Third Ministerial Roundtable on Copyright: Image Makers Association Australia Summary – 29th Aug 2023

SUMMARY

This week we attended the Federal Attorney General's Third Round Table on Copyright. This meeting included a session on day one covering the implications of artificial intelligence on copyright, and then on day two a discussion of issues relating to the definition of 'broadcast'. At this meeting with government we advocated for maintaining and strengthening the rights of our members, using data collected from our recent survey on AI. Our notes from this round table follow below.

Artificial Intelligence and Copyright:

An introduction on the broader government review process from the Dept of Industry, Science & Resources revealed that 30% of all submissions to Dept of Industry AI Discussion Paper mentioned copyright as an issue of concern for the development of AI.

Much of the ensuing discussion at the round table was split into two areas of concern, being: the INPUTS to generative AI systems, and then separately to the OUTPUTS generated by those AI systems. While the conversations around both halves of this discussion were relatively broad and philosophical the topic that exposed differences of opinion around the table related to if/when/how copyright is applicable to the creative works that are being used/scraped/mined by AI systems as inputs. The majority of people who spoke on this topic were of the opinion that existing copyright law in Australia already applies directly to this type of use and that any use of copyrighted work without the permission of a copyright holder by an AI company represents a clear infringement of copyright. There were, however, some people (generally end-users) who didn't agree with this interpretation and who are seeking changes to the Copyright Act to achieve clarity around this interpretation.

Other matters that were discussed included:

- What are the implications for patent law?

- Are IP / Copyrights applicable to the outputs of AI?

- It is generally accepted that copyright applies only to works created by humans (there are international legal precedents that establish this).

- How much human contribution is required in the process of making AI-generated material before it becomes a copyrightable Work? The general consensus was that courts will ultimately decide the answer to this question.

- Opt-out proposals internationally are not yet practical or workable and would represent a way for AI companies to circumvent approval for use of creative work as inputs.

- A lack of transparency regarding original source data used by AI systems will make the process of enforcing infringements in courts difficult.

- Lack of transparency of source data sets as well as acknowledgement of AI status of outputs presents ethical issues that may need to be resolved outside of copyright legislation.

- Multiple court cases & class actions that are currently playing out internationally will test the applicability of copyright to AI training processes (noting differences in international law).

- Legal Data Mining Exceptions exist in legislation in some other countries. In the UK those exceptions are for non-commercial use only. The UK recently announced that they would extend that exception to also permit commercial use

however the backlash was large and that idea appears to have been shelved for now. Generally speaking, many of the organisations at the roundtable who were representing users of AI material are seeking a similar text & data mining exception for Australian copyright law. Most other representatives, including broadcast organisations and creators of copyrighted works expressed a preference to leave the Copyright Act alone and to not implement any exceptions.

- Questions were raised about how to practically build a business model and associated systems that would compensate the original creators of input source data. One idea that was floated was that perhaps remuneration could occur at the moment when each new creative output occurs, paid for by end-users of AI systems and then somehow delivered to all owners of input copyrighted works. How this could be implemented is unknown.

- A view was presented that if the outputs of AI systems are so desirable and valuable then it would make commercial sense for the makers and operators of those systems to pay commercial rates for any creative works that have been used as inputs for those systems. As a corollary, it would thus be fair to determine that if the owners and users of these systems do not have sufficient budgets to pay for the use of copyrighted source material that they are using as inputs then their AI systems may not in fact represent a legal, ethical or commercially viable proposition moving forward.

- It was noted that Associated Press recently announced that it was licensing OpenAI to access its archive of news stories while News Corporation says it is negotiating with big tech firms to forge a similar deal. These commercial arrangements are likely to become legal proof that source material is indeed protected by copyright and that private organisations and other copyright owners are in a position to license their works to AI companies for data input purposes.

In advocating for our membership, Image Makers Association Australia contributed to the discussion by reiterating agreement with other copyright owners that we would not be supportive of any data-mining exceptions that would allow these computer systems to freely access our copyrighted works. We noted that if any changes were to be made to the Australian Copyright Act or Regulations to clarify these matters that any such amendments should only strengthen the commercial rights of copyright owners and not diminish those rights in any way.

The Definition of ‘Broadcast’:

The Copyright Act contains different licensing, duration and other rules that relate to ‘broadcasts’ as opposed to digital or other ‘communication’. With the world moving toward an increasingly digital/internet delivery of creative and media content it is probable that old definitions and legislation will need to evolve to allow for equitable application of copyright. Many panellists at the round table noted that current licensing agreements between content-makers and broadcasters as well as digital communication businesses have been established based on the current structures in the Copyright & Broadcasting Services Acts. As a result, there was not a strong appetite for changing the Copyright Act to redefine ‘broadcast’. It was considered that such a change could result in many commercial licensing agreements needing to be re- negotiated and re-written. This part of the round table discussion only has tangential implications for photographers and image-makers, however the possibility of opening up parts of internet-based delivery of digital content to ‘broadcast’ definitions could have flow-on impacts in relation to content licensing for some of our members. This thus remains an issue that Image Makers Association Australia will keep an eye on as it develops.