



Submission by Free TV Australia

Copyright and AI Consultation Paper

Attorney General's Department

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1. Executive Summary

- Free TV welcomed the Government’s recent rejection of a text and data mining (**TDM**) exception, which would have allowed artificial intelligence (**AI**) developers to use Australian copyright works without permission or payment to train AI systems.
- We also welcomed the Government’s commitment to ensuring Australian creators are protected and supported as copyright challenges from AI emerge.
- Free TV supports the Attorney-General’s Department (**AGD**) consultation on licensing frameworks for AI development and endorses voluntary licensing as the appropriate model.
- However, the paper focuses exclusively on onshore AI development and ingestion of copyright works, which represents a small fraction of the actual threat to Australian media and creative businesses.
- Overseas-based AI companies are systematically ingesting Australian copyright material without permission or payment—this is happening now, at scale, and that is the problem to fix.
- It is a problem because the territorial nature of copyright law means Australian copyright law provides no practical protection against offshore AI training.
- None of the three licensing options presented in this consultation (voluntary, statutory, or extended collective licensing for local ingestion) address offshore uses. This means there is a critical gap in the consultation, which must be addressed as an urgent priority.
- Australian media organisations face the same jurisdictional challenges and bargaining power imbalances with AI companies that led to the News Media Bargaining Code and the News Bargaining Incentive.
- Without regulatory intervention—whether that be in relation to copyright or to address competition or other concerns—overseas-based companies will continue to structure their operations to avoid the Australian jurisdiction, making enforcement practically impossible.
- The borderless nature of digital platforms creates jurisdictional challenges that allow overseas-based companies to operate in Australia, use Australian content, and serve Australian users while avoiding accountability under Australian law.
- The Joint Select Committee on Social Media recognised this problem and recommended bringing digital platforms under the Australian jurisdiction. The same solution is needed for AI companies.
- This matters because Free TV members invest over \$1.625 billion annually in Australian content, including more than \$400 million on trusted news. This is the content that is being ingested overseas by AI developers.
- High-quality journalism, among other content, requires substantial investment in skilled news gathering, verification, and production. Without effective copyright protection and other safeguards, the sustainability of public interest journalism and Australian storytelling is at risk.
- AI companies seeking reliable, trustworthy data need high-quality journalism—they should pay for this valuable input just as they pay for hardware, computing power, and electricity. Paying for it will sustain its creation, which will lead to better AI outputs for users, and stronger Australian democracy and culture.
- Transparency is essential to support any licensing framework—copyright holders must know when and how their material is being used, which is impossible under current arrangements for offshore AI training.

Recommendations

AGD should recommend that the Government:

- Address unauthorised offshore uses of Australian copyright material for AI training as an urgent priority, not as a matter for future consultation.
- Direct the ACCC to conduct a market study into AI's impact on creative and news industries, recognising this is fundamentally a competition issue as well as a copyright issue.
- Support voluntary licensing as the appropriate framework for onshore and offshore AI development, while rejecting compulsory statutory licensing that would remove copyright holders' fundamental right to control use of their material.
- Similar to the News Media Bargaining Code, and the News Bargaining Incentive, implement a mechanism to encourage AI companies to enter into voluntary licensing agreements with copyright owners.
- Require overseas-based AI companies to submit to the Australian jurisdiction, building on recommendations from the Joint Select Committee on Social Media.
- Implement mandatory transparency requirements requiring AI companies to disclose what Australian copyright material they have ingested, when, and from which sources—to underpin creative and news media organisations' ability to negotiate commercially with AI developers.

2. Introduction

Free TV Australia appreciates the opportunity to comment on the AGD's October 2025 *Copyright and AI Consultation Paper* (the **Consultation Paper**). Free TV Australia is the peak industry body for Australia's commercial television broadcasters (information about Free TV and its members is at **Attachment A**).

This submission addresses the issues of licensing, copyright in AI outputs, and enforcement dealt with in the Consultation Paper. However, it first focuses on the bigger issue of overseas-based copyright infringement by AI, and other matters such as mandatory transparency requirements, which will assist Australian rights holders to protect their rights to their intellectual property.

It is separated into the following sections:

- **Section 3** – acknowledges positive elements of the Consultation Paper's approach to copyright.
- **Section 4** – addresses the critical omission regarding offshore AI training and jurisdictional challenges.
- **Section 5** – responds to Part 1 of the Consultation Paper on legal avenues for using copyright material as AI inputs.
- **Section 6** – responds to Part 2 of the Consultation Paper on generative AI outputs.

This submission builds on Free TV's previous engagement with government on AI issues, including submissions to a range of public policy processes arguing that mandatory guardrails should be imposed for AI.¹

It also builds on our engagement with the Copyright and AI Reference Group (**CAIRG**) process, including the process looking at the issue of transparency requirements, which has provided valuable opportunities for industry consultation.

Free TV acknowledges the Government's collaborative approach through the CAIRG process and the opportunity to provide detailed feedback on these critical policy questions.

¹ Including:

- Response to the Productivity Commission's interim report, *Harnessing data and digital technology*, 2025: <https://www.freetv.com.au/wp-content/uploads/2025/10/Free-TV-Submission-Harnessing-data-and-digital-technology-Interim-Report-October-2025.pdf>
- 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>

2.1.1 Copyright and Free TV's members

Free TV's members are significant copyright holders. The news, current affairs, and other content they produce represents substantial investment in:

- Highly skilled news gathering, production and presentation
- Investigative journalism that holds those in power accountable
- Local content that reflects the issues that matter most to local communities
- Australian drama, entertainment and sport that reflects our unique culture and brings Australians together

As the Consultation Paper appropriately recognises, 'creators and many businesses rely on copyright to monetise their creative and media practices, to protect their commercial interests and underpin the licensing and other contractual arrangements that are part of their industry workflows'.²

For Free TV's members, copyright protection is not merely a commercial consideration—it is the foundation that enables them to continue investing in public interest journalism and Australian storytelling. Without effective copyright protection, including against unauthorised uses by AI companies, the sustainability of these investments is at risk.

² Consultation Paper, page 18.

3. Positive recognition of copyright framework and why it matters

3.1.1 The Government has appropriately ruled out a text and data mining exception

Free TV welcomed and strongly supports the Government's decision not to pursue a TDM exception to copyright law.³ A TDM exception would have legalised the theft of Australian content and handed a free pass to Big Tech companies—most based overseas—to use Australian creative works without permission or payment. This principled stance by Government recognises that copyright protection is fundamental to sustaining Australia's news media and creative sectors.

The Government's decision sends a clear message that Australian copyright holders' rights should be respected, and that any use of copyright material for AI development must be negotiated fairly and include appropriate compensation and control.

3.1.2 Important acknowledgements in the Consultation Paper

Free TV acknowledges and supports several aspects of the Government's approach as set out in the Consultation Paper:

- **Recognition of copyright's centrality** – the Consultation Paper appropriately recognises that copyright is central to creative and media industries. This recognition is fundamental and must underpin any policy response to AI-related challenges.

The paper notes that 'the creative, media and technology sectors will be among the most directly affected' by copyright rules relating to AI, and that 'the impact copyright rules relating to AI may have on these industries will be a key consideration for the Government'.⁴ Free TV strongly supports this prioritisation of the industries that will be most directly affected by these policy decisions.

- **Quality inputs lead to quality outputs** – the Consultation Paper also acknowledges that 'high-quality AI requires high-quality data' and that 'this data is often protected by copyright'.⁵

This is a crucial recognition. The investment that Free TV's members make in producing verified, accurate, high-quality journalism and content creates data that is particularly valuable for AI training precisely because of the editorial standards, fact-checking processes, and professional practices that underpin its production.

AI companies seeking to develop reliable, trustworthy AI systems need access to high-quality data. The question is whether they should be able to access this data without permission or payment, or whether they should be required to license it from the copyright holders who invested in creating it.

- **Fair sharing of value** – the Consultation Paper notes that 'the department has heard diverse views about...how the monetary and social value able to be derived from [use of copyright material for AI development] should be shared'.⁶ Free TV submits that the answer to this question must recognise that:

³ Free TV's public response is at: <https://www.freetv.com.au/free-tv-welcomes-government-decision-to-rule-out-text-and-data-mining-exception/>.

⁴ Consultation Paper, page 3.

⁵ Consultation Paper, page 5.

⁶ Consultation Paper, page 5.

- news media organisations invest in the collection, verification and distribution of news, not the AI operators who seek to use this content;
- copyright holders should be compensated for the use of their material in AI training; and
- as set out below, voluntary licensing arrangements—and mechanisms to incentivise negotiation of those arrangements—supported by appropriate transparency requirements, provide the framework for fair sharing of value.

3.1.3 Why this matters

As the Productivity Commission has recently noted in its interim report, *Harnessing data and digital technology*, Australia needs to manage and mitigate the downside risks of accelerated use of data and digital technology.⁷ When it comes to AI, current and emerging risks to manage include:

- **Risks to the sustainability of the Australian media sector** – as noted above, 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 outputs 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.

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 consultation, these risks should be noted.

⁷ Productivity Commission interim report, *Harnessing data and digital technology*, August 2025, page 1 – available at <https://www.pc.gov.au/inquiries-and-research/data-digital/interim/>

4. Critical Omission: offshore AI training and jurisdictional challenges

Notwithstanding its positive recognition of the importance of copyright, the Consultation Paper's focus on onshore AI development fails to address the most significant and urgent threat facing Australian media businesses which is ingestion by overseas-based AI companies of Australian copyright material without permission or payment.

It also fails to acknowledge, and deal with, the effect of the significant bargaining power imbalance that exists between Australian media businesses and overseas-based AI firms, which must be addressed in order for licensing of Australian copyright material for use in AI to flourish.

4.1 The scale of the problem

Overseas-based AI companies are systematically scraping and ingesting content from Australian news websites and other media sources. This is not a theoretical future problem—it is happening now, at scale.

For example, as reported in the *Australian Financial Review* in August 2025, AI firms are crawling the news sites of Nine Entertainment, owner of Free TV member the Nine Network, 10 times a second.

The report reveals that:

ChatGPT owner OpenAI, Perplexity and other artificial intelligence giants are crawling and scraping major Australian news websites tens of millions of times a month despite those media companies taking explicit steps to prevent it from happening.

New figures from Australia's biggest media company, Nine Entertainment, reveal the sheer number of times OpenAI and its rivals are scraping news outlets to inform their AI products.

...

In the month of June [2025], Nine websites were crawled almost 10 times every second by all AI firms. OpenAI was the biggest contributor, accounting for several of those 10.⁸

4.2 Failure to address offshore uses of copyright material

Notwithstanding evidence of scraping by overseas-based AI firms, the Consultation Paper explicitly directs stakeholders to focus submissions on how Australia's copyright law facilitates onshore AI development activity.⁹ It indicates that offshore uses may be the subject of future Australian Government consultations.¹⁰

The Consultation Paper's three licensing options (voluntary licensing, statutory licensing, and extended collective licensing) only apply to AI development occurring within Australia and therefore provide no protection against the primary form of AI-related copyright infringement affecting Free TV's members.

⁸ Sam Buckingham-Jones, 'AI firms crawling Nine Entertainment's news sites 10 times a second', *Australian Financial Review*, 6 August 2025 — available at <https://www.afr.com/companies/media-and-marketing/ai-firms-crawling-nine-entertainment-s-news-sites-10-times-a-second-20250806-p5mkop>.

⁹ Consultation Paper, page 5.

¹⁰ Consultation Paper, page 2.

This deferral represents a fundamental misalignment between the Government’s consultation priorities and the existential threat facing Australian media businesses.

Without urgent action to address unauthorised offshore uses, the Australian media industry faces a future where its content is systematically exploited by multinational technology companies without consequence.

4.1 Market power imbalances and the need for an incentive to do deals

Overseas-based AI companies should be incentivised to license copyright material, just as major social media and search platforms were incentivised by the News Media Bargaining Code—and will be by the News Bargaining Incentive once introduced—to negotiate deals for news content on their platforms.

As with major social and search platforms, AI firms like those mentioned in the *Australian Financial Review* extract above, as well as others like Google, benefit from a significant bargaining power imbalance in relation to Australian media companies. This arises from the dominance of a small number of powerful businesses, their emerging role as gatekeepers (where, for example, AI-generated news summaries are based on others’ journalistic efforts), and their massive data advantages.

In this submission Free TV recommends that the ACCC be directed to conduct a market study into AI’s impact on creative and news industries, recognising this is fundamentally a competition issue as well as a copyright issue. This process will enable the collection of data that quantifies this market power and bargaining imbalance. It will provide the foundation for the introduction of a legal mechanism like the News Media Bargaining Code or News Bargaining Incentive to incentivise AI companies to enter into licensing agreements with copyright owners.

4.2 Jurisdictional Issues

From a copyright perspective, a fundamental problem is that while Australian law provides rights to copyright holders, these rights only extend to copying that occurs within Australia. As the Consultation Paper acknowledges, copyright protection is territorial, meaning it is governed by the laws of each individual country and copying of copyright material for AI training overseas is subject to the relevant laws of the jurisdiction in which it occurs.¹¹

This jurisdictional limitation means that Australian copyright law provides no meaningful protection against the primary form of AI-related copyright infringement affecting Free TV’s members.

The borderless nature of digital platforms creates jurisdictional challenges that allow overseas-based companies to operate in Australia, use Australian content, and serve Australian users while avoiding accountability under Australian law.

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

- **Andrew Forrest's civil proceedings:** the founder of Fortescue was forced to commence civil proceedings against Facebook in California in relation to scam cryptocurrency advertisements which used his name and image, published on Facebook, because the company’s corporate

¹¹ Consultation Paper, page 3.

structure placed the relevant decision-making and control outside Australian jurisdiction.¹²

- **The eSafety Commissioner enforcement action:** legal action by the eSafety Commissioner seeking global takedown of non-compliant content from X (formerly Twitter) resulted in discontinuation of proceedings in the Federal Court, highlighting the practical difficulties of enforcing Australian law against overseas-based platforms.¹³

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 1996.¹⁴

The Joint Select Committee ultimately 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 these same jurisdictional challenges apply with equal consequence to overseas-based AI companies, and that similar solutions are required.

4.3 Trade and investment considerations must not outweigh copyright protection

The Consultation Paper notes that 'the Government will consider how any potential policy response aligns with Australia's international obligations, including with respect to intellectual property rights, trade, and investment'.¹⁵

Free TV acknowledges the importance of Australia's trade relationships. However, we submit that copyright protection for Australian content should be non-negotiable in trade discussions.

While a separate subject matter, experience with the lack of progress on the Government's proposed new digital competition (ex ante) regime provides a cautionary tale:

¹² 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>.

¹³ 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>.

¹⁴ Joint Select Committee on Social Media, Final Report, *Social media: the good, the bad, and the ugly recent and Australian Society*, page 58.

¹⁵ Consultation Paper, page 4.

- The ACCC set out the evidence of the problem in 2021 in its inquiry report into digital advertising services.¹⁶
- In 2022 the ACCC found that existing competition laws are not sufficient to promote effective competition in digital platforms markets, across a range of areas including ad tech, and recommended a new ex ante scheme for digital platforms.
- In December 2024 Treasury consulted on the design of the ex ante scheme.
- There has been no progress since.

The competition harms that the ACCC identified have had, and continue to have, a profoundly harmful effect on Australian consumers and businesses. However, this initiative has apparently stalled, with overseas technology companies making strong arguments against its introduction, which may have created trade-related concerns.¹⁷

Free TV submits that the same pattern must not be repeated with AI and copyright. The interests of Australian copyright holders should not be traded away in pursuit of trade or investment benefits, particularly when those benefits would primarily accrue to multinational technology companies rather than Australian businesses or citizens.

The value of copyright protection for Australian content creation far exceeds any short-term trade considerations.

¹⁶ The ACCC found existing competition laws are not sufficient to deal with conduct like self-preferencing and leveraging data collection for anti-competitive advantage by players like Google. It causes disadvantage to anyone other than these big platforms in being able to control online advertising.

¹⁷ Laurel Henning and Jock Buckley, 'Amazon argues Australia's new digital competition rules would stifle innovation', *Capital Brief*, 19 March 2025 – available at <https://www.capitalbrief.com/article/amazon-says-australias-new-competition-rules-would-stifle-innovation-d97a0135-a3c7-4e27-b0c8-a6a16a68964c/>.

5. Response to Part 1 of the Consultation Paper: legal avenues for using copyright material as AI Inputs

Free TV acknowledges the Consultation Paper's thorough exploration of different licensing frameworks that could apply to AI development in Australia. The paper appropriately describes licensing as 'an integral part of how the value of intellectual property is determined and shared between individuals, companies and industries in a commercial context'.¹⁸

However, as detailed above, all three options presented in Part 1 apply only to onshore AI development activity and therefore do not address the primary threat facing Australian media businesses.

Free TV's responses to the specific options below focus on how these frameworks might work if implemented—but we emphasise that implementing any or all of these frameworks will not address offshore unauthorised uses, which must remain the policy priority.

The following should be read in light of the submissions in Section 4 about market power imbalances and the need for an incentive to do licensing deals.

5.1 Support for Voluntary Licencing Approach (Option A)

The case for voluntary licensing

Free TV supports voluntary licensing as the appropriate mechanism for copyright material use in AI development, supported by strong transparency requirements.

The Consultation Paper correctly describes voluntary licenses as 'cornerstones of the professional creative industries and their intersection with content distribution networks, including the technology sector'.¹⁹ The paper notes that voluntary licences are 'familiar legal instruments that can be used in sophisticated and flexible ways to facilitate uses of material in ways both old and new'.²⁰ Indeed technology companies, like AI developers, have been licensing intellectual property to protect their investment drive innovation for years.

Free TV agrees with this assessment. Voluntary licensing:

- **Maintains fundamental incentives for content creation:** market-based licensing preserves the economic signals that encourage investment in high-quality journalism and content production.
- **Allows copyright holders to control use of their material:** this is a fundamental right under copyright law and should not be diminished.
- **Enables negotiation of fair compensation:** voluntary licensing allows parties to negotiate terms that reflect the true value of the content being licensed.
- **Preserves flexibility:** different licensing arrangements can be tailored to different use cases, content types, and business models.

¹⁸ Consultation Paper, page 6.

¹⁹ Consultation Paper, page 7.

²⁰ Consultation Paper, page 8.

The Consultation Paper notes that ‘it has been suggested that if copyright material is a valuable input for AI development, it should be paid for like any other input (such as hardware, compute, electricity, staff)’.²¹ Free TV strongly agrees with this principle. If AI companies consider copyright material sufficiently valuable to use in developing their products, they should be willing to pay for that access just as they pay for other inputs.

Voluntary licensing only works with enforceability

For voluntary licensing to function effectively as a framework:

- AI developers must face genuine legal risk if they use copyright material without authorisation
- Copyright holders must have practical ability to enforce their rights
- Transparency must enable copyright holders to know when and how their material is being used

None of these conditions currently exist for offshore uses of Australian copyright material, which is why the measures recommended in Section 4 are so important.

Support for transparency requirements

Transparency of inputs to AI development is essential to support any licensing framework. Mandatory transparency requirements for AI systems operating in Australia should be developed and could include:

- Sources of training data, including identification of specific websites, publications, or content repositories
- When Australian copyright material was accessed
- Which Australian websites have been scraped, including volume and frequency of access
- Technical details of how content was processed and incorporated into training datasets

These transparency requirements should be enforceable by the ACCC or other appropriate regulator and be supported by meaningful penalties for non-compliance.

Transparency requirements would be an important component of a suite of measures to rebalance negotiating power between copyright holders and AI companies. They would provide information about what material is being used, support the development of effective licensing markets by making clear what uses are occurring, and provide evidence to support enforcement action where necessary.

Addressing concerns about voluntary licensing

The Consultation Paper identifies several potential concerns with relying on voluntary licensing. Free TV addresses these below:

- **Transaction costs and administrative burden:** the paper notes concern about ‘the possibility that the transaction costs and administrative burden (for both licensees and licensors) required to establish licences for the use of some material could exceed the value of that use’.²²

Free TV acknowledges that transaction costs can be a genuine issue, particularly for uses involving many individual copyright owners with small amounts of material. However, this concern is not applicable to Free TV’s members, who are significant copyright holders with established processes for negotiating and managing licenses in other areas.

²¹ Consultation Paper, page 8.

²² Consultation Paper, page 9.

- **Power imbalances:** The Consultation Paper acknowledges that ‘not all copyright owners have equal practical capacity or leverage to negotiate licences’.²³

Free TV agrees this is an important consideration—but it should be recognised that the power imbalance is not simply between individual content creators and AI developers. Rather, the most significant power imbalance is between Australian media organisations and multinational technology companies with market capitalisations in the billions of dollars.

Addressing this power imbalance requires strong legal frameworks and enforcement mechanisms to ensure AI companies cannot simply take content without negotiating.

- **Difficulty identifying copyright owners:** the paper also notes potential difficulties identifying and contacting all owners of copyright in material intended for use to request a licence.

While this may be a legitimate concern for some types of material, it is not relevant to Free TV’s members. News articles, current affairs programs, and other content produced by Free TV’s members are clearly attributed to the broadcaster or the specific journalist/creator, with clear pathways for commercial contact.

If AI companies genuinely cannot identify or contact copyright holders for some material, the solution is not to allow them to use that material anyway—it is to exclude that material from their training datasets.

5.2 Opposition to compulsory statutory licensing (Option B)

Free TV has significant concerns about compulsory statutory licensing for AI development and opposes this option.

Fundamental concerns

The Consultation Paper explains that under a statutory licence, ‘individual copyright owners cannot refuse permission for a use of their material that is within scope of the statutory licence’.²⁴ This represents a fundamental erosion of copyright holders’ rights.

Loss of control over copyright material

Under a compulsory statutory licence, Free TV’s members could not refuse to make their news content available for AI training even if:

- They wished to negotiate their own terms to retain greater control and secure better commercial outcomes
- They had concerns about how specific AI developers might use news content or about the reliability of AI systems trained on that content
- They believed the proposed remuneration was inadequate relative to the value their content provides
- They had strategic reasons for wanting to maintain exclusive control over their content

²³ Consultation Paper, page 6.

²⁴ Consultation Paper, page 10.

The Consultation Paper recognises significant disadvantages in compulsory licensing for organisations like Free TV’s members with particularly valuable libraries of material such as news. Free TV agrees shares these concerns, particularly with respect to trade-offs involved:

...the share of licence fee revenue that they would be entitled to under a statutory licence (and the potential reduction in their own administrative costs due to the statutory licence being managed centrally) may not fully make up for the loss of individual control over licensing arrangements.²⁵

News content is different

News and current affairs content is fundamentally different from the types of content and uses covered by existing statutory licences in Australia—such as for government copying and educational copying and communication.

These existing statutory licences serve a specific public interest purpose. AI training does not share these characteristics. Using news content to train commercial AI systems:

- Serves the private commercial interests of AI companies, not a broader public purpose
- May create AI systems that directly compete with the news organisations whose content was used for training
- Will, without compensation, undermine the business models that fund public interest journalism

Weakened negotiating position

Even if a statutory licence theoretically allowed copyright holders to negotiate direct licences as an alternative, the Consultation Paper acknowledges that ‘the availability of a statutory licence would likely weaken the negotiating position of a copyright owner seeking to negotiate a direct licence’.²⁶

This weakening of negotiating position would particularly harm Free TV’s members, who produce some of the highest-value content for AI training. If AI companies could access this content through a statutory licence at a fixed rate, they would have no incentive to negotiate direct licences at rates that reflect the true value of the content.

Focus should be on incentivising negotiation, not compelling licensing

The fundamental problem is not that copyright holders are refusing to license their content to legitimate AI developers. The problem is that AI companies—particularly overseas-based AI companies—are using content without seeking licenses at all.

The policy response should focus on ensuring AI developers must negotiate licenses (by addressing jurisdictional issues, ensuring enforcement is possible, and incentivising deals), not on forcing copyright holders to give up control over their material through compulsory licensing.

²⁵ Consultation Paper, page 13.

²⁶ Consultation Paper, page 12, footnote 9.

5.3 Careful consideration required – extended collective licensing (Option C)

The Consultation Paper describes extended collective licensing (**ECL**) as a half-way point between voluntary and statutory licences, being a licensing mechanism that allows a collecting society or similar organisation to licence copyrighted works on behalf of both its members and non-members.

The paper says that such a scheme would preserve the ability for any copyright owner (whether a collecting society member or not) that wants to actively control whether or how their material is used in AI development to exclude some or all of their material from the ECL.²⁷

Free TV does not have a settled view on extended collective licensing. However, a number of issues have been identified.

We share concerns about ECL identified in the Consultation Paper—particularly related to administrative complexity and burden on copyright holders, and the potential revenue versus control trade-off.²⁸ We note risks related to:

- **Disruption of AV licensing** – audiovisual (**AV**) content financing, production, and licensing relies on direct agreements between parties. Introducing a blanket ECL system would disrupt this model. Direct licensing is the cornerstone of AV content exploitation; exceptions to that approach must be limited to exceptional cases that do not undermine the value of those rights.
- **Opt-out challenges** – while ECL frameworks claim rightsholders can opt-out, in practice this process has been burdensome and unreliable for many rightsholders globally. In the context of AI, it is unclear how rightsholders can verify compliance with opt-out requests.
- **Impact on content value** – as the ECL functions in a manner that values all content in the same way, even where an individual rightsholder can opt-out from the ECL, the mechanism is likely to operate to decrease the value of content on the market. The ECL would affect the value of direct licences and, therefore, affect the legitimate interest of rightsholders, even when the latter effectively opted out.
- **Transparency and accountability concerns** – without transparency, fair royalty allocation is impossible. An ECL regime would lead to indiscriminate collections without a robust framework for distribution.

Further consideration would be required for Free TV to settle its view on ECL.

²⁷ Consultation Paper, page 16.

²⁸ Consultation paper, page 16.

6. Response to Part 2 of the Consultation Paper: Generative AI Output

6.1 Copyright status of generative AI outputs

Production of news and other content by Free TV's members involves clear human authorship and editorial control.

Journalists research, write, edit, and produce news content. Editorial decisions about story selection, angles, sources, and presentation are made by human editors. Even when AI tools are used to assist with specific tasks (such as transcription, translation, or video editing), the fundamental creative and editorial decisions remain with human journalists and producers.

This means that news and current affairs content produced by Free TV's members will clearly satisfy copyright subsistence requirements, as it originates from human authors who exercise intellectual effort and creative judgment in producing the content.

These characteristics are also found in other genres of professionally-produced television content made by Free TV's members.

Support for clarity on AI-assisted outputs

However, Free TV recognises that clarity on when AI-assisted content attracts copyright protection would be beneficial for the broader creative sector and for AI adoption generally.

Free TV supports the high-level objective suggested in the Consultation Paper of providing 'clarity that using AI as a tool to support human creativity, as distinct from a replacement for human creativity, does not exclude the material produced from being protected by copyright'.²⁹

This objective aligns with the longstanding principle that using tools to create content does not prevent that content from being protected by copyright. Free TV does not have a settled preference for legislative or non-legislative approaches to providing this clarity.

6.2 Support for improving enforcement mechanisms

Free TV acknowledges longstanding concerns about the cost and complexity of copyright enforcement in Australia. These concerns are not unique to AI-generated outputs but may be exacerbated by the volume of content that AI tools can produce.

Free TV supports Government consideration of options to make it easier and less costly to resolve copyright infringement cases, including small-value claims. However, Free TV emphasises that while output infringement matters, input infringement is the more fundamental threat to our members' businesses.

²⁹ Consultation Paper, page 20.

7. Attachment A – Background on Free TV and its members

Free TV Australia advances 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.



7.1.1 The contribution of Free TV’s members

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.

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.