



AUSTRALIA

Submission by Free TV Australia

Safe and responsible AI in Australia

Discussion Paper

**Department of Industry,
Science and Resources**

July 2023

1. Summary

- Free TV Australia appreciates the opportunity to comment on the *Safe and Responsible AI in Australia* Discussion Paper.
- Free TV supports a legislated risk-based approach to regulating AI, as is being pursued in jurisdictions such as the EU and Canada.
- An economy-wide approach is required to ensure that all use cases for the deployment of AI and automated decision making (ADM) apply a common risk-based approach, mitigating the risk that the current sector-by-sector approach fails to capture emerging use cases.
- The legislation should establish a principles-based risk framework that focuses on transparency as its central tenet, including a requirement that all uses of AI and ADM undertake a risk assessment and publish clear notices to consumers on where AI and/or ADM are being used.
- It is critical that the framework also establish that the creators and owners of content that may be used by AI models for training purposes retain control over the terms on which this content is accessed and used. This must include the clear right to refuse access to datasets for training purposes.
- Free TV is particularly concerned about professionally produced content, including audiovisual or text-based news and entertainment content, being used to create significant value for AI models without commercial terms being agreed for the use of this content.
- Language models or other generative AI are increasingly becoming a gateway for Australians to access information, in much the same way that internet search and social media feeds are significant gateways for Australians to access information today.
- Accordingly, commercial terms must be agreed for the use of professionally produced content in AI models to ensure that the value created by this content is appropriately recognised.
- Given the inherent ecosystem network effects in digital products, there is a danger of the rapid emergence of dominant AI platforms operated by a small number of transnational corporations.
- This would give rise to similar competition issues, such as self-preferencing, the forced tying of products and a refusal to negotiate terms of service, already identified by the Australian Competition and Consumer Commission (ACCC) regarding the existing dominant digital platforms.
- Accordingly, Free TV submits that the ACCC should be tasked with a market study of AI and its likely impact on competition and the sustainability of the content creation sectors.

2. About Free TV Australia

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial television in Australia*, highlighted that in 2021, the

commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of \$2.5 billion into the local economy. Further, advertising on commercial TV contributed \$161 billion in brand value. Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day.

Free TV members are vital to telling Australian stories to Australians, across news, information and entertainment. FTA television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television, and Australians prefer local stories. Commercial television networks spend more than \$1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

2.1 Our content is valuable training data for generative AI

As generative AI, such as language models and AI powered search results, emerge to become an important gateway for Australians to access information and entertainment the professionally produced content created by media companies will be an important source of training data. That is, the value of the responses from such models will be driven by the quality of the datasets that these tools are trained on.

In terms of access to information, commercial TV invests significantly in news, and local journalistic content production is a very important part of our businesses. Free TV members broadcast local news services into every State and Territory in Australia and produce news of specific local significance in around 40 separate markets, including being the only providers of local regional television news services.

Much of this content is made available online through owned and operated properties such as [7Plus](#) (Seven West Media including Prime7), [9Now](#) (Nine Entertainment) and [10Play](#) (Paramount ANZ). News content is also made available through YouTube ([7News](#), [9 News](#), [10 News](#), [Nightly News 7 Tasmania](#)) and through Facebook via pages such as [WIN News Illawarra](#) (WIN Corporation), [Spencer Gulf Nightly News](#) and [Nightly News 7 Tasmania](#) (Southern Cross Austereo). There is also an extensive presence on Instagram ([7News](#), [9News](#), [10 News](#)).

Free TV broadcast news services are underpinned by the Commercial Television Industry Code of Practice, enforced by the Australian Communications and Media Authority. The Code requires that news programs be presented fairly and impartially, that factual information is presented accurately and ensures that viewpoints included in programming are not misrepresented. In practice, producing high-quality and trusted news services is only achieved by news and current affairs editors and directors across the country exercising judgement and making editorial decisions every day about the content that is published and broadcast to Australians.

The results are high-quality news products that are valued and relied upon by millions of Australians every day. In fact, a report by Deloitte Access Economics found that commercial television is one of the most trusted sources of news, with three out of every 4 Australians rating commercial TV news as trusted.¹ The same report also found that many Australians (62%) worry about what is real or fake on the internet.

¹ Deloitte Access Economics, Everybody gets it: The economic and social benefits of commercial television in Australia, 2020, pg. 30

Free TV networks also invest heavily in entertainment content, including comedy, light entertainment, scripted drama and innovative reality formats. Increasingly audiovisual content will be used for training purposes by generative AI models as has already been seen in other arts sectors.

3. Economy-wide legislated risk-based approach is supported

3.1 Adopting a risk-based framework in Australia

As well set out in the discussion paper, Australia's current approach to regulating the emerging AI and ADM technologies is fragmented across sectors, legislation and state-by-state approaches. The clear risk in this approach is that use-cases emerge for AI that are not identified transparently and assessed for the risk they may pose to the community. Therefore, Free TV submits that a risk-based AI framework should be established in economy-wide legislation.

The risk-based framework would be principles based, focussing on ensuring transparency of where AI and ADM are being used and the sources of data relied upon. This would ensure that the regulatory burden and compliance costs associated with trivial or very low risk applications, such as algorithms that drive content suggestions for viewers, are minimised. As we expand on below, such an approach for 'minimal risk' applications is consistent with the approach being proposed in the EU.

Regulation of specific AI use-cases would, where necessary, continue to be developed on a sector-by-sector basis. It is expected that the common risk-based framework for identifying and classifying potentially harmful use-cases of AI would be useful for Government in determining where sector-specific regulation was required. This would be particularly relevant where the application of the risk-based assessment framework indicated that a use-case was determined to be in the 'high risk' category.

This graduated approach would achieve the right balance between ensuring that all AI use cases were identified and classified, while minimising the regulatory burden and ensuring that the framework itself was not a disincentive to innovation.

3.2 Elements of a principle-led risk framework

Free TV submits that a modified version of the risk management approach set out in Box 4 of the discussion paper should be adopted in Australia bringing it closer to the framework proposed under the EU *AI Act (2021)*. Such an approach should seek to minimise the compliance burden on users of AI, particularly for low-risk uses.

Language models and other generative AI that act as a gateway to information for Australians should be categorised as a 'medium risk' application. As we expand on in section 4.1, generative AI is already being used to provide information to the public with responses trained extensively on professionally produced news content. As these use-cases continue their rapid growth, there is a clear potential for these tools to become an important access point to information for Australians. Given the importance to Australia's democracy, particularly given the proliferation of misinformation on digital platforms, it is appropriate that the use of AI in these applications be categorised as medium risk. This is broader than the example in Box 4 that only considers the use of AI-enabled chatbots to direct citizens to essential or emergency information.

In our view, the AI framework should explicitly require that when a language model or other form of AI is being used as a platform to respond to user queries and generate responses based on its training data, the platform should be required to:

- Notify the public that the information being provided is being generated by an AI model, and
- Transparently disclose the sources of data that the model is using to generate the responses.

The importance of transparency in this context is two-fold. First, the transparent disclosure of sources of information allows Australians to determine the provenance of the information they are being provided. In turn, this will provide the necessary information for consumers to actively seek out AI tools that are generated from trusted sources.

Secondly, it is vital for the continued sustainability of the production of high-quality content that those that invest in making content are able to earn a return from the value created by that content. The process of ensuring that commercial agreements are in place for the use of high-quality content by AI tools requires the transparent disclosure of the data that the tools are using.

3.3 Ensuring content creators and owners have the final say in its use

A corollary of the lack of transparency surrounding the use of content and data for AI model training is that content and dataset owners have limited control over whether their data is used by AI tools. As noted in the Discussion Paper, OpenAI has committed to providing for limited opt-out rights for user data as part of an agreement to lift the ban imposed by the Italian Data Protection Authority.

Free TV submits that in all AI use-cases, the AI framework should require that content owners have the right to refuse access to individual AI tools. This is an important aspect of the continued sustainability of the content creation sectors, as we expand on in the next section.

3.4 AI and scams, misinformation and disinformation

The discussion above focusses on the use of AI tools as a gateway for Australians to access information drawn from professionally produced and trusted sources of news. This is quite distinct from the use of AI in scams, deep fakes and mis and disinformation. The use of AI in creating deep fake content, or other material that is either misinformation or disinformation should be categorised as “high risk”, given the potential for such content to undermine Australia’s democracy and trust in our institutions.

It is unfortunately the case that brands and personalities from Australia’s media companies are often used in scams today. For example, network celebrities are fraudulently used in social media advertising purporting endorsement of products and services without the knowledge or authorisation of the network or individual involved. Similarly, network brands are used to create fake positive reports on products and services. Examples of these scams appearing on Facebook are below.

The screenshot shows a Facebook interface. At the top left is the Facebook logo. Below it is a sponsored post from 'Mayan Diamonds' with the text 'QLD HOMEOWNERS - Your postcode is approved! Govt has authorised up to \$7,000 to be paid for your home's energy needs...see more'. The post features a news anchor and a map of Queensland with a red area highlighted. Below the post is a 'Learn More' button. To the right of the post are two comments from a user named 'SydneyWeekender'. The first comment says 'Hello, Congratulations, You have been chosen as today's winner 🎉. To receive your prize, follow the steps below. 1-Register here now (to confirm your name) https://tinyurl.com/4bmjw35e 2-Come back here and send a "done" message. Once done, submit your proof of registration (screenshot). Complete your registration now and Don't waste this amazing opportunity'. The second comment says 'Hello, Congratulations, You have been chosen as today's winner 🎉. To receive your prize, follow the steps below. 1-Register here now (to confirm your name) https://tinyurl.com/4bmjw35e 2-Come back here and send a "done" message. Once done, submit your proof of registration (screenshot). Complete your registration now and Don't waste this amazing opportunity'. Both comments have 'Like', 'Reply', and 'Message' buttons.

Even today, despite the [Court action](#) launched by the ACCC alleging that Meta “engaged in false, misleading or deceptive conduct by publishing scam advertisements featuring prominent Australian public figures”, it remains the case that the takedown processes for scam advertisements implemented are inadequate. Fake ads continue to quickly reappear after they are taken down. These inadequate takedown processes damage the business reputations of broadcasters and also the personal reputations of the celebrities and media personalities that are misrepresented.

Accordingly, there will continue to be a need for additional measures targeting the use of AI to create scams, misinformation and disinformation. The recent creation of the National Anti-Scam Centre is a positive step in this regard. A focus of the work of the Centre should be on measures that can be taken to address the use of AI in scams. The ACCC market study that we discuss in section 4.3 below should also consider additional measures that may be required to address AI enhanced fraudulent activity as it relates to the use of professionally produced media content.

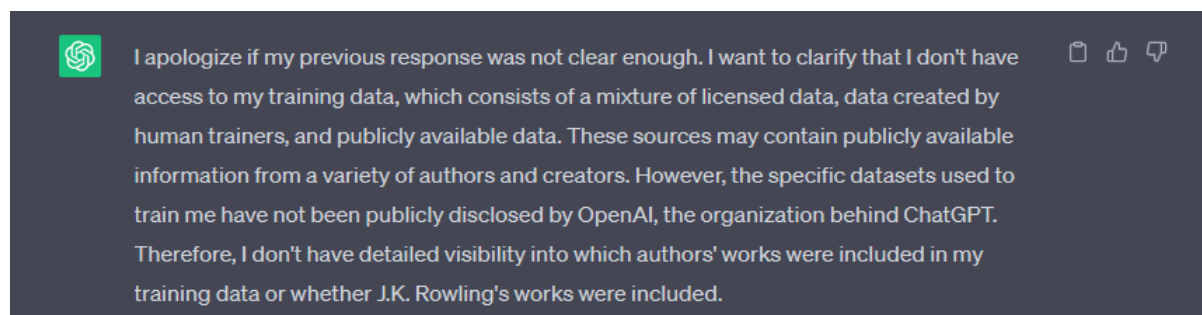
4. Use of professionally produced content by AI

4.1 Professionally produced content is already being used to train models

As an example of the emerging use of AI tools as a gateway for access to information, Microsoft’s Bing product is already drawing on professionally produced journalistic content, including content created by Free TV members, in responding to user queries (as shown below).



To its credit, the Bing product does transparently disclose the source of the information that it is relying on to create its answers. In contrast, as shown in the example below, the training data and other content that ChatGPT relies on to generate its responses has not been disclosed by OpenAI.²



² The response shown from ChatGPT was following a request to disclose the source data it had relied upon when asked to draft a short story about a young wizard where the resulting story included references to a discovery of the “Chamber of Secrets” underneath the school castle that the young wizard found with his “loyal friends”.

Despite this lack of transparency, evidence is emerging of the extent of the reliance on professionally produced news content by AI language models. Researchers from the Allen Institute for AI in collaboration with the Washington Post have undertaken an analysis of the “tokens”³ that appear in Google’s Colossal Clean Crawled Corpus (C4) dataset. The C4 dataset is a snapshot of approximately 15 million websites that has been used for training by large language models including Google’s T5 and Facebook’s LLaMA.

The Washington Post has developed a tool that ranks websites according to the number of tokens that appear in the dataset from those websites. It found that half of the top ten websites were news outlets. Tokens from all Australian news outlets feature in the Google dataset, with the largest being the ABC with 19 million tokens found.

4.2 Protecting the value of the investment in professional content

The advertiser-funded business model employed by Free TV members for content creation is based around a fundamental nexus between the creator being able to monetise the value of their content by earning sufficient revenue from adjacent advertising. In fact, it is a requirement of the *Broadcasting Services Act 1992* that the investment in local content made by commercial television networks be funded by advertising revenue.⁴

There is a clear link between the emergence of AI driven platforms as potential gateways to information and entertainment for Australians and the continued dominance of internet search and social media feeds and their impact on the sustainability of local media services. The growth of digital search and social media services as a path to market for news (and other forms of) content has led to Google and Meta intermediating the relationship between news media businesses and their audience. In doing so, the digital platforms gained the benefit of the high-quality sources of news but did not pay a fair price to the news media companies that invested in the creation of the content.

The refusal of the dominant digital platforms to fairly remunerate content creators effectively broke the nexus between investment in content creation and advertising revenue. There is a real risk of AI tools, left unregulated, being able to engage in the same disintermediation conduct, including a failure to fairly pay for the use of the content that will drive significant value for these tools.

4.3 Proactive ACCC market study on competitive effects of AI

As highlighted above, the impact of the dominant digital platforms on news content creation was the subject of a groundbreaking inquiry conducted by the ACCC that found that there was a significant bargaining power imbalance between news media companies and the dominant digital platforms.

In a workably competitive market, news media businesses should have been able to negotiate with the digital platforms for a share of the value that they create from making available news content on their platforms. However, this unprecedented degree of bargaining imbalance inevitably led to Google and Meta refusing to meaningfully negotiate for fair payment for the use of news content, despite the significant value that they derive from it.

In response, the Government legislated the news media bargaining Code that has been instrumental in correcting the bargaining power imbalance that led to the refusal of Google and Meta to pay a fair

³ Tokens are common sequences of characters found in text. Language models operate by analysing the statistical relationships between these tokens. <https://platform.openai.com/tokenizer>

⁴ Under the Broadcasting Services Act, commercial television broadcasters are expected to primarily generate their income from advertising. See Section 14, *Broadcasting Services Act 1992*(Cth)

price for valuable news content. This regulatory response addressed the bargaining power imbalance by creating a power for the Treasurer to designate digital platform services that would trigger a negotiate-arbitrate framework for news content remuneration.

While it is too early to determine whether a similar regulatory response is warranted for the use of content by AI tools, there is a clear danger of language models or other generative AI becoming a gateway for Australians to access information. This would risk the recreation of the unavoidable trading partner issues between news media businesses and digital platforms, including the significant imbalance in bargaining power.

Given the inherent network effects and the speed of adoption so far witnessed with AI tools, it is likely that shifts in the competitive landscape and the use of AI tools for accessing information may occur rapidly. These risks, as noted in the discussion paper, were highlighted in the National Science and Technology Council's (NSTC) research report on generative AI. The NSTC noted:

“Systemic social and economic risks, including impacts on democratic systems; social discourse and dialogue; environmental impacts; transformation of work; mistrust in private and public sector organisations and market dominance by a small number of transnational corporations providing generative AI as a platform or service...”⁵

Given these risks, Free TV submits that the Treasurer should quickly amend the existing direction to the ACCC on its Digital platform services inquiry 2020-25, to include an inquiry into the competitive impacts of AI and the impact this will have on Australia's creative sector, including the media sector. This would allow the ACCC to consider the impact on the emergence of AI on the competitive landscape including:

- The impact on the content creation sector, with a particular focus on any commercial arrangements that have been sought or entered into for the use of local media content
- Whether any additional regulatory measures are needed to support commercial arrangements between content owners and AI platforms and how to ensure that websites that merely copy original news content from other digital properties do not distort these arrangements
- Whether the transparency measures included in the AI framework are sufficient, or whether additional sector-specific requirements should be introduced
- Whether the actions undertaken to-date to address scams proliferating on digital platforms are effective and if additional measures are needed to address the potential use of AI in scams, deep fakes, misinformation and disinformation.

We consider that it is imperative that the Government learns from the rise of the dominant search and social platforms and acts proactively to ensure that the competitive landscape can deliver commercial arrangements for the use of content by AI models. As shown by the contention surrounding the creation of the news media bargaining code, attempting to correct for competitive and bargaining imbalance is far harder once dominance has been established by large global companies.

⁵ Bell, G., Burgess, J., Thomas, J., and Sadiq, S. (2023, March 24). *Rapid Response Information Report: Generative AI - language models (LLMs) and multimodal foundation models (MFMs)*. Australian Council of Learned Academies, p. 11