Australian Writers' Guild

Australian Writers' Guild Authorship Collecting Society

Senate Standing Committees on Environment and Communications

Inquiry into the National Cultural Policy

9 October 2025

The Australian Writers' Guild acknowledges we live and work on Aboriginal land. We pay our respects to Elders past and present. We thank them for their custodianship of land and waterways, stories, and song, and pay our respects to the oldest storytelling civilisation in the world.

WHO WE ARE

The Australian Writers' Guild (**AWG**) represents Australia's performance writers: playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers. We represent 2,600 performance writers in Australia. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees such as the Theatre, Television and Games committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society (**AWGACS**) is a not-for-profit collecting society for screenplay authors. With more than 2,000 members and 32 partnerships with overseas collective management organisations, AWGACS has collected more than $25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS continuously advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

Executive summary

As the professional organisation representing writers working in screen, theatre and games and interactive media we look forward to contributing to the development of more inclusive pathways for emerging practitioners and new ways to support experienced practitioners as they continue to produce world-class work. Ideally, this world class work should find a home here, providing stable and rewarding careers for creative workers, as they showcase Australia to the world.

Generative Artificial Intelligence (**Generative AI**) is antithetical to this purpose because it copies existing artistic work to create a competitor to Australian creatives – one build on their stolen work and the stolen work of their peers. The unregulated use of AI is a clear and present danger to Australian writing and our creative sector more broadly, and consequently to the creative and professional interests of the members we represent and our community of creators.

Before we can assess the impact – positive or negative – artificial intelligence (**AI**) will have on the Australian cultural sector – and its economic impacts on Australia more broadly – the fundamental issue that it has been **built on the back of stolen intellectual property** must be resolved. There can be no economic, cultural or scientific benefit to the nation until a process of transparency, consent and ongoing compensation is afforded to the creative workers who have made AI possible. The fair regulation of AI is critical to the future of the creative sector.

The Senate Committee has also sought comment on opportunities for tax reform and ways to boost the productivity of Australia's arts and creative sectors. Any work to ensure creative workers can practice their craft and tell the distinctly Australian stories we all love is welcome. That said, we believe that the challenges faced by Australia's creative sector are not, at their core, tax problems but rather the product of decades of systemic underinvestment and deregulation, exacerbated by the COVID-19 pandemic. Without direct investment and regulation, tax reform alone will not be enough to reverse the contraction in the sector. Notwithstanding this, our tax and incentives systems can be tuned to produce better results for creators and our communities.

Our industry is experiencing both an acute downturn and a long-term contraction in work. In our view, the contraction of our sector stems from the cumulative effect of:

- **Funding cuts to the ABC and SBS:** Our public broadcasters have historically commissioned landmark work that has pushed the envelope in terms of the kinds of stories being told and the diversity of Australians represented through those stories. This vital role must be continued and supported. We strongly support increased funding to the ABC and SBS to ensure they can continue to commission new Australian scripted drama, documentary and, in particular, children's content.
- **Funding cuts to the Australia Council (now Creative Australia):** To achieve more pathways for playwrights and the production of Australian stories on our stages, Creative Australia must be adequately funded, and the funding of small and mid-sized theatre must be prioritised. All funds that are distributed by Creative Australia should come with a clear mandate for minimum requirements in the development and staging of new Australian work and minimum conditions on employment.
- **The suspension and relaxation of local content quotas on commercial television by the Morrison Government**: In April 2020, the Morrison Government suspended Australian content obligations on commercial television, which require minimum amounts of Australian drama, documentary and children's content. This suspension stayed in place for months, causing great uncertainty in the sector. Local quotas were permanently cut under a revised 'points system' which predictably resulted in the commercial networks halving their investment in local drama: from $107m in 2018/19 to $54m in 2020/21. By reducing the number of hours of drama on television, the Morrison government reduced employment for thousands of Australians in the screen sector and worsened the pandemic-created under-employment and unemployment crisis, weakened the career trajectories of content creators and limited opportunities for emerging writers from all backgrounds to develop their craft. It must also be noted that the removal of sub-quotas for forms (children's television, scripted drama, documentary) has seen the functional end of children's TV production outside the ABC, further burdening our public broadcaster.
- **Lack of regulation of the streaming-video-on-demand (SVOD) platforms**: Despite widespread industry support for the proposition, the government has failed to introduce a local content quota on Streaming Video on Demand (SVOD) platforms like Netflix, Amazon, and Disney+, that operate in Australia
- **Regulatory settings that incentivise offshore intellectual property ownership, rather than ownership by Australians.** Both State and Federal governments and generous incentives for production in Australia that do not prioritise Australian copyright

holder (writers, directors, composers) engagement on projects and increase funding further down the line away from creative development.

Revive represented a return to actively enabling our sector to grow, a return that was welcomed by artists and creatives. It had ambitions to create a sophisticated internal and external marketplace of ideas and content, where the cultural and economic power the sector can wield at home and abroad is actively built. *Revive* was a commitment to driving Australia's sovereign capacity. It was a commitment to building capacity in this country so that we would not be left to the cultural vagaries of other nations. It sought to give us the power to project our voice. We now urge government to continue this important work particularly as the sector – not yet fully recovered – faces new threats and challenges.

Claire Pullen
Group CEO

A. Artificial intelligence

Artificial Intelligence (**Generative AI**), in particular Large Language Models (LLMs) copies existing artistic work either used without the consent of the authors, or which has been pirated and illegally published online. The term AI companies use for this is ‘training’, but it is copyright infringement.

Both here[1] and overseas[2], AI companies have conceded they use works in ways that are unauthorised reproduction of copyrighted work has occurred and therefore an author’s copyright has been infringed. In addition, any business that uses Generative AI is likely exposed to secondary liability for copyright infringement. This is because generative AI technologies have been ‘trained’ on copyrighted material without permission from the original authors. Furthermore, any output that is based on the infringing material – or any output that is generated by Generative AI – cannot be protected by copyright. Copyright does not subsist in material that is not a product of the "independent intellectual effort" of a human author, nor should it. Each output from each user is likely infringement – and indeed, this is part of Midjourney’s defence against the infringement suit brought against it by Disney, Warner Brothers and Universal in the USA.[3] It is difficult to see how AI has any place in the creative sector in creative work.

The cultural sector stridently opposed the position that the Productivity Commission took in its ‘Harnessing data and digital technology’ Interim Report. We have **attached** a copy of the joint submission of the Australian Screen Industry Guilds, along with some of the relevant media. In essence, we opposed the introduction of a new ‘text and data mining’ exception or any other relaxation of current copyright regulations that would serve to harm copyright owners and entrench the interest of multi-billion-dollar foreign-owned tech companies. If a company cannot afford to pay the workers whose labour and intellectual property has been extracted to build its

[1] See Select Committee on Adopting Artificial Intelligence, *Chapter 2: Regulating the AI Industry in Australia*, in *Adopting Artificial Intelligence (AI): Final Report* (2024).
[2] Ortutay, Barbara. “Judge Approves $1.5 Billion Copyright Settlement Between AI Company Anthropic and Authors.” *AP News*, September 25, 2025. https://apnews.com/article/anthropic-authors-copyright-judge-artificial-intelligence-9643064e847a5e88ef6ee8b620b3a44c.
[3] Disney Enterprises, Inc., Marvel Characters, Inc., MVL Film Finance LLC, Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, Universal City Studios Productions LLLP, and DreamWorks Animation L.L.C. v. Midjourney, Inc., No. 2:25-cv-05275 (C.D. Cal., filed June 11, 2025).

models, it should fail. Instead, the Productivity Commission appeared to endorse a government bail-out dressed as productivity.

In 2023, Australian screen and theatre sectors contributed nearly $1 billion worth of value in the Australian economy, comprised of $121 million in theatre ticket sales[4] and $930 million in screen productions (both television and movies).[5] The uptake of artificial intelligence threatens to destroy this economic activity. There are approximately 6,000 authors, screen writers, script and book editors in Australia,[6] earning approximately $553 million per year.[7] At standard population growth levels, this industry would be expected to increase to 6,767 people over the next decade. However, if AI technology reduces jobs by even 5% per year, this industry will have approximately 2,690 jobs fewer than forecast, representing some $1.8 billion worth of wages lost over the next decade. The shameless cheerleading for big tech companies undertaken by the Productivity Commission does not even contemplate the economic losses that will be suffered if our copyright laws are diminished.

The Productivity Commission has admitted in public hearings, and to the AWG and AWGACS directly, that it did not conduct any modelling on the loss to creative workers (and thus the loss of taxpayer revenue) that a new fair dealing exception, or any relaxation of copyright law, might have. The Productivity Commission advised us that they have not “taken a detailed analysis of these [copyright] issues” and claimed that their inquiry was “not a copyright enquiry”. It seems to us that if the Productivity Commission is to publish a recommendation to dismantle existing copyright protections it should have undertaken detailed analysis of the subject and have sourced some relevant expertise. The Productivity Commission also did not answer many of the questions we put to them in correspondence, including whether the projected benefits in the interim report were gross, or net (i.e. the supposed benefits of AI balanced against the costs incurred though lost creative economy contributions). This is work that should have been done before publishing its Interim Report. In light of the Productivity Commission’s failure to undertake this analysis, we commissioned some modelling of our own.

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[4] Live Performance Australia, Live Performance Industry in Australia: 2023 Ticket Attendance and Revenue Report, 11 October 2024.
[5] Screen Australia, Drama Report 2023/24: Key Findings, 11 April 2025.
[6] To use the category of “Author” as defined by the Australian Bureau of Statistics.
[7] Australian Bureau of Statistics, *Survey of Employee Earnings and Hours, May 2023 (customised report)*, 2024.

Australian writers in screen and theatre set in motion over $1 billion in economic activity per year. AI could see over 2,000 creative jobs slashed and $1.7b in lost wages by 2035.

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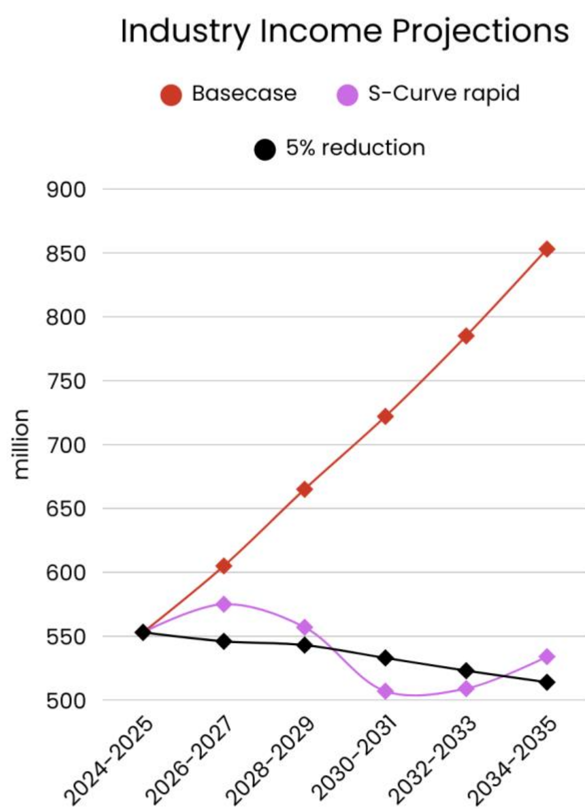
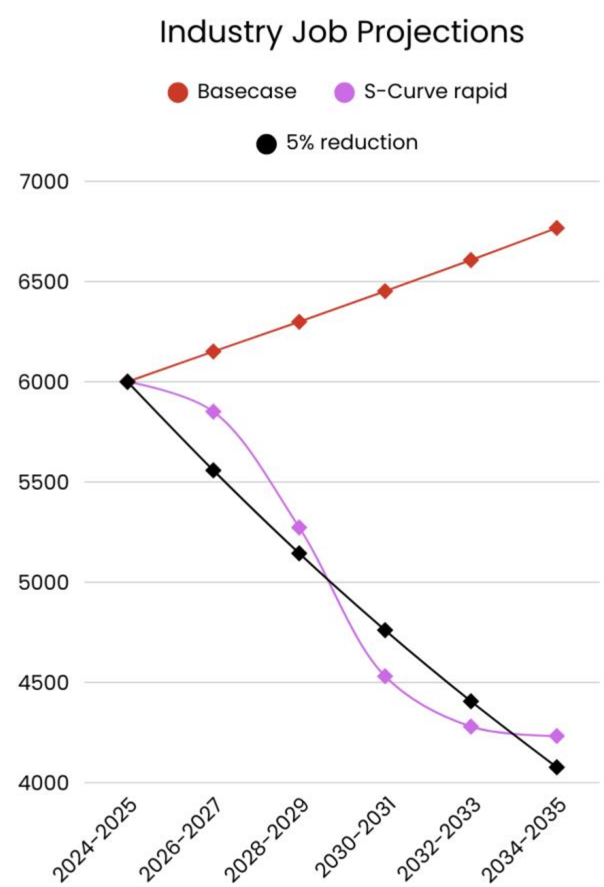
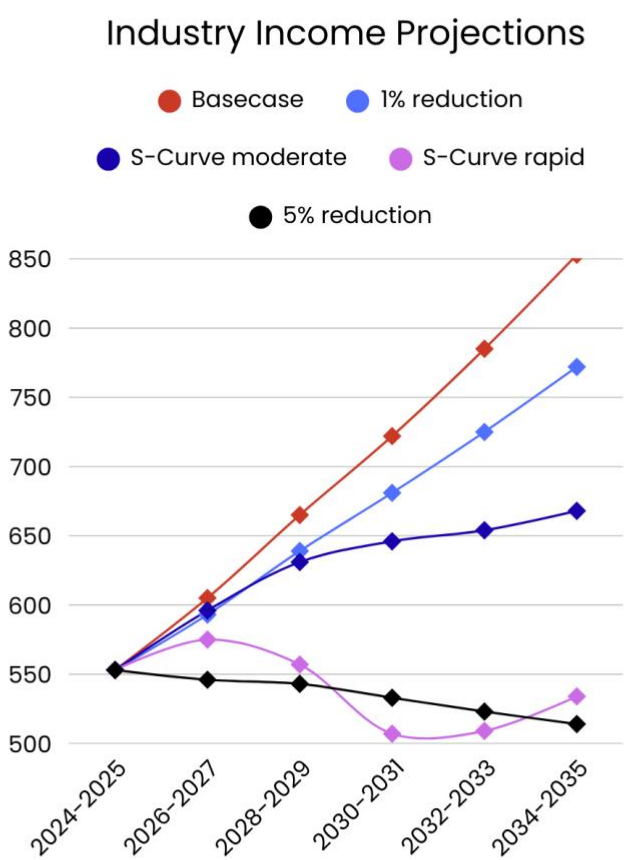


The starting number of writers and writers' salaries are based on current ABS modelling.





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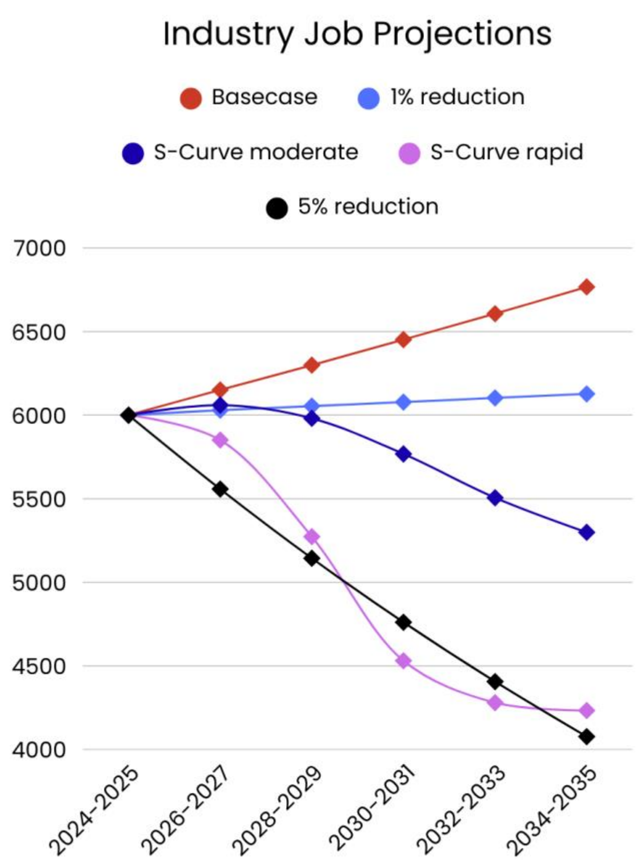
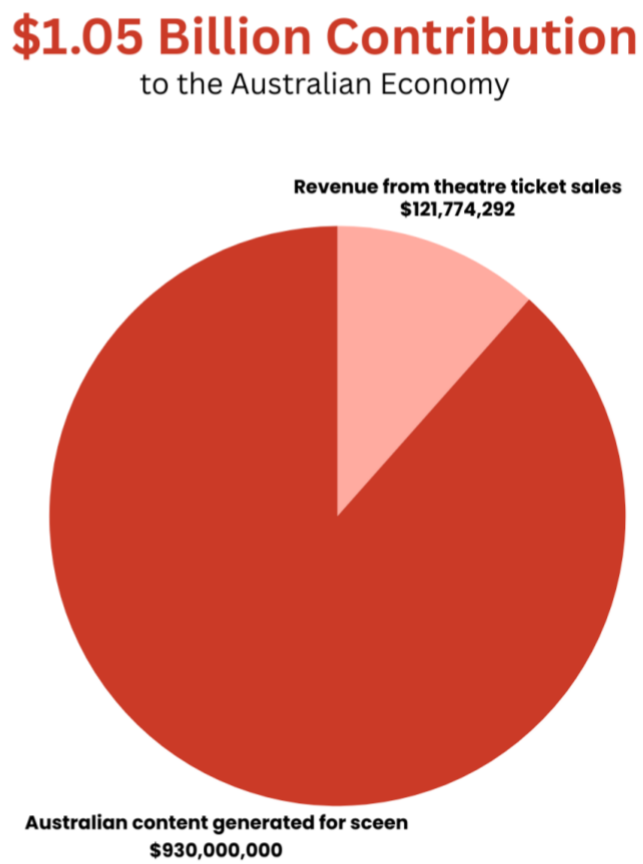


In 2023, Australian screen and theatre writers alone set in motion nearly $1 billion worth of value in the Australian economy, comprised of $121 million in theatre ticket sales and $930 million in screen productions (both television and movies). If artificial intelligence begins being used, all this economic activity is at risk.



Assumptions

The forecast modelling models five scenarios. In each scenario, the starting number of writers and writers' salaries are based on current ABS modelling.[8]

1. Base case: in this scenario, the number of writers is assumed to grow in accordance with population growth and wage growth is in line with Commonwealth Treasury estimates.
2. 1% reduction: a flat 1% reduction is applied across the forecast on the total number of jobs required.
3. S-curve (moderate adoption): assumes reduction in jobs by the following, to represent an S-Curve in artificial intelligence adoption[9]:

2025-2026	2026-2027	2027-2028	2028-2029	2029-2030	2030-2031	2031-2032	2032-2033	2033-2034	2034-2035
0.5%	1.0%	1.5%	2.2%	2.8%	3.2%	3.5%	3.5%	3.2%	3.0%

4. S-curve (rapid adoption): as above, but an accelerated adoption process:

2025-2026	2026-2027	2027-2028	2028-2029	2029-2030	2030-2031	2031-2032	2032-2033	2033-2034	2034-2035
2.0%	3.0%	4.5%	8.0%	9.0%	8.0%	5.0%	3.0%	2.0%	1.5%

5. 5% Reduction: a flat year on year reduction in jobs by 5%

[8] ANZSCO Classification: Authors, and Book and Script Editors (2122): Authors (212211) + Book and Script Editors (212212): https://www.jobsandskills.gov.au/data/occupation-and-industry-profiles/occupations/2122-authors-and-book-and-script-editors
63060DO011_202305 Employee Earnings and Hours, Australia, May 2023: https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release / ANZSCO Classification: Authors, and Book and Script Editors (2122): Authors (212211) + Book and Script Editors (212212) https://www.jobsandskills.gov.au/data/occupation-and-industry-profiles/occupations/2122-authors-and-book-and-script-editors

[9] For example, *Diffusion of Innovations* by Everett Rogers: https://teddykw2.wordpress.com/wp-content/uploads/2012/07/everett-m-rogers-diffusion-of-innovations.pdf

We recommended that government act quickly to address the infringement of creative workers' copyright by AI companies by:

- Requiring consent is given by creative workers before their work is used to 'train' AI datasets, with an appropriate compensation model; and
- Ensuring that the creative workers are aware that the infringement has taken place;
- Implementing a compensatory and rectification process for infringements that have already taken place, including the removal of work from models ('data disgorgement');
- Making a no-cost jurisdiction available to creators to seek remedy where they believe their work has been infringed, where transparency is required and any failure to provide transparency results in a default judgement against the defendant AI company.

In addition:

- **There should be no federal or state funding for any projects that use AI to replace creative workers, nor any access to Australian tax offsets:** Arts funding agencies must not fund any creative projects that use AI technology as a replacement (in whole or in part) for work that has traditionally been done by a creative worker at least until the copyright concerns raised in this submission are addressed by the federal government.
- **Active disclosure:** Any person or company applying for federal funding must, throughout the grants process, have obligations to actively disclose any use of AI technology.

(a) **Consent**

Under Australian law, 'authors'[10] are granted personal and inalienable "moral rights" in connection with their original works. These rights cannot be sold, and they can be exercised by the author even if copyright is owned by someone else. These rights include the right of attribution under s 193 (the right of an author to be credited as the author of their work), the right not to have authorship falsely attributed under s 195AC-195AH, and the right of integrity under s 195AI-195AL

[10] In the context of copyright law, this term is used broadly to refer to the person or persons responsible for creating, through their own skill and effort, an original literary, dramatic, artistic or musical work (which may include a writer, a director, or a photographer for example). 'Authorship' should also be taken to include 'maker' in this submission as it is defined in the *Copyright Act* to refer to the 'maker' of a sound recording, film or broadcast who is the copyright owner.

(which is the author's right not to have their work subjected to derogatory treatment). We note many of our members have put the view the ingestion of their work into AI models is derogatory treatment in and of itself.

These legislative provisions were incorporated into the *Copyright Act* in 2000 under the *Copyright Amendment (Moral Rights) Act 2000* to fulfil Australia's international obligations under Article 6*bis* of the Berne Convention and to acknowledge "the great importance of respect for the integrity of creative endeavour."[11]

Strengthening Australian creative workers' moral rights – and ensuring that their creative rights are enforced – is in keeping with the Australian Government's national cultural policy. Expanding moral rights (at a minimum) to voice, likeness and style is a logical progression in the face of AI. As a concrete example of what this regime should seek to prevent, the use of artists' names or studio 'styles' as prompts, as well as the use of intellectual properties as prompts, would be part of such a moral rights strengthening.

In addition to the lack of authorisation to reproduce an artist's work discussed in the above section, generative AI outputs do not credit the artist(s) whose work is being used to 'train' the AI. This failure to appropriately attribute authorship of the source material which has directly resulted in a given output may be a breach of the original author's moral rights, particularly their right to attribution under s 193 of the *Copyright Act*.

"Derogatory treatment" is defined in the *Copyright Act as* any act "that results in a material distortion of, the mutilation of, or a material alteration to, the work that is prejudicial to the author's honour or reputation". It is our belief that the uptake of AI technology across different arts sectors should make the 'right of integrity' a much more prominent feature of our copyright framework.

To train an AI system using an artist's work and to produce an output based on that work is a distortion or mutilation of that work. It is offensive to the artist and devalues their work. It diminishes the artistic process and the years of research and training it may have taken to produce the original work. It is disrespectful to the 'integrity of the creative endeavour' which these provisions were introduced to protect.

[11] House of Representatives, Copyright Amendment (Moral Rights) Bill 1999, Second Reading Speech (8 December 1999).

An AI system can also be asked to produce an output using the 'voice' or style of a particular author. As things stand, it is possible for a generative AI to be fed an existing artists' oeuvre and then produce (for example) a 'David Williamson' play, without one of our best-known playwrights having any recourse to prevent the publication and sale of this work. It will be appealing to consumers as a 'David Williamson' work; it will be appealing to those who wish to exploit creatives via AI because it is a 'David Williamson' work. The commercial benefit of such a work would go to whoever is trading on the playwright's name and distinctive style; we have no licensing or permissions scheme that would even require the user of the AI to notify him that the AI has been fed his work or that someone has generated a text using his name as a prompt.

In our view, the existing provisions in the *Copyright Act* relating to derogatory treatment of an artist's work should be applied precisely in situations like this. Plainly, it is prejudicial to an author's reputation to have AI outputs published in or trading on their name and artists should have legal recourse for those breaches of their right to integrity of authorship.

(b) **Transparency**

We support a broad transparency obligation, in line with current EU proposals, that obliges AI corporations to publicly disclose the titles of all works used as data for training, particularly where those works are protected by copyright law. For example, there could be a search function within the model itself that confirms whether an artist's work has been used to train it.

To give artists confidence that their work has *not* been used without their consent, or where their consent has been revoked, prompt restrictions should be implemented (i.e. a prompt to 'write a screenplay in the style of X'') in the same way that a privacy warning is generated when a LLM is used to search a person's contact details. Businesses must be required to disclose when any creative content, including audio-visual content, is created with the assistance of AI. These disclosure obligations should be applied broadly not just to – for example – scripted performance content but advertising, especially political advertising. This might take the form of a label, credit or stamp on the final output.

(c) **Payment**

If an artist's work has been 'scraped' by an LLM, or AI music generator, then a payment should be made to that artist. Where an author's work is used by a generative AI platform to produce an output ("derivative work"), and the author has given permission for that work to be used in the model, then the author must be paid for that use (output) and each subsequent use. If that derivative work is then used to produce audio-visual content, further remuneration and royalties should be payable by the owner of the audio-visual content, to the original author each time the audio-visual content is broadcast, communicated or accessed.

A framework for such payments already exists under Australian copyright legislation. Certain users are excepted from seeking authorisation to use a copyright work, provided that those users pay remuneration to the relevant collecting society. The authors of the original works then receive a share of the money collected. Currently, government (s 183), educational institutions (Part IVA (Division 4)) and audiovisual services retransmitting free-to-air broadcast to another service (such as Pay TV) (Part VC) have access to these "remunerated exceptions". This money represents a substantial portion of some screenwriters' and directors' income.
We propose a similar stream of remuneration for authors who have consented to have their work used by generative AI platforms. A royalty should be payable to those authors each time their work is used to generate an output, as well as for the initial input of the work (where consented to). If a piece of audio-visual content is produced based on generative AI material, then a royalty must be paid to the human author(s) of the source work(s) each time that content is transmitted or accessed by a user online.

We note here there is substantial scope for expanding whose work is captured by such a license. The Select Committee into Adopting Artificial Intelligence heard that companies like Amazon and Google had the capability to scrape copyrighted material available on "the open internet" in many different formats including "web documents and code ... image, audio, and video data along with text".[12] Amazon was asked, but declined to answer, the question of whether "content on 'Prime Video' [was] ever transcribed, whether using AI or not, and that

[12] Google, Answers to Written Questions on Notice from Senator Tony Sheldon (9 September 2024) (received 20 September 2024) in Senate Select Committee on Adopting Artificial Intelligence, Interim Report (Appendix 1 – Submissions and Additional Information)

transcription subsequently used to ‘train’ AI."[13] Companies that develop AI have the capacity to train their models on audio-visual content (including films and television series available online to stream), meaning that they have scraped the copyrighted works of screenwriters, directors, and composers (screen authors for copyright purposes) as has already been discussed.

It seems logical that this scraping has included the work of our public broadcasters.

However, in addition to that, these models can ’learn from’ and copy the work of **any** member of the production team, post-production team, or cast and anyone else involved in the production of that film or series whose creative work is communicable visually or auditorily: e.g. the style and technique of a screen editor or cinematographer, a make-up artist or production designer. These aspects of an audio-visual production are not currently protected by copyright, yet AI still copies that work and has the effect of shifting market demand away from those creative workers.

At present, a makeup artist or cinematographer (for example) does not own copyright in the work they have done as it is displayed on a screen. If someone wanted to produce a competing audiovisual product, before AI they would hire a different cinematographer or make-up artist to produce the visual style they wanted – but this was the market at work, a choice between paying worker a or worker b. Now, however, AI can replicate the style of a makeup artist or a cinematographer, and no worker is engaged at all.

AI is a novelty requiring novel regulation precisely because it results in those shifts in the market: there will be far fewer opportunities for emerging practitioners within these creative fields for employment or training and workers are competing against a product that was ‘trained’ on their work. It is therefore critical that **all** creative workers whose output – which is a product of their individual effort, creative aspirations and skill – has been copied by AI companies should be fairly compensated even if the current copyright framework does not consider their creative work to be a ’work’ or ’subject matter’ for the purposes of copyright subsistence.

[13] Amazon, Answers to Written Questions on Notice from Senator Tony Sheldon (9 September 2024) (received 9 October 2024) in Senate Select Committee on Adopting Artificial Intelligence, Interim Report (Appendix 1 – Submissions and Additional Information).

Protection of First Nations cultural assets and expressions

A core promise of *Revive* was to facilitate the implementation "stand-alone legislation to protect First Nations knowledge and cultural expressions”. We supported this goal and proposed the formation of a working group of relevant experts comprised principally of First Nations creatives in the screen and stage sector, supported by a relevant industry organisation, other relevant subject matter experts, and the collecting agencies. We recommended that the working group would consider the translation of ‘cultural assets’ as a class of copyrightable assets into stage and screen contracts, in addition to industry terms of trade and contracts for performed or cinematographic works based on these assets or expressions.

As yet, there is no standalone legislation regarding First Nations cultural assets and expressions and the need for legal recognition is particularly urgent with the advent of AI. It is entirely possible in our current settings (for example) for a generative AI to be trained on fake Aboriginal art or stories, to generate a fake ‘Dreaming story’, and be made and distributed internationally and in Australia, to the benefit and profit of non-First Nations entities, without regard to cultural protocols or remuneration.[14] AI companies must be compelled to share data confirming whether or not their AI platforms have been trained on Australian works, including First Nations works. Without such transparency, all LLMs must be assumed to be infringing Australian and First Nations works, committing cultural harm, and are a significant and inherent risk in their current forms.

In the context of First Nations content, cultural protocols around the reproduction and broadcast of the voices and images of Elders and people who have died cannot be adequately respected within AI models. This is not a question of copyright but one that would be regulated by standalone AI legislation.

Even if the input data is ‘accurate’ and a First Nations person has added it to the ‘training’ corpus of an AI generator, there is no guarantee that the person who input the data had the cultural authority to do so, or that its perpetual availability or rendering down to parts for algorithmic purposes is consistent with cultural protocols.

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[14] James Vyver and Tahnee Jash, “Calls to Protect Indigenous Intellectual Property from AI,” *ABC News*, 23 August 2025 <https://www.abc.net.au/news/2025-08-23/calls-to-protect-indigenous-intellectual-property-from-ai-cultur/105680182>

Further, there remains the risk, as with all AI models, of replicating bias and harmful stereotypes based on input material.

B. Tax reform

As noted above, we do not believe that tax reform alone can reverse the contraction of Australia's creative economy. However, it can be part of the solution, if government prioritises support for individual artists over organisations or corporations, and encourages work across disciplines or forms. Most writers work as sole traders or freelancers, moving between short-term contracts and creative roles. Few benefit from corporate tax concessions. An example of how until now support for the sector has played out was JobKeeper. Theatre companies were paid, but playwrights were not.

Any tax offsets enjoyed by screen and theatre producers should come with an expectation that they are producing Australian content – Australian intellectual property, written, directed and crewed by Australians – for Australian audiences. Tax relief should not be paid to US studios to produce Hollywood blockbusters, and they should not subsidise the stage production of a foreign play over a new Australian work. Targeted tax relief – and public money invested in the arts – should be directed to Australian artists with mixed or intermittent incomes; creatives that engage in mentorship, training, or commissioning emerging practitioners, and creators working in high-risk development phases of new screen products.

We discuss these issues in more detail in our recent submission to the NSW Government 'Art of Tax Reform' consultation (**attached**). Specifically, we recommended:

- **The introduction of tax incentives (in combination, ideally, with direct financial incentives) for experienced creative workers that engage emerging practitioners as 'apprentices.** Where an experienced playwright or screenwriter is commissioned to deliver a new play or feature film screenplay or television script they may engage a suitable early- to mid-career practitioner as an apprentice. The apprentice would learn skills on the job and benefit from shared contacts and reputation transference, among other things. Programs like ScriptedInk's Writer's Internship Placement Program are good models for what a funded internship program might look like. Scripted Ink. is a not-for-profit organisation that aims to shape, build and invest in the Australian screen industry by creating new pathways for script development. Scripted Ink. supports writers to participate in a paid internship program at Studiocanal, taking on duties like reading scripts, writing coverage, notetaking, and assisting and learning from Studiocanal staff.

- **The creation of two tax free thresholds for creative workers.** Creative workers in Australia have "portfolio careers", referring to a mixture of different jobs usually without any minimum employment standards. Patterns of work across the cultural and creative sector vary, with a large number of creative practitioners undertaking short-term contracts as employees or independent contractors or performing ad hoc and seasonal work. Many creative workers must take on a second job or multiple jobs to make ends meet. Reducing the tax-free threshold for multiple jobs within the creative sector would go far in making a career in the arts sustainable.
- **Requiring artist and creative minima be paid as a part of any contract or grant.** No government money should be given in grants where there is not a guarantee that the creative workers engaged are paid an appropriate minima, and there was fair dealing on the terms of any contract. Recipients of grants, whether they be theatre companies, screen producers, game studios or other bodies should be required to warrant they contract under established industry minima and that they comply with all relevant employer obligations including the payment of superannuation where applicable. Where an agency becomes aware that an artist or creative worker has been treated unfairly or underpaid, the person or entity in receipt of government funds should lose them and be ineligible to apply for further funding.
- Making arts prizes, fellowships, and government grants tax-free, similar to the treatment of the Prime Minister's Literary Awards. These funds often cover both past work and future projects that may span months or years. Taxing them reduces the resources available for artists to create and unfairly treats irregular funding as if it were stable income.

In addition to the recommendations in that submission, we encourage government to revisit the settings currently in place for the various screen production offsets – specifically, to ensure that the 'Significant Australian Content' continues to deliver outcomes for the local sector and incentivises local intellectual property ownership and the engagement of Australian creative talent.

Significant Australian Content test

Under the *Income Tax Assessment Act 1997*, a film production company qualifies for the 'producer tax offset' by spending a minimum of $35 million for a season of a drama series, over a maximum period of 12 months of production or 36 months for an animated image film series.

In order to qualify for the producer tax offset, the production must satisfy the "significant Australian content" (**SAC**) test at section *376-70(1).* The SAC test is a discretionary test which is, in our view, inferior to an objective and more transparent 'points system'. In our view, a points system such as the one used in Canada is preferable.[15] Canada, like Australia, uses economic incentives to promote the development of local Canadian content and protect its local screen industry. Like Australia, Canada imposes quotas on broadcasters and tax incentives are available to Canadian production companies that produce Canadian content. To qualify as "Canadian content" screen content must satisfy several requirements including employing Canadian creatives in key roles on a production (as writer, director, lead actor, or head(s) of department with each role being worth a number of points and the production company being required to accumulate 6 out of a total 10 points). We strongly support a points-based SAC test like the Canadian model.

Additionally, we would support the following modification to the existing SAC test in the *Income Tax Assessment Act 1997*.

Modified SAC test
In determining for the purposes of section 376-65 (certificate for the producer offset) whether a *film has a significant Australian content, the *film authority must have regard to the following: (a) the subject matter of the film; (b) the place where the film was made; (c) the nationalities and places of residence of the persons who took part in the making of the film, **(d) the extent to which creative control rests with Australian creative talent;** **(e) the extent to which copyright ownership resides with Australians;** (f) the details of the production expenditure incurred in respect of the film; (g) any other matters that regulator considers to be relevant.

[15] Canadian Radio-television and Telecommunications Commission (CRTC). "Content Made by Canadians." https://crtc.gc.ca/eng/cancon/c_cdn.htm

The current Producer Offset Guidelines as administered by Screen Australia, lists "other matters" that the film authority should consider.[16] These include:

- the extent to which creative control rests with Australian citizens or residents; the extent to which copyright ownership resides with Australians – in particular,
- whether this is commensurate with the proportion of the budget provided by Australians;
- the extent to which there is recoupment and profit participation for Australian nationals or residents, and the extent to which that is commensurate with ownership;
- the policy purposes of the Producer Offset, such as the impact of the project on creating a sustainable Australian film and television production industry, or whether it supports the development and employment of Australian key creatives to make Australian films;
- and anything else that we or you consider relevant.

"Creative control" resting with Australians, and copyright and intellectual property being controlled by Australians, are a sufficiently significant aspect of what it means for a work to have "Significant Australian Content" that it should be a primary consideration in the legislation. Conversely, without an Australian owning the copyright in a work, it is hard to see the argument that Australian taxpayer money should subsidise foreign ownership.

Furthermore, the quality of 'Australianness' that the legislation aims to preserve is determined by the people telling the story – their voices, perspectives and ways of seeing the world – rather than the subject matter or the mere location of the production. In other words, the nationality of the key creatives involved in the development and production of a television series or feature film is, our view, the most important factor in a film or television series' Australian character. Therefore, the executive producer/showrunner, creator (where the work is a series), writer(s) and director(s) (of each episode, if applicable) **should** be Australian citizens or residents to satisfy the SAC test.

Currently, the regulator need only consider whether there is a "higher the proportion of Australian citizens and residents involved in the project".[17] We propose that the involvement and participation

[16] Producer Offset Guidelines, Screen Australia, paragraph 2.2.2.5.
[17] Producer Offset Guidelines, paragraph 2.2.2.3(a).

of Australians in the above key creative roles become a determining factor as to whether the offset can be claimed.

We support a test that requires most lead cast members and **all** key creative heads of department (the director of photography, production designer, editor, costume designer, sound designer and composer; and other cast, crew and service providers: for example, post-production houses) to be Australian.

Creatives employed on these films and programs must be treated fairly and paid, at least, industry agreed minima (where such minima exist) so that a career in screen, in Australia, is a sustainable and viable option compared to pursuing work in other jurisdictions. We support an amendment either to the *Income Tax Assessment Act 1997* or the Producer Offset Guidelines that reflects this.

This would be in keeping with the "policy purposes" of the Producer Offset (i.e. "creating a sustainable Australian film and television production industry [and] the development and employment of Australian key creatives to make Australian films"[18]) as well as Screen Australia's Terms of Trade for funding applicants which relevantly state at clause 4.7 that:

> *Screen Australia also expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:*
>
> *(a) paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including key creatives, cast and crew*

However, we note that this same expectation is **not** currently contained in the Producer Offset Guidelines which, in our view, is a gap in the regulatory framework.

[18] Producer Offset Guidelines, paragraph 2.2.2.5(iv).

An amendment requiring producer offset applicants to pay award minimums would also be consistent with *Revive* which states that:

> *"Funding bodies should continue to affirm the principle that artists should be paid for their work, including through recognition of Awards, mandated rates of pay and codes of practice such as the Live Performance Award 2020, the Broadcasting, Recorded Entertainment and Cinemas Award 2020, Australian Society of Authors rates of pay,* ***Australian Writers' Guild benchmarks****, and the National Association for the Visual Arts Code of Practice."*

Regular compliance checks on offset applicants would be essential to ensure that these requirements for fair treatment of creative talent are met. Government may choose to outsource enforcement duties to relevant industry organisations and AWG is prepared to take on this duty so long as Government is prepared to cover the reasonable costs.

C. Local content obligations on streaming platforms

Our support for a strong local content reinvestment obligation for international streaming services is a matter of record. We have previously argued that a 20% re-investment obligation would deliver approximately $336 million in Australian content investment annually, creating an additional 10,000 industry jobs and over 300 hours of Australian content for streaming audiences here and around the world. This export product and intellectual property would ensure a dividend for Australians, economically and creatively. A 20% obligation would correct a long-standing market failure in our small local production sector and allow us to compete with the easy-to-import content from the world's largest content markets with which we compete – the English-speaking markets.

The fundamental economic reality that must be acknowledged when deriving these policy settings is that the English (UK) economy is, at a conservative estimate, twice as large as Australia's. The USA's is (again, conservatively) ten times the size. We are at a structural disadvantage in screen production both in terms of potential viewers and production capacity. Any notions of 'competing on quality' fall down in the face of this deluge of English-language content and large foreign audience pool, and arguments that Australia does not make competitive screen products attempt to tap into our cultural cringe as a means of playing down our local content. Where we fail to ‘compete’ it is simply a reflection of our relative size- noting how much of a thumb on the scales SVOD providers can have here, in terms of what we are shown and when.

We undertook a great deal of positive work with the Office for the Arts throughout 2023. We expected – as promised in *Revive* – that this regulation would come into force in July 2024 but, ultimately, it did not. In the 2023-24 financial year, investment in Australian feature film, adult drama and children’s television dropped by 29%.[19] This has had commensurate flow ons to the jobs in our sector and represents a significant shrinkage. As already stated, the Morrison Government’s relaxation of local quotas for terrestrial broadcasters and the introduction of a ‘point system’ is largely to blame for this contraction.

We are still at a net loss of jobs and content from that time and SVOD providers have not stepped up to fill the gap left by the cut to terrestrial broadcast production, despite being the means by which most of us get our content. SVOD providers have taken the benefits of replacing the terrestrial broadcasters but have evaded the community license to do so of making content here. Streamers are very responsive and can turn production up and down and indeed did do in the 2022-23 financial year when local content regulation was being actively developed. What this regulation needs to achieve is security of the jobs pipeline for workers and businesses in screen.

[19] Screen Australia, Drama Report 2023/24.