



Safe and Responsible AI in Australia Discussion: Image Makers Association Australia – 26th July 2023

Submission to:

Australian Government - Department of Industry, Science and Resources

INTRODUCTION

Image Makers Association Australia represents professional and emerging photographers and image makers in Australia through education, advocacy, celebration and connection. We work on behalf of our members to improve the business landscape for the photographic profession, building confidence in the value of photography and ensuring image making remains a viable career path into the future.

Image Makers Association Australia acknowledges and pays respect to the past, present and future traditional custodians and Elders of Country throughout Australia. We acknowledge their continuous connection to the lands, waters, culture and communities on and within which we work.

Our members are commercial image makers and stills photographers working across portraiture, editorial, architecture, design, food, advertising, corporate, lifestyle, travel, social media content, still life, studio, montage artistry and more. They are commissioned to produce imagery for a range of organisations including small and medium businesses, corporations, government, not for profit organisations and print and online publications. Their work can be seen across a wide range of media promoting a variety of products and services.

Image Makers Association Australia has filled a void of representation for commercial photographers; the organisation came about following several years during which a group of Australian photographers communicated with each other around issues relating to copyright that affected them all. In some instances they worked together informally to enact change, leading to the eventual formation of an industry body in mid 2022. In just over 12 months of operation, membership has grown to over 120 individuals and continues to climb steadily with four industry members (Eizo, Michaels Camera Hire, Nikon Australia and Specular) offering their support too.

In the short time since establishment, we have become an affiliate member of the Australian Copyright Council, the pre-eminent authority on Australian copyright law, and we are recognised in their literature as the relevant industry body for commercial photographers in Australia. We have also formed productive affiliations and partnerships with the following organisations in support of our aims to educate, advocate, celebrate and connect for the benefit of our membership:

- Australian Institute of Architects
- Authentic Design Alliance
- Indesignlive / Inde.Awards
- Regional Architecture Association

Copyright and its enforcement are at the core of Image Makers Association Australia; in fact this topic is our primary reason for being. Concerns around copyright and licensing were noted by over 70% of our members as being one of the most pressing issues currently facing our industry as a whole. This statistic was established out of a survey conducted of our membership in October 2022 to establish priorities for the newly formed association.

DISCUSSION PAPER RESPONSE

The Department of Industry, Science and Resources of the Australian Government is seeking to mitigate the potential risks from generative artificial intelligence and to increase public trust and confidence in the development and use of such systems. In calling for submissions, the department has prepared twenty broad questions and has noted that responses need address only some of the questions raised. Many of the questions in the discussion paper extend far beyond the scope of professional photographers and image makers. We have thus focused our response on only those matters that relate in specific and practical ways to our commercial enterprises as image makers.

Broadly, the response that follows addresses the following discussion paper questions:

2. What potential risks from AI are not covered by Australia's existing regulatory approaches? Do you have suggestions for possible regulatory action to mitigate these risks?

9. a. Where and when transparency will be most critical and valuable to mitigate potential AI risks and to improve public trust and confidence in AI?

9. b. Mandating transparency requirements across the private and public sectors, including how these requirements could be implemented.

In order to produce our submission to the Safe and Responsible AI in Australia Discussion Paper, we conducted a survey of commercial photographers to ensure our submission reflected the real, up-to-date experience of current practitioners. Along with our membership, we also reached out to a broad range of other commercial photographers so as to ensure we reflected the experience of the industry as a whole, especially given our organisation is still relatively young. This online survey was open for submissions for a fortnight during July of this year. We received a total of 61 responses to our survey.

Interestingly, photographers, montage artists and other image makers sit in a slightly unusual position in relation to this burgeoning technology as we are simultaneously in a position to be commercially threatened by some of the visual work generated by AI but we are also in a position to benefit from improvements in productivity as a result of that same technology. As a result, the responses to some of our survey questions reflect this contradiction.

Generally speaking, our survey indicates that the majority of commercial photographers see AI as posing a threat to their business. Yet a large number of them also see AI as an exciting tool for them to utilise, with more than a third of respondents having already used AI in some form in their image-making practice.

Critical to the ongoing commercial viability of professional photography and to image making more broadly is the ability to license copyrighted work to generate income. With this in mind, we surveyed our industry about their opinions on how copyright might or might not relate to new work that is either entirely or partially generated by AI. We also inquired about their opinions on attribution of authorship in relation to such works. While many respondents indicated that they are currently unsure about how these issues might be resolved, a large number generally indicated that copyright of such work should rest with the human creators of such work rather than with either a computer software company or with some abstract AI entity. One respondent also pointed out that in their opinion copyright should not apply at all to any images that have been entirely generated by AI as that work will have been created using unlicensed, illegally sourced, copyrighted works.

With regard to the data that is being used by AI systems to generate their automated visual output, the vast majority of our survey respondents indicated that AI systems should only be accessing data that is specifically licensed for the purposes of training generative AI systems. A majority of survey respondents indicated that they would be likely to join a legal class action against the owners of AI systems for training AI systems using their copyrighted work. The vast majority of respondents also indicated a preference for compulsory disclosure of use of AI whenever such work is published, used

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or displayed. It could thus be garnered that transparency of AI-generated status as well as the original sources of AI-generated image-based output is critical to improve public trust and confidence in AI as well as ensuring that all AI-generated imagery does not breach copyright of existing works.

The pages that follow include the detailed findings of our recent survey.

OUR SURVEY RESPONSES

Awareness and Initial Impressions of AI

Are you aware of evolving artificial intelligence computer systems (AI), specifically the ability of AI to generate fairly realistic photographic-like digital imagery?

Yes: **61** (100% of respondents)
No: **00** (0% of respondents)

Do you see AI as a new and exciting tool for you to utilise in your creative endeavours?

Yes: **27** (44% of respondents)
Unsure: **23** (38% of respondents)
No: **11** (18% of respondents)

Do you see imagery generated by AI as a current or future threat to your business as a photographer?

Yes: **36** (59% of respondents)
Unsure: **13** (21% of respondents)
No: **12** (20% of respondents)

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Use of AI to Create Entire Images via Text or Voice Prompts

Have you been using any AI systems to generate creative works via text or voice prompts?

Yes:	22	(36% of respondents)
No, but I intend to in the future:	11	(18% of respondents)
No, and I don't currently intend to in the future:	28	(46% of respondents)

Select any of the following AI tools you have experimented with:

DALL-E:	08	(13% of respondents)
Mid Journey:	16	(26% of respondents)
Runway:	01	(02% of respondents)
Stable Diffusion:	03	(05% of respondents)
Firefly:	02	(04% of respondents)
PhotoShop:	06	(10% of respondents)

Would you consider that a human who entered text or voice prompts into an AI system to create a work owns the copyright in the generated works?

Yes, the copyright should be entirely owned by the human who entered the prompts	26	(43% of respondents)
Yes, but only partially - a computer/software company should own a partial share of copyright	05	(07% of respondents)
Yes, but only partially - a non-human AI entity should 'own' a partial share of copyright	01	(02% of respondents) (Not an IMAA Member)
No, not at all - a computer/software company should own the copyright entirely	00	(00% of respondents)
No, not at all - a non-human AI entity should own the copyright entirely	03	(05% of respondents) (1 x assistant, 2 x non-members)
Unsure	26	(43% of respondents)

Do you feel that AI systems that are used to generate creative works via text or voice prompts should be attributed as an author in some way?

No, not at all - the human who entered the prompts should be solely attributed as the creator of the work	19	(31% of respondents)
Yes, but only partially - a computer/software company should be credited alongside the human who entered the prompts	17	(28% of respondents)
Yes, but only partially - a non-human AI entity should be credited alongside the human who entered the prompts	08	(13% of respondents)
Yes, entirely - the human who entered the prompts should not receive any credit or attribution as the creator of the work	02	(04% of respondents) (All non-members of IMAA)
Unsure	15	(24% of respondents)

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More generally do you feel that use of AI systems to generate creative works via text or voice prompts should be disclosed whenever the resultant images are published or used?

Yes:	54	(88% of respondents)
Unsure:	05	(08% of respondents)
No:	02	(04% of respondents; 1 x assistant, 1 x non-member of IMAA)

Use of AI to Edit Parts of Conventional Photographs in Post-Production

Have you been using Adobe Photoshop's new AI based generative fill and replacement tools (or similar) as part of your photography post-production workflow?

Yes:	24	(39% of respondents)
No, but I intend to in the future:	25	(41% of respondents)
No, and I don't currently intend to in the future:	12	(20% of respondents)

When considering the use of AI-based generative fill and replacement tools (or similar) as part of your photography post-production workflow, would you consider that you as the photographer own the copyright in any such works?

Yes, entirely	48	(79% of respondents)
Yes, but only partially - a computer/software company should own a partial share of copyright	03	(05% of respondents)
Yes, but only partially - a non-human AI entity should 'own' a partial share of copyright	00	(00% of respondents)
Unsure	10	(16% of respondents)

Do you feel that when AI-based generative fill and replacement tools (or similar) are used as part of your photography post-production workflow, the AI system should be attributed as an author in some way?

No, not at all - the human who took the original photograph should be solely attributed as the creator of the work	37	(61% of respondents)
Yes, but only partially - a computer/software company should be credited alongside the human who took the original photograph	11	(18% of respondents)
Yes, but only partially - a non-human AI entity should be credited alongside the human who took the original photograph	02	(03% of respondents)
Unsure	11	(18% of respondents)

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More generally, do you feel that any use of AI-based generative fill and replacement tools (or similar) in photography post-production workflows should be disclosed whenever the resultant photographs are published or used?

Yes:	10	(16% of respondents)
It would depend on the extent:	40	(66% of respondents)
No:	09	(15% of respondents)
Unsure:	02	(03% of respondents)

Use of Copyrighted Material by AI Systems

Do you agree that AI developers should have to be transparent about the data sets used for their AI models?

Yes:	59	(96% of respondents)
Unsure:	01	(02% of respondents)
No:	01	(02% of respondents, not an IMAA Member)

Do you agree that AI developers should be restricted to using authorised data sources when training AI models to ensure appropriate licensing of content used and to avoid infringing copyright?

Yes:	60	(98% of respondents)
Unsure:	00	(00% of respondents)
No:	01	(02% of respondents, not an IMAA Member)

Does it worry you that AI machine learning systems may have been ‘trained’ using your copyrighted imagery?

Yes:	49	(80% of respondents)
Unsure:	05	(08% of respondents)
No:	07	(12% of respondents)

Would it worry you if imagery generated by AI systems included direct copies of parts of your copyrighted work without your direct prior approval and without attributing you?

Yes:	58	(95% of respondents)
Unsure:	00	(00% of respondents)
No:	03	(05% of respondents, 1 x founding member, 2 x non-members of IMAA)

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Would it worry you if imagery generated by AI systems closely resembled your photographic style?

Yes: **39** (64% of respondents)
 Unsure: **14** (23% of respondents)
 No: **08** (13% of respondents)

Would it worry you if AI systems use your copyrighted photography for facial recognition or social scoring without your direct prior approval?

Yes: **60** (98% of respondents)
 Unsure: **01** (02% of respondents, 1 x founding member of IMAA)
 No: **00** (00% of respondents)

Have you used websites such as <https://haveibeenentrained.com> (or similar) to check to see whether any of your imagery has been used to train generative artificial intelligence systems?

Yes: **08** (13% of respondents)
 No: **53** (87% of respondents)

Are you aware that you can actively block some generative AI web systems from using your imagery as the basis for AI machine learning?

Yes: **07** (11% of respondents)
 No: **54** (89% of respondents)

Have you already taken steps to block access to your websites and digital works by AI machine learning systems?

Yes: **00** (00% of respondents)
 No, but I intend to soon: **39** (65% of respondents)
 No, the horse has already bolted: **14** (23% of respondents)
 No, I don't mind if AI is trained using my work: **04** (06% of respondents, 2 x members, 2 x non members)
 Unsure: **04** (06% of respondents)

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If there was a class action in Australia against AI systems and their owners for training AI systems using your copyrighted material, would you be likely to join such an action?

Yes:	31	(51% of respondents)
Unsure:	25	(41% of respondents)
No:	05	(08% of respondents, 1 x non-member, 4 x founding members of IMAA)

Governmental & Legislative Responses to AI Systems

In your opinion, do you believe that Australia's existing copyright laws adequately address all issues relating to generative AI?

Yes:	01	(02% of respondents, non-member of IMAA)
Unsure:	15	(24% of respondents)
No:	45	(74% of respondents)

In your opinion, do you believe that Australian governments should be implementing regulations and policies that specifically relate to the development, control and use of generative artificial intelligence and associated machine learning?

Yes:	57	(93% of respondents)
No, the companies behind AI should self-regulate:	01	(02% of respondents)
Unsure:	03	(05% of respondents)

CONCLUSION & THANK YOU

It is clear from the surveyed responses above that the application of generative artificial intelligence computer systems to image making businesses raises many questions. While our profession is in a position to garner productivity improvements in parts of our workflow, we are also collectively worried about the extent of unauthorised use of our copyrighted work by these AI systems. Government needs to review the application of existing copyright legislation in relation to this technology to ensure that these systems do not breach copyright during production of AI image-making through unauthorised data-mining and also in relation to the copyright status of any work that results from those systems. It is also important that legislation be developed that clarifies requirements of acknowledgement of source material used by AI systems and also declaration of the AI generated status of any publicly visible AI work.

Thank you for providing our association with the opportunity to provide feedback to Government on these matters that are critical to the ongoing commercial viability of our industry. Being adequately remunerated for all types of use of copyrighted works is a critical component of any photographers' business model and is something we see as being put

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at risk by the development of generative AI systems. Issues around copyright and its enforcement are core business matters for Image Makers Association Australia and our key reason for existing. We remain concerned about the developing issues in this area and would welcome the opportunity to discuss further any of the data or ideas that have been put forward in this response; we can be contacted on info@imagemakersassociation.com.au


We look forward to seeing copyright legislation in relation to generative artificial intelligence computer systems continue to evolve and better support and protect the commercial realities of working professional photographers.



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