

screenrights

Towards a new National Cultural Policy

Screenrights submission

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About Screenrights

1. Screenrights is a non-profit copyright management organisation representing the screen production sector. Screenrights has more than 5,200 members in 73 countries worldwide. Our members are producers, writers, visual artists, directors, sales agents, broadcasters and distributors.
2. Screenrights is appointed by the Commonwealth and the Copyright Tribunal to administer several statutory licensing schemes on behalf of filmmakers and other rightsholders. The licences include educational use of broadcasts, retransmission of free-to-air broadcasts and government use of broadcasts. Screenrights collects the fees for the use and distributes them to the copyright owners of the programs used.
3. In the 2024/25 financial year, Screenrights made available \$43.5 million for distribution to Screenrights members, payable to our members under our statutory licences and other services.
4. Screenrights also administers a licensing scheme in New Zealand, which includes educational licences.
5. Supporting the integrity of copyright in a fast-changing digital environment and supporting our members' right to fair compensation for the usage of their creative material is fundamental to Screenrights' role.

Background

6. Screenrights welcomes the opportunity to participate in the public consultation on the National Cultural Policy. This is an important policy which establishes the principles that underpin Australia's support for a vibrant cultural sector.
7. Since its launch in January 2023, there has been a seismic shift in the creative sectors globally. The introduction of generative Artificial Intelligence models (**GenAI**) such as Chat GPT, Gemini and Claude has fundamentally changed the environment in which the cultural sector and the creative industries operate.
8. GenAI has upended the sector in multiple ways:
 - (a) Its creation involves the copying of the entire corpus of creative works including audiovisual works for the purpose of training the foundation models without any regard for copyright, consent or control.
 - (b) Its application makes a substitute for the copied works displacing existing markets and revenue streams and with disregard to Australian cultural norms.
 - (c) Its use undermines existing business models that support the Australian cultural sector such as by redirecting web search to GenAI products.
9. The screen sector and Screenrights itself are by no means opposed to technological changes. Audiovisual content is a product of technology and embraces new technology constantly. Screenrights uses machine learning tools for data matching.
10. However, absent proper controls and regulation, GenAI represents a fundamental threat to the core principles of the Cultural Policy.

Impact on the pillars of the policy

11. In particular, GenAI negatively impacts three of the five pillars.

Pillar 1: First Nations First

12. Screenrights strongly endorses the support for recognising and respecting Australia's unique cultural heritage from our First Nations peoples.
13. GenAI has copied works created by First Nations peoples indiscriminately without any consideration of consent, control or compensation. It has the capacity to make fake content at unprecedented scales completely defeating the pre-eminence of First Nations stories in Pillar 1.

Pillar 3: Centrality of the Artist

14. GenAI undermines the centrality of the artist and potentially displaces creative workers indiscriminately.
15. In its substitute works, GenAI eliminates the concept of authorship and creativity entirely, replacing a vibrant and sustainable cultural workforce with mechanical prompting indifferent to the artist.

Pillar 4: Strong Cultural Infrastructure

16. The protection of copyright is a key component of Australia's cultural infrastructure. This is recognised in *Revive* which states:

Australia's copyright laws incentivise the creation of new cultural material while also allowing reasonable and equitable use of copyright material in the public interest. Intellectual property is the return on investment for Australia's extraordinary capacity to create some of the best plays, books, films, songs, art and design loved by people at home and around the world.¹

17. Copyright is under constant threat by GenAI technology and the vast multinational corporations that own it.
18. *Revive* committed the Government to "maintaining a strong copyright framework... to support the success and vibrancy of Australia's cultural and creative sector."²
19. The Government demonstrated that commitment through the Attorney-General's categorical rejection of the introduction of a so-called Text and Data Mining exception which is being pushed by the tech sector in jurisdictions throughout the world. Screenrights welcomes this position and notes its bipartisan support from the Opposition and the Greens.
20. Rejecting a Text and Data Mining exception is a critical first step to bringing back some control for the creative sector over the use of their copyright. It allows the possibility for Australian producers of cultural works to manage how, where, for what purpose and under what conditions GenAI may use their content.
21. But the tech sector has shown blithe indifference to copyright to date and even with this strong position of support by the Government and Parliament generally, there is no

¹ "Revive: Australia's Cultural Policy", January 2023, p57.

² Ibid.

guarantee that Australian copyright owners will be able to enforce their rights in the face of that indifference and the vast disparity in resources and power that favour the tech giants.

22. This is particularly true of smaller copyright holders who make up the majority of Screenrights members.

Policy response to the threat of Artificial Intelligence

23. GenAI has changed the rules for the creative sector and threatens the fundamental intellectual property rights of our cultural industries embodied in our copyright laws.
24. To meet the goals of the Cultural Policy, the rules that govern the use of content by GenAI services must change too with a view to ensuring that the Australian creative sector maintains real control over the use of its content in practical terms.
25. This means going beyond Australia's position of rejecting a free exception for GenAI, to considering what policy changes are required to support the creative sector in the face of the power imbalance that the tech sector represents. As stated earlier, the screen sector is by no means opposed to technological change. Screen practitioners embrace that change and the owners of copyright wish to be part of the change (rather than a victim of it). This requires a consideration of policy measures to support licensing of copyright by Australian copyright owners.
26. The Attorney-General has commissioned a consultation by the Copyright AI Reference Group on policy changes to support licensing for GenAI. Screenrights participated in the review which in its consultation paper proposes three options:
 - (a) Status quo: do nothing and allow licensing markets to develop naturally;
 - (b) Statutory licence: an exception to copyright in return for fair compensation; or
 - (c) Extended Collective Licensing: a means to support voluntary collective licensing.
27. Screenrights supports option C: the introduction of an Extended Collective Licensing (**ECL**) framework into Australian copyright law to facilitate the licensing of content for AI and other purposes. ECL is a novel concept in Australian law, but well understood in Europe where it has existed for 60 years. It helps copyright holders band together to offer collective licences (where there is sufficient support) while preserving the right of those that do not wish to participate in the collective licence to stay out of the licensing process.
28. It is particularly of value to smaller copyright holders who are in the worst position of market power imbalance when it comes to dealing with the giant tech companies.
29. Screenrights recognises that larger copyright owners, such as commercial broadcasters, film studios and global record companies are able to manage their rights directly and do not benefit from a collective licence.
30. Copied below is a summary of Screenrights' position on the three options, and why we submit that ECL is necessary to support Australia's Cultural Policy in the face of the new existential threat of GenAI.

Extended Collective Licensing

31. Screenrights' informed view is that regulatory reform is needed to strengthen copyright licensing for AI development in Australia, in order to level up access to licensing, particularly for smaller copyright holders.
32. Screenrights' support for regulatory reform to introduce an ECL framework is based on:
 - (a) a survey of our members into their licensing needs in relation to AI, the results of which demonstrate a clear gap between willingness on the one hand and perceived resources and/or ability on the other hand among our members who are open to licensing to AI developers; and
 - (b) extensive research on the operation of ECL in other jurisdictions and its suitability for introduction into Australia, particularly taking into account the flexibility offered by the model and the way it operates alongside voluntary licensing, aspects that are especially relevant for licensing of AI.
33. Screenrights supports ECL as an effective compromise position that strikes the right balance between efficient access to works and authorised indemnity from infringement for the tech sector; and autonomy, protection and fair remuneration for copyright holders.
34. Screenrights does not support Option A, retaining the status quo of only voluntary licensing, for three reasons:
 - (a) voluntary licensing is not effective or fair for copyright owners when there is an extreme disparity of market power, as there would be between large AI developers and smaller copyright holders;
 - (b) voluntary licensing is impractical for smaller copyright holders as, in the absence of some regulatory support, the transaction cost of achieving a licence agreement with AI developers, whether directly or collectively, will often be higher than the licence fee obtained; and
 - (c) where it is too onerous for AI developers to obtain licences from numerous smaller copyright holders for high-volume uses, there are two possible outcomes, both negative:
 - (i) conscientious AI developers may be left without access to the materials they require for development, despite those copyright holders being willing to license; and/or
 - (ii) unscrupulous AI developers may continue to infringe copyright in the materials of smaller copyright holders, relying on those smaller copyright holders having insufficient resources to pursue enforcement action against them. This has the added disadvantage of potentially reducing market licence fees for larger copyright holders because a "free" substitute good exists.

35. Screenrights administers several statutory licences in Australia and New Zealand and is a strong supporter of that system of licensing as it has met the social policy needs in each case. However, Screenrights does not support Option B, the introduction of a statutory licence for GenAI, for three reasons:
- (a) there is no demonstrated widespread market failure for copyright licensing to AI developers; AI developers are securing some licences for copyrighted inputs; difficulties in licensing are not universal;
 - (b) statutory or compulsory licensing removes many rights from copyright holders and should only be implemented where the unequivocal public interest in the use outweighs those rights – we do not agree that AI development for commercial purposes meets this criterion; and
 - (c) a statutory licence for AI development would be totally unacceptable to many of our members, some of whom have strong moral objections to working with AI developers in light of previous infringements; some of whom prioritise autonomy and direct licensing very highly; and some of whom have substantiated concerns about a lack of appropriate respect and protection for tradition and culture in relation to Indigenous Cultural Intellectual Property (**ICIP**).
36. A full copy of Screenrights' submission with detailed explanations of the case for ECL is available on our website:
[Submission responding to the Copyright and AI Consultation Paper – Submission by Screenrights](#)

Recommendations

37. That the Cultural Policy should endorse the work across government to support copyright holders in protecting their copyright in the face of GenAI.
38. That the Cultural Policy should endorse Extended Collective Licensing to assist smaller copyright holders in acting collectively to protect their copyright.
39. That the recommendation from the 2023 policy to introduce stand-alone legislation to protect First Nations knowledge and cultural protection be accelerated.³

For further information:

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³ Ibid p. 32