



Submission by Free TV Australia

Harnessing data and digital technology

Interim report

Productivity Commission

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1. Executive Summary

- Free TV supports the Government's productivity growth agenda and the inquiries of the Productivity Commission (the **Commission**) to identify priority reforms to support it. We acknowledge that productivity growth is a key driver of wage growth and living standards over the long term.
- However, productivity growth should not come at the expense of the local news media and creative sectors, who underpin Australian democracy and culture, and drive economic activity.
- In particular, copyright law should not be undermined to enable artificial intelligence (**AI**) providers to grow their businesses without express permission from, and payment to Australian copyright holders for use of their copyright material to train AI.
- The Commission must recognise that copyright forms the foundation of the creative and news media industries; that a text and data mining (**TDM**) exception to copyright would legalise unauthorised content theft by AI providers; and, that multinational Big Tech platforms would be the primary beneficiaries, not Australians.
- Weakening copyright protections threatens Australia's cultural and social fabric and Australians value access to a healthy and diverse news media industry, local culture and the frameworks that support it. They want to build those frameworks up, not break them down.
- Current copyright law encourages innovation through proper licensing, with existing frameworks creating the right environment for negotiations between rightsholders and technology companies.
- These frameworks should be reinforced, not undermined. This will benefit local technology companies and institutions who will be able to licence robust data, giving them confidence in the quality of the AI outputs developed. The quality of these outputs will improve productivity gains.
- Commercially negotiated licensing agreements will be better supported by meaningful transparency of inputs to AI. This will allow for negotiation for fair compensation for creators' contributions to AI development and be a win-win scenario for Australian news organisations and content creators—and AI providers.
- Enforceable transparency rules for major AI platforms who are engaging with Australian entities should be introduced. The ACCC should have a role in identifying companies that are subject to the rules.
- The Government should direct the ACCC to conduct a market study into the AI market in Australia to assist this process.
- Requiring overseas-based AI companies, and major digital platforms more generally, to submit to the Australian jurisdiction will support enforcement of Australian law in relation to the operation of these platforms and services in Australia, including with respect to copyright law.
- Australia is a mid-way through a two-stage process of modernising its privacy laws. A flexible, outcomes-based approach to compliance, as suggested by the Commission, should be considered as the process continues.

Recommendations

AI

The Commission should:

- Acknowledge the existential threat that uncompensated AI training poses to Australian media businesses and democratic discourse.
- Reject the proposed TDM exception and instead support transparency of inputs and commercial licensing.
- Recommend an ACCC market study of AI's impact, including on creative and news industries, to inform evidence-based policy making.
- Recommend enforceable transparency and attribution requirements which will underpin creative and news media organisations' ability to negotiate commercially with AI providers for use of their data.

Privacy

The Commission should:

- Recommend that a flexible, outcomes-based approach to compliance be considered as part of the existing and ongoing Privacy Act reform process in Australia.
- Recommend that precedents from other outcomes-based digital regulatory schemes be taken into account.

2. Introduction

Free TV Australia (**Free TV**) appreciates the opportunity to comment on the Commission's interim report, *Harnessing data and digital technology* (the **Interim Report**), released in August 2025. This submission addresses two of the four matters dealt with in the Interim Report:

1. Enabling AI's productivity potential (Chapter 1 of the Interim Report)
2. Supporting safe data access and use through outcomes-based privacy regulation (Chapter 3 of the Interim Report)

It is separated into the following sections:

- **Section 3** – Deals with the productivity challenge and policy context
- **Section 4** – Outlines the critical contributions free TV makes to Australian democracy, culture and the economy
- **Section 5** – Responds to the Commission's draft recommendation
- **Section 6** – Discusses AI and the importance of protecting Australian content creation
- **Section 7** – Discusses outcomes-focused privacy regulation

Free TV has submitted separately in response to the Commission's interim report, *Creating a more dynamic and resilient economy*.

3. The productivity challenge and policy context

Free TV supports the Government’s productivity growth agenda and the Commission’s inquiries to identify priority reforms to support it. We acknowledge that productivity growth is a key driver of wage growth and living standards over the long term.

As the Commission notes, data and digital technologies are the engines of modern economic growth.¹ Whether it be in relation to content creation or distribution, or the placement of advertising to support these activities, the commercial television industry harnesses both data and digital technologies to deliver services efficiently and effectively for benefit of all Australians.

However, as noted in the Interim Report, Australia also needs to manage and mitigate the downside risks of accelerated use of data and digital technology.² When it comes to AI, current and emerging risks to manage include:

- **Risks to the sustainability of the Australian media sector** – the sustainability of news media and other content and creative businesses will be at risk if content, the production of which they have developed and funded, is used to train AI without transparency, permission and remuneration.
- **Risks to democracy** – there is a significant risk that citizens will consume AI-generated or AI-summarised news without transparency as to its source, impairing their ability to critically analyse its reliability, including by validating that it is from accountable sources like the free TV broadcasters. More concerningly, as the Commission notes, there are risks that AI can manipulate public opinion,³ or more generally preform antisocial tasks.⁴

Risks arising from AI news summaries include that audiences are exposed to misinformation and disinformation, including from AI-generated fakes, which will impair their ability to make informed decisions about public interest issues, and most concerningly when forming voting intentions. While not the primary focus of this Inquiry, these risks should be noted.

By contrast, Australia has a mature privacy regulatory framework, with reforms to modernise it already underway.⁵

The downside risks to manage with respect to privacy regulation include that reforms create overly prescriptive rules that are not sufficiently flexible to keep pace with technological change. There is also a risk that reforms unduly restrict data handling in a way that fails to recognise other security measures and impairs business activity without corresponding consumer benefit.

¹ Interim Report, page 1.

² Interim Report, page 1.

³ Interim Report, page 14.

⁴ Interim Report, page 15.

⁵ The Government has consulted significantly on reform to privacy regulation over recent years. Tranche 1 of the reforms Privacy Act passed in 2024—including a statutory tort for serious invasions of privacy (appropriately including a journalism exemption), expanded powers for the Australian Information Commissioner, and enhanced civil penalties for privacy breaches. Consultation on tranche 2 is expected.

4. About Free TV

Free TV Australia is the peak industry body for Australia's commercial television 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 TV makes to Australia's culture and economy. We proudly represent all of Australia's commercial free television broadcasters in metropolitan, regional and remote licence areas.



Our members are dedicated to supporting and advancing the important contribution commercial free TV makes to Australia's culture and economy. Free TV members provide vital local services to all Australians, available in almost 100 per cent of homes—whether they be delivered over the air to an aerial, or via free broadcast video on demand (**BVOD**) services delivered via the internet. The latter are key to this Inquiry given their use of digital technology and data.

Free TV brings Australians together, supporting Australian culture and democracy. The commercial television industry creates these benefits by delivering content across a wide range of genres, including news and current affairs, sport, entertainment, lifestyle and Australian drama. At no cost to the public, our members provide a wide array of channels across a range of genres, as well as rich online and mobile offerings.

Commercial television networks:

- Reach 19.3 million Australians every week, including 11.4 million who watch trusted news every week, and 9.5 million who watch live and free sport each week
- Provide 25,285 hours of Australian content a year
- Spend more than \$1.625 billion on Australian content every year, dedicating over 88% of their content expenditure to local programming
- Spend more than \$400 million a year on trusted news, including on 390 local news bulletins every week across the country (plus updates and community service announcements)

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.

A strong commercial broadcasting industry delivers important public policy outcomes for all Australians and is key to a healthy local production ecosystem. This in turn sustains Australian storytelling and local voices and is critical to maintaining and developing our national identity.

5. Response to the Commission's draft recommendations

Free TV supports a number of recommendations in the Interim Report relating to AI and privacy regulation. However, it does not support any recommendation relating to AI that would undermine copyright. Nor does it support any recommendation that discourages action by Government in relation to other AI risks that have already been well ventilated through existing public policy development processes.

5.1 AI

- **Draft recommendation 1.1** – Free TV supports proportionate, risk-based, outcomes-based and technology-neutral AI regulation, and the PC's recommendation that the Government continue to work through various policy processes to identify gaps in a range of regulatory frameworks.

However, this should not mean that responses to clearly identified risks posed by AI should remain unaddressed pending an exhaustive multi-sector regulatory review.

- **Draft recommendation 1.2** – at a high-level Free TV supports this recommendation which provides that new AI regulation should only be considered where existing frameworks cannot adapt and technology-neutral regulations are not feasible.

However, importantly, this submission identifies a number of areas where new AI regulation is required—particularly, regulation to provide transparency of inputs to AI—given identified harms relating to the sustainability of Australia's news media and creative sectors arise from content theft by AI providers.

- **Draft recommendation 1.3** – Free TV does not support this recommendation that Government should pause steps to implement mandatory guardrails for high-risk AI uses.

Free TV has consistently argued through submissions to a range of public policy processes that mandatory guardrails should be imposed. The significant work the Government and affected parties have already done to identify high-risk AI uses should not be disregarded.⁶

⁶ Including, in 2024 alone:

- Response to *Review of AI and the Australian Consumer Law* discussion paper, November 2024: <https://www.freetv.com.au/wp-content/uploads/2024/11/Review-of-AI-and-the-ACL-Discussion-Paper-November-2024.pdf>
- Response to the *Safe and Responsible AI in Australia* Proposals Paper, October 2024: <https://www.freetv.com.au/wp-content/uploads/2024/10/Free-TV-Submission-Safe-and-responsible-AI-in-Australia-Proposals-Paper-October-2024-final.pdf>
- Response to *Revitalising National Competition Policy Consultation Paper*, September 2024: <https://www.freetv.com.au/wp-content/uploads/2024/09/Free-TV-submission-Revitalising-Competition-Policy-Consultation-paper-September-2024.pdf>
- Response to the ACCC Issues Paper relating to the *Digital Platform Services Inquiry – Final Report*, August 2024: <https://www.freetv.com.au/wp-content/uploads/2024/08/Free-TV-Submission-Digital-Platform-Services-Inquiry-%E2%80%93-March-2025-%E2%80%93-Final-Report-Issues-Paper-%E2%80%93-August-2024.pdf>
- Submission to the Submission to the Senate Select Committee on Adopting Artificial Intelligence, May 2024: <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Select-Committee-on-Adopting-Artificial-Intelligence-May-2024.pdf>

5.3 Privacy

- **Draft recommendation 3.1** – Free TV supports further consideration of reform of the Privacy Act to provide for an alternative compliance pathway that focuses on outcomes, rather than prescriptive control-based rules. In the context of digital platforms there is precedent in other recent and proposed digital regulation in Australia for taking an outcomes-based approach.
- **Draft recommendation 3.2** – Free TV supports careful consideration of this recommendation that the Government not introduce a ‘right to erasure’ as proposed through previous Privacy Act reform consultations

Factors to consider include: the significant security benefits of de-identification as opposed to erasure; consumers’ existing right to access and correction of personal information; and, the undue weight a right to erasure may place on an individual’s right to privacy at the expense of freedom of communication.

The latter is particularly relevant to the activity holding power to account and reporting on matters of public interest through robust journalism.

6. AI and Copyright: Protecting Australian content creation

Recommendations

The Commission should:

- Acknowledge the existential threat that uncompensated AI training poses to Australian media businesses and democratic discourse.
- Reject the proposed TDM exception and instead support transparency of inputs and commercial licensing.
- Recommend an ACCC market study of AI's impact, including on creative and news industries, to inform evidence-based policy making.
- Recommend enforceable transparency and attribution requirements which will underpin creative and news media organisations' ability to negotiate commercially with AI providers for use of their data.

6.1 The interests of copyright owners should not be traded off against Big Tech

The Interim Report notes that a key policy issue with respect to data is how different interests should be traded off against each other when they come into conflict.⁷

The current issue in Australia is the view put by Big Tech that the interests of local copyright holders should be traded off against the interests of AI companies—many of whom are multinational, not Australian—who seek to weaken copyright protection to reduce their costs and maximise profits from their AI services. This view is in conflict with the view of copyright owners, including Free TV's members, who want the law to protect, not undermine their investment in copyright material. Our strong view is that the trade-off Big Tech is seeking should not occur.

Fundamental to this position is recognising that intellectual property in the form of data has significant value which should be maintained or licensed by its creators. Therefore, we do not agree with the Commission when it says that:

Data is distinct from other goods in that it is often non-rivalrous, meaning multiple parties can access and use the same data at the same time without depleting its value to other users.⁸

Copyright material is owned by Free TV's members and, as such (subject to existing fair dealing exceptions in the Copyright Act), they have the exclusive right to control its distribution and use, including where they sell advertising against it to fund its production. When it is ingested into AI for training without permission and payment not only is its value depleted, but it is a breach of the Copyright Act. This should be recognised by the Commission.

⁷ Interim Report, page 7.

⁸ Interim Report, page 7.

6.3 A TDM exception to copyright would legalise unauthorised content theft by AI providers

The Commission is seeking feedback on whether reforms are needed to better facilitate the use of unlicensed copyrighted materials, in the context of training AI models.

It appropriately acknowledges that breach of copyright is a harm that AI could exacerbate by changing economic incentives. It then goes on to acknowledge that with previous waves of technological innovation that have made it easier to share or reproduce copyrighted materials, the law has been either adapted or, importantly, better enforced.⁹

What is not clear—and would require significant consideration by the Commission—is the legislative criteria to determine what types of use would be considered a fair dealing for the purpose of TDM to avoid, what the Commission has said will not be, a ‘blank cheque’.

In the face of what Big Tech acknowledges is violation of copyright for AI training via scraping,¹⁰ which is also acknowledged in the Interim Report,¹¹ the Commission now has a choice whether to support:

- adaptation which condones and permits this activity through introduction of a fair dealing exception for TDM covering AI model training, and other forms of analytical technique using machine-read material to identify patterns; or
- better ways to enforce the Copyright Act to protect the legal and commercial interests of the copyright holder.

Free TV strongly submits that the Commission should support Australia’s current copyright arrangements and reject a TDM.

6.4 Copyright law encourages innovation through proper licensing

The Commission cites the Attorney-General’s Department which notes that that:

*the copyright regime works to benefit society by encouraging creation and innovation, rewarding intellectual effort and achievement, and supporting the dissemination of knowledge and ideas.*¹²

Notwithstanding this acknowledgement, the Commission then goes on to frame its assessment of the issue from the perspective of whether copyright is a barrier to building and training AI models.¹³ Rather than consider it a barrier, in the final report of the Inquiry the Commission must consider how copyright, and licensing in particular, are in fact an enabler of AI development.

While copyright issues associated with AI outputs are not within scope of the Interim Report, the debate should focus on the benefits to AI companies and Australian users when AI is trained on licensed data. This data, such as journalism with strong editorial standards, holds licensors accountable for its quality, and promotes trustworthy outputs for users.

⁹ Interim Report, page 24.

¹⁰ For example, on the 7.30 program, Scott Farquhar, Chair of the Tech Council of Australia, said that ‘at the moment all AI usage of mining or searching or going across data is probably illegal under Australian law’. See transcript at <https://www.abc.net.au/news/2025-08-12/could-australia-benefit-from-the-revolution-in-ai/105645406>.

¹¹ Interim Report, pages 25 and 28.

¹² Interim Report, page 24.

¹³ Interim Report, page 24.

The Commission acknowledges the benefits of licensing, including noting that:

- **it addresses the problem before the risk of unauthorised use of copyright material arises**—which is far more efficient than cost ineffective court proceedings which necessarily address only isolated instances of copyright infringement; and
- **it is the key mechanism through which a copyright owner grants permission, and often involves some sort of payment**—a tried and tested mechanism that appropriately recognises ownership and value.

The Commission asks whether there are policy measures which could be implemented to better facilitate the licensing of copyrighted materials. As previously submitted to Government, Free TV's priority is regulated measures to improve transparency of inputs to AI, to underpin commercial negotiation (see next section).

Free TV's members do not support compulsory licensing regimes, instead preferring measures that create the information and incentives for commercially negotiated licensing. However, it is acknowledged that for smaller copyright owners, or groups of copyright owners, collective licensing may be most appropriate and that this could be considered by the Commission.¹⁴

Fit for purpose licensing for AI could also assist the smaller Australian organisations identified in the Interim Report, being Australian research institutions, medical technology firms and research service providers.

6.5 Meaningful transparency of inputs to AI to be imposed under regulations

In the context of AI, mandatory transparency (as well as attribution) requirements for large language AI models would support a copyright licensing system. This approach would require AI operators to maintain and make detailed records of the copyrighted materials they ingest. Setting appropriate detail in these rules will be essential to their efficacy.

By establishing these regulatory guardrails, the regime would support a market where copyright holders can license their work to AI developers, transforming licensing from a potential barrier into an enabler for AI innovation.

Critically, the implementation of this regime would also address the market advantages that immense data holdings confer upon AI operators, which can stifle competition. This concern is echoed by the ACCC, which noted in its Digital Platform Services Inquiry that:

*Given the dynamic nature of digital platform services, it is critical that the proposed digital competition regime enables continued scrutiny and monitoring of emerging technologies and their effects in other markets. For example, generative AI may affect competitive dynamics in a wide range of other markets.*¹⁵

¹⁴ Some adjustments to the competition law may be appropriate to support such collective licensing or negotiation.

¹⁵ ACCC, *Digital platform services inquiry – Final report (DPSI Final Report)*, March 2025, page 13 – available at: <https://www.accc.gov.au/system/files/digital-platform-services-inquiry-final-report-march2025.pdf>.

Free TV supports the ACCC's recommendation in its final report that it maintains a monitoring function for emerging digital technologies under the proposed digital competition regime.¹⁶ An ACCC market study would be a vital tool for the ACCC to use as part of delivering on this function.

The study could gather the crucial evidence needed to inform the regulatory framework by examining ingested materials, as well as the competitive harms arising from AI operators' data advantages, including their impact on media organisations' advertising revenue.

6.6 Overseas-based tech companies should be required to submit to the Australian jurisdiction

Jurisdictional issues are acknowledged in the Interim Report when the Commission notes that copying of copyright material for AI training overseas is subject to the relevant laws of the jurisdiction in which it occurs, and that Australian copyright law only applies to copying that occurs within Australian boundaries.¹⁷

There are notable examples of significant challenges faced by Australian individuals and regulators when dealing with global digital platforms who decline to submit to the Australian jurisdiction. These include:

- Andrew Forrest, founder of Fortescue, who was forced to commence civil proceedings against Facebook in California in relation to scam cryptocurrency advertisements which used his name and image, to promote cryptocurrency investment schemes, published on Facebook.¹⁸
- Legal action by the eSafety Commissioner seeking global takedown of non-compliant content from X, which resulted in discontinuation of proceedings in the Federal Court.¹⁹

The borderless nature of many digital platforms was examined by the Joint Select Committee on Social Media in November 2024. In its final report, *Social media: the good, the bad, and the ugly recent and Australian Society*, the Committee cited one witness who highlighted:

the 'jurisdictional arbitrage' engaged in by social media platforms in order to 'avoid effective accountability to Australian regulators and courts and deny redress to the victims of these scams and other harms':

By structuring their businesses so that all relevant operations are managed and controlled by US based companies with no relevant entities based in Australia they can frustrate attempts at service, refuse to comply with codes of practice, refuse to comply with legislation, render voluntary their compliance with injunctions and other court orders and force litigants to go through a convoluted process to sue or get a court order enforced in the US. Furthermore, they claim absolute immunity for virtually all their activities thanks to section 230 of the Communications Decency Act 1996.²⁰

¹⁶ Recommendation 5 of the DPSI Final Report was that the ACCC continue to have a monitoring function for emerging digital technologies under the proposed digital competition regime. It included generative AI among services it seeks to continue to monitor. See DPSI Report, page 22.

¹⁷ Interim Report, page 25.

¹⁸ See the ABC's report at <https://www.abc.net.au/news/2024-04-12/charges-against-meta-facebook-discontinued-in-wa-andrew-forrest/102815046>.

¹⁹ See the Commissioner's statement about the matter at: <https://www.esafety.gov.au/newsroom/media-releases/statement-from-the-esafety-commissioner-re-federal-court-proceedings>.

²⁰ Joint Select Committee on Social Media, Final Report, *Social media: the good, the bad, and the ugly recent and Australian Society*, page 58.

Ultimately, the Joint Select Committee recommended that the Australian Government consider options for greater enforceability of Australian laws for social media platforms, including amending regulation and legislation, to effectively bring digital platforms under Australian jurisdiction.

Free TV submits that the Commission should also recommend that overseas-based AI companies, and major digital platforms more generally, be required to submit to the Australian jurisdiction. This will support enforcement of Australian law in relation to the operation of these platforms and services in Australia, including with respect to enforcing rights under the Copyright Act.

7. Privacy Regulation: outcomes-focused regulation

Recommendations

The Commission should:

- Recommend that a flexible, outcomes-based approach to compliance be considered as part of the existing and ongoing Privacy Act reform process in Australia.
- Recommend that precedents from other outcomes-based digital regulatory schemes be taken into account.

The Interim Report notes that ‘the relative ease with which massive amounts of data can be created, gathered, stored and traded...creates issues of privacy and trust’.²¹

Therefore, it is right to note that the safety of data access and use is key to realising productivity growth opportunities—with the Privacy Act being central to consumer trust in the safe collection and handling of personal information.

7.1 Outcomes-based approach supports flexibility and innovation and reduces compliance cost

The Commission finds that the Privacy Act focuses too much on specific controls rather than outcomes, contributing to excessive regulatory burden. Consent, notification and disclosure requirements are called out.²²

Free TV supports the proposal to explore alternative, outcomes-based pathways to the Privacy Act compliance. This approach would:

- **Provide flexibility in compliance** by setting out what an entity must achieve rather than prescribing how to achieve it.
- **Support innovation by reducing procedural friction**—for example, by simplifying complex consent flows that can negatively impact user experience.
- **Have the potential to reduce compliance cost**—enabling organisations such as Free TV’s members to reinvest funds otherwise spent on compliance in the creation of free Australian screen content for all Australians.

The Interim Report demonstrates that there are mixed views among submitters to the Inquiry so far—for example, when it comes to the balance between certainty and flexibility. It is therefore acknowledged that the proposal would be an alternative on a ‘dual-track’ compliance path, being available to entities that prefer flexibility, while not being compulsory for those preferring the certainty of a more prescriptive track.²³

Free TV has always supported a Privacy Act which remain principles-based and technology-neutral, with: high-level principles of general application in the Privacy Act; subordinate instruments that can

²¹ Interim Report, page 5.

²² Interim Report, page 54.

²³ Interim Report, page 59.

be adapted to circumstances as required; and, guidance from the regulator.²⁴ An outcomes-based approach alternative to compliance would be consistent with principles-based primary legislation.

7.2 Outcomes-based regulations in other areas can be considered

The Commission notes that dual-track compliance regimes already exist in relation to financial advice and work health and safety.²⁵ There are also examples from existing and proposed digital regulation that could be considered as part of the Government's ongoing privacy reform process. These include:

- **Basic Online Safety Expectations** – these benchmarks, set under the *Online Safety Act 2021*, provide for online service providers to take proactive steps to protect users. While not legally enforceable, they function as a transparency and accountability mechanism and provide flexibility as to how digital platforms will protect their users.

Examples of these expectations include taking reasonable steps to ensure a service is used safely, proactively minimising unlawful or harmful material, and considering the best interests of children in the design of services likely to be accessed by them.

The expectations are outcomes-based in that user protection is the key, rather than prescriptive steps to achieve this protection.²⁶

- **Social media minimum age law** – while yet to commence, platforms that will be age-restricted social media platforms are expected to have flexibility as to how that restriction is given effect on their platform.

eSafety has released guidance ahead of the requirements taking effect that relate to reasonable steps that social media platforms will have to take to prevent age-restricted users having accounts.²⁷

²⁴ For example, see Free TV's submission to the Privacy Act Review at: <https://www.freetv.com.au/wp-content/uploads/2021/09/FINAL-Free-TV-Submission-7-Dec-2020-Privacy-Act-Review.pdf>.

²⁵ Interim Report, page 59.

²⁶ For more detail see: <https://www.esafety.gov.au/industry/basic-online-safety-expectations>.

²⁷ For more detail see: <https://www.esafety.gov.au/sites/default/files/2025-09/eSafety-SMMA-Regulatory-Guidance.pdf?v=1758262859921>.