



**INDEPENDENT MUSIC PUBLISHERS  
INTERNATIONAL FORUM**

## **IMPF submission to the Senate Select Committee on Adopting Artificial Intelligence (AI)**

**May 09, 2024 (a public submission to the Parliament of Australia)**

IMPF (Independent Music Publishers International Forum) represents 200 of the world's leading independent music publishing companies. We are engaged in international AI related policy discussions, and have submitted to enquiries in the United States, the European Union ("AI Act"), the United Kingdom, Japan, and Canada. We are a founding member of the Human Artistry Campaign; <https://www.humanartistrycampaign.com/>

In October 2023, we published [ethical guidelines](#) on generative Artificial Intelligence welcoming technological developments in as far as they improve our business and the capacity to assist the writers we represent. These guidelines are aimed at enhancing the relationship between the creative side, in our case writers and music publishers, and AI service providers. This should ultimately enable transparent collaboration for the benefit of all stakeholders including users of AI systems. Given the rights we represent our comments concern musical and literary works only. We are available to discuss these issues and any other related questions that the Select Committee may have.

### **1. Introduction**

We welcome this timely consultation. A legally, politically, and commercially successful AI ecosystem depends upon all relevant parts working in tandem for this common goal: Coexistence of human created and AI generated works, competing on a level playing field and a fair market. The fundamental starting point for the maintenance of a fair market is compliance with the law in the jurisdiction AI service providers operate, in our case mainly copyright law but also other rules such as data protection and contractual obligations.

Australia has the opportunity to be at the forefront of the best regulation design that both protects creators rights and fosters innovation by establishing a fair market in which both the creative industries and AI service providers can flourish concurrently at national level. Furthermore, Australia can steer future advances within the Indo-Pacific area as part of the Comprehensive and Progressive Transpacific Partnership or based on bilateral trade agreements. Australia is also a thought leader outside the Indo-Pacific area, ideally placed to promote its high regulatory standards on copyright and enforcement, for the

benefit of its creative industries. Likewise, a clearly defined legal approach for the operation of artificial intelligence provides the certainty for inward investment in the creative as well as the AI industries.

Tech companies providing AI systems (run by various, sometimes third-party entities selling datasets, ultimately for commercial purposes) scrape the internet to collect data for machine learning. This involves many rights which require express permission by rightsholders, including copyright, for the numerous reproductions occurring in the training process. In our view such a requirement is not covered by any of the potentially available exceptions (e.g. text and data mining, temporary copying, fair use depending on the jurisdiction). In the absence of binding court decisions on the application of exceptions, general copyright rules apply, and the express permission of the creator and the rightsholder is required.

Additionally, data scraping is often expressly prohibited in the Terms and Conditions of the scraped websites; this constitutes a legally binding express prohibition which needs to be respected.

## **2. Text and data mining**

In the absence of a specific exception for text and data mining in Australia, we stress the general approach under copyright law that AI service providers should ask for permission to legally use the works for training purposes. Notably, such a permission-based approach reflects the international standard: exceptions which cover text and data mining are e.g. limited to non-commercial purposes (UK) or subject to an opt out for rightsholders (EU). Given recent legal developments in the United States, it is also unlikely that text and data mining for commercial purposes qualify as “fair use”, in particular if rightsholders have offered training datasets to AI service providers on commercial terms. The only country potentially promoting AI service providers and platforms over their creative industries is Singapore; but the market for creative works originated in Singapore is very limited, and thus not comparable to Australia. In any case, an exception would only apply to copyright but not to other rights such as data protection (Privacy Act [1988](#)).

Licensing constitutes the general manner in which the use of human creative talent is permitted. The music publishing industry has been licensing novel uses in response to technological developments from, mechanical musical boxes through radio broadcasts to music streaming for centuries. Licensing is based on a negotiation within a fair market. Any negotiated licence needs to reflect the actual value of an individual song for the creator and/or rightsholder, the AI service provider and, ultimately, the individual consumer.

The requirement for such express permission should not be circumvented by “offshoring” the machine learning process to countries setting themselves up as copyright havens. Government should consider market access standards to ensure that AI service providers do not manipulate jurisdictional rules to flout domestic copyright requirements. Government should also consider copyright infringements committed by AI service providers in the past; we note that most available AI systems are based on datasets of creative works which have already been ingested, mostly without permission.

### 3. Temporary copying

Australian Copyright law provides various exceptions covering temporary copying, in particular Sections 43A and 43B. These exceptions however are irrelevant (in Australia as well as in other territories such as the UK, the US, and the European Union). For AI application to offer suitable inferences they need to retain the data ingested to be able to consider the wider context of their use when presenting the output.

### 4. Transparency

Transparency is a key requirement for any business operating in Australia, or anywhere in the world. Transparency is an important measure protecting society against abuse by deep fakes. Transparency is also essential to put in place licensing arrangements furthering development of legal AI systems.

- **Record keeping.** AI service providers, including AI developers and mere dataset providers should be obliged to keep records of, or disclose what copyright-protected content was used in the training of AI systems. Such record keeping reflects international standards, e.g. the recently adopted European Union AI Act.
- **Labelling.** AI generated products as such enables consumers to make an informed choice as to the goods and services they acquire. According to a recent wide ranging [survey](#) at international level around ¾ of consumers stress the importance of acquiring human created works. A consumer [poll](#) carried out this month in the UK shows that 83% of consumers prefer human created music. Labelling could simply be a consumer protection requirement to identify music as AI generated in the metadata. Consumers should be able to make an informed decision about the nature of the product or service they are acquiring. Aside from personal preferences, consumers might reject AI generated works due to their high energy costs and the environmental impact of their production. Likewise, accurate labelling also ensures that human creators are correctly recognised for their talent.

### 5. Data Protection

Data protection constitutes an important aspect of the AI service provider's responsibility, requiring the express permission of the data subject whose data is being processed, including the personal data of individual creators or artists. Data protection needs to be assessed in addition to copyright, trademark, contractual and unfair competition laws.

### 6. Authorship and ownership of works generated by AI

The situation could arise that AI service providers could copy musical and literary works without remuneration for the original creator, and generate works potentially even protected by copyright, competing with the original music they have copied. This would be a perverse result: a creator competing with their own original creation benefiting only AI service providers.

**Questions of authorship or ownership** in relation to AI require a clear differentiation between AI-assisted and AI-generated works.

- Creators using AI systems as a tool (AI assisted): the authors are generally the initial owners of the copyright in the works they create. This is based on general copyright concepts.
- Purely AI generated works (i.e. without human intervention) are different. Stating the obvious, artificial intelligence applications apply algorithms to existing datasets to make predictions/inferences for new settings based on probabilities. It is very sophisticated but in no way creative, a purely stochastic process. In fact: neither artificial nor intelligent.

**Copyright** rewards the expression of human creativity and talent, which self-evidently is lacking without human input. A work generated by an artificial intelligence system without any human input, is currently not protected by copyright.

To our knowledge this is the case everywhere in the world. Based on philosophical, historical, and legal justifications of copyright (amongst others as a human right under the Universal Declaration of Human Rights) most jurisdictions do not grant copyright protection for purely AI generated works, amongst many the United States (Copyright Office memorandum concerning the registration of copyright supported by recent court decisions ([Thaler v Perlmutter](#)) and the European Union (constant CJEU (Court of Justice of the European Union) jurisprudence focusing on the author's own intellectual creation expressing their personality). Notably, the UK Court of Appeals has confirmed in a decision in 2023 (THJ [systems v Sheridan](#)), that the EU standard continues to apply even after the UK withdrawal from the European Union.

## **7. Infringement and liability regarding AI**

We note the challenges to establish copyright infringement by AI generated output. In the absence of record keeping, it is impossible for rightsholders to determine whether an AI service provider has used their works (to our knowledge no technological approach exists yet to obtain such information a posteriori). The commercial attractiveness of AI generated output depends mainly on high quality datasets of creative works. Record keeping of the musical and literary works ingested in the machine learning process is key in this regard as well. It constitutes good business practice to provide information about the constituent parts of a product or service (similar to the requirements on fair trade clothing, where the source of every part of the final product has to be notified to qualify for fair trade certification).

Infringement by the output of AI systems follows “normal” copyright enforcement rules when identifying infringement of previous works or derivative works. We note that a variety of natural or legal persons can be solely or jointly liable including the developer of a generative AI model, the developer of the system incorporating that model, end users of the system but also third parties providing the datasets; and more generally, the person/entity ultimately benefiting from the AI generated output. Government might address the scope of potentially liable persons and entities. We suggest that measures which business can take to mitigate risks of liability for infringing AI-generated works consists in simply complying with the law, i.e., by obtaining the required permissions.

## 8. Miscellaneous

We note the importance of personality or publicity rights to address the situation where AI is used to imitate a person's likeness, voice, or image. Individual creators or artists should be specifically protected from misappropriation in addition to available remedies against false endorsement such as passing off. The resulting damages can be economic or otherwise (such as damage to their reputation or goodwill or causing distress). We note the ELVIS ([Ensuring Likeness Voice and Image Security Act](#)) Act coming into force in July 2024 in Tennessee specifically designed to protect musicians from the unauthorised use of their voices through AI technologies.

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IMPF (Independent Music Publishers International Forum) is the global trade and advocacy body for independent music publishers worldwide. IMPF helps to stimulate a more favourable business environment in different territories and jurisdictions for artistic, cultural, and commercial diversity for its music publisher members and the songwriters and composers they represent. IMPF is based in Brussels, Belgium [www.impforum.org](http://www.impforum.org)

