screenrights

Submission responding to the *Copyright and AI Consultation Paper October 2025*

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For further information:
James Dickinson
Chief Executive Officer
james@screenrights.org

About Us

1.   Screenrights is a non-profit copyright management organisation representing the screen production sector. Screenrights has more than 5,200 members in 73 countries worldwide. Our members are producers, writers, visual artists, directors, sales agents, broadcasters and distributors.

2.   Screenrights is appointed by the Commonwealth and the Copyright Tribunal to administer several statutory licensing schemes on behalf of filmmakers and other rightsholders. The licences include educational use of broadcasts, retransmission of free-to-air broadcasts and government use of broadcasts. Screenrights collects the fees for the use and distributes them to the copyright owners of the programs used.

3.   In the 2024/25 financial year, Screenrights made available $43.5 million for distribution to Screenrights members, payable to our members under our statutory licences and other services.

4.   Screenrights also administers a licensing scheme in New Zealand, which includes educational licences.

5.   Supporting the integrity of copyright in a fast-changing digital environment and supporting our members' right to fair compensation for the usage of their creative material is a fundamental objective for Screenrights.

Executive Summary

6.   Screenrights is grateful for the opportunity to respond to the *Copyright and AI Consultation Paper October 2025* (**Paper**) issued by the Attorney-General's Department (**Department**). Screenrights will address Part 1 of the Paper only.

7.   Screenrights' informed view is that regulatory reform is needed to strengthen copyright licensing for AI development in Australia, in order to level up access to licensing, particularly for smaller copyright holders.

8.   <u>Screenrights supports the introduction of an extended collective licensing (**ECL**) framework, as set out in Option C of Part 1 of the Paper.</u>

9.   Screenrights' support for regulatory reform to introduce an ECL framework is based on:

   (a)   a survey of our members into their licensing needs in relation to AI, the results of which (annexed to this submission) demonstrate a clear gap between willingness on the one hand and perceived resources and/or ability on the other hand among our members who are open to licensing to AI developers; and

   (b)   extensive research on the operation of ECL in other jurisdictions and its suitability for introduction into Australia, particularly taking into account the flexibility offered by the model and the way it operates alongside voluntary licensing, which aspects are especially relevant for licensing of AI.

10. Screenrights supports ECL as an effective compromise position that strikes the right balance between efficient access to works and authorised indemnity from infringement for the tech sector; and autonomy, protection and fair remuneration for copyright holders.

11. Screenrights does not support Option A, retaining the status quo of only voluntary licensing, for three reasons:

    (a) voluntary licensing is not effective or fair for copyright owners when there is an extreme disparity of market power, as there would be between large AI developers and smaller copyright holders;

    (b) voluntary licensing is impractical for smaller copyright holders as, in the absence of some regulatory support, the transaction cost of achieving a licence agreement with AI developers, whether directly or collectively, will often be higher than the licence fee obtained; and

    (c) where it is too onerous for AI developers to obtain licences from numerous smaller copyright holders for high-volume uses, there are two possible outcomes, both negative:

        i. conscientious AI developers may be left without access to the materials they require for development, despite those copyright holders being willing to license; and/or

        ii. unscrupulous AI developers may continue to infringe copyright in the materials of smaller copyright holders, relying on those smaller copyright holders having insufficient resources to pursue enforcement action against them. This has the added disadvantage of potentially reducing market licence fees for larger copyright holders because a "free" substitute good exists.

12. Screenrights does not support Option B, the introduction of a statutory licence, for three reasons:

    (a) there is no demonstrated widespread market failure for copyright licensing to AI developers; AI developers are securing some licences for copyrighted inputs; difficulties in licensing are not universal;

    (b) statutory or compulsory licensing removes many rights from copyright holders and should only be implemented where the unequivocal public interest in the use outweighs those rights – we do not agree that AI development for commercial purposes meets this criterion; and

    (c) a statutory licence for AI development would be totally unacceptable to many of our members, some of whom have strong moral objections to working with AI developers in light of previous infringements; some of whom prioritise autonomy and direct licensing very highly; and some of whom have substantiated concerns about a lack of appropriate respect and protection for tradition and culture in relation to Indigenous Cultural Intellectual Property (**ICIP**).

13. Screenrights addresses the questions raised in Part 1 of the Paper in more detail below.

Introduction to Part 1 – Legal avenues for using copyright material as inputs for AI in Australia

14. We quote the following from page 5 (formatting added for emphasis):

> *There are two broad schools of thought:*
>
> *1. The first is that the status quo under Australian law – that is, voluntary licensing – is able to meet the needs for using copyright material as inputs for AI development activity occurring within Australia (and therefore falling within Australia's legal jurisdiction), while appropriately remunerating copyright owners for such onshore development.*
>
> *2. The other is that relying solely on voluntary licensing under current law presents practical problems for onshore AI development, such as administrative complexity and potential costs, particularly for smaller market entrants, or limitations on the amount and kind of copyright-protected data likely to become practically available under voluntary licences.*

15. While Screenrights acknowledges that the licensing market for AI inputs is still developing, the feedback from our members in the annexed survey results supports the second school of thought; that voluntary licensing under the current law is insufficient for licensing AI inputs. A combined 82.3% of our survey respondents who might consider licensing to AI developers state they are either unable, or unsure they are able, to license to AI developers directly. Moreover, without the support of a facilitative licensing framework, smaller rightsholders will not be in a position to enforce their rights even if they were able to enter into a licence successfully.

16. Screenrights' survey question also made reference to the respondents' interest in a collective licence. However, in Screenrights' experience, voluntary collective licences for the film sector are prohibitively difficult to conclude without some form of regulatory support, due to the complexity of rights in the film sector. A voluntary collective licence, which is effectively "opt-in", can be stymied by the inaction (as opposed to resistance) of copyright holders. While it may be possible to obtain approval from some copyright holders (who could meet the "informed consent of a substantial proportion of members" test for ECL), it becomes increasingly difficult to secure confirmation from all copyright holders; and the costs of repeated attempts to engage and inform them of the relevant issues increase to the point of becoming prohibitive. Without regulatory impetus such as a structured process of obtaining a mandate (members) and an active obligation to opt-out (non-members) a voluntary collective licence may languish and never be concluded.

17. Screenrights believes that ECL would provide sufficient support to reduce administrative complexity and cost to the point that a collective licence for smaller rights holders would be both achievable and viable in terms of returns for the copyright holders as well as sufficiently comprehensive to be commercially attractive and useful for AI developers.

Option A: Status quo, generally requiring voluntary licensing

18.   We quote from page 9 of the Paper and provide our detailed responses:

> 1. *How effective and fair do you think this option would be as a way of facilitating lawful use of copyright material for AI development in Australia?*

19.   As stated above Screenrights believes that the option of only retaining the status quo of voluntary licensing is insufficient for effective and fair licensing for all AI inputs in Australia.

> *In answering this question, you may wish to consider:*
>
> *o the balance between different parties' reasonable interests*

20.   Most copyright holders are not in a position to effectively negotiate a reasonable licence fee with a large entity like an AI developer. Screenrights' position is that voluntary licensing alone does not achieve a balance of their interests against those of the AI developers.

21.   Voluntary licensing is not effective or fair for copyright when the licensee holds significantly more power than the copyright holder. The Government only needs to refer to the behaviour of Meta and Google during the early progress of the News Media Bargaining Code to see documented examples of the impact of extreme disparity of market power. In that case against copyright holders who were mostly large and well resourced themselves, although not to the same extent as Meta and Google.

22.   We consider that retaining the status quo will impact both AI developers and copyright holders negatively by:

    (a)   exposing AI developers to infringement actions; and/or

    (b)   reducing the data available to AI developers because the cost and difficulty of licensing high-volume, low-value uses is prohibitive and onerous; and/or

    (c)   undermining commercial negotiations for large copyright holders who are able to secure a voluntary licence with AI developers by providing a free substitute pool of data for unscrupulous AI developers who choose to risk infringement proceedings.

> *In answering this question, you may wish to consider:*
>
> *o Australia's ambitions and objectives in relation to AI as you perceive them*

23.   In Screenrights' view, Australia's ambitions and objectives in relation to AI can be summarised as:

    (a)   <u>Protecting and developing creative industries and cultural identity through copyright.</u> Australia aims to support production of new Australian cultural and creative content through robust copyright protection. Australia also aims to maintain an environment in which creative careers and business models can be pursued (to paraphrase from page 3 of the Paper), while also embracing innovation in content creation using AI tools.

    (b)   <u>Ethical and responsible AI.</u> Australia aims to create frameworks to ensure that AI development is ethical, transparent, and beneficial for society. This includes

addressing concerns about transparency, use of copyright, privacy, bias, and accountability, while also setting international standards for AI governance.

(c) <u>Fostering technological development and innovation and strengthening the technology sector.</u> Australia has ambitions to support the growth of its domestic AI industry as well as collaboration with and investment from the international AI industry. This includes creating a conducive environment for AI companies, providing funding for AI startups, and establishing partnerships with global tech firms to attract investment and talent.

(d) <u>Boosting productivity and economic growth.</u> Australia has ambitions to leverage AI to drive economic growth by improving productivity across industries such as manufacturing, agriculture, healthcare, and services. The goal is to create efficiencies, reduce costs, and enhance innovation to strengthen the national economy.

(e) <u>Enhancing living standards</u>. Australia aims to improve life for Australians by maximising and appropriately sharing the social and economic benefits Australians receive from AI technology (to paraphrase form page 3 of the Paper).

24. Screenrights does not believe that the status quo will achieve those ambitions and objectives. On the basis that Australia aims to harness AI technology to improve life for Australians by technological advances, increased living standards and productivity output, we believe that merely retaining the status quo would not allow AI developers to legitimately obtain content that they require to develop, nor would it preserve copyright holders' rights to license or not license. We believe that regulatory reform is necessary to assist smaller creators, many of whom will only be able to license within the context of a collective licence.

25. Implementing an ECL framework will allow smaller creators to do so efficiently and effectively to the benefit of both the tech sector and the creative sector.

> *In answering this question, you may wish to consider:*
>
> *o the benefits and/or limitations of this option from your perspective, including any broader economic or societal costs or benefits, and*

26. As noted above, Screenrights considers that the "do nothing" option will leave smaller copyright holders out in the cold at risk of unremunerated scraping, expose AI developers to infringement proceedings and/or limit their access to data, and in doing so negatively impact both the creative sector and the tech sector.

> *In answering this question, you may wish to consider:*
>
> *o specific data needs for these ambitions and objectives.*

27. AI large language models should never have been constructed without proper copyright safeguards for ingestion. This is contrary to established copyright law. But AI is here to stay and will only increase in development. In order to take a forward-looking approach Screenrights considers it is necessary to give both the tech sector and creative sector a vision for a better and more collaborative approach. "Do nothing" will not achieve that.

28. In our member survey, 64.2% of respondents were either willing, or not opposed to licensing to AI developers, however 82.3% of those respondents were not confident they could achieve a licence themselves. There is a practical problem to be addressed if we are to achieve Australia's ambitions and objects in relation to AI.

29. We quote from page 9 of the Paper to further answer this question:

> *There may be concerns about whether voluntary licensing could realistically facilitate access to the full range of copyright material that is of potential use to AI developers due to:*
>
> *…*
>
> - *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*
>
> - *delays to AI projects caused by the time required to secure licences – particularly where many separate licences would be needed – disadvantaging Australian innovation in a fast-moving and competitive global tech environment, or*
>
> - *the difficulty of identifying and contacting all owners of copyright in material intended for use to request a licence – for instance, where the material is published online under a screen name, anonymously, or without contact details.*

30. We confirm that in Screenrights' experience the three concerns we have quoted are real practical issues for smaller copyright holders. In our view those practical issues could be addressed through an ECL framework. While the ECL process would not entirely remove the time factor in the second bullet point, it would create more predictability around the transaction times for a licence. And the extended effect would address the concern in the third bullet point.

> *2. Are there current or emerging best practice approaches that could help meet Australian AI development data needs under the legal status quo? (For example, new forms of voluntary licensing arrangement emerging within relevant industries, or uses of digital technology to facilitate efficient uses and remuneration at volume.)*

31. We are aware of the limits of the matters addressed in the Paper. However when discussing "best practice approaches" it is necessary to mention the one regulatory reform that is essential, regardless of the copyright licensing approach adopted by Australia: <u>transparency from AI developers</u>. While the best practice will be to license prior to any use by AI developers, in order to support any AI copyright licensing arrangements emerging within relevant industries, and in order to facilitate efficient uses and remuneration at volume of uses of copyrighted material for AI inputs, there must be an obligation on AI developers to record and communicate their usage of those copyrighted materials. In order for Australian copyright owners to license and protect their rights they need to know if their content is being used and how. Laws must be introduced to impose obligations on AI developers to report use of copyrighted material.

32. We are not aware of any voluntary licensing approaches that have been successfully implemented to address the copyright and licensing issues and concerns with AI inputs considered in the Paper.

> *3. Are there non-legislative steps the Government could consider taking to encourage or facilitate the emergence of voluntary licensing agreements at a breadth and scale sufficient to meet Australian AI data needs?*

33.   We have had the benefit of reading the submission on this Paper from the Copyright Agency and we endorse most of their points on non-legislative actions, which will be beneficial regardless of the approach taken by Australia. These are:

    (a)   as part of the Government's policy to be exemplars for safe and responsible use of AI, demonstrate its commitment to fair compensation for the use of other people's content;

    (b)   support for licensing in Government guidelines for ethical AI development;

    (c)   in government or authority procurement requirements, ensure that AI products and services are based on legally sourced content;

    (d)   in conditions for Government funding for AI development: explicit requirements for legally sourced content; and

    (e)   guidelines on how to ensure that content is legally sourced (including under licensing arrangements).

34.   We do not encourage placing any responsibility on copyright owners to opt-out of AI scraping digitally. Evidence emerging from Europe is that copyright holder opt-outs for text and data mining exceptions (**TDM exceptions**) for AI are totally ineffective, and we believe that any technological protections or digital licensing facilitation for copyright holders, especially smaller copyright holders, would be equally ineffective for as long as it was fully voluntary for the tech sector. We note here that AI large language models routinely scrape sites like news sites despite extensive and overt technological measures in place to prevent them doing so. Referring again to the News Media Bargaining Code, the Government will be aware that one of the biggest hurdles is bringing large tech companies to the table. It is not possible to conclude a fully voluntary licensing agreement with an unwilling licensor. There needs to be some incentive beyond that which they can obtain for themselves in a fully voluntary market. We believe that ECL will provide incentive for users in being cost efficient with an extended repertoire. ECL will be protective for copyright holders and provide protection from infringement for AI developers.

Option B: New paid collective licensing framework under the Copyright Act – compulsory statutory licence

35.   We quote from page 13 of the Paper and provide our detailed responses:

> *4. How effective and fair do you think this option would be as a way of facilitating lawful use of copyright material for AI development in Australia?*

36.   As the declared society administering several statutory licences for other purposes, Screenrights is very familiar with their operation and strongly supports Australia's statutory licensing regime.

37.   However, Screenrights does not support the enactment of a statutory licence for AI training at this stage. Any benefits in effectiveness would be strongly outweighed by unfairness to copyright holders. While Screenrights has seen the considerable benefits of statutory licences in specific narrow instances, such as those already administered by Screenrights and the Copyright Agency, Screenrights is aware that a statutory licence for the use of copyright material for AI development purposes would be totally unacceptable to many copyright holders including some of our members. Many copyright holders either:

(a)   for entirely legitimate reasons do not want their work used in AI training at all; or

(b)   wish to negotiate very specific terms and limitations with AI developers, including control of outputs, use within a closed system, use for a limited period of time and high market rates for licence fees among others.

38.   In addition, a statutory licence which is compulsory on the copyright owners and from which a copyright owner cannot opt out would override the important and legitimate concerns relating to traditional knowledge holders and ICIP.

39.   We quote from page 10 of the Paper where it lists three differences between statutory licences and voluntary licences:

> *However, statutory and voluntary collective licences differ in important ways. Notably, statutory licences:*
>
> ● are compulsory for relevant copyright owners*, meaning that they do not need to be opted into and cannot be opted out of – individual copyright owners cannot refuse permission for a use of their material that is within scope of the statutory licence*
>
> ● may support relevant uses of covered material even before the terms for those uses (including applicable fees) have been agreed or determined, *so long as the licensee has undertaken in writing to pay equitable remuneration consistent with an agreement or determination once settled, and*
>
> ● are subject to a greater degree of Government oversight *than voluntary licence arrangements are – for example, legislated processes for the declaration of collecting societies to administer the statutory licences, and requirements to provide annual reports to be tabled in Parliament.*

40.   The first two differences are strong disadvantages and disincentives for copyright holders. As noted above, in regard to AI, we do not consider that a statutory licence would be fair

for copyright holders due to its compulsory nature – i.e. the lack of opt-out, and the lack of flexibility.

41. A third disadvantage is the lack of free negotiation on terms and licence fees which is an essential consideration for larger copyright holders, and for copyright holders with unique and highly valuable content.

42. Screenrights' position is that the case for a statutory licence has not been demonstrated yet. It has not yet been demonstrated that there is market failure in respect of copyright licences for AI development i.e. that the transaction costs of securing a licence will always exceed the licence fees recoverable. A statutory licence goes too far into regulatory control.

> *In answering this question, you may wish to consider:*
>
> *o the balance between different parties' reasonable interests*

43. A statutory licence would favour AI developers over copyright holders to the detriment of the creative sector.

> *In answering this question, you may wish to consider:*
>
> *o Australia's ambitions and objectives in relation to AI as you perceive them*

44. In the event that regulatory reform for a statutory licence for AI inputs received sufficient support to be introduced into Australia, more thought would be needed around how it would advance Australia's ambitions and objections for AI in relation to the creative sector as described in paragraph 23(a) of this submission, particularly in respect of developing Australia's cultural identity.

45. We believe that any attempt to introduce a statutory licence would ultimately be unsuccessful due to fierce resistance from the creative sector and it therefore would not advance Australia's ambitions for AI to expend resources on this option.

> *In answering this question, you may wish to consider:*
>
> *o the benefits and/or limitations of this option from your perspective, including any broader economic or societal costs or benefits, and*

46. The critical benefit of a statutory licence is that it is the most administratively efficient and comprehensive licensing tool for copyright. However, it is such a great imposition on the copyright owners' property rights that it should only be introduced where there is clear market failure in association with a carefully constructed public purpose.

> *In answering this question, you may wish to consider:*
>
> *o specific data needs for these ambitions and objectives.*

47. Of the members who responded to our survey, 35.8% would choose not to license AI developers at all. That is too significant a number to be ignored.

48. We consider that a statutory licence is not a viable option at this time, and therefore have not addressed the questions in 5 and 6 of Option B.

49.   Finally, we note that the existing government statutory licence in s183 could be employed for AI purposes by the Commonwealth, State or Territory governments for the purposes of the Crown. We are aware that some Crown agencies have sought TDM exceptions for their AI initiatives. While the Commonwealth Government has absolutely ruled out a TDM exception, it is worth noting that for the purposes of the government there is an existing statutory licence that can cover the governments' needs for AI. Examples might include State Departments of Education wishing to create AI tutors for students, or government research organisations that wish to use data to create AI models for weather forecasting. We note further that recent case law has confirmed the wide breadth of scope of the purpose in s183, and the availability of the authorisation provisions which could, for example, be employed for entities where their Crown status may be unclear such as the CSIRO.

Option C: New paid collective licensing framework under the Copyright Act – extended collective licence

50.   Screenrights strongly supports regulatory reform to introduce ECL into Australian copyright law. ECL has the benefit of being one copyright licensing tool that can operate alongside individual rights management and voluntary collective licensing. The ECL structure addresses the main concerns arising in relation to a statutory licence, in that it allows copyright holders to opt-out, it requires agreement before AI developers can start using material and it allows flexibility of terms. It also addresses the gap arising in the status quo approach by empowering smaller copyright holders to be able to license effectively to AI developers. Australia is well placed to introduce ECL as we have the requisite robust collective management framework to support this regulatory reform.

51.   We quote from page 16 of the Paper on "Potential concerns with this option" and give our detailed response:

> *… the ability for individual copyright owners to exclude their material would inevitably reduce the extent to which an ECL framework could deliver the same kind of benefits for AI developers as a compulsory statutory licence.*

52.   While some creators will opt-out and choose not to license at all, many of the major copyright holders will opt-out in order to license directly. AI developers will still be able to secure the benefit of more of the data and content required for development than voluntary licensing alone. As noted above, the case has not been made to force copyright holders to licence where they choose not to.

> *…the need for a collecting society to implement systems and processes to manage and communicate exclusions from its ECL, and the need for licensees to build compliance checks against these exclusions into their AI development workflows, would increase administrative costs and reduce efficiency on both sides of the licence.*

53.   Speaking for Screenrights, we have a sophisticated app-based client relationship management system in place that could streamline this process. It would be less efficient than a statutory licence, however, technology increasingly allows simpler and easier tools for copyright owners to manage their rights and Screenrights is constantly improving these tools for our members.

54. In terms of the need for licensees to build compliance checks against these exclusions into their AI development workflows, we understand it may seem initially daunting given their previous disregard for copyright. But in view of their enormous technological ability and the resources at their disposal, this does not seem like an unreasonable or overly onerous obligation. They would also need to do this in a purely voluntary licensing framework and given that some licences are emerging overseas it is demonstrably viable.

> *…what would it mean if a copyright owner exercised their ability to opt out from an ECL part-way through an AI development process, or after an AI product developed using the ECL was put on the market?*

55. This concern could be explored both through regulation and through the terms of the agreement itself with the AI developer under ECL, which is able to be negotiated. It is not a hurdle to implementing the scheme at large. A well-drafted ECL framework would preserve flexibility on the licences to be offered, which will allow collecting societies and their members to structure their licences to address issues such as these meeting the needs of both copyright owners and AI developers.

> *Ultimately, the licence's value to developers (and hence take-up and revenue) might diminish to the point that an ECL's administrative costs outweigh its benefits if:*
>
> ● *a large number of individual copyright owners elect to exclude their material, or*
>
> ● *a disproportionately high number of owners of copyright in types of material in which developers are most interested elect to exclude their material.*

56. If this were to occur it would be the correct outcome in terms of the right to exploit copyright. AI development is not a pure social benefit in the way that education or Government processes are. If the majority of copyright holders chose not to license to an AI developer that would be a free market operating correctly. Copyright owners may have perfectly legitimate reasons not to offer a licence. For example:

   (a)   the purpose sought by the AI developer may be incompatible with their commercial interests;

   (b)   it may be a breach of moral rights or contracts with their performers; or

   (c)   it may impose on ICIP content.

> *Some copyright owners – including those who are not already members of collecting societies – may also have concerns about the way the authorisation of ECLs could shift administrative burden onto them, as they would have to take practical steps to exclude their material. 'Opt out' features of other jurisdictions' existing or proposed copyright exceptions relevant to AI, under which copyright owners have to expressly reserve their rights if they do not want their material to be used under the exception, have been criticised for putting the onus on rights holders to actively assert their rights rather than on potential users to seek permission (as is the 'default' position). An ECL framework would need to include reasonable protections for the interests of rights holders who are not members of the relevant collecting society to ensure that have simple and easy-to-exercise options to either exclude their material from, or share in the benefits of, an authorised ECL.*

57. We agree that this is a relevant concern, but one that can be resolved. There are many options for how opt-outs could work in practice. For example, in Sweden and Norway,

there is an assumed opt out for some classes for ECL where the collecting society has "a special reason to assume that the copyright owner opposes the use". If a copyright holder has made a public declaration that they will never license to AI that would fall under this type of deemed opt-out. Alternatively, Norway in Section 57 of its A*ct on Copyright in Intellectual Property, etc. (Intellectual Property Act)*, which is an ECL for the "making available" of audio-visual works, has an express prohibition on directly licensed works: "Such contractual license [i.e. ECL] does not apply to the use of works for which an agreement has been entered into directly with the author." This means any directly licensed works would be automatically excluded. In addition to these possible legislative steps there are many practical processes that could be used by collecting societies that would streamline opt-outs for non-members. Screenrights does not propose any of these particular approaches at this time, but merely points out that the issue is well understood and addressed by various means in the mature ECL systems in Europe.

> *The practical effectiveness of an ECL framework in Australia would also be subject to other factors such as the willingness of Australian collecting societies to seek authorisation to offer ECLs (which may be influenced by their members' views). An ECL framework that did not result in authorisation being sought or granted for any ECLs would neither practically improve access to copyright material for AI development nor provide additional revenue streams for copyright owners.*

58. ECLs are historically user driven. If AI developers wished to use data and content, we believe collecting societies are well placed to respond to that need and canvas their members and make an application to the relevant authorising body in a timely fashion.

59. Australia has an existing practice of authorisation for collecting societies through the ACCC in relation to provisions in membership agreements. These processes are understood by collecting societies and could be applied or adapted for this purpose. It is critical that the authorisation process be fit for purpose. In this case, for example, it must be relatively streamlined to allow for fast and flexible licence creation in response to the ever changing needs of AI.

> *Some stakeholders – including licensees, collecting society members, copyright owners who are not collecting society members, and the broader public – might also have concerns about different aspects of how licence fees are set, collected and distributed under ECLs. Confidence in the framework would need to be supported by governance arrangements providing transparency and assurance to all parties.*

60. The collecting management framework in Australia has a long history, with robust transparency, a well-publicised Code of Conduct; review of declared societies' operations by Parliament; Copyright Tribunal jurisdiction over remuneration rates and licence terms as well as distribution schemes among other aspects of administration.

61. We quote from page 17 of the Paper and provide our detailed responses.

> *7. How effective and fair do you think this option would be as a way of facilitating lawful use of copyright material for AI development in Australia?*

62. Screenrights considers that an ECL framework would provide the best of both worlds; it has the efficiency advantages of a clear and streamlined framework with the flexibility and autonomy advantages similar to voluntary licensing. We believe it would be the best balance of effective and fair. We also believe that establishing the framework with a

general ECL class that can be tailored to future uses would enable Australian copyright licensing to adapt as AI technology adapts.

> *In answering this question, you may wish to consider:*
>
> *o the balance between different parties' reasonable interests*

63. Screenrights considers that ECL achieves balance between the interests of AI developers and the interests of large and smaller copyright holders for the following reasons:

    (a) <u>It gives AI developers more options to access creative content</u>: ECL addresses the administration barrier which arises with voluntary collective licensing. For sectors with complex rights ownership, such as audio-visual works, achieving unaided voluntary collective licensing of a repertoire of content is prohibitively expensive due to the administrative complexity. ECL overcomes this by establishing a central, efficient system for collecting and distributing royalties at an acceptably low administrative cost.

    (b) <u>It levels the playing field for smaller rights holders</u>: Individual creators and smaller businesses often lack the leverage and resources to negotiate directly with large, global AI foundation model developers. ECL ensures these rights holders have a practical and effective way to share in the economic value of AI use, offering them the best opportunity to benefit from this new economy.

    > *In answering this question, you may wish to consider:*
    >
    > *o Australia's ambitions and objectives in relation to AI as you perceive them*

64. We believe that ECL will be an effective and fair method of facilitating lawful use of copyright material for AI development in Australia and supporting Australia's ambitions to get the best out of AI while developing and supporting a strong creative sector and strong Australian creative identity because it:

    (a) <u>Extends and facilitates access to available material for AI development</u>: The legal extension effect and structured framework increases the material available and the ease of licensing available to AI developers under an authorised ECL.

    (b) <u>Provides certainty to all sectors</u>: Business certainty is desirable for achieving growth and maximum productivity.

    (c) <u>Prevents unpaid use</u>: If voluntary collective licensing is too onerous and difficult for mass use of works by smaller creators, AI developers may continue to use content without permission or payment. ECL provides a robust, clear, and legal paid avenue for onshore AI development, ensuring creators are compensated for the commercial use of their works. Without an ECL framework, unpaid and uncontrolled use of content from smaller copyright holders, may pull down the commercial value able to be individually negotiated by large copyright holders.

    (d) <u>Retention of direct negotiation:</u> The licence opt-out ensures that organisations or creators with large, commercially valuable catalogues (e.g. broadcasters, film studios) can continue to negotiate exclusive, bespoke, direct licences with AI

developers. Crucially, the availability of the collective ECL for others does not undermine their individual bargaining position.

(e) <u>Preserves the hold out position:</u> Unlike statutory licensing, ECL licensing does not operate as an exception to copyright in terms of permission, so AI companies cannot rely on the provision until all terms are agreed, thereby preserving rights holders' ability to optimise their commercial position.

(f) <u>Provides the ability to refuse permission, including for members:</u> Creators who have ethical, moral, cultural, or philosophical objections to their work being used to train AI can simply exercise their right to exclude their material. This allows any copyright owner, member or non-member, to refuse permission, ensuring alignment with their artistic and commercial strategies including indigenous cultural rights.

(g) <u>Sustains the commercial viability of the Australian creative sector:</u> A functioning licensing ecosystem ensures Australian creators can participate and enjoy the benefits of AI to the extent they desire, thereby supporting the commercial model for the sector.

> *In answering this question, you may wish to consider:*
>
> *o the benefits and/or limitations of this option from your perspective, including any broader economic or societal costs or benefits, and*

65. Firstly, we note that voluntary licensing can co-exist alongside a new extended collective licensing framework (ECL). ECL does not derogate from voluntary licensing either individually or collectively.

66. Secondly, a significant benefit of the ECL model is that the licence negotiated is not limited solely to remuneration, as may be the case with statutory licences. An ECL is a negotiated agreement between the collecting society and the AI developer or user organisation, meaning it:

(a) <u>Can include non-financial terms:</u> This is vital for addressing creator concerns beyond just payment. The licence can and should allow for other terms to be part of the agreement, such as usage restrictions, attribution requirements, or even non-remuneration-based terms that protect the integrity of the work or the moral rights of the creator.

(b) <u>Requires up front agreement:</u> As noted previously, unlike a statutory licence, a user organisation cannot simply submit a notice and proceed; the terms of the ECL need to be agreed upon in full between the parties in advance. This preserves the power of rights holders to achieve the market value of deals.

> *In answering this question, you may wish to consider:*
>
> *o specific data needs for these ambitions and objectives.*

67. An AI developer can propose a particular use of a certain set of data or content, and that use and repertoire can form the basis for an ECL. The need for this flexibility is evident in the pace of development of AI services. Australia's licensing regime will need to be able to adapt to new products offered (or intended to be offered) by AI developers. ECL uniquely

has the ability to compile the relevant rights efficiently and relatively quickly in response to these product developments.

68. As noted above under paragraph 31 in reference to option A, the success of an ECL scheme will depend in part on transparency obligations on AI developers. In order for Australian copyright owners to license and protect their rights they need to know their content is being used.

> 8. If a new ECL framework for AI development in Australia were introduced, what rules or requirements should govern who can apply for authorisation to offer an ECL and how decisions on authorisation should be made, and what governance arrangements could provide appropriate oversight and transparency? In answering, you may wish to consider any features these arrangements should share with existing statutory or voluntary collective licences, or with arrangements for ECLs established in other countries.

69. We anticipate that an ECL framework in Australia could operate well for AI as follows:

(a) Regulatory reform: Legislation to introduce a general (as opposed to legislated classes) ECL framework similar to that in the UK under s116B of the *Copyright, Designs and Patents Act 1988* and *The Copyright and Rights in Performances (Extended Collective Licensing) Regulations 2014*.

(b) User or collecting society defines a type of high-volume use: A user such as an AI developer (or a member organisation such as a collecting society) identifies a need to use a large number of specific copyright works for a particular use.

(c) Representative collecting society: There is a collecting society who represents many or most of the copyright holders of the works that are sought for that use. The test in countries like Sweden is "substantial representation". This is really a case-by-case assessment depending on the types of works and the rightsholders who will be most affected.

(d) Mandate or consent of members: The collecting society would then seek a mandate from a substantial number of its members who hold that type of work for that use. The test in the UK is "informed consent of a substantial proportion of the members".

(e) Application to Government body by collecting society for ECL: The collecting society would then seek authorisation from the government authority (we anticipate this would be the ACCC in Australia, as it already authorises collecting society membership agreements, or a similar body) by demonstrating its level of representation among copyright holders in the relevant field, the consent of a threshold proportion of its membership to the ECL proposal, and its adherence to standards of transparency, accountability, and good governance.

(f) Authorisation granted to collecting society for particular ECL: The government authority authorises the collecting society to license a class of works for a specific use on behalf of both members and non-members of the organisation.

(g) Opt-out permitted and advertised: The collecting society advertises the proposed licence and copyright holders have the right to opt-out, either entirely or for specific works. The form of opt-out could be considered in more detail at a later date.

(h) <u>Collecting society negotiates a licence with the user</u>: The collecting society then negotiates licence rates and terms with a prospective user like an AI developer and enters into a licence that covers both members and non-members who have not opt-ed out. The collecting society can negotiate terms and limits of use, as well as licence fees. The licence operates as flexibly as a voluntary licence, within the terms of the authorisation.

(i) <u>Collecting society collects and distributes licence fees</u>: The collecting society collects licence fees from the user and distributes those licence fees to rightsholders, including non-members within a specified period. This is a process familiar to existing statutory licence administration.

(j) <u>Equal treatment</u>: Members and non-members must be treated equally.

(k) <u>Alternative dispute resolution available between users and collecting societies</u>: The ECL process is subject to an alternative dispute resolution process, usually in phases starting with good faith negotiation, then mediation, then arbitration (perhaps through the Copyright Tribunal). Members and non-members would have the benefit of the existing complaint and resolution framework for collecting societies.

(l) <u>Liability protection for the user</u>: The user (or AI developer) is protected from liability for copyright infringement for compliant use of the repertoire under an ECL. Non-members (and members) that have not opted out are prevented from taking legal action against the user for copyright infringement. The user is protected, and its use is legitimate under the licence. Again this is equivalent to a voluntary collective or individual licence.

> 9. *If you are a copyright owner or represent copyright owners, how likely would it be that you (or your members) would choose to opt out of an ECL covering uses of your material for AI development? What factors would influence decisions on whether to opt out?*

70. We are aware that some of our members would not choose to license to AI developers, and some of our members would choose a direct licence instead of a collective licence. We still believe we could achieve substantial representation and a mandate for particular uses of particular classes of work. As noted previously we have surveyed our Australian members on their views on licensing to AI developers. The results of our survey annexed to this submission show that 64.2% of respondents are either willing or not opposed to licensing to AI developers. Those numbers may fluctuate depending on:

(a) the type of work being sought: members may be more protective over some works than others;

(b) the type of use being proposed: members may be more willing if there is a perceived public interest for the development;

(c) the identity of the AI developer: some members may be willing to license to an Australian based AI developer but not a global AI developer for example; and

(d) the limits and particular terms of the licence being proposed, including licence fees.

71.   Taking all those factors into account, we are confident there will be sufficient interest to achieve critical mass for ECL authorisation for certain uses and repertoires.

> 10. Which Option set out in Part 1 of this paper do you prefer, and why?

72.   We prefer Option C, ECL, as the best compromise to support Australia's ambitions and objectives for AI. The status quo does not provide an effective means for many creators dealing with AI developers, and a statutory licence goes too far. We note that ECL has a long international pedigree and its application for AI inputs is under active development in Europe.

73.   If Australia has implemented an ECL framework allowing licences for AI development, this places Australia in a position to potentially work with other jurisdictions and reap the benefits of a successful global licensing approach while preserving our cultural identity and sustaining the commercial viability of our creative sector.

> 11. Are there any other licensing-related policy options you think the Australian Government should consider to support legal avenues for using copyright material as inputs for AI in Australia?

74.   We believe adopting ECL is the correct path forward.

Conclusion

75.   Screenrights considers that a case has been made for regulatory reform to introduce ECL into Australian copyright law to give smaller copyright holders fair access to licensing for AI development.

Annexure

Member Survey results

From 31 October 2025 to 21 November 2025 Screenrights surveyed approximately 2,300 Australian members via email and received 291 usable responses. The response rate of more than 10% of surveyed members is considered a strong response rate and reflects the level of interest in this issue.

Question 1 "I am interested in licensing my work to generative AI companies in exchange for fair compensation."

All Data (minus unidentifiable)	Strongly agree	Agree	Not sure	Disagree	Strongly disagree	Total Responses
I am interested in licensing my work to generative AI companies in exchange for fair compensation.	39	60	88	36	68	291

I am interested in licensing my work to generative AI companies in exchange for fair compensation.

Strongly agree
13.4%

Agree
20.6%

Not sure
30.2%

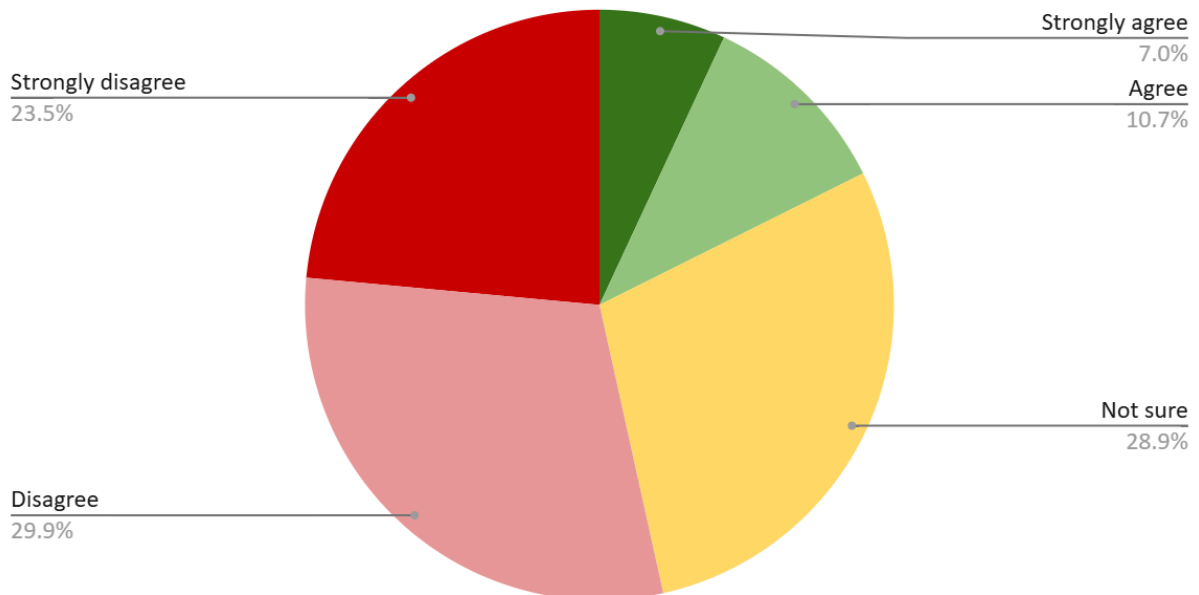Disagree
12.4%

Strongly disagree
23.4%
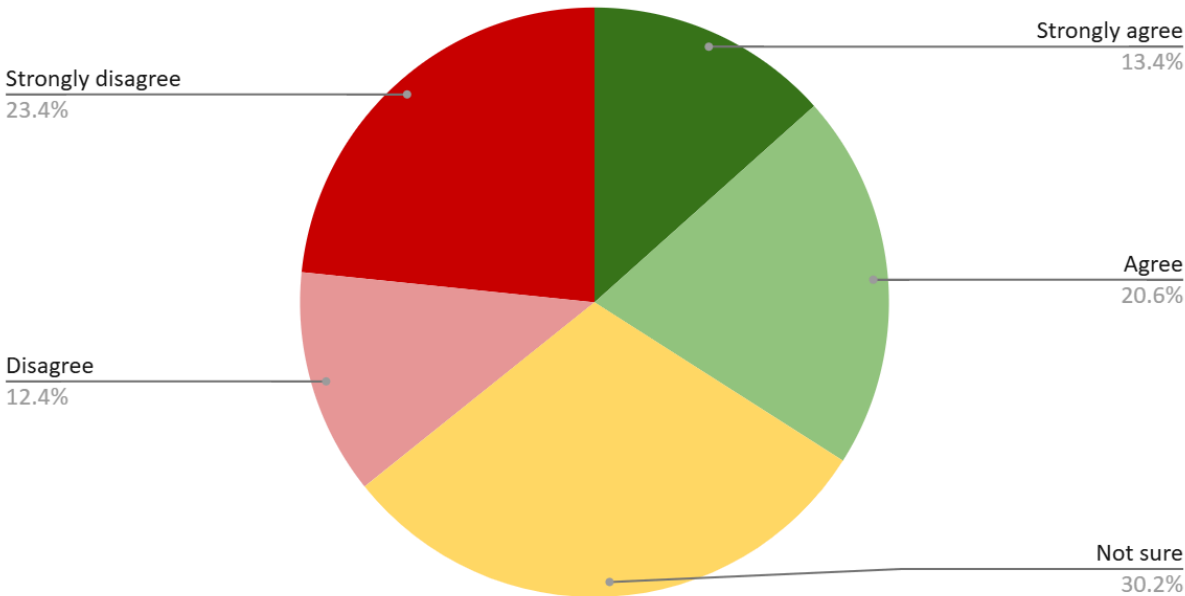
Question 2 (excludes Disagree and Strongly Disagree from Question 1)

"I have the resources to license my work to generative AI companies directly and would not want a collective licence."

All Data (minus unidentifiable)	Strongly agree	Agree	Not sure	Disagree	Strongly disagree	Total Responses
I have the resources to license my work to generative AI companies directly and would not want a collective licence.	13	20	54	56	44	187

I have the resources to license my work to generative AI companies directly and would not want a collective licence.

Strongly agree
7.0%

Agree
10.7%

Not sure
28.9%

Disagree
29.9%

Strongly disagree
23.5%

Question 3 (Excludes Strongly Agree and Agree from Question 2)

"I would support a change to the Copyright Act to facilitate collective licensing."

All Data (minus unidentifiable)	Strongly agree	Agree	Not sure	Disagree	Strongly disagree	Total Responses
I would support a change to the Copyright Act to facilitate collective licensing.	35	67	44	5	1	152

I would support a change to the Copyright Act to facilitate collective licensing.

Disagree
3.3%

Not sure
28.9%

Strongly agree
23.0%

Agree
44.1%