the global trade body for independent music publishers

IMPF SUBMISSION
Australian Productivity Commission: Harnessing Data and Digital Technology Interim Report Response

IMPF is the global trade and advocacy body for independent music publishers, helping to stimulate a more favourable business environment in different territories and jurisdictions for artistic, cultural, and commercial diversity for songwriters, composers, and music publishers everywhere.

Independent music publishing continues to assert its critical role within the global music industry, showcasing steady growth and cultural significance, as important partners, key agents of cultural diversity and custodians of songs.
Independent publishers captured a 26.3% global market share in 2023. The global value of independent music publishing reached €2.57 billion in 2023, representing a 5.7% year-over-year growth. This marks an impressive 105.6% increase since 2018[1]. This continued growth demonstrates the value independent music publishing delivers on both a local and international level supported by a healthy copyright framework.

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, India, Australia and Canada. 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 AI developers.

IMPF welcomes the opportunity to respond to this consultation. Given the rights we represent our comments concern musical and literary works only.

I. General Comments

Music has entered a new era with AI, which will have a transformative impact on many levels. Whilst IMPF welcomes technological developments in as far as they improve our business and the capacity to assist the writers we represent (e.g. enhancing royalty management and offering creative tools, GenAI also poses unprecedented challenges.

[1] Please find the full IMPF Global Market View Report from April 2025 here: https://www.impforum.org/wp-content/uploads/2025/03/IMPF-Global-Market-View-Independent-Music-Publishing-April_2025.pdf

According to a PMP Strategy study conducted at global level, potential consequences are laid out clearly highlighting that 24% of music creators and 21% of audiovisual authors' revenues are at risk by 2028[2]. We therefore have to be clear that this is a different kind of disruption and therefore effective policies and guardrails that empower rather than replace songwriters and composers and their music publishers will be essential. Policy-makers should therefore focus on how AI can strengthen and support the growth of the cultural and creative sector and continue to be a significant driver of global and regional economic growth. Cultural and creative industries generate annual revenues of almost US$ 2.3 trillion globally, contributing 3.1 per cent of the global gross domestic product (GDP). In addition, UNESCO estimates that the cultural and creative industries account for 6.2 per cent of global employment[3]. The cultural and creative industries In Australia contribute $63.7 billion annually to the Australian economy and employ 282,000 Australians across multiple sectors[4].
AI innovation and copyright protection are not opposing forces but can - and must - reinforce each other in support of the development of a competitive, ethical[5], and human-focused AI ecosystem globally.

II. Why a TDM Exception Is Not Useful for Australia

A new Text and Data Mining (TDM) exception for GenAI training would be counter-productive in Australia. It is unnecessary to drive innovation, risks undermining creator livelihoods, conflicts with international copyright obligations, and is inconsistent with Australia's broader cultural policy goals, including respect for Indigenous Cultural and Intellectual Property (ICIP). The application of TDM exemptions, if enacted, would undoubtedly be tested in Australian courts, resulting in protracted litigation and potentially significant negative economic impact for AI companies wanting to do business in the Australian market.

i. Weak policy rationale and distorted cost–benefit framing

Exceptions to copyright are justified in light of a greater social purpose, such as providing visually impaired persons with accessible format copies.
Claims about large economy-wide productivity gains from AI are not a sound basis for weakening property rights. They have not been matched by a robust analysis of costs to the creative economy, displacement effects on human creators, or public infrastructure burdens (power, water, networks) that subsidise offshore AI development.

ii. International law and comparative experience

Broad TDM exceptions do not align with the core reproduction right where GenAI training encodes and internalises protected expression. Exceptions at national level have to comply with the so called three-step test as included in the TRIPS Agreement accompanying Australian membership to the World Trade Organisation. This test is mandatory for all WTO members. In a nutshell, this test requires any new exception introduced by a WTO member to be limited to special cases without interfering with the normal exploitation. Even if the

[2] https://www.cisac.org/Newsroom/news-releases/global-economic-study-shows-human-creators-future-risk-generative-ai
[3] https://unctad.org/system/files/official-document/ditctsce2024d2_en.pdf
[4] https://www.arts.gov.au/news/highlighting-value-our-cultural-and-creative-activity
[5] See also IMPF ethical guidelines for the development of AI: https://www.impforum.org/wp-content/uploads/2023/10/IMPF-Ethical-Guidelines-on-generative-AI-docx.pdf

exception would be limited to AI developers as sole beneficiaries, using the whole Internet as data source certainly does not constitute a special case. Normal exploitation occurs through licensing of musical works for AI training (which, by the way, is already happening[6]); an exception obviously interferes with this normal exploitation.
Introducing such an exception allegedly balancing the commercial interests of AI developers with the protections of rightsholders is consequentially legally wrong.

a. United States of America

The fair use exception in the United States is subject to several legal challenges; it is incorrect to imply that fair use applies to AI training; and that as a consequence AI developers prefer the United States. To the contrary, a judge in the recent case Thompson Reuters v Ross Intelligence (1:20-cv-00613)[7] opined that the copying in the machine learning process is not fair use, it is not transformative and competes with the market of the original work.
In Kadrey v Meta (3:23-cv-03417)[8], the US court held that "Because the performance of a generative AI model depends on the amount and quality of data it absorbs as part of its training, companies have been unable to resist the temptation to feed copyright-protected materials into their models—without getting permission from the copyright holders or paying them for the right to use their works for this purpose. This case presents the question whether such conduct is illegal. Although the devil is in the details, in most cases the answer will likely be yes". The court continues that "the doctrine of "fair use," which provides a defence to certain claims of copyright infringement, typically doesn't apply to copying that will significantly diminish the ability of copyright holders to make money from their works (thus significantly diminishing the incentive to create in the future). GenAI has the potential to flood the market with endless amounts of images, songs, articles, books, and more. People can prompt GenAI models to produce these outputs using a tiny fraction of the time and creativity that would otherwise be required. So by training GenAI models with copyrighted works, companies are creating something that often will dramatically undermine the market for those works, and thus dramatically undermine the incentive for human beings to create things the old-fashioned way." "And here, copying the protected works, however transformative, involves the creation of a product with the ability to severely harm the market for the works being copied, and thus severely undermine the incentive for human beings to create. Under the fair use doctrine, harm to the market for the copyrighted work is more important than the purpose for which the copies are made".

b. Singapore

Singapore's TDM law, the "computational data analysis" (CDA) exception in Sections 243–244 of the Copyright Act 2021, is tightly conditioned: copying is allowed only where the user already has lawful access to the material, any copies made may be used solely for the analysis, and onward supply of those copies is generally limited to verification or genuinely collaborative research[9]. Crucially, users may not bypass paywalls/technological protection measures, and in December 2024 the government confirmed it would not amend the law but rather keep the exception narrow in practice. While the CDA exception is available to both

[6] e.g. https://www.universalmusic.com/soundlabs-and-universal-music-group-announce-strategic-agreement-to-offer-responsibly-trained-ai-technology-and-vocal-modeling-plug-in-micdrop-to-umg-artists/?utm_source=chatgpt.com
[7] https://www.courtlistener.com/docket/17131648/thomson-reuters-enterprise-centre-gmbh-v-ross-intelligence-inc/
[8] https://www.courtlistener.com/docket/67569326/kadrey-v-meta-platforms-inc/
[9] https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_conv_ge_24/wipo_ip_conv_ge_24_ss04.pdf?utm_source=chatgpt.com

commercial and non-commercial users, these safeguards mean it cannot be used to scrape paywalled repertoires or to build shareable shadow datasets, preserving licensing as the default route.

c. *The European Union*

Across the EU, the TDM exceptions in Articles 3 (research) and 4 (commercial purposes, with opt-out) of the DSM Directive have not delivered legal certainty for GenAI training. The European Parliament's 2025 study on "Generative AI and Copyright" notes persistent ambiguity over whether GenAI training qualifies as TDM at all and stresses that the EU AI Act's Article 53 references to Article 4 are procedural and do not validate the lawfulness of TDM-based training; uncertainty remains over scope, "lawful access", opt-out mechanics, and what disclosures are required[10], creating legal uncertainties.

Indeed, EU Member States themselves told the Council that "a significant number" consider GenAI-training uses to go beyond the TDM exception's scope[11]. A detailed German legal opinion by Prof. Tim W. Dornis and Prof. Sebastian Stober (commissioned by Initiative Urheberrecht) argues the TDM exception does not apply to training generative models because training entails multiple acts of reproduction and memorisation that exceed mining for "information."[12] Echoing this, the European Copyright Society's 2025 Opinion finds that Arts. 3–4 may cover some narrow operations but "certainly not all stages" of generative AI development[13].

The matter is now laying before the European Court of Justice (C-250/25 *Like Company v Google Ireland* (referral lodged 3 April 2025)[14]). The Hungarian court asks whether training and operating an LLM-based chatbot involves acts of reproduction/communication to the public and, if so, whether such uses can rely on the DSM Directive's Article 4 TDM exception (including the "lawful access" and rights-reservation conditions). The outcome is still pending.

d. *United Kingdom*

Following its 2022 consultation, the UK government confirmed in early 2023 that it would not proceed with the UK Intellectual Property Office's (IPO) proposal to introduce a broad TDM exception that would have permitted commercial GenAI training. Ministers told Parliament the plans were being halted, and the IPO subsequently scrapped the proposed extension to cover TDM for commercial purposes. On 17 December 2024 the UK government re-launched the idea of a broader exception however the June 2025 Data (Use and Access) Act did not change copyright rules for GenAI training.

iii. Rights-reservations / opt-outs are not a solution

Forcing creators to opt out flips copyright's default of consent, imposes unmanageable administrative burdens, and is practically unverifiable at AI-scale. Even sophisticated, machine-readable reservations do not give rightsholders visibility into whether their works were ingested, nor do they enable effective enforcement once data has been copied and

[10] https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU%282025%29774095_EN.pdf
[11] https://data.consilium.europa.eu/doc/document/ST-16710-2024-REV-1/en/pdf
[12] https://www.pinsentmasons.com/out-law/news/german-legal-question-applicability-tdm-exception-training-ai
[13] https://legalblogs.wolterskluwer.com/copyright-blog/european-copyright-society-opinion-on-copyright-and-generative-ai/
[14] https://curia.europa.eu/juris/showPdf.jsf?cid=5661670&dir=&docid=300681&doclang=EN&mode=req&occ=first&pageIndex=0&part=1&text=&utm_source=chatgpt.com

models trained. We refer the Productivity Commission to the ongoing discussions about the required nature of rights reservations at European Union level.

iv. Inconsistency with ICIP and cultural policy

A blanket TDM exception would be at odds with Australia's stated ambition to protect ICIP and to ensure consent and respect for traditional cultural expressions. Treating digitised cultural works as "free" training inputs for commercial AI disrespects creators and communities and contradicts policy settings elsewhere in government.

v. Market distortion and displacement

Allowing unlicensed ingestion enables AI outputs to compete with the very creators whose works powered the models, without consent or compensation, eroding investment, discoverability and incomes for Australian writers and publishers. As noted above, the PMP Strategy study conducted at global level, highlights that 24% of music creators and 21% of audiovisual authors' revenues are at risk by 2028[15]. The European Parliament's 2025 study also flags structural risks to creator incomes from GenAI's current training/usage models, reinforcing the need for licensed access and transparency rather than broad exceptions[16].

III. Build a Pro-Innovation Licensing Market Instead

The right path is licensing, not exceptions. There is no challenge to direct licensing at scale. Rightsholders across the creative industry have a track record of successfully licensing copyrighted works at scale; e.g. for the streaming market. Indeed, legitimate licensing markets are now developing globally without need for legislative intervention. Reddit and Google have established an annual licensing agreement for AI training data, and there has been a wave of newsroom partnerships (e.g. with Associated Press, the Financial Times, News Corp, TIME, The Atlantic and Vox Media which have all struck multi-year deals that cover access to archives and use in model development and products). In music, the same licensing-first pattern is visible: e.g. UMG and SoundLabs allows artists to create consented vocal models. Most recently, Anthropic has reached a settlement in a class action lawsuit filed by authors over copyright infringement related to its AI training data[17].

IV. Conclusion

Australia should focus on facilitating the creation of a sustainable licensing market rather than implementing broad exceptions that undermine creator protections.
GenAI products are expected to generate billions, even trillions, of dollars for the companies that are developing them. If using copyrighted works to train the models is as necessary as the companies say, they will figure out a way to compensate rightsholders for it (Kadrey v Meta).
Copyright is not an obstacle to the wide access to high-quality material to drive development of leading AI models. Licensing musical works for AI training is for AI developers simply a cost

[15] https://www.cisac.org/Newsroom/news-releases/global-economic-study-shows-human-creators-future-risk-generative-ai
[16] https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU%282025%29774095_EN.pdf?utm_source=chatgpt.com
[17] https://authorsguild.org/news/anthropic-lawsuit-update-settlement-reached-with-pay-out-to-authors/

to their business, which they try to avoid in order to increase their profit margins at the expense of rightsholders.

Submitted: 14 September 2025

IMPF Co-funded by the European Union clip Creators Learn Intellectual Property

IMPF is the global trade and advocacy body for independent music publishers, helping to stimulate a more favourable business environment in different territories and jurisdictions for artistic, cultural, and commercial diversity for songwriters, composers, and music publishers everywhere. www.impforum.org