

**Safe and Responsible AI in Australia**



**Submission of the Media Entertainment and Arts Alliance (MEAA)**

**July 2023**

MEAA makes this submission in response to the Australian Government's discussion paper on Safe & Responsible Artificial Intelligence (AI) to provide some insight into potential regulation of AI within the creative industries and throughout the broader community.

We welcome the opportunity to provide a contribution to the discussion on steps Australia can take to mitigate the potential risks of Artificial Intelligence (AI), and trust this feedback will help inform the Australian Government's further governance and regulatory responses.

As the union representing workers in media and entertainment, including journalists, photographers, musicians, performers, stage and film crew, we are particularly conscious of the potential impacts of this technology – both for workers and for audiences.

The rapid advancement and distribution of AI – in particular, generative AI – holds remarkable promise for societies, businesses and individuals, but also poses unique threats to our members' work, income, rights and creative agency, and to the continuation of Australian voices in a sustainable media and entertainment industry. The development of next generation AI, giving machines the ability to create novel content, has only heightened this risk.

The speed at which these technologies are evolving means that any necessary framework or regulation ought to be developed as a matter of urgency. It is also imperative that governments and agencies be able to respond rapidly in the future. We cannot have a "set and forget" approach to regulation and monitoring of this. A flexible, responsive, evolving approach is needed to minimise harm.

### **Regulation Framework**

MEAA notes the Australian Government's commitment to regulating AI and the requirement that this would likely involve both enforceable regulation by laws and statutes, and voluntary codes of conduct and ethical frameworks around AI use in order to minimise risk and promote beneficial human-centric use.

We currently work in a similar framework in our industries – through enforceable statutory and contract rights (such as enterprise agreements, awards, and statutes including the Fair Work Act) and also through the development of voluntary codes of conduct (e.g. Journalist Code of Ethics, Equity Intimacy Guidelines) to promote best practice in our industries.

However, enforcement is best achieved through legally binding mechanisms, and the Australian Government should be mindful of its role in establishing compulsory minimum standards to supplement and support any voluntary codes.

### **Job Losses**

We note this submission does not require commentary on potential job losses in specific industries, but MEAA has particular concern for our members working in journalism, content creation, design, screen performance, as voice-over artists and as musicians. These industries are all highly vulnerable to AI risks. It is conceivable that many of our members

could be replaced by various versions of generative AI – and thus it is important that consent, copyright and the creativity of the individual are protected, and placed at the heart of any regulation.

### **MEAA Position**

MEAA believes that responsibly designed AI has the potential to usefully supplement, extend and enhance the work of our members, and benefit audiences. For example, efficiencies introduced by AI could, if broadcasters and publishers choose, be directed to journalists to expand coverage and address poorly served sectors and communities.

But this technology also has far-reaching consequences, which need careful consideration, consultation, and regulation.

Any regulation and ethical framework should consider and guide the introduction of appropriately regulated AI tools in the media, creative, performance and content industries and contain mechanisms for regular review to keep pace with this fast-changing technology.

AI will be used across our industries in many ways including through personalised recommendations, content creation, content moderation, and artistic performance and creation, and through all aspects of audio-visual production.

There are significant risks associated with this – including in the areas of copyright, privacy, truth, ownership and attributable content.

### **Moral Rights / Copyright**

Moral rights and copyright must be considered in the development of publicly available AI tools including where these rights may be diminished by AI.

Moral right protection should be enhanced to prevent unreasonable waivers of such rights and to allow their assertion against any derogatory treatment that may be prejudicial to their reputation and / or any false attribution.

The *Beijing Treaty* (which deals with the intellectual property [IP] of performers in audiovisual performance) should be enacted within Australia so as to protect the moral rights of an individual for work created, and to help protect a person's image from harm or distortion. This would build on work done by the E-Safety Commissioner and is most relevant to work in the creative fields where a person's image or work has been used or their voice has been recorded.

Copyright protection should not be extended to works predominantly or exclusively made by AI – it should only protect any human based creation, voice or work. This ought to include creations that AI created but that clearly connect to a discernible artist, writer or musical style. As an example, AI making music that is mimicking an existing creator, should be in breach of that copyright (unless an agreement has been made with that musician).

Scraping content protected by copyright for purposes of training generative AI should be subject to prior licensing or consent. Text and Data Mining (TDM) exceptions should be strictly limited, and any existing exemptions should be revised (around this new technology) and require informed consent by owners of IP rights, particularly with any content being used for self-training purposes. Again, this should include voice and sound data including music and visual art. It is imperative that there are protections for any artists (audio or visual) from their style being copied or 'passed off' without authorisation or payment.

National legal frameworks protecting personal biometric data, including the voice and likeness of creators, should be put in place, with the exploitation of such content requiring informed consent. There should be fast and accessible (non-costly) avenues for redress, including financial compensation, where these rights are violated. A register should be set up listing all authorisations expressly granted by performers and other right holders for AI usage and training.

AI tools which profit from the work of media or creative professionals must introduce methods to compensate the creators whose work is used to train these tools. Informed consent needs to be embedded into the process.

### **Informed Consent**

Informed consent should be at the centre of any AI creative, content or performance work – with established rates of pay set out in an appropriate Awards and/or Agreements, and the need to pay for usage and create licence periods around such use. Performers and other creatives should be fully informed about any exploitation, and not limited by contracts. This means personal information or data should be safely stored and protected from theft and misuse and free from third party licensing without consent.

Ethical safeguards should be put in place based on the principle of informed consent and remuneration for content or image use – protecting the creator's copyright and moral rights in the process. Registers should also be set up listing any authorisations granted by performers, musicians and other rights holders.

### **Content Creation**

AI is increasingly being used in content creation, such as generating scripts, creating music compositions, voice-synthesisation, developing visual effects, and drafting media articles – with potential job displacement.

There will of course be benefits to the use of AI in the industry in enhancing tools for visual editing, animation and other post-production, and developing better and more enjoyable audio-visual technology – such as VR and AR. Finding and removing breaches of copyright and other content moderation may be easier and provide some protection against these unwanted abuses.

Media professionals, content producers and creatives need to be consulted and to have mechanisms and opportunity to opt in or opt out where their work is used as training data for AI. This has been set out more fully above.

There is a need for ethical frameworks around AI content in the media and entertainment industries and acceptance of the use of pre-existing content based on permission and payment. Workers in the media and entertainment industries ought to be consulted and involved in the development of industry and ethical frameworks around AI content use. This may include training and development for employees within these industries.

## **Truth**

A major concern relevant to our industries is around truth in content – be it the creation of content outside human control, or the regulation of errors or fake news. There will be increased difficulty for consumers verifying the authenticity of AI generated content. This can then add to concerns around trust in the media and journalism and has the potential to undermine social cohesion and co-operation.

It is imperative that any legal regulations deal with this issue and promote truth in content, the verification of AI-generated content and the appropriate disclosure of AI in the generating of such content.

Deepfakes can be used by AI to manipulate or replace faces in videos. In the entertainment industry, deepfake technology has been used to digitally insert the likeness of actors into scenes, such as bringing deceased actors back to the screen or recreating younger versions of performers. Unfortunately, this technology is mostly used to create pornographic material without the performer's consent, by superimposing their likeness onto sexual material. The unauthorised use of their voice and likeness in a sexualized or politically sensitive context has a devastating impact on their careers and reputation. In addition, this technology has already demonstrated the potential to undermine democracy and further erode trust in governments and the media through its use in attacking political opponents.

Synthetic voices are also being used in a variety of applications, from customer service systems or e-learning to voice assistants in vehicles and GPS – and are generated by sampling a performer's voice, often without consent and remuneration, or by scraping trillions of voice data available on social media and on publicly accessible material on the internet and even copyrighted works – where there is a TDM exemption – to produce a “new” voice, not based on any one identifiable individual performer and reusable at will. If not regulated, this raises important concerns about a possible future where performers, or at least some of them, may be gradually replaced by their digital self.

We believe that users of AI generating or manipulating text, audio or visual content that would falsely appear to be authentic or truthful and featuring depictions of people appearing to say or do things they did not say or do – whether with or without their consent – should be subject to mandatory timely, clear and visible labeling obligation. Use of such content in the context of creative, artistic or in fictional audio-visual production should always be based on informed consent with affective means of redress available to sanction

or remove any non-consensual use. This would need to be regulated through legal statute or developed by copyright or common law and moral rights.

## **Bias**

Bias in the decision-making algorithms may be exacerbated and reinforced with reuse – such as social media assuming and entrenching audience preferences and values, or content bubbles to the detriment of social harmony.

Content produced for public consumption by AI tools must demonstrate that it does not entrench bias (such as racial and gender bias) and must be labelled and fact-checked by human editors. This is important to protecting truth within the media as well as any online content.

Biases in training data may end up having a huge impact on the employability of certain people by reinforcing stereotypes and may have a discriminatory impact on special underrepresented or marginalised groups in the community.

There are many ethical concerns around privacy, free speech and defamation that need to be considered in any regulatory framework. This includes around who takes responsibility for any content that falls outside of accepted legal or ethical norms – such as liability for defamatory content created by AI.

Issues of truth and bias should be addressed in any legal framework adopted by the Government to deal with AI – this will ensure a safer uptake and understanding of AI within organisations and the community.

## **Conclusion**

Workers throughout the creative industries - and audiences - have a right to certainty and protection that ensures the ongoing delivery and enjoyment of factual news and information and creative performances and productions made by humans.

AI, as a new technology that holds much promise, but also brings significant risks, requires regulation so that its risks to workers and communities is mitigated.

Such regulation should include legally binding minimums and protections, and workers in the creative industries must be involved in the development of these laws, as well as in the negotiation of any industry codes of practice.