3.3 AI – ACMA ROLE AND ACTIVITIES

LEAD/SUPPORT: CATHY RAINSFORD | JEREMY FENTON | HELEN OWENS

The Australian Communications and Media Authority (ACMA) is working across government, including through the Digital Platform Regulators Forum (DP-REG) to understand and assess the impact of Artificial Intelligence (AI) on the sectors we regulate. The ACMA is not permitting the use of generative AI tools for work purposes, or from work devices, until challenges are better understood and a considered approach to AI is settled.

KEY ISSUES

The industries that the ACMA regulates are impacted by AI

- The ACMA is aware that algorithms and generative AI tools are being used in ways that are impacting the digital platform industry, news and media environment:
  o generative AI tools are being used to create and disseminate disinformation and misinformation at scale
  o Australians are turning to AI tools, like ChatGPT for answers to questions, even when the information those tools provide may be incomplete
  o news content is being used to support AI-learning
  o legitimate media organisations are starting to use generative AI to support the creation and distribution of journalism.
- Generative AI has the potential to increase the volume, sophistication and impact of scam activity across communication channels – phone, SMS and digital platforms.
- Scammers can use generative AI to produce realistic and persuasive content, potentially increasing the success rate of scams.

The ACMA is contributing to whole-of-government discussions about AI

- The Department of Industry, Science and Resources (DISR) is the lead government agency in relation to AI including coordinating government activities.
- Multiple government agencies have a role in assessing the challenges, and supporting the uptake of AI, in Australia (see **Attachment C**). The ACMA contributes to these discussions including through the DP-REG Forum (DP-REG):
  o the DP-REG provided a joint submission to the DISR consultation process on Safe and responsible AI in Australia. In the published submission, members set out our respective assessments of risks associated with AI for our regulatory remits, and suggested that government consider how the impact of AI and algorithms can be addressed within existing regulatory frameworks
  o DP-REG's Digital Technology Working Group is exploring the regulatory implications of algorithms and generative AI. This is one of DP-REG's key priorities for 2023–24.

- Separately, the ACMA Chair, Ms Nerida O'Loughlin PSM also attended the Minister for Communications, the Hon Michelle Rowland MP's (the Minister), generative AI roundtable with industry stakeholders to discuss the impact of this technology on the sector.

- While the ACMA does not currently have formal regulatory powers in relation to scams or misinformation and disinformation on digital platforms or over-the-top services, we are engaged with telcos on a range of scam reduction activities. This includes the introduction by key telcos of AI or machine learning to automate and enhance the identification and disruption of scams.

- The Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the Department of Home Affairs is leading joint work to understand the operation of algorithms on digital platforms as part of the government's response to recommendations 13 and 14 of the House of Representatives Select Committee on Social Media and Online Safety[1]. We will provide advice around the impact of algorithms on the news and information environment to inform this work.

The ACMA internal use of AI

- The ACMA does not permit the use of publicly available generative AI tools for work purposes consistent with interim whole-of-Federal-government guidance provided by the Digital Transformation Agency.

- The use of publicly available generative AI tools such as ChatGPT, Google Bard, Bing Chat are blocked to staff use from workstations and any use of such tools for their work without specific permission by the Chief Security Officer is in contravention to the ACMA Acceptable Use of Information and Communications Technology Resources Policy.

- The ACMA is developing an overarching agency approach to AI and establishing an AI steering committee to assess the opportunities and risks in using AI within ACMA. The steering committee will consider the uses case benefits, risks, policies and guidelines as well as continuing to raise staff awareness of AI.

BACKGROUND

Additional information - Definitions

- Algorithms are 'any well-defined computational procedures that take some value or set of values, as input and produce some value or set of values as output':
  - AI is a type of algorithm. AI refers to a learning system that generates predictive outputs like content, forecasts, recommendations or decisions based on a given set of parameters (inputs)
  - a Generative AI model (or tool) is a subset of AI. It generates novel content like text, images, audio and code, in response to prompts
  - a large language model (LLM) is a type of generative AI. In response to a prompt an LLM chatbot employs algorithms trained on vast amounts of data to predict a text output that can represent a synthesis of existing data.

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[1] Response tabled March 2023.

Additional information – Generative AI

- Generative AI is a type of artificial intelligence that can create seemingly original content such as text, images, audio, video or data, usually in response to plain language prompts entered by a user, using 'natural language processing'. Examples of products that use generative AI are the chatbot ChatGPT, Google's Bard and the image generator DALL-E.

- Generative AI models rely on relationships between vast amounts of data points, such as words, to make 'best guesses' that produce outputs (e.g. written words, images) based on a user's prompt.

Disinformation and misinformation

- Algorithms play a key role in the detection and moderation of disinformation and misinformation.

- The voluntary Australian Code of Practice on Disinformation and Misinformation supports increased transparency around the use of algorithms to deal with disinformation and misinformation. This is being achieved through a new outcome 1e, where signatories can opt-in to making information about recommender systems available to end-users, and to providing end-users with options about the content suggested to them. In reporting on this outcome, responses have been mixed. Meta, TikTok, RedBubble and X (formerly Twitter) provided information about how their algorithms work, other signatories to the code did not report on the outcome.

- The current voluntary Australian Code of Practice on Disinformation and Misinformation does not have an explicit reference to or provisions around generative AI. Our July 2023 report to government on the operation of the code calls for more explicit measures to deal with the challenges associated with generative AI.

- As drafted, the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 would provide the ACMA with the power to require social media companies to share information about the systems they have in place to identify if misinformation or disinformation content was made using generative AI.

News environment

- Recommender systems are commonplace in the online news environment. However, generative AI is playing an increasingly important role. Generative AI technologies can be deployed to generate articles, research or to interrogate large data sets, identify errors or suggest corrections to editorial staff.

- Some media industry stakeholders, like NewsCorp, have called for generative AI companies to remunerate media companies for the use of their content to train their AI tools.

Digital Platform Regulators Forum (DP-REG)

- In March 2022, the ACMA, ACCC, OAIC and the eSafety Commissioner formalised collaborative arrangements to form DP-REG. Through DP-REG, members share information about, and collaborate on, cross-cutting issues and activities involving digital platforms.

- The DP-REG is developing an understanding of the extent to which generative AI may raise cross-cutting issues across regulatory areas each member is responsible for. Once finalised, our work investigating the impact of large language models (LLMs) and algorithms will be published.

- Separate to the DP-REG's work, on 15 August 2023, the eSafety Commissioner has developed a generative AI position statement, outlining what it sees as the risks and opportunities of AI for online safety.

Department of Industry's 'Supporting Responsible AI' discussion paper

- From 1 June 2023 to 4 August 2023, DISR consulted on a 'supporting responsible AI discussion paper'. DP-REG made a submission to this consultation on 26 July 2023 supporting an approach to AI regulation that considers improvements to existing regulatory frameworks.

- DISR has published 448 submissions. A wide range of stakeholders have made submissions, canvassing a variety of views about the risks and benefits of AI. Among others, submissions were made by the Australian Federal Police, Commonwealth Bank, Telstra, multiple universities, Microsoft, Free TV Australia and Independent Schools Australia.

- We understand that DISR will use feedback to inform consideration of appropriate regulatory and policy responses, building on investments made in the 2023–24 Budget.

International Approaches

- Several overseas regulators and legislators are engaging with the risks posed by generative AI.

- The **European Union's** proposed Artificial Intelligence Act would require providers or 'high risk' AI services (including generative AI) to comply with additional transparency requirements, including to disclose when content was generated by AI. The draft legislation was approved by the European Parliament in June 2023.

- **Italy's** privacy regulator announced a temporary ban on ChatGPT in April 2023, which was lifted on 28 April after requirements around transparency and age-gating were agreed to.

- The **United Kingdom** has made two recent announcements aimed at supporting greater knowledge around AI:

  o in May 2023 it announced a review of the underlying systems of AI tools. The review is being led by the UK's Competition and Markets Authority

  o in June 2023, the UK announced a £54 million boost efforts in the university sector to develop trustworthy AI research.

- The **United States of America** announced, in July 2023, the White House further announced voluntary commitments with 7 leading AI companies to move towards safe, secure and transparent development of AI technology.

ATTACHMENTS

Attachment A	Question on Notice – Senate Estimates Hearing May 2023 - Protection of IP in Australia from Artificial Intelligence
Attachment B	Hansard excerpt of questions to the ACMA about generative AI – Senate Estimates Hearing May 2023
Attachment C	Responsibility for AI across government

Clearing Officer
Cathy Rainsford
General Manager
Content Division
Ph (02) 6219 5500

Clearing Officer
Jeremy Fenton
General Manager
Consumer Division
Ph (03) 9963 6909

Clearing Officer
Richard Bullock
A/g General Manager
Communications and Research Division

Date 3/10/2023

Environment and Communications
QUESTION ON NOTICE
Budget Estimates 2023 - 2024
Infrastructure, Transport, Regional Development, Communications and the Arts

Departmental Question Number: SQ23-003865
Division/Agency Name: Agency - Australian Communications Media Authority
Hansard Reference: Written, Page No. (02 June 2023)
Topic: ACMA - Protection of IP in Australia from Artificial Intelligence

Senator Hollie Hughes asked:
- What work is ACMA – or the department – doing to protect Australian news companies' IP, and content from being plundered by AI chatbots?
- Does ACMA – or the department – hold concerns that Australian news companies are not receiving the revenue they should from AI companies for the use of their content and IP?
  o   What are you doing about it?
- Are you talking with the news companies? When? What form have these discussions taken?
  o   What is your aim here?
- Are you engaging with your counterparts overseas on this? Are you talking with partners in the UK and Europe? What are they
  doing?
- What action are we likely to see on this front in Australia, and when?
- We've heard the Science Minister is holding industry roundtables on AI. Is that all? What is the Communications Minister doing in this area, given the importance to news and media organisations?
- More broadly, what concerns do you hold about the sharp rise of AI? Can you see a time when we talk about the world 'before AI'
  and 'after AI'?

Answer:
The Australian Communications and Media Authority (ACMA) has no regulatory role in relation to protecting the intellectual property of Australian news companies.
To the extent to which the ACMA has a role in relation to the revenue paid for content produced by Australian news companies, we assess news companies for registration under the News Media and Bargaining Code (established through Part IVBA of the *Competition and Consumer Act 2010*).
The ACMA is aware that there is working group in government led by the Department of Industry, Science and Resources that is considering how the Australian government can mitigate any potential risks of AI and support safe and responsible AI practices.

Hansard excerpt of questions about generative AI
Budget Estimates – 24 May 2023

Senator Sarah Henderson: … Can I turn now to the work of ACMA in relation to AI, particularly from the point of view of the protection of Australian media companies. When various different AI applications rip off the content of Australian media companies—and perhaps other media companies but particularly, given your jurisdiction, with respect to Australian media companies—do you have concerns about that?

Ms Nerida O'Loughlin: I think we're alert to the discussion that the media industry themselves are putting forward— their concerns about copyright, intellectual property and how that is handled in AI. There are various issues. We've not got firm responsibilities in that area. It's probably something that is a little bit akin to the news media bargaining code about how these platforms are regulated. There is a whole-of-government process being managed through the department of industry, which is looking at various aspects of AI, which we are engaged with. There are things in place like an AI ethical framework that industry has developed previously. I think we are collectively looking at what future regulation might look like around AI in a variety of ways.

AI is already embedded in many systems. With some of the work that we talked about earlier, about SMS scams and scam calls, the ability for telcos to deal with that level of scam calls and SMSs is facilitated by AI. So there are things embedded in the system which are useful and good and work well and are ethically dealt with.

Senator Henderson: Of course.

Ms O'Loughlin: I think the ChatGPT-type generative AI is a new area that a whole-of-government process is looking at currently.

Senator Henderson: Have you made any recommendations to government in relation to AI?

Ms O'Loughlin: No, we haven't.

Senator Henderson: Have you had any discussions with news companies in relation to their concerns?

Ms O'Loughlin: News companies haven't raised it directly with us, but they have made that public, and we're aware of some of their concerns.

Senator Henderson: Are you engaging with your counterparts overseas, or have you had any other discussions with other agencies in other jurisdictions?

Ms O'Loughlin: I don't believe so. I think we've certainly had Commonwealth agency engagement. But we always observe what our counterparts are doing, particularly colleagues in the EU and Ofcom. I think we're all grappling with some of these issues currently.

Senator Henderson: We have heard that the science minister is holding AI round tables. Assistant Minister, are you aware of any similar types of arrangements that Minister Rowland is putting into place in relation to having these important discussions on AI?

Senator Carol Brown: I'm sorry; I have to take that on notice, and I'll get back to you as soon as I can.

Senator Henderson: Are you able to inform the committee as to whether the government is considering any similar type of scheme, such as the news media bargaining code, so that news media companies are remunerated when the material is used—

Senator Brown: The news media bargaining code has just gone under review, and the government is considering that review.

Senator Henderson: No, no. I asked: are you looking at any scheme similar to the news media bargaining code which might remunerate Australian news companies in relation to the use of their content by AI applications?

Senator Brown: Oh, sorry. We are looking at those issues, but I will have to take the detail of it on notice. I'll get back to the committee.

Senator Henderson: Thank you. Chair, are you concerned about the rise of AI? Obviously, this is happening very, very rapidly in the context of your work. Do you foresee that you will need greater powers in relation to the applications that are springing up left, right and centre?

Ms O'Loughlin: It depends what harm we are trying to regulate against. Some of that will fall in our remit, and some of that might fall in the remit of others. We're very conscious that it is emerging very quickly. We're also very conscious that some of the things that are already in place may provide some protections around AI. There's the misinformation and disinformation code: where there's AI generated stuff on digital platforms, we're turning our minds to whether that code can cover AI as well. What you're talking about in terms of the remuneration for companies is really more in the bailiwick of copyright and copyright payment, which of course sits within the Attorney-General's Department. I think it's fair to say that we're keeping ourselves abreast of what's happening internationally. I don't see anything currently happening internationally around this issue of remuneration for media companies, but we will be keeping an eye on that with like-minded regulators around the world.

Senator Henderson: That's just one issue.

Ms O'Loughlin: Yes.

Senator Henderson: The world of AI is very far reaching. It's very difficult for government to operate in silos, because it's permeating every part of Australians' lives and every aspect of the operation of government.

Ms O'Loughlin: That's why the industry department and minister are taking the lead on that to coordinate actions across government on identifying issues and dealing with what may be done about them.

Senator Henderson: Which minister is taking the lead?

Ms O'Loughlin: That would be Minister Husic.

Senator Henderson: Within your jurisdiction, what do you consider to be the big challenges with respect to AI?

Ms O'Loughlin: Some of the challenges which are in our bailiwick will be things like misinformation and disinformation generated by generative AI or the ability for generative AI to generate scams, which we've discussed previously. And, of course, our colleagues in the eSafety Commissioner will be looking at generative AI and things that are in their remit, like adult cyber abuse and sexual exploitation of children. So we're all looking at it from where our current remits are and seeing what the implications might be.

[Estimates questioning then moves to the eSafety Commissioner's corporate arrangements].

Responsibility for AI across government

Issue	Responsibility
Cross-government coordination, consultation and assessment of AI risks	• Department of Industry, Science and Resources
Development of AI ethics frameworks and principles	• Department of Industry, Science and Resources • CSIRO (coordination of National AI Centre focused on responsible AI)
Support for small and medium enterprises to adopt AI technologies	• Department of Industry, Science and Resources
Operation of algorithms as it relates to online harms *Response to recommendations 13 and 14 of the Social Media Online Safety Inquiry*	• Department of Home Affairs • Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA)
Use of generative AI to generate or disseminate misinformation or disinformation	• ACMA (oversight of voluntary Australian Code of Practice on Disinformation and Misinformation) • DITRDCA (proposed ACMA powers)
Responding to AI-related online safety issues	• DITRDCA (policy) • eSafety Commissioner (complaints under the Online Safety Act 2021, industry engagement)
Remuneration of media and news sector for the use of their content by AI tools	• Department of the Treasury (News Media Bargaining Code policy) • Attorney-General's Department (if it is a copyright matter)
Potential privacy and copyright implications of AI	• Attorney-General's Department • IP Australia (AI Working Group on Intellectual Property Policy Group)
Use of AI analytical tools in government	• Department of Finance (initial Data and Digital Government Strategy) • Digital Transformation Agency (guidance to help public sector adoption) • Commonwealth Ombudsman (principles for the use of automated systems)
Framework for AI in schools	• Department of Education