Generative AI and creative work

Creative Australia Principles

Context

The use of generative AI for content creation marks a step change for the role of AI in culture and creativity. AI systems have been shaping cultural consumption for some time, for example through personalisation algorithms on streaming platforms. However, as readily accessible consumer products have entered the market in recent years, there has been a strong increase in the use of generative AI systems for content creation and to produce creative works.

There are many uses and applications for AI, presenting new possibilities for artists integrating AI technologies into their creative practice and for institutions to connect audiences with content. However, as this technology continues to develop, clear principles need to be applied to policy development to ensure the creative work that has been used to train generative AI systems is appropriately acknowledged, and the potential impacts of generative AI on our culture and creativity are understood and managed.

The development of AI technologies, our adoption of them and attitudes to them, are a fast-moving and rapidly evolving landscape. Policies and guidance for ethical use of AI need to be responsive to this changing landscape. There is a need for clear principles to be applied to the development and use of AI technologies now, and as they continue to develop.

IP protection for artists

Unlike other new technologies that have developed over time, the success of generative AI systems relies on both technology and the large datasets they are trained on. For generative AI applications designed to produce creative outputs, these datasets are drawn from existing creative work which have been used predominantly without permission and with no recognition or remuneration for the original creator.

In addition to principles of fairness and the legal right to be remunerated for the use of creative work, this has broader implications for the future of creative work in an AI age. Creative work can now be produced by anyone, with significant potential impact on the financial viability of creative careers, and this content is being produced off existing creative work without compensation.

Ownership of generative AI

Concentrated ownership of AI applications further compounds the potential impact on revenue models for artists. The top four companies in the world by market capitalisation are technology companies, all of which own platforms and technology integral to cultural production and distribution. Generative AI systems are the latest frontier in an ongoing trend of concentrated ownership of technology by a small group of global tech companies which have altered traditional revenue models for artists and led to a significant transfer of revenue away from creative sectors.

The computing power and technology capability required to train large language models has meant advances in this area are largely industry-driven, led by global technology companies. These companies have significant control over the evolution and future direction AI technology will take. Their size, power and global nature present challenges for regulation. This requires careful consideration, because without any intervention, the current trajectory of developments in generative AI has widespread implications for culture and creative output.

In addition to the impact on revenue models for artists, AI presents challenges to Australia's cultural identity and unique creative output. Many AI applications used for creative output are global in their scope and use and much as recommendation algorithms have made it harder for artists to be surfaced locally, the global nature of AI has implications for Australian culture and creativity. This can be seen in AI created Indigenous styles of art produced without attribution or the consent of First Nations communities, following cultural protocols on how art styles can be used and by who, or recognising the connection of Indigenous art to communities and Country.

AI within creative practice

As with previous new technologies, artists are integrating AI into their creative practice in a range of ways, adopting a variety of approaches and generating a broad scope of artistic work. The scale and complexity of the use of AI in artistic work will continue to grow, as the technology further evolves. Ethical frameworks and guidance are required for artists who are using AI and want to engage with best practice across areas such as copyright and ethical use of datasets, and education has an important role to play in sharing learnings and adoption.

Regulation

Regulation is often framed as while potentially necessary, inevitably a handbrake on innovation within AI technology. But regulation can also be proactively used to provide a clearer direction for the evolution of AI which maximises the positive potential of AI and achieves more broadly shared benefits.

In the case of generative AI there is a gap in the protections for the creatives whose data is being used to train the models without their consent or remuneration.

Competition law is a key tool for addressing a concentration of market power to maintain a dynamic and innovative market for consumers and small businesses.

Competition law seeks to guard against abuse of market power however this can have limited efficacy in a global business context. Also, it is not consumers who are experiencing the harm – in fact the consumer is benefiting from access to free generative AI tools. Rather it is the creatives (i.e. the originators of the data) that are losing out. Whilst competition law in Australia provides protections for small businesses, this is a costly, lengthy, and uncertain route to take, and its jurisdiction does not extend to capture corporations operating outside Australia.

Whilst copyright law has traditionally provided protection for creatives, the scale of datasets used in generative AI is challenging the effectiveness of copyright to protect creative IP.

Principles guiding the use of generative AI for creative output

The following principles have been developed to underpin policy and guidance on the development and use of generative AI applications for creative output. They are intended to promote a thriving environment, centred on human creativity, that generates opportunities for a broad a range of practitioners and businesses and supports artists to engage in creative practice. These must be founded in the fundamental principles of fairness, ethics and transparency, and the centrality of human creativity.

Value the human creative inputs used to build AI applications

Recognise that human creativity is central to our culture. Existing creative work used to build AI applications should be recognised and remunerated, either through individual or collective models.

Support artists and users to ethically engage with AI

Develop a clear and accessible framework for ethically engaging with AI.

Uphold the transparency of AI usage

AI generated creative output must be clearly identified.

Support policy approaches that enable innovation and support the unique identity of Australian culture and creative work

Adopt policy approaches that provide direction for the ongoing evolution of AI that benefits Australia and Australian creativity.

Recognise the impact of global ownership of AI technologies on accountability and government capacity to shape ethical development of AI technology

Inform government responses to the impact on artist revenue and the capacity to protect existing creative IP of concentrated and global ownership of AI systems.

Include creative leaders in policy design and decision-making for key developments in AI

Involving creative leaders in design and development will support future AI technologies that positively contribute to Australia and Australia's creative industries.