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SIS 2024 Symposium – Copyright update

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2023 Copyright Roundtables

In 2023 the Attorney-General and the Attorney-General's Department (AGD) held a series of roundtables with key stakeholders on copyright priorities and emerging issues. Discussions focused on the following five issues:

1. Orphan Works
2. Quotation
3. Remote Learning
4. Artificial Intelligence (AI) and Copyright
5. Definition of 'Broadcast' for Copyright Purposes

Participants included the Council of Australian University Librarians (CAUL), Australian Library and Information Association (ALIA) and Universities Australia.

Orphan Works

1. General agreement that there was scope for Government to implement an orphan works scheme
2. General agreement to the incorporation of the following elements:
    - broad application
    - due diligence requirements
    - industry guidelines supporting the application of these due diligence requirements
    - reasonable scope for any emergent owners to assert their rights, balanced with reasonable protections for good-faith users of previously orphaned materials.
3. Number of key design elements require further work, and could be explored through further discussions (model, enforcement, transparency).

2024 developments:

- *April: Announcement that the Government will consult further on the design of a proposed Australian orphan works scheme*
- *September/October: Stakeholder roundtable and feedback*

Quotation

1. No general agreement regarding the need for reforms to allow for quotation in circumstances broader than those currently provided for.
2. Future reforms more likely to receive broad support if they:
    - are framed around specific purposes
    - incorporate safeguards to protect copyright owners' interests (including fairness factors and appropriate attribution)
    - are supported by industry guidelines, and
    - are developed through continued engagement with stakeholders.

2024 developments:

- *Some copyright stakeholders independently continuing discussions on potential targeted amendments*

Remote Learning

1. General support for simple, targeted legislative amendments to achieve the objective that the performance exception for educational instruction in s28 of the Copyright Act covers:
    - an online or remote class
    - a parent or other person assisting a student or students with their lessons, and
    - a person other than a member of school staff (such as a member of the local community) who is involved in a class.
2. Strong support for ongoing engagement with key stakeholders throughout the drafting process.

2024 developments:

- *April: Announcement that the Government will move amendments to the Copyright Act achieve agreed objectives identified through Roundtables*

AI and Copyright

1. Agreement that copyright issues are among the many complex issues that should be considered by the Government as part of its ongoing development of policy responses to AI.
2. Key issues identified include: use of inputs/training data, transparency in use of materials by AI, use of AI to create imitative works/other works infringing copyright and the copyright status of AI outputs.
3. Varying perspectives on most appropriate policy response, with agreement that any response be guided by broader government approaches, international developments and stakeholder engagement.

2024 developments:

- *December 2023: Announcement that the Government would establish a Copyright and AI Reference Group as an outcome of the Roundtables*
- *February: Reference Group first meets; consultation ongoing*

Definition of ‘Broadcast’

1. General agreement that there is no immediate need for the Government to consider whether to delink the definition of ‘broadcast’ in the Copyright Act from the definition of ‘broadcasting service’ in the Broadcasting Services Act.
2. General agreement that future reforms that could affect the definition of ‘broadcasting’ should involve a detailed and timely consideration of related copyright issues, supported by collaboration between portfolios.

2024 developments:

- *Some copyright stakeholders independently continuing discussions on potential targeted amendments*

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Copyright and Artificial Intelligence Reference Group (CAIRG)

Purpose and focus

- *Facilitate engagement, information sharing and open discussion.*
- *Identify, explore and test key policy problems, legal uncertainties and/or regulatory 'gaps', and potential solutions.*
- *Inform preparation of advice to Government.*

- Standing mechanism to engage with stakeholders across a wide range of sectors on issues at the intersection of AI and copyright
- Currently around 65 participants, including the creative, media, technology, education and collecting (including libraries) sectors.
- Steering committee consisting of 20 Reference Group participants established to test ideas and refine questions ahead of engagement with the broader group.
- 2024-25 Budget: $1.2 million over one year for AGD to review the application of copyright law to AI as part of a broader cross-government work to clarify and strengthen existing regulation of AI.

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Copyright and Artificial Intelligence Reference Group (CAIRG)

First consultation: Uses of copyright material as AI inputs

- Initial focus in engagement with CAIRG on use of copyright material as inputs for AI systems.
- AGD sent participants a questionnaire seeking insights on, and examples of, how copyright materials may be used in developing and deploying AI technologies.
- Participants also asked for views on what objectives Australia should be aiming to achieve where our copyright framework intersects with the development, deployment and use of AI technology.
- 42 responses received.
- Provided valuable information, insights and perspectives – though *not* comprehensive, quantitative data.

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Respondents' objectives for Australia's copyright and AI framework

Overall, **four main themes** emerged:

- Legal framework
- Transparency
- Economic viability and social benefits
- Industry practices

- Many cited an **overarching objective** of balancing, or simultaneously advancing, existing copyright framework objectives (e.g. incentivising production of new creative works; the dissemination of knowledge; facilitating technological innovation).
- Many responses expressed objectives related to how Australia's **legal framework** treats uses of copyright material as AI inputs. These varied significantly in nature.
  - Calls for greater clarity on how existing legislation applies vs. No fundamental lack of clarity, but need to improve practical application to provide remuneration for rights holders
  - Calls for changes to the legal framework in response to AI – for example, new protections for creators, or exceptions for AI developers/users.
- Many objectives related to **transparency** around the use of copyright materials as inputs for AI systems – mostly improving rights holders' awareness of if or how their material is used and ability to exercise their rights, though also supporting users' confidence in AI systems.
- Some objectives were about how Australia's approach to AI-copyright issues could support the **economic viability** of important industries, including the creative and technology sectors, and provide broader **social benefits**.
- Others related to how **industry practices** should develop in this space, with clarity, fairness and consent recurrent issues.


Infringement / Enforcement
Consent
Collective licensing practices
Direct licensing practices
Clarity on existing industry standards
Develop new licensing practices
Industry practices
Improve wellbeing, quality of life
International competitiveness (AI industry)
Maximise community benefit
Enabling conditions for thriving AI industry
Compensation / remuneration (Creative industry)
Market displacement
Economic viability and social benefits
Balancing, or simultaneously advancing, existing copyright framework objectives
Govt (provided / endorsed) guidance on how legislation should be interpreted
Remuneration (includes retrospective international use)
Clarity on existing legislation
Source of materials
Exisiting exceptions
AI & Human authorship
Indigenous Cultural IP
Voice, Style, Likeness
Develop new protections and exceptions
Potential exceptions to support AI use
Infringement / Enforcement
Consider other / non-copyright legislation
Legal framework
Verify output data authenticity
Verified content provenance
Identifying whether infringement has occured
Ethical sourcing of materials
Opt-in / out options
Clear consent protocols
Credit / recognition
Protection of Indigenous Cultural IP
Transparency

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Examples in responses: How are AI systems being used? (part 1)

Some observations about responses

- Many respondents adopting AI are conscious of responsibilities and risks related to third-party copyright – some noted the complexity of entirely avoiding material in which third parties hold rights even when trying to use only internal/licensed data as AI inputs.

- While the questionnaire asked about uses of copyright material as inputs in the *development and deployment* of AI systems, many examples involved Australian *end-users of AI systems* inputting copyright material into third-party systems (e.g. in prompts for online public chat bots, or other off-the-shelf AI tools, based in Australia or elsewhere).

Examples highlighting benefits

Some examples provided highlighted ways in which AI systems with copyright material inputs could have positive impacts on the users of those systems and society more broadly – for example:

Libraries and Museums: A repository of World War I artefacts, including personal diaries, newsletters, and transcripts are distinctly included as source material references in responses by a LLM chatbot. Users can have conversations with an AI historical figure.

Construction, Design, and Conservation: Assessing compliance of designs with Australian standards. Models conducting urban mapping, ecology impacts, tree cover analysis, population health, and conservation tools that assist with caring for Country practices based on Indigenous Cultural Intellectual Property provided by First Nations people.

Visual effects: Artists can use tools incorporating generative AI to assist with previously time-consuming tasks such as colour correction, detail sharpening, removing unwanted objects from a scene, or actor ageing or de-ageing, allowing them to focus their energies on the creative aspects of their work, helping creators realise their vision and enhance the audience experience by making visual effects more dramatic, realistic and memorable.

Education and Scientific research: LLM-based systems using Retrieval Augmented Generation (RAG) processes to guide teachers through policy, curriculum and syllabus documents. AI tools that summarise previous research and data to support further research.

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Examples in responses: How are AI systems being used? (part 2)

Some observations about responses

- Many responses reflected concerns from rights holders about how material containing their IP and/or creative contributions might be used as inputs at various stages of the AI value chain without their agreement or payment.
    - These concerns are strongly related to how the related outputs of these AI systems may harm rights holders' personal, cultural or economic interests.
- Some respondents are also uncertain about implications for their own IP when they use third-party AI tools – for example, if the terms and conditions for using these tools might mean their material can be used for further AI training.

Examples highlighting challenges or concerns

Other examples were cited as challenges or concerns, particularly for copyright owners and creatives whose material is used as AI inputs – for example:

Film, TV, gaming and music: AI systems trained on material containing performances by human creatives without their knowledge and consent that are able to replicate their appearance or voice, or to create 'composite synthetic performers'.

Indigenous Cultural and Intellectual Property (ICIP): AI image generation tools whose training dataset included material containing ICIP without permission, and that can produce outputs including aspects of that ICIP (e.g. art styles) in ways that disregard cultural protocols, fail to attribute ICIP to communities, or are false and misleading.

News media: Use of AI systems to produce substantially similar, paraphrased or summarised text of Australian news items (used as inputs) and publish these to world-wide general audiences, competing with the original publisher.

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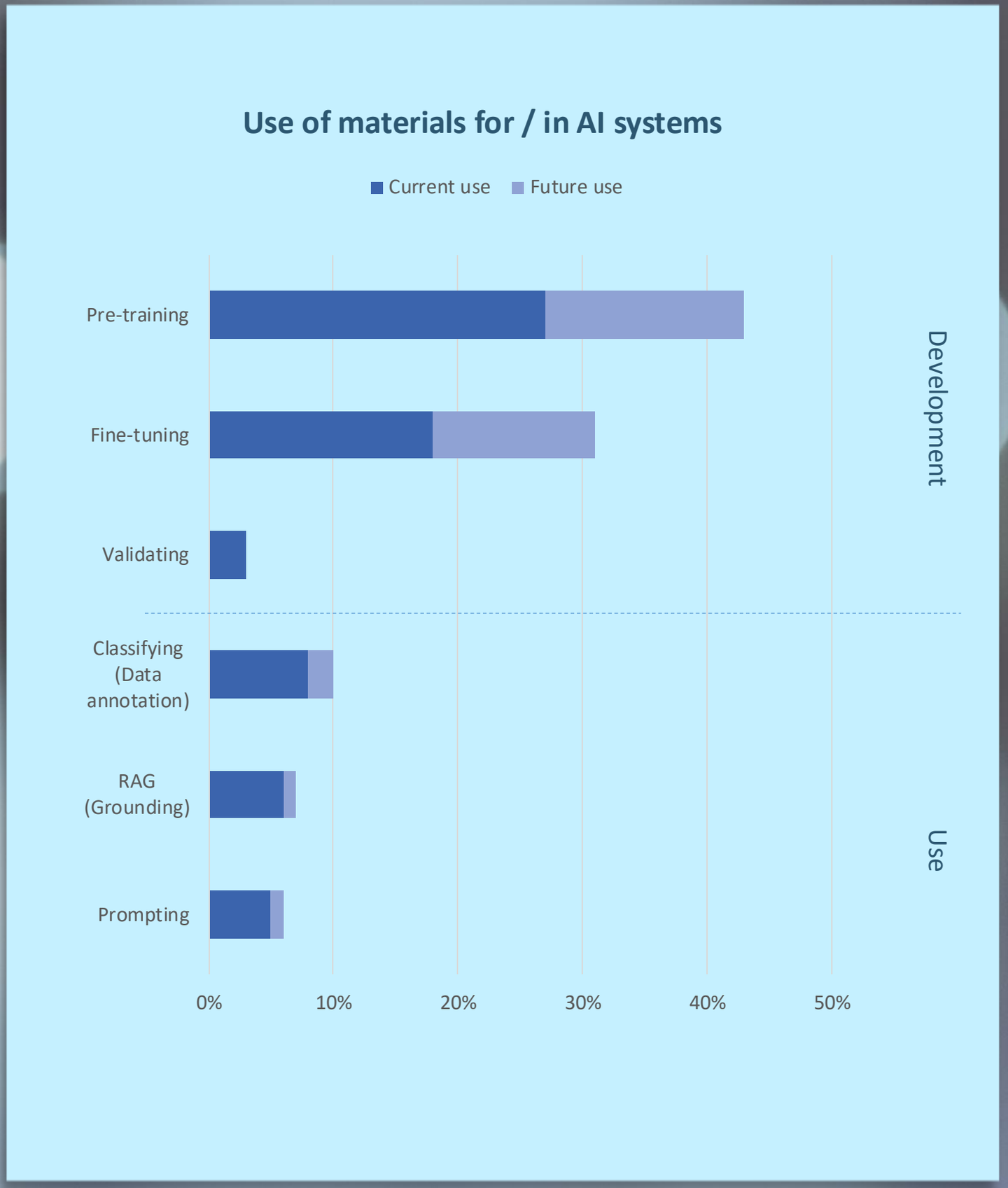
Examples in responses: How are the materials used as inputs?

Summary

- While some examples included detailed information on how materials were (or could be) used as AI inputs, others were more speculative in nature, with many respondents citing a lack of publicly available information on AI training practices as a barrier to providing more detail.
- While the questionnaire was framed around uses of copyright material as AI inputs in Australia, many responses focused on the *use within Australia of AI models developed overseas*.
    - This was a significant factor in pre-training being the most common type of use cited in current and future examples: most examples referring to pre-training were about international uses, particularly in relation to foundation models.
- Examples of fine-tuning in Australia mostly related to AI models that had been pre-trained overseas.



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AI inputs issues raised in discussions with the CAIRG

- We asked CAIRG to tell us about any issues (e.g. with industry practices, or legal or regulatory frameworks) affecting uses of copyright material as AI inputs in Australia.
- Some (not all) significant inputs-related issues are outlined to the right.
- There are also important issue around AI outputs that merit consideration (e.g. copyright status of AI outputs).

Transparency

What level of transparency should appropriately apply to the use of copyright materials as inputs for AI systems developed, deployed and/or used in Australia, and what mechanisms could be used to provide this transparency?

Remuneration for overseas uses

What avenues could potentially exist for Australian copyright owners to receive remuneration where their material is used overseas as inputs for AI systems that are developed, deployed and/or used in Australia?

How the copyright framework facilitates use

Are there gaps in how current law – including the default position in the Act of licensing and contracting as ways to exercise existing rights, and existing exceptions – supports the local development, deployment and uptake of AI technologies in the broad public interest (including Australian culture and creative careers)? If so, are there options for allowing specific uses of material as AI inputs without permission that would *not* unreasonably affect rights holder interests?

Protections

How do protections for holders of moral rights in copyright materials apply where these materials are used as AI inputs, and are these protections adequate to guard against potential AI-related concerns and harms?

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AI inputs: Copyright-adjacent issues

- Some important issues raised in CAIRG responses are relevant to the IP framework and copyright-dependent industries, but are not confined to copyright.

Indigenous Cultural and Intellectual Property (ICIP):

- Risks and potential harms for Aboriginal and Torres Strait Islander peoples related to the use of materials including ICIP (whether or not copyright protected) as AI inputs.
- Relevant to the Government's commitment to introduce new stand-alone legislation to protect ICIP.

Competition:

- Market dynamics and incentives in and between the AI sector and copyright-dependent industries (e.g. bargaining power imbalances, information asymmetry) may raise competition issues affecting how copyright licensing arrangements develop.
- Relevant to Australia's broader competition framework.

Industry impacts:

- Potential for AI to have significant (and often negative) disruptive impacts on the economic sustainability of creative industries, employment and career pathways.
- Australian copyright law may influence whether or how a local AI industry, or AI tools tailored to Australian needs, develop.

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Second consultation: Transparency

- September: AGD sent discussion paper on copyright and AI transparency issues to CAIRG seeking views on whether specific transparency amendments to the Copyright Act are required.

- Link to Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings (led by Department of Industry, Science and Resources).
  - Some aspects of proposed guardrails relate to transparency of AI inputs and AI outputs.

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