accounts and cancelling user accounts.

24 For example, Facebook and Michigan State University researchers have developed AI-detection of deepfakes but Facebook's deepfake removal policy excludes parody and satire. See Meta (2021). Reverse engineering generative models from a single deepfake image. See also Meta (2020). Enforcing Against Manipulated Media. Likewise, a YouTube representative said YouTube's content regulation system did not 'understand' the context around content. European Commission (2019). Fourth meeting of the Stakeholder Dialogue on Article 17 of the Directive on Copyright in the Digital Single Market.

25 The European Commission emphasises regulation of online disinformation must 'strictly respect freedom of expression and include safeguards that prevent their misuse, for example, the censoring of critical, satirical, dissenting, or shocking speech.' See European Commission (2018). Communication COM/2018/236 Tackling online disinformation: a European Approach. See also Directive 2019/790 on Copyright in the Digital Single Market, article 17(7) and European Commission (2020). Impact Assessment accompanying Digital Services Act.

26 For legislation and disallowable legislative instruments, this assessment is already required. Attorney-

General's Department (AGD) (c2018). Statements of Compatibility.

27 The Australian Government's draft legislation to combat misinformation excludes professional news content, satire and parody. DITRDCA (2023). Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 - Guidance Note.

28 Australian Government (2023). Australian Centre for Evaluation to measure what works.

29 Broadcasting Services (Television Captioning) Standard 2013.

30 Further, there are an average 3 hours of weekly viewing of 'user generated content or short form online video services such as Tik Tok and Instagram Reels'. ACMA (2023). How we watch and listen to content.

31 ACMA (2023). Use and experience of consumer captioning.

32 Gernsbacher, M. (2015). 'Video Captions Benefit Everyone'. Policy Insights from the Behavioural and Brain Sciences.

33 ACMA (2023). Consultation Paper: Proposal to remake the Broadcasting Services (Television Captioning) Standard 2013.

34 For example, see Department of Communications and the Arts (DoCA) (2019). Monitoring program for the Netflix Classification Tool 2018-19.

35 Australian Classification (c2022). Classification Tool ratings.

36 The Stevens Review also explains the Netflix Classification Tool involves human review by content experts to tag content, an algorithm developed by Netflix converting tags to Australian classifications, and Department monitoring and auditing of automated classifications. Stevens, N. (2020). Report on the review of Australian classification regulation.

37 DoCA (2019). Monitoring program for the Netflix Classification Tool 2018-19.

38 Stevens, N. (2020). Report on the review of Australia classification regulation.

39 See ABS (2022). Snapshot of Australia. See also ABS (2022). Australia's Population by Country of Birth.

40 For example, see

- Department of Home Affairs (2019). Australian Government Language Services Guidelines.
- Victorian Department of Premier and Cabinet (2019). Multilingual information online.
- New South Wales Multicultural Health Communication Service (2020). Position Statement: Use of machine translation to communicate with culturally and linguistically diverse communities.
- US Department of Justice Limited English Proficiency Committee (2021). Improving Access to Public Websites and Digital Services for Limited English Proficient Persons.

41 Existing Australian regulation of use of AI in arts and culture include the approval required prior to use of automation- or AI-based systems for classification of video content and games. It also includes the standard for quality of captioning of television content (which applies to captioning generally and is not AI-specific). Examples of where there is little regulation of use of AI in arts and culture include:

- Quality of captioning of non-television video content
- Private sector use of machine translation of language
- Automated decision making by online platform to block access to content
- Machine translation of language in arts and culture (noting there is sector-wide guidance for public sector use of machine translation of language)

42 Attribution of human authorship and human performership is an established part of copyright policy in Australia and other countries, including a requirement against false attribution. Copyright Act 1968, part IX. A recent national copyright roundtable highlighted 'broad agreement' that any quotation exception protects moral rights through 'appropriate attribution'. AGD (2023). Second roundtable on copyright. An Australian qualitative study of reuse practices also found 'One of the most important norms for creators is proper attribution'. Pappalardo, K., Aufderheide, P., Stevens, J. and Suzor, Nicolas. (2017). Imagination foregone: A qualitative study of the reuse practices of Australian creators.

43 For example, regulation could potentially extend copyright policy (tied to the rights of attribution and against false attribution) or consumer law (for example, the protection against false or misleading representations regarding the supply of goods sufficient).

44 Only 4 in 10 surveyed Australians 'somewhat' or 'strongly' supported use of AI in 'culture', compared to almost 8 in 10 for 'health', 'medicine', 'environmental challenges' and 'crisis response'. Selwyn, N., Cordoba, B., Andrejevic, M. and Campbell, L. (2020). AI for social good? Australian public attitudes toward AI and society.

45 Selwyn, N., Cordoba, B., Andrejevic, M. and Campbell, L. (2020). AI for social good? Australian public attitudes toward AI and society.

46 Pew Research Center (2018). Artificial Intelligence and the Future of Humans.

47 ANA's focus group research also found arts and culture 'bring communities together, encourage unity in diversity, and increase acceptance of differences across society.' ANA (2020). A view from middle Australia: Perception of arts, culture and creativity.

48 ANA recognises government investments into AI-specific expertise, such as the CSIRO Responsible AI Network, National AI Centre, the Australian Research Council funded ADM+S Centre of Excellence and the Australian National University School of Cybernetics. ANA notes the ADM+S Centre has just joined Responsible AI UK. Dela Cruz (2023). ADM+S joins new Responsible AI UK network.

49 For a list of these institutions, see Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) (2021). Impact of our National Cultural Institutions. ANA notes the Australian Council of the Arts is becoming Creative Australia.

50 We note the proposed EU AI Act risk levels for applications of AI are draft. We note existing EU regulation

in this space includes the Digital Services Act and General Data Protection Regulation.

51 European Parliament (2023). Press release: AI Act: a step closer to the first rules on Artificial Intelligence.

52 European Commission (2021). COM/2021/206 Proposal for an AI Act.

53 The EU has already introduced a similar obligation for 'prominent markings' to provide some transparency on deepfakes and similar manipulated images, audio and videos. Regulation (EU) 2022/2065 Digital Services Act.

54 President Biden's recent speech on AI specifically highlights opportunities and risks. The White House (2023). Remarks by President Biden on Seizing the Opportunities and Managing the Risks of Artificial Intelligence. Likewise, the UK Secretary of State for Science, Innovation and Technology highlights the importance of 'getting regulation right so that innovators can thrive and the risks posed by AI can be addressed'. Department for Science, Innovation and Technology (2023). A pro-innovation approach to AI regulation.

55 Department of the Prime Minister and Cabinet (2023). Australian Government Guide to Policy Impact Analysis.

56 Bell, G., Burgess, J., Thomas, J., and Sadiq, S. (2023). Rapid Response Information Report: Generative AI - language models (LLMs) and multimodal foundation models (MFMs). Australian Council of Learned Academies.

57 Large firms were those with $US100m+ annual revenue. MITSloan Management Review and Boston Consulting Group (2023). Building Robust RAI Programs as Third-Party AI Tools Proliferate.

58 High-Level Expert Group on Artificial Intelligence (2020). Assessment List for Trustworthy Artificial Intelligence (ALTAI) for self-assessment.

59 DISR (c2022). Australia's AI Ethics Principles.

60 European Commission (c2016). Can I be subject to automated individual decision-making, including profiling?.

61 eSafety Commissioner (2023). eSafety demands answers from Twitter about how it's tackling online hate.

62 eSafety Commissioner (2023). eSafety demands answers from Twitter about how it's tackling online hate.

63 The Stable Diffusion generative AI generates images in response to word prompts, and was intended for use in art or graphic design. Crawford, A. and Smith, T. (2023). 'Illegal trade in AI child sex abuse images exposed'. BBC News.

64 European Parliament (2023). Press release: AI Act: a step closer to the first rules on Artificial Intelligence.