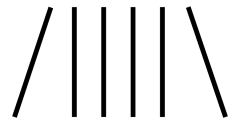# INQUIRY INTO ARTIFICIAL INTELLIGENCE (AI) IN NEW SOUTH WALES

Organisation: Australian Society of Authors

Date Received: 23 October 2023

By email: portfoliocommittee1@parliament.nsw.gov.au

23 October 2023

Inquiry into Artificial Intelligence (AI) in NSW

**Submission from the Australian Society of Authors**

About the ASA

The Australian Society of Authors (ASA) is grateful for the opportunity to make a submission to the NSW Government.

The ASA is the peak body, professional association, community, and voice of Australia's writers and illustrators. We have almost 4,000 members drawn from every sector of the writing and illustrating world, including: novelists, non-fiction writers, biographers, illustrators, academics, cartoonists, comic artists, scientists, historians, graphic novelists, educational writers, children's writers, crime writers, science-fiction writers, romance writers, editors, bloggers, journalists, poets and more.

To prepare this submission, the ASA has conducted a survey of our members, held focus group meetings with professional authors about the ways in which AI is impacting their careers, and participated in discussions with equivalent author organisations around the world.

Executive Summary

Artificial intelligence offers opportunities and efficiencies, but also poses significant threats, particularly to the creative industries. In order to minimise the risks and embrace the upsides, we believe that AI ought to be carefully regulated, and we support a risk-based approach. We also support *mandated regulation,* in addition to voluntary regulation, given the speed and far-reaching consequences of AI development.
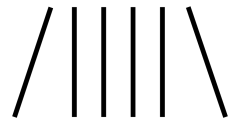
The creative industries are particularly vulnerable to disruption from AI in ways which will diminish skills, supplant talent, and have long-term consequences on quality cultural material. In a rapidly changing and complex landscape, there are so many issues to canvas including serious privacy concerns, but, due to our limited resources, we have confined our comments to issues within the ASA's core expertise. This submission will explore the risks generative AI poses to the professional lives of creators and the social, cultural, and economic value of their creative work.

Our concerns are:

- the risk of copyright infringement and degradation of author rights
- the risk to incentives to create
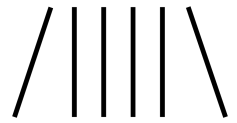- the risk to integrity in publishing.

We realise that copyright law is a matter for the Federal Government and hence encourage the NSW government to work with and encourage the Federal Government to take steps to foster and protect our creative industries.

Our recommendations are:

- *Mandate transparency around inputs*: oblige AI companies to be transparent about their training datasets
- *Mandate transparency around outputs*: AI-generated products should be labelled as such
- *Support opt-in licensing*: copyright owners should be in a position to prohibit or authorise the exploitation of their works and be compensated for such uses
- *Maintain copyright*: encourage the Federal Government to **resist** calls to introduce new exceptions into the *Copyright Act* which would permit copying or mining of copyright works for AI-training purposes
- *Protect creator income*: encourage the Federal Government to consider a new scheme for the remuneration of creators, either by way of a cultural levy on AI products and services to ensure creators are paid for their work, or a universal basic income
- *Protect consumers*: ensure AI companies are liable for inaccuracy, bias, and the harm of misinformation
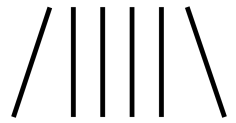
- *Mandate human oversight*: embed a requirement for human oversight in AI policy development, particularly in publishing, given our shared reliance on truth and integrity in the world's information channels
- *Establish a special expert group:* the particular vulnerability of creators across the arts requires a sector-specific response. An expert panel should consider copyright issues, appropriate regulation, and the impact of generative AI on the cultural, social and economic life of Australia, to ensure the vision of the National Cultural Policy, *Revive,* and the NSW Government's Arts and Culture Policy is supported and not thwarted by AI
- *Slow down AI development to conduct safety checks:* heed the calls of tech experts for regulatory sandboxes for AI - the training of AI systems more powerful than GPT-4 should be paused in order to put appropriate safeguards in place. Just as new drugs cannot be released to the public before their side-effects are tested, new AI tools should not be made publicly available until they are safe.

Risk Analysis

1.   Risk of copyright infringement and degradation of author rights

Generative AI Models have been built unlawfully

In the last six months, there have been rapid advancements in generative AI software, particularly Large Language Models (LLMs) and Multimodal Foundation Models (MFMs). OpenAI has developed ChatGPT and DALL-E; Google has developed Bard; Microsoft has developed its Bing AI chatbot, in addition to significantly investing in OpenAI; Midjourney, Inc. has developed AI software that creates imagery and art from word prompts; and Stability AI has developed Stable Diffusion, software capable of generating photo-realistic images given a word prompt.

These generative AI models are trained by ingesting vast amounts of text (the inputs or training dataset) to produce outputs.[1]

The quality of the outputs of generative AI is reliant on the quality of the training dataset. To date, LLMs and MFMs have acquired their training datasets by scraping the internet, including digitised books, news articles, Wikipedia, blogs, search queries, Twitter and Reddit posts, YouTube videos, Flickr images, and more. While we know that books, journals, essays and articles have been included in the training datasets, there is little to no transparency over the details.[2]

This opaqueness has made it impossible to know which – if any – Australian books have been ingested by AI developers.

However, in late September, *The Atlantic* published a search tool[3] which allowed authors to search for their books in one of the datasets that has been used to train generative AI systems: the "Books3" corpus. We understand the dataset contains 183,000 books, downloaded from pirate sources.

In the days following the publication of *The Atlantic* article, the ASA heard from over 150 dismayed authors who found their books in "Books3" having had no idea their works had been used without permission.

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[1] For example, Midjourney's founder David Holtz [has referenced his company's scraping of a hundred million images](#) from the Internet to build Midjourney.
[2] Narasimhan, K., Radford, A., Salimans, T., Sutskever, I. (2018). [Improving Language Understanding by Generative Pre-Training.](#)
[3] Reisner, A. (2023). [These 183,000 Books are Fueling the Biggest Fight in Publishing and Tech](#).
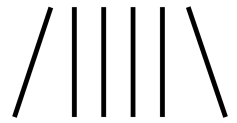
According to OpenAI, their training dataset includes "two internet-based books corpora (Books1 and Books2) and English-language Wikipedia". We do not know which books comprise "Books1" and "Books2" but suspect they have been substantially sourced from pirate sites. It is unclear whether the Books3 dataset has been used by OpenAI.

While authors are reeling from large-scale unauthorised use of their work, generative AI products have already been released onto the market and monetised. For example, subscriptions to ChatGPT-4 currently cost approximately AU$30 per month. Authors appropriately feel outraged. The fact is that generative AI technology relies upon books, journals, essays, and scripts written by authors, as well as images and artwork created by artists, yet permission was not sought nor compensation granted. It's particularly galling that this same technology will be weaponised against authors to diminish future jobs and devalue their work.

Authors' rights have been ignored

At the moment, authors and artists cannot opt out of being included in the training datasets and cannot opt out of being named in the prompts.[4]

This is particularly problematic where Indigenous Cultural and Intellectual Property (ICIP) is concerned. At a time when the National Cultural Policy has put 'First Nations first' and is working on stand-alone legislation to acknowledge and protect ICIP, generative AI tools may be used to produce and perpetuate inauthentic and fake art, and appropriate Aboriginal and Torres Strait Islanders' art, design, stories and culture without reference to Traditional cultural protocols.

If the copying of the training datasets occurred in Australia, it would be unlawful, but it is unlikely Australian law applies to the development of LLMs and MFMs due to jurisdictional issues. The reality for Australian authors is that the *Copyright Act* doesn't offer them any protection from the egregious actions of tech companies operating overseas. In the absence of legal remedies, authors are reliant on Government pressure in the form of a new Code of Conduct or similar to restrain the actions of global tech companies conducting business within Australia.

Creator objections around the world

Globally, authors and artists are objecting to this unfair appropriation of their work.

The US Authors Guild has sent an Open Letter to the CEOs of OpenAI, Alphabet, Meta, Stability AI, IBM, and Microsoft objecting to large-scale copyright infringement. More than 10,000 authors from around the world, including Australia, have signed that letter. The ASA endorses this letter.

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[4] Salkowitz, R. (2022). Midjourney Founder David Holz on the Impact of AI on Art, Imagination and the Creative Economy.
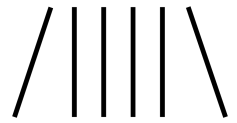
In the United States, the Writers Guild of America (**WGA**) staged the second longest strike in their history. The strike ended - after 148 days of labour stoppage - once the WGA successfully negotiated for better conditions for their members including AI protections. Studios can't use AI in place of a credited and paid Guild member; writers may use AI in their workflow when a studio allows it but cannot be compelled to use AI; and writers' scripts can't be used to train AI without permission. The Screen Actors Guild – American Federation of Television and Radio Artists (**SAG-AFTRA**) remains on strike, concerned about, among other things, film studios using actors' likeness without consent or payment, supplanting actors with AI-derived content.

CISAC – the International Confederation of Societies of Authors and Composers – is the world's leading network of authors' societies, with 225 member societies in 116 countries, representing more than 6 million creators across music, audiovisual, drama, literature and visual arts. CISAC has penned an open letter calling upon governments to commit to developing and adopting policies and legislation that are consistent with upholding creator rights, licensing, transparency, credit, and legal responsibility for AI operators. The ASA endorses this letter.

Litigation has commenced in the UK and US, with class-action lawsuits launched against Stability AI, DeviantArt and Midjourney,[5] and Google,[6] Getty Images commencing legal proceedings against Stability AI for using its images without payment,[7] bestselling authors filing a class action lawsuit against OpenAI,[8] and comedian and writer Sarah Silverman and others commencing action against OpenAI and Meta alleging that their copyright has been infringed in the training of the companies' AI systems.[9]

This is a threshold issue. If the Australian public and private sectors proceed to adopt generative AI, without first tackling the copyright infringement issue explained above and demanding appropriate licensing solutions, we will have tacitly approved the unremunerated appropriation of decades of authors and artists' work, disregarded the premise of copyright law, and decentivised future creative and intellectual labour.

## Recommendations

Mandate transparency on inputs:

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[5] United States District Court Northern District of California San Francisco Division (2023). [Class Action Complaint against Stability AI, Midjourney and DeviantArt](#).
[6] United States District Court Northern District of California (2023). [Class Action Complaint Against Alphabet Inc., Google Deepmind, and Google LLC](#).
[7] United States District Court for the District of Delaware (2023). [Getty Images Complaint against Stability AI.](#)
[8] United States District Court Northern District of California San Francisco Division (2023). [Class Action Complaint Against Open AI.](#)
[9] Milmo, D. (2023). [Sarah Silverman sues OpenAI and Meta Claiming AI Training Infringed Copyright.](#)
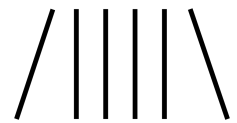
- Oblige all companies which offer generative AI to be transparent about their training datasets. The copyright works they have "ingested" must be disclosed. Creators are entitled to understand how and to what extent their works have been, and will be, used, and for what purpose.

  For example, in Europe, the proposed **Artificial Intelligence Act** (AI Act) classifies the level of risk an AI technology poses to the health and safety or rights of a person. Some practices are so high risk they are banned outright, whereas other practices are regulated. Relevant to this submission, the AI Act requires creators of LLMs and MFMs to:

  - be transparent to end users about AI-generated content,
  - help identify deep fake images and
  - ensure that details of copyrighted data used to train their AI systems are publicly available.[10]

  In our view, these same requirements should be legislated in Australia.

Uphold moral rights under the Copyright Act

- Authors and illustrators are entitled to recognition and credit when their works have been exploited by AI systems. The obligation to be transparent about training datasets and the right to prevent their works from being treated in a way that would harm their honour or reputation is consistent with the moral rights of authors under the Copyright Act.

Opt-in licensing:

- To support licensing solutions, the NSW Government could play an educative role and help inform users of the underlying copyright issues in order to increase pressure on Meta, Alphabet, Microsoft, OpenAI, Midjourney, Stability AI and others to negotiate fair licences with creators.

- Following the precedent set by the *News Media and Digital Platforms Mandatory Bargaining Code*,[11] the Federal Government could legislate a code to incentivise commercial arrangements. In the same way that Google and Facebook would not have licensed news content from proprietors without the threat of designation under the code, similarly AI companies could be pressured to negotiate with writers and illustrators to enter into fair collective licensing.

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[10] Greene, L., Timon, V. (2023). Artificial Intelligence Act Passed by the European Parliament.
[11] Australian Competition and Consumer Commission (2022). News Media Bargaining Code.
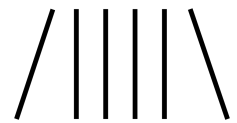
- Licensing requires traceability and record keeping. To the extent that ISPs/OSPs are not already required to preserve metadata, new obligations could be introduced to maintain providence and authorship records of copyright works.

Maintain copyright protection for creators

- Do not allow for the amendment of the *Copyright Act* to introduce new exceptions that would permit copying for AI training purposes (such as a new text and data mining exception). Resist such calls from the tech sector.

2.   Risks to incentives to create

We are deeply concerned about the impact of generative AI on the viability of author and illustrator careers in Australia. Margins in the book industry are thin and author earnings are, in the main, precariously low.[12] Many writers and illustrators rely on supplementary sources of income to afford to write books and make complex art, including copywriting, freelance writing, and concepting art jobs. It's likely that these jobs - jobs which help writers and illustrators pay the bills, but also teach them the necessary skills to become professional authors - will be taken over by generative AI.

Within the publishing industry, it's likely that publishers will seek cost savings by reducing employment of editors, illustrators, graphic designers, marketers, and literary translators as machine learning tools are increasingly embraced. This risk is not very different to the risk faced in virtually every industry; that AI will replace human labour. Such losses must be balanced against the opportunities and efficiencies that AI will bring. While job losses are an economy-wide issue, we make two observations particular to authors:

(a) earnings are already so low that even a small disruption may mean the permanent loss of many professional writers, resulting in a contraction of insights, of voices, of unique Australian perspectives;

(b) humans actively want to make art; unlike the outsourcing of menial, dangerous jobs, the arts derive meaning from the very fact that humans create it. All art is ultimately about the shared human experience, which is antithetical to AI-generated content.

It's entirely possible to prompt generative AI tools to write in the style of Helen Garner or Michael Robotham or Kylie Scott - any well known author - and generate knock-offs. What will stop anyone from generating entire books or artworks in the style of popular authors and illustrators and making that work available to buy online? Not only will this diminish the value of their creative work, established and prolific authors will be damaged by impersonations and

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[12] The latest Macquarie University research into author income confirms that the average earnings from writers' creative practice is $18,200 per annum.
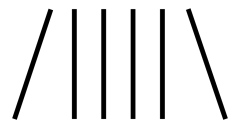
mimicry. Like all public figures, authors are at risk of deep fakes, but also plagiarism which will be difficult to police in what is already a very crowded, noisy market.

A consequence of the ease of AI-generated books and art will be a corresponding "junkification"[13] and flooding of the market.[14] Several authors have created "a book in a day" with the help of AI tools and managed to upload and sell these books on Amazon.[15] An increase in AI-generated books will make the challenges of discoverability and dilution of audiences even tougher for professional writers. Amazon has introduced a policy limiting the number of books that authors can self-publish on its site to three a day, in a bid to control the influx of AI-generated material being sold.[16] This policy is woefully inadequate to address the broader issues raised by AI-generated books but shows the scale of AI-generated material being submitted to Amazon's marketplace.

The longer term risks, therefore, are:

- a future skills gap in professional writing, editing, design and artwork;
- a future where it is even harder to earn a living as a writer or artist. The reality in Australia is it is *already* impossible to earn a living wage from writing, other than for a few outliers. Even if artisanal pockets of creativity spring up, we may be left with hollowed out and diminished creative industries where only the privileged few make art.

It is beyond the ASA's submission to explore the impact of AI on literacy and education, however we note that a loss of writing skills means a loss of thinking skills as, from an early age, writing is how we interrogate problems, learn critical analysis, express ourselves and share thoughts.

As author, Ted Chiang, writes in *The New Yorker*, "The hours spent choosing the right word and rearranging sentences to better follow one another are what teach you how meaning is conveyed by prose. Having students write essays isn't merely a way to test their grasp of the material; it gives them experience in articulating their thoughts. If students never have to write essays that we have all read before, they will never gain the skills needed to write something that we have never read."[17]

Recommendations:

Protect creator income:

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[13] Herrman, J. (2023). The Junkification of Amazon: Why Does it Feel Like the Company is Making Itself Worse?

[14] Baker-Whitelaw, G. (2023). Amazon's Ebook Charts are Full of AI-Generated Spam.

[15] Bensinger, G. (2023). Focus: ChatGPT Launches Boom in AI-Written E-Books on Amazon.

[16] Creamer, E. (2023). Amazon Restricts Authors from Self-Publishing More Than Three Books a Day After AI Concerns.

[17] Chiang, T. (2023). ChatGPT is a Blurry Jpeg of the Web.

- The Federal Government must not amend the *Copyright Act* to allow for copyright protection to be given to works solely or substantially created by AI, which would further decentivise human creativity.

- Support the introduction of a cultural levy on AI products and services in Australia and use that levy to properly pay creators. There are precedents around the world for a levy on disruptive technology, such as the levy on the purchase of blank tapes and other recording media in recognition of the losses to creators. Calls for a universal basic income for creators have been strengthening as incomes from creators have diminished around the world over the last two decades. If drastic change is coming and we wish to embrace AI's upsides, we must think equally radically about new forms of remuneration so that the rise of digital platforms doesn't mean the decimation of creative careers.

3.　　Risk to integrity in publishing

Outputs of Generative AI are biased and inaccurate

LLM software is a step-change in technology; it can both parse and produce convincing, coherent, human-like language. The significance of this is far reaching. As historian, philosopher and author Yuval Noah Harari has said, "AI has gained some remarkable abilities to manipulate and generate language, whether with words, sounds or images. AI has thereby hacked the operating system of our civilisation."[18]

The superficial plausibility of LLMs obscures inherent biases and inaccuracies. OpenAI has admitted to bias on the grounds of race, gender and religion: "Broadly, our analysis indicates that internet-trained models have internet-scale biases; models tend to reflect stereotypes present in their training data."[19]

It's relevant to note that AI researchers are overwhelmingly white, male and American. Australian Professor Toby Walsh observes: "Not only are four-fifths of AI researchers male, they are also mostly white males. Black, Hispanic and other groups are poorly represented within AI, both in academia and in industry."[20] Researcher, computer scientist, and author Dr Joy Buolamwini[21] has written extensively about the profound social implications of AI and the ways in which its inherent bias may wind back the advancements of the civil rights movement and has founded the Algorithmic Justice League.[22]
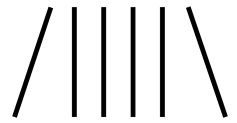
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[18] Harari, Y. (2023). Yuval Noah Harari Argues that AI Has Hacked the Operating System of Human Civilisation.
[19] Brown, T. et al. (2020). Language Models are Few-Shot Learners
[20] Walsh, T. (2022). *Machines Behaving Badly.*
[21] Buolamwini, J. Poet of Code.
[22] Algorithmic Justice League.

Microsoft, Google and OpenAI have also acknowledged that generative AI Models "hallucinate" or make things up. "Facts" may be baldly stated, including with supporting citations which have been entirely fabricated.

No matter how coherent or plausible the outputs of LLMs seem, LLMs are not actually "thinking". As Noam Chomsky says, "Whereas humans are limited in the kinds of explanations we can rationally conjecture, machine learning systems can learn both that the earth is flat and that the earth is round. They trade merely in probabilities that change over time."[23]

Generative AI can be harnessed for propaganda and harm

ChatGPT can be used to answer general knowledge questions, perform search functions, complete sentences or paragraphs, and translate between languages. One of OpenAI's claims is that: "... for news articles that are around 500 words long, GPT-3 continues to produce articles that **humans find difficult to distinguish from human written news articles**."[24] [emphasis added] This should alarm governments everywhere; news is the fourth estate, a critical check on power, and AI-generated content lacks journalistic independence, fact-checking, and ethical decision-making.

According to OpenAI: "Any socially harmful activity that relies on generating text could be augmented by powerful language models. Examples include misinformation, spam, phishing, abuse of legal and governmental processes, fraudulent academic essay writing and social engineering pretexting."[25]

Generative AI currently has no mechanism for filtering bias and preventing misinformation.

Recommendations
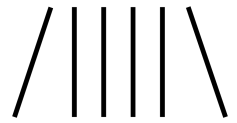
Transparency around outputs:

- AI-generated products should be labelled as such to give consumers transparency and choice. A classification system could be introduced which makes clear which goods or services are:

  - AI-free
  - AI-augmented or assisted
  - AI-generated.

[23] Chomsky, N. (2023). Noam Chomsky: The False Promise of ChatGPT.
[24] Brown, T. et al. (2020). Language Models are Few-Shot Learners
[25] Brown, T. et al. (2020). Language Models are Few-Shot Learners

Transparency requirements are likely to be sector specific so mandatory industry codes could be developed with industry input, with penalties for non-compliance.

Leverage existing consumer protection laws:

- Do not allow AI companies to use their Terms of Services to disclaim responsibility for inaccuracy, or bias, or harm caused by their products.

Human oversight:

- Given our shared reliance on truth and integrity in the world's information channels, embed into AI policies a requirement for human oversight in publishing.

We would be pleased to meet to answer queries or provide further information. Thank you for the opportunity to make this submission.

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