Artificial Intelligence Position Statement
October 2023

Creators and publishers are amongst those most affected by the speed and scope of the development of generative AI models. Their works are being used to train AI without their authorisation, remuneration, or recognition, frequently under the guise of "research". Creators and publishers are also concerned about AI-generated works being passed off as works of authentic human creativity—a concern shared throughout society.

While we acknowledge that there are useful and important purposes AI can be applied to, there is an urgent need for policymakers to act by implementing regulatory regimes to respond to these concerns. Creators and publishers, who are at the cutting edge of the creation and use of intellectual property, must be present in these policy discussions to ensure that AI systems are transparent, ethical, fair, and lawful.

By using their works in training AI, creators and publishers have provided the foundation for many AI technologies, and it is right and just that creators' and publishers' lawful rights should be recognised and enforced.

We do not regard this as a zero-sum matter: we can have AI that fuels innovation throughout our economy and respects the rights of creators and publishers. Respect for their intellectual property rights is compatible with the growth of AI.

Creators' and publishers' rights need appropriate protections when exploited by AI systems

The scraping, analysis, and exploitation of vast quantities of data appears to frequently occur without rightsholders' lawful authorisation. These works have value—both economic and non-economic—and rightsholders should be able to authorise or prohibit use of their works, to receive acknowledgement for it, and to be compensated for it.

Significance of the impact on Māori intellectual property

We particularly emphasise the impact of the exploitation of Māori taonga, both in its impact on Māori creators and traditional systems of intellectual property management, and of the effect of AI outputs on Māori tikanga. Further, Te Tiriti o Waitangi and Wai 262 place important obligations on the Crown in respect to the protection of taonga and tikanga. While others can speak to these issues with greater knowledge than us, we acknowledge these issues significance.

Licencing and collective management are the solution

Existing collective licencing systems can readily accommodate the equitable use of rightsholders' creative works in AI systems. This has been demonstrated by the use of collective licences by some AI developers. Individual and collective licencing solutions are readily available for a wide variety of works, including text-based works relying on books, articles, and other written materials, and visual artworks. They offer an efficient, well-established solution to licencing creators' and publishers' works.

Copyright Licensing New Zealand
Kotahitanga, Level 6, 19-21 Como Street
PO Box 331 488, Takapuna, Auckland 0740
Aotearoa New Zealand
T +64 9 486 6250
Freephone 0800 480 271
E info@copyright.co.nz
www.copyright.co.nz

Text and data mining exceptions must allow for opt-out

Article 9(2) of the Berne Convention, to which New Zealand is a signatory, states that exceptions to copyright—such as TDM exceptions that allow AI systems to exploit creators' works without authorisation or remuneration—should be avoided. Instead, TDM exceptions should be narrow, remunerative, and respect the rights of creators.

Policy changes must be based on robust evidence

Around the world, copyright law has successfully adapted to many technological changes and has generally effectively addressed previous challenges. To continue this success, we should not rush into changes without deep consideration of the needs of creators and publishers. There is no evidence to suggest that changes to the law are needed to incentivise AI-related innovations: there is no evidence of market failure or problems warranting changes to the law.

Policy changes should not harm existing markets

Derogations of the rights of creators and publishers must be subject to the exceptions and limitations defined in the Berne Convention. The application of exceptions to respond to AI should be no different: exceptions must consider the integrity of the over-all copyright system and should not harm existing and developing markets.

Education is essential

For copyright policy to be sound, policymakers, rightsholders, and users of copyright material must have robust understanding of the legal implications of using copyright works and the importance of copyright law to society. This should include understanding that the use of copyright works as inputs to AI systems without authorisation or remuneration to creators and publishers can—particularly in commercial contexts—result in infringement; this is particularly acute where AI outputs compete with underlying copyright works for economic and non-economic rewards.

Transparency and clear responsibility are key to fairer AI practices

Copyright policies that respond to AI and their fair implementation should be based on transparent recording and communication to creators and publishers of what copyright works are used by AI systems and for what purpose. This is critical to support licencing, identification of works generated by AI systems, and acknowledgement of creators and publishers. AI operators must be legally required to keep relevant records, and they must be held accountable for activities and outputs that infringe the rights of creators and publishers.

Transparency is critical to the safe, ethical, and unbiased operation of AI systems, and encourages a better understanding of the use of copyrighted materials.

A new agency may be part of the solution

Recognising the complex interplay between AI and the law, we propose that a new agency should be established to be an active guide for the AI ecosystem in New Zealand. This agency could draw on the best of regulations being developed overseas to balance innovation with ethical and legal safeguards. By assessing and enforcing standards of quality and responsibility for AI technologies, it can safeguard intellectual property, data and privacy protections, and ethical use.

This will not be merely punitive but instead align closely with on-going dialogues on these issues. It could also engage across government and with other sectors. By operating in this way it can encourage responsible innovation within the AI sector.