

SUBMISSION TO THE NATIONAL CULTURAL POLICY CONSULTATION

Submitted by: ARTIS CAUSA Pty Ltd

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Executive Summary

This submission responds to the National Cultural Policy consultation, addressing Pillar 1 (First Nations First) and the urgent need to protect First Nations cultural expressions from AI-generated appropriation; Pillar 3 (Centrality of the Artist) and the intersection of generative AI with creative practice; Pillar 4 (Strong Cultural Infrastructure) and the need for stronger commercial frameworks to support Australian content; and Pillar 5 (Engaging the Audience) and the challenge of ensuring Australian content remains discoverable in algorithmically-driven platforms.

Our submission advances five key principles under Pillar 3 that we believe should be reflected in the next National Cultural Policy to guide Australia's approach to AI and creativity: (1) transparency around AI use; (2) workable licensing and compensation frameworks; (3) meaningful consent mechanisms; (4) preservation of human creative oversight; and (5) cross-industry education and collaboration. We also advocate for enhanced incentives for businesses to invest in, promote and protect Australian content, to ensure Australian creators can compete sustainably in a global market.

About ARTIS CAUSA

ARTIS CAUSA is a specialist legal practice advising clients across the creative industries. We represent artists, content creators for film and screen, game developers, influencers, graphic and motion designers, producers, fashion houses, publishers, authors, podcasters, brands, and technology companies on matters spanning intellectual property, commercial agreements, content licensing, talent representation, employment, reputation, and the legal dimensions of emerging technologies.

Our practice is grounded in a deep commitment to support creators, makers, producers, rightsholders and creative businesses to navigate the challenges and opportunities where creativity, law, and technology intersect. We regularly advise and guide clients on the legal and commercial implications of the use of generative AI within creative practice.

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Submission Response

The consultation paper correctly identifies that digital tools and platforms are changing how creative work is produced, distributed and discovered, while also raising questions about authenticity, creative rights and fair remuneration. These issues are no longer theoretical, they are already reshaping the Australian creative landscape in real time, with implications for the 591,000 Australians employed in cultural and creative activity. Australia's creative and cultural industries contribute over \$68 billion to Australia's economy. The economic stakes of getting this policy framework right are significant.

Australia's copyright framework, as established under the *Copyright Act 1968* (Cth), fundamentally centres around human authorship. This creates increasing legal and practical tension when generative AI tools are incorporated into the creative process. Some AI-assisted works may attract copyright protection where there is sufficient human creative input, control, and originality. Others may not; particularly where the AI's contribution is substantial and the human role is limited to prompting or basic curation. In the absence of legislative guidance or judicial determination on AI-generated works, significant uncertainty remains.

At the same time, the legal frameworks that have historically protected creators are being tested by the way AI systems are developed, trained, and commercialised globally. Key questions of law being tested include: whether training AI systems on copyrighted works should constitute infringement, whether the scope of fair dealing exceptions are too restrictive, and should there be transparency regarding training datasets. Whilst these questions remain unanswered (or to the extent that they are clear, are left untested by way of judicial determination), we are seeing the real world consequences of AI systems and companies extracting data training sets (and for the purpose of this submission, protected creative works) without sufficient transparency, consent, or compensation mechanisms; which ultimately diminishes the public perception about the value of creative works and disincentivises creators from producing cultural products. Without adequate safeguards, the economic value generated from creative works will increasingly be captured and retained by big tech—which is predominantly headquartered offshore—rather than the human creators who produce them. Much like biosecurity measures that protect against both the extraction of valuable biological resources and the introduction of external threats to fragile ecosystems, so too must our legal frameworks protect against (a) the extraction of Australian creative and cultural capital into foreign-owned platforms and (b) the depletion of local narratives and voices through the inundation of imported content into the national attention economy at a scale that overwhelms natural cultural exchange.

The Australian Government's decision to reject a text and data mining exception to copyright law was a significant step in protecting creative rights. This position has set a global precedent and should not be diluted.

Transparency regarding training datasets is a precondition for a functioning licensing market: creators cannot meaningfully license their work to AI developers if platforms refuse to disclose what they are using. This submission strongly supports maintaining Australia's leadership in this space.

These issues cannot be resolved by copyright law alone. A broader cultural and policy response is required. One that addresses the conditions for creative work, supports fair and safe workplaces, and ensures that Australian creators are appropriately recognised across the broader economy for their intellectual and creative output.

Pillar 1: First Nations First

AI systems are already capable of generating content that mimics Aboriginal and Torres Strait Islander artistic styles, language patterns, and cultural expressions, without consent, compensation, or cultural authority. The current legal framework provides insufficient protection against this form of digital cultural extraction. Stand-alone legislation to protect First Nations traditional knowledge and cultural expressions on digital platforms, as committed under Revive but not yet delivered, must be treated as urgent. First Nations communities must have autonomy and authority over how their cultural expressions are used, including the right to exclude their use entirely from AI training and generation.

Pillar 3: Centrality of the Artist

Pillar 3 of the National Cultural Policy is about supporting the artist as worker and celebrating artists as creators. As creative practice, technology, and work patterns continue to evolve, particularly with the rapid integration of generative AI into creative workflows, cultural policy must respond to changing conditions for creative work. This includes providing safer and fairer workplaces, protecting creative rights in the digital environment, supporting arts education and lifelong learning, and ensuring creators are appropriately recognised across the broader economy.

In developing the next National Cultural Policy, we submit that the following five principles should guide Australia's long-term approach to AI and creativity:

1. Transparency Around AI Use

Audiences, collaborators and creators should have greater transparency regarding when and how generative AI tools are being used within creative workflows. This is particularly important in industries where authorship, trust, authenticity, and reputation are commercially significant.

Particularly, we support a framework for mandatory disclosure and/or classification requirements to make it easier to identify when a creative work is: (a) wholly created by Generative AI; (b) a mix of work created by Generative AI and human-made works; (c) a work created by humans with the assistance of

generative AI tools; or (d) wholly created by humans. This could be practically implemented through watermarking, metadata, or other labelling requirements, as similar to those modelled in the Transparency Rules under the *European Union Artificial Intelligence Act*.

2. Workable Licensing and Compensation Frameworks

Australia should actively explore and support the implementation of workable licensing models that allow creators to be compensated each time their work (a) informs AI training systems or (b) contributes to outputs.

While this is a complex issue globally, the absence of frameworks risks undermining long-term sustainability for creative workers. We do not agree that it is sufficient to rely on industries to self-regulate in this regard, noting the inequality in bargaining power between major tech companies and independent creators. Whilst some larger organisations may be in a position to negotiate licensing terms directly, many individual creators lack equivalent leverage. Accordingly, there must be mechanisms established and protected by laws and regulations to enable collective bargaining on behalf of creators within particular sectors of the creative industries.

We additionally support regulatory intervention by the Australian Government to set minimum licensing requirements or empower industry bodies to do so.

3. Meaningful Consent Mechanisms

Creators should have greater agency regarding whether and how their work is or has been used in training datasets. Whilst we fully support the Australian Government's decision to rule out a text and data mining exception to copyright law, current practices still often operate with limited visibility and insufficient consent structures. This applies both where technology companies curate and maintain their own centralised training datasets, and where systems are further trained on a decentralised or per-user basis, often with limited oversight over what content individual users ingest into the system for ongoing learning. In both scenarios, the common practice of relying on general terms of use as implied or express consent from users to train on data and information provided by them is insufficient. What is required is specific, targeted and clear consent for each work on each platform.

Unlike traditional licensing models where a licence can be terminated and the work removed from circulation, once a creative work has been used to train an AI system, that work may be deleted from the dataset but the system itself cannot be untrained; the influence of the work persists indefinitely within the model's parameters. This is precisely why it is essential that positive consent is obtained before training occurs.

4. Preservation of Human Creative Oversight

The policy framework should continue to reinforce the centrality of human creativity, judgement, and accountability to cultural products. AI can be a powerful tool for creative practice, but cultural policy should not lose sight of the fact that creative industries are fundamentally human industries, dependent on the skills, perspectives, lived experiences, culture, and labour of creative workers. To achieve this, reforms to copyright law (as outlined in principles 1-3 above) and stronger safeguards around ICIP (as outlined under our submissions for Pillar 1 above) are necessary in order to extend and clarify protections for works of human authorship with the assistance of generative AI tools.

5. Cross-Industry Education and Collaboration

There is a significant need for accessible education, shared resources and interdisciplinary collaboration across the arts, technology, and legal sectors. Many creators are navigating rapidly evolving technologies without sufficient support structures or practical guidance. This aligns with the consultation paper's emphasis on arts education, creative skills, and lifelong learning as key considerations under Pillar 3.

Specifically, there is a huge opportunity for experienced creative industry workers to re-skill, up-skill or cross-skill so that they can better design, refine and optimise inputs to guide generative AI tools; creating new roles within the industries and minimising job loss. Bodies established under Revive are well-positioned to support this work. However strategic funding will need to be allocated to these initiatives given the depth and scale of training required to address potential workforce displacement in the absence of meaningful reskilling and upskilling pathways.

Pillar 4: Strong Cultural Infrastructure

Beyond the AI-specific recommendations above, this submission also raises broader concerns about the commercial infrastructure supporting Australian creativity.

The consultation paper asks how Australia's cultural infrastructure can remain resilient, adaptable and fit-for-purpose, including how existing partnerships, investment, infrastructure, and systems could be used more effectively. From a commercial perspective, this requires honest acknowledgment that the current framework does not adequately protect Australian culture and identity at a commercial level.

Australian creators now compete on a truly global scale, where nationality is often commercially irrelevant. Digital platforms and international markets are not structured to prioritise local content, particularly when the Anglosphere is dominated by cultural products from North America and the UK. The result is that only a small number of Australian creators achieve commercial success

abroad, while those who remain focused on the domestic market are not fully supported. This has long-term implications for the sustainability of Australian creative industries and the diversity of Australian stories being told.

Stronger incentives for Australian businesses to invest in and actively promote Australian content above international content should be a policy priority. We have outlined our recommendations on this particular point under Pillar 5 below.

Policy measures could include enhanced tax incentives, preferential treatment in government procurement, investment requirements for platforms operating in Australia, and recognition mechanisms that reward businesses for championing Australian creativity. Australia should also consider implementing a dedicated cultural levy on streaming platforms, modelled on successful frameworks in countries such as France, South Korea and Germany, where such levies are reinvested directly into domestic content production and cultural infrastructure.

Without such measures, the commercial infrastructure will continue to favour international content, to the detriment of Australian creators and Australian cultural identity.

Pillar 5: Engaging the Audience

Discoverability is now a defining policy challenge. Where audiences once relied on radio, television, and retail to find Australian content, discovery now happens through algorithms that are not designed to prioritise local work. This submission supports consultation with industry and platforms on measures to ensure prominence of Australian content across digital service providers and streaming services, including in playlists, recommendations, and passive listening or watching modes.

Beyond consultation, we also support consideration of specific platform accountability measures, including minimum quotas for Australian content in algorithmic recommendations, transparency reporting on the proportion of Australian content served to Australian users, and regulatory oversight where platforms fail to meet reasonable local content thresholds.

This is essential not only to support Australian creators, but to ensure Australian consumers have meaningful access to and engagement with local stories, perspectives, and cultural products. Without deliberate intervention, consumer habits increasingly default to international content, driven by algorithmic recommendations and platform economics that favour globally scaled productions.

Conclusion

Used responsibly, AI presents genuine opportunities for Australian creativity. It can accelerate development processes, unlock new forms of storytelling, increase accessibility for audiences and creators with disability or in marginalised communities, and lower barriers to creative participation. Many creators are already integrating these tools thoughtfully and innovatively into their practice.

Younger Australians in particular are engaging with digital environments to collaborate and tell stories in new forms; a trend the consultation paper rightly identifies as shaping future creative pathways.

However, innovation cannot come at the expense of the very people whose creativity underpins the ecosystem in the first place.

If human creativity is to remain central to Australia’s cultural identity and creative economy, the next National Cultural Policy must proactively address the realities of AI-driven creative production as an immediate priority.

This is an appropriate juncture for proactive policy development. Creators, industry bodies, policymakers, and technology stakeholders should work together to shape the standards, safeguards and commercial frameworks that will define the next era of Australian creativity. Bodies established under Revive are well-positioned to support this work, but would require greater funding in order to be effective in implementing a National Cultural Policy.

The choices made now will determine whether Australia sets the global standard for a creative economy that harnesses technological innovation to protect and empower its creative workforce, or cedes that ground to jurisdictions less committed to the value of human creativity let alone Australian culture. The window for meaningful intervention is narrowing and the time to act is now.

We welcome the opportunity to engage further with Government on these issues.

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