



Stephen King and Julie Abramson  
Commissioners  
Productivity Commission  
Australian Government

15 September 2025

Dear Commissioners,

The National Association for the Visual Arts (NAVA) welcomes the opportunity to respond to the Productivity Commission's *Harnessing data and digital technology* interim report.

NAVA is an independent membership organisation which brings together the many voices of the visual arts, craft and design sector to improve the fundamental conditions of work and practice. We do this through advocacy, education and the Code of Practice for the Visual Arts, Craft and Design. Our network comprises over 50,000 artists, arts workers, galleries, arts organisations and industry bodies.

NAVA has been a longstanding advocate for copyright entitlements for visual creators. In 1995, we played a pivotal role in establishing Viscopy, Australia's first visual arts copyright collecting agency, now part of the Copyright Agency. This was a significant step toward securing income rights for artists.

Today, with the rapid development and deployment of artificial intelligence (AI) systems, NAVA continues to champion the intellectual property rights and income-generating potential of visual artists, craft practitioners and designers. We hold a deep concern for the lawful, ethical, and transparent use of artists' works in AI training, generation, and dissemination.

NAVA is an affiliate member of the Australian Copyright Council, and a member of the Copyright Agency and the Indigenous Art Code. We endorse the responses of these organisations to the Productivity Commission's Interim Report, particularly their shared opposition to introducing a fair dealing exception for text and data mining (TDM), and their recommendation that licensing pathways are the best way to protect the rights of creators and copyright owners.

NAVA strongly opposes any amendment to the Copyright Act that would introduce a fair dealing exception for TDM. We join fellow arts peak bodies and thousands of Australian artists, writers and publishers in rejecting this proposal, which would entrench a system where creators are not asked, not paid, and not protected. The introduction of such an exception would primarily benefit large multinational AI companies while causing long-term harm to Australia's creative industries, including the visual arts. Far from promoting innovation, it would entrench a system where creators are exploited for their intellectual labour, further compounding the precarity already experienced by many Australian artists.

This is especially damaging in the context of Indigenous Cultural and Intellectual Property (ICIP), which is not protected under current copyright law. As the Indigenous Art Code notes, weakening copyright to facilitate AI scraping would have disproportionate and harmful impacts on Aboriginal and Torres Strait Islander artists, many of whom already face significant barriers in asserting their rights. AI scraping presents specific cultural risks, including misappropriation of traditional cultural expressions, loss of control over ICIP, further risks to Indigenous data sovereignty, misrepresentation, and the proliferation of AI-generated “Aboriginal-style” outputs that distort markets and disrespect culture.

The Copyright Agency has also warned that AI regulation must reflect that some creators, particularly holders of ICIP, may not wish to grant permission for their work to be used. Any regulatory response must therefore include a robust commitment to transparency, proper consent, and Indigenous governance across the AI lifecycle.

Earlier this year, NAVA participated in the *Envisioning Aboriginal and Torres Strait Islander AI Futures* gathering. This event affirmed that First Nations leadership must guide how AI interacts with First Nations cultural content and knowledge systems.<sup>1</sup> Such leadership must be embedded in both AI policy development and the design of regulatory frameworks. Ethical AI governance must uphold Indigenous data sovereignty, cultural protocols, and First Nations-led decision-making around access and use of cultural material.

As the Productivity Commission’s own 2022 report on Aboriginal and Torres Strait Islander visual arts and crafts concluded, “dedicated legal protections” are the most effective way to address the misappropriation of ICIP.<sup>2</sup> Under National Cultural Policy *Revive*, the Australian Government has committed to progress standalone ICIP legislation.<sup>3</sup> Stronger protections could also help Australia meet its international obligations in relation to First Nations peoples and their cultures.

Aligning with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples,<sup>4</sup> NAVA emphasises that AI regulation must embed the principles of Indigenous data sovereignty and actively protect ICIP from unauthorised use.

Draft ICIP legislation is currently being developed, and the Commission’s interim report fails to acknowledge the specific risks that AI scraping poses for First Nations cultural rights. This omission is significant. Failing to act now risks embedding new forms of digital colonialism under the guise of innovation. This is not just a copyright issue - it is a cultural rights issue.

Rather than weakening copyright protections, NAVA supports the development of lawful licensing mechanisms, particularly through Australia’s established collective licensing frameworks, as the most effective way to ensure rightsholders are remunerated for the onshore use of copyright material in AI systems, and to build a fair, sustainable AI ecosystem that benefits Australian creators and audiences.

NAVA’s core concern is that artists’ work is already being scraped and used to train AI systems without consent, attribution or compensation. This undermines copyright and moral rights and devalues creative labour. Artists must retain the right to control how their work is used, including in

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<sup>1</sup> [https://research-management.mq.edu.au/ws/portalfiles/portal/424078379/Publisher\\_version.pdf](https://research-management.mq.edu.au/ws/portalfiles/portal/424078379/Publisher_version.pdf)

<sup>2</sup> <https://www.pc.gov.au/inquiries/completed/indigenous-arts#report>

<sup>3</sup> <https://www.arts.gov.au/sites/default/files/documents/national-culturalpolicy-8february2023.pdf>

<sup>4</sup> [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

the development of AI models. Attribution must be preserved even if a work is modified, and income-generating potential must be upheld.

NAVA asserts that consent for inclusion in AI training datasets must be opt-in, not assumed. Opt-out schemes or "Do Not Train" registries are inadequate and place the burden of monitoring and enforcement on individual artists, who are already structurally disadvantaged in this space.

Licensing agreements must be based on informed participation. A collecting society model may offer a viable pathway for legitimate, remunerated access to copyrighted content.

General-purpose AI tools, such as image generators, large language models, and chatbots, can cause substantial harm to visual artists, regardless of whether they are classified as "high risk." These harms include the scraping and imitation of visual works, impersonation, and the loss of control over personal imagery. Artists face power imbalances, opaque platforms, and significant barriers to legal recourse. These are not failures of copyright law but failures of enforcement systems. Stronger regulation is needed to ensure that artists are not left bearing the cost of innovation driven by powerful tech companies.

In July 2025, NAVA conducted a national survey of more than 890 visual artists on how they are experiencing and responding to AI. Key findings include:

- Over 80% believe AI poses risks to their income, practice, and moral rights
- 73% support a compensation scheme when work is used to train AI
- Artists report their work and personal data have already been scraped without consent
- Many feel unsafe sharing work online due to AI-related risks.

Respondents repeatedly stressed that AI scraping without consent is not innovation, but exploitation. Many called it theft. They also raised concerns about impersonation, the loss of control over their artwork and personal imagery, and the environmental impacts of large-scale AI infrastructure.

Despite these risks, artists are not rejecting AI. Many are experimenting with the technology, particularly in administrative and research contexts. Among artists who currently use generative AI:

- 49% use it for editing or grammar correction
- 49% use it to draft written content
- 36% use it for grant writing and administration
- 40% use it for research and development
- Only 6% use AI to produce final artworks.

This suggests artists are open to technological tools that support their work and practice, but reject systems that undermine their rights to earn income and be attributed for their work.

Uncertainty around copyright ownership of AI-generated works creates further vulnerability for artists. Many respondents expressed confusion and frustration over ambiguous rules related to attribution, especially when their own work may have been scraped or mimicked in training datasets without their knowledge or permission. These grey areas make it harder to properly recognise artists' work and leave them vulnerable to reputational damage and financial loss. We urgently need clearer rules and legal definitions to protect authorship, make rights enforceable, and ensure artists can continue to earn a living from their practice.

NAVA supports international good practice models such as the EU AI Act, which introduces:

- Mandatory disclosure of training data sources
- Clear labelling of AI-generated content (e.g. via metadata or watermarks)
- Accountability across the AI development and deployment supply chain.

However, Australia must go further. Transparency obligations must apply to all AI products made available to Australian users, including those developed offshore. Simply harmonising with overseas models is not enough to protect the rights of Australian artists and cultural workers. Our regulatory response must reflect local needs, legal frameworks, and cultural responsibilities, particularly with respect to ICIP.

NAVA urges the Productivity Commission and the Australian Government to:

- Reject any new copyright exceptions, including a TDM fair dealing exception, that would permit AI companies to scrape creators' work without authorisation
- Strengthen enforcement of existing copyright laws, including cross-border accountability
- Develop standalone AI legislation that explicitly upholds creators' rights
- Mandate transparency around training datasets, including full disclosure of sources
- Embed meaningful consent processes, based on opt-in licensing
- Protect moral rights and ICIP, including through the urgent development of standalone ICIP legislation, supported by a dedicated budget and implementation framework to ensure the legislation is properly applied, enforced, and governed by First Nations-led processes.

NAVA supports a transparent, lawful and accountable approach to the development and regulation of AI systems. This includes strong copyright protections, meaningful consent processes, and clear enforcement pathways that centre the rights of artists and uphold the integrity of their work and practice.

*Revive: a place for every story, a story for every place* recognises the importance of supporting artists as workers - including secure pay, career sustainability, and safe and respectful workplaces. These commitments must be reflected in how Australia approaches AI regulation.

Protecting creators' rights, including moral rights and Indigenous Cultural and Intellectual Property, is essential to a functioning copyright system, and to building an ethical and artist-respecting digital future.

We welcome the opportunity to contribute to this process and are happy to provide further information if required.

Sincerely,

Penelope Benton  
Executive Director