

SBS SUBMISSION TO THE PRODUCTIVITY COMMISSION
HARNESSING DATA AND DIGITAL TECHNOLOGY INTERIM REPORT
September 2025

KEY POINTS

- SBS welcomes the opportunities that innovation in data and digital technology can offer for its audiences, including the potential for AI to support greater efficiency and investment of resources in the vital news, information, and entertainment services we deliver under our Charter to foster social cohesion.
- These opportunities must be supported by a balanced regulatory framework that fosters innovation and keeps pace with technological change, while ensuring appropriate safeguards are in place. These safeguards are critical to protecting and strengthening Australia's local media, creative and cultural sectors, so they continue to deliver economic growth, skilled employment, trusted news and information that underpins democratic participation, Indigenous cultural expression, and diverse Australian stories that connect and entertain audiences.
- Copyright underpins Australia's cultural and creative industries, which contributed \$63.7 billion to Australia's economy in 2022-23.¹ Weakening copyright protections would erode innovation and productivity in these sectors, discourage ongoing creative investment, and reduce the content and services that sustain democratic participation, national identity, and social cohesion. Any regulatory settings should focus on addressing and preventing, rather than exacerbating or permitting, the problem of unauthorised and large scale scraping of copyright material by AI companies without rightsholder permission, attribution, or compensation.²
- **Well targeted reform of the copyright regime should take place to prevent unauthorised use of content and incentivise AI companies to negotiate licensing of copyright material for AI training on fair terms.** The copyright regime should be clarified to clearly recognise the exclusive rights of copyright owners to authorise access and use of content for AI model development. Measures to improve transparency around the use of copyright materials by AI developers to support fair compensation and attribution of copyright holders should also be considered. This would enable Australia's cultural, creative and media sectors to share in the opportunities of AI, incentivise creators, and support the market for the licensing of Australian copyright material.
- Regulatory frameworks and mechanisms to secure the sustainability of Australia's news publishers should also be prioritised. The policy objective of the news media bargaining code and the proposed news media bargaining incentive was to compensate Australian news providers for use of their work by global technology companies and support the sustainability of the Australian news industry. However, issues with the operation of the code and delays in bringing forward the incentive have meant that the intended benefits have not been realised. Certain digital platforms have not entered negotiations with news providers, as is the case with

¹ Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, December 2024, *Cultural and creative activity*, <https://www.infrastructure.gov.au/research-data/bureau-communications-arts-and-regional-research/arts/cultural-and-creative-activity>

² See for example: The Guardian, 20 June 2025, *BBC threatens legal action against AI startup over content scraping*, <https://www.theguardian.com/media/2025/jun/20/bbc-threatens-legal-action-against-ai-startup-over-content-scraping>; Australian Financial Review, 6 August 2025, *AI firms crawling Nine Entertainment's news sites 10 times a second*, <https://www.afr.com/companies/media-and-marketing/ai-firms-crawling-nine-entertainment-s-news-sites-10-times-a-second-20250806-p5mkop>

Meta in relation to SBS. Meta has further publicly announced it will not renew the commercial deals it had struck with Australian news media companies.³ Google has reportedly withdrawn from deals with dozens of Australian news outlets.⁴

- The proposed new digital competition regime for digital platforms to promote effective competition should also be advanced as a priority.⁵ The proposed scheme, which Treasury consulted on between December 2024 – February 2025, follows the findings and recommendations of the ACCC to address anti-competitive behaviours by dominant digital platforms, which have a negative impact on productivity and innovation. These measures should be progressed to address the range of competition harms identified in digital platform markets.
- **SBS is strongly opposed to the introduction of a text and data mining (TDM) exemption to the Copyright Act 1968 (Copyright Act). Such an exemption would cause significant harm to Australia's media, creative and cultural sectors by removing the established safeguards that ensure copyright owners – creators and rightsholders – are fairly compensated and attributed for use of their content.** In SBS's case, it would mean that the organisation's news, TV, and audio content would be taken and used without attribution by AI companies for the development of AI products. These products may amend or alter the content without permission (including for potentially improper purposes), compete directly with SBS services, or may not be freely accessible to users. Just as the PC urges for new AI regulations to be paused until regulatory gap analyses are completed to appropriately target risks, SBS urges the PC to take a similarly considered approach to the issue of making changes to existing laws that threaten the sustainability of Australia's media, cultural and creative sectors, and appropriately weigh the risk of harm to these sectors and the benefits they deliver to Australian communities.
- In relation to the PC's consideration of new data access pathways, the media sector is not among those where greater data access would be expected to have significant productivity benefits at relatively low cost. SBS's On Demand platform and online services are freely available to audiences across Australia. SBS On Demand users are provided with access to their account information, and in line with SBS's privacy obligations, audiences have the right to access personal information as outlined in SBS's privacy policy.⁶ SBS is further a provider of advertising inventory, and existing measures and agreements in place to provide relevant information to suppliers are functioning effectively.
- SBS supports the protection of privacy and takes its obligations under privacy law very seriously. SBS recognises that privacy protection must be balanced with entities' legitimate interests in carrying out their functions or activities. For SBS, such legitimate interests include delivering on its Charter objectives to inform, educate and entertain all Australians, which involves undertaking activities such as public interest journalism in line with rigorous editorial standards, and the collection and use of information on our digital platforms to better serve Australian audiences.

³ Australian Broadcasting Corporation, 1 March 2024, *Meta won't renew commercial deals with Australian news media*, <https://www.abc.net.au/news/2024-03-01/meta-won-t-renew-deal-with-australian-news-media/103533874>

⁴ Australian Financial Review, 22 June 2025, *Google ditches million-dollar deals with publishers amid Labor inaction*, <https://www.afr.com/companies/media-and-marketing/google-ditches-million-dollar-deals-with-publishers-amid-labor-inaction-20250620-p5m94l>

⁵ The Treasury, December 2024, *A new digital competition regime – Proposal paper*, <https://treasury.gov.au/consultation/c2024-547447>

⁶ SBS, *SBS Privacy Policy*, <https://www.sbs.com.au/aboutus/privacy-at-sbs/privacy-policy/>

- As SBS has highlighted in previous submissions addressing proposed changes to privacy laws⁷, any new rights to privacy for individuals – including the proposed right to erasure – should be subject to appropriate exemptions and must be applied flexibly and proportionately. There should be no absolute rights which would impact on significant matters of public interest such as freedom of speech and freedom of the media in public interest journalism; or legitimate business reasons to retain data. New rights should not place unreasonable burdens on business operations or the public interest.
- SBS supports in principle the exploration of an alternative dual-track compliance pathway that enables regulated entities to fulfil their privacy obligations by meeting criteria that are targeted at outcomes, rather than controls-based rules. This could result in more effective and efficient privacy protection measures; however, there would need to be further consultation with stakeholders on how outcomes would be framed, implemented, and measured.

I. INTRODUCTION

SBS response: SBS supports Australia's productivity through its services by informing Australians, supporting participation and fostering social inclusion. SBS welcomes opportunities to do more.

The Special Broadcasting Service (SBS) welcomes the opportunity to respond to the Productivity Commission's (the **PC's**) interim report – *Harnessing data and digital technology* (the **Interim Report**).

SBS is Australia's public media organisation dedicated to the delivery of services that inform, educate, and entertain all Australians including multicultural, multilingual, and First Nations communities. In everything we do, we are driven by our Charter obligations and purpose to inspire all Australians to explore, respect and celebrate our diverse world and in doing so, contribute to an inclusive and cohesive society. We are one of the world's most diverse media organisations, offering news, information, and entertainment in more than 60 languages spoken across Australia.

SBS is consistently rated as one of Australia's most trusted sources of news, and is the home of National Indigenous Television (NITV), Australia's only national public media provider by, for, and about First Nations peoples. Through our TV, audio, and online services, Australia's rich cultural diversity is reflected and celebrated, and people have access to vital, reliable, and trusted news and information to navigate life in Australia in their language.

By supporting social inclusion and cohesion, SBS's services contribute to increased productivity. Our services support cross-cultural understanding and enable economic, social, and civic participation by multilingual and multicultural communities, helping individuals to engage effectively in work, employment and education, and to navigate government services.

One study from Deloitte found the economic dividend to Australia from having a more inclusive society to be \$12.7 billion annually.⁸ SBS supports exploring opportunities to enhance its content and services that foster participation and inclusion, particularly for migrant communities.

⁷ SBS, April 2023, *SBS submission to the Australian Attorney-General's Department Privacy Act Review Report*, https://www.sbs.com.au/aboutus/wp-content/uploads/sites/sbs.com.au/aboutus/files/sbs_submission_on_the_privacy_act_review_report_-_april_2023.pdf

⁸ Deloitte, 28 August 2019, *The economic benefits of improving social inclusion* <https://www.deloitte.com/au/en/services/economics/perspectives/economic-benefits-improving-social-inclusion.html>

II. ARTIFICIAL INTELLIGENCE

PC Draft recommendation 1.1: Productivity growth from AI will be built on existing legal foundations. Gap analyses of current rules need to be expanded and completed.

SBS response: SBS supports analyses of regulatory frameworks to appropriately target AI use cases that pose the greatest potential for individual and/or societal harm, and which are not effectively regulated today.

SBS recognises the opportunities presented by AI to drive innovation and deliver enhanced community, consumer, and business outcomes. AI presents opportunities to enhance and expand SBS's service provision for all Australians, by supporting efficiency gains and re-investment in content, and by making services more accessible. Accordingly, SBS is exploring the potential benefits of responsible AI use, including opportunities for AI to support tasks including transcription, summarising, subtitling, and editing as well as accessibility, with human control and oversight.

SBS is Australia's most diverse broadcaster, with statutory functions that include reflecting Australia's multicultural society and making use of Australia's diverse creative resources, as well as statutory duties to maintain the integrity of SBS and the accuracy of news and information. Given the well-documented shortcomings of AI, including in relation to bias and hallucinations, SBS recognises that AI carries clear risks which must be carefully managed to uphold and safeguard content integrity and editorial standards, and in turn audience trust.

SBS supports a risk-based approach to AI regulation, focusing on high-risk settings and activities that pose the greatest potential for individual and/or societal harm. Assessments of high-risk AI applications and the imposition of new regulations must consider existing regulatory protections and frameworks. This regulatory approach can balance harm prevention without hindering the potential societal and individual benefits that can be derived from AI use in low-risk settings.

Content creation and distribution using AI can create harms. Any regulatory guardrails must therefore be sufficiently nuanced to target harmful activities that are not already subject to oversight or controls. It is relevant to note that a number of jurisdictions are already seeking to regulate and prohibit harmful AI use in content creation.⁹

SBS as a highly regulated media organisation has robust protections in place to prevent harms, such as the distribution of misinformation. The SBS Code of Practice contains comprehensive editorial standards in relation to a range of matters including accuracy, fairness, balance, and classification of content. SBS has further established and published Guiding Principles on its approach to the responsible use of AI, addressing audience trust, content integrity, and editorial standards.¹⁰ To target risk effectively and avoid duplication or unnecessary complexity, AI regulation should distinguish between established, regulated media organisations such as SBS and unregulated content creators and publishers.

⁹ See for example, the *Criminal Code Amendment (Deepfake Sexual Material) Bill 2024*, https://www.aph.gov.au/Parliamentary_Business/Bills_LEgislation/Bills_Search_Results/Result?bld=r7205

¹⁰ SBS, *SBS Guiding Principles for Use of Artificial Intelligence*, <https://www.sbs.com.au/aboutus/sbs-guiding-principles-for-use-of-ai/>

PC Information request 1.1: The PC is seeking feedback on the issue of copyright materials being used to train AI models.

SBS response: Australia's existing copyright regime already provides an established and well understood avenue for the licensing of copyright materials.

SBS strongly opposes the introduction of a text and data mining exception in the Copyright Act, which would allow exploitation of copyright materials for AI model development without permission, attribution or compensation, creating risks to the economic sustainability of Australia's media, creative and cultural sectors.

Well targeted reform of the copyright regime should take place to recognise the value of access to and use of copyright material for AI model development and training, the exclusive rights of copyright owners to authorise access to and use of copyright material for these purposes, and to ensure licensing of materials by AI developers takes place on fair and transparent terms.

Copyright is a bundle of economic rights that give creators a legal right to seek fair compensation for the use of their work via licensing arrangements, and protects against unauthorised use of their work. Such rights are essential to empower creators to build sustainable business practices, derive income from their creativity, and promote the creation of original artworks, TV, music, news reporting, audio content and more. An established system of licensing, permissions and income underpins Australia's media, cultural and creative industries, which make a significant economic contribution and play vital societal roles. These include sustaining democracy through the provision of trusted news and information, facilitating public debate, enabling cultural representation and expression, and connecting communities through national and local events and storytelling.

Recognition of the importance of copyright to these sectors is reflected in the Government's *Revive* cultural policy:

'The Government is committed to maintaining a strong copyright framework that works in concert with other legal and policy mechanisms – including funding support for the creative industries, our broader intellectual property framework, the regulation of broadcasting and content industries, and celebration and protection of First Nations arts and culture – to support the success and vibrancy of Australia's cultural and creative sector.'¹¹

Proactive AI developers can and have entered licensing arrangements to train AI models and provide attributed content within their AI products. A range of licensing deals between AI developers and news organisations have been publicly announced and reported.¹² However, presently local and international copyright regimes do not clearly recognise access to and use of copyright material for AI model development and training as an exclusive right of the copyright owner, which has meant that this issue continues to be the subject of contention in copyright AI litigation across a range of jurisdictions.

¹¹ Office for the Arts, *National Cultural Policy – Revive: a place for every story, a story for every place*, <https://www.arts.gov.au/what-we-do/new-national-cultural-policy#:~:text=The%20Australian%20Government%20released%20its,of%20Australia's%20arts%20and%20culture.>

¹² For example: Adnews, 20 August 2025, *Google's first Australian AI news content deal*, <https://www.adnews.com.au/news/google-s-first-australian-ai-news-content-deal>; NewsCorp, 22 May 2024, *The Guardian*, 23 May 2024, *OpenAI and Wall Street Journal owners News Corp sign content deal*, <https://www.theguardian.com/technology/article/2024/may/22/openai-chatgpt-news-corp-deal>

As such, unauthorised scraping of content by AI companies without permission, attribution or compensation has taken and continues to take place.¹³ The PC notes this in the Interim Report, outlining that 'large AI models are already being trained on unlicensed copyrighted materials'. SBS notes the recent settlement in the United States between Anthropic and book authors regarding Anthropic's use of more than 7 million pirated books to train its AI.¹⁴

In the Australian context it is important to note that, while there are limited and very specific 'fair dealing' exceptions for some types of copyright material, there is no broad US-style 'fair use' exception which is being relied upon by some AI developers in U.S.-based copyright AI litigation, so there is limited utility in looking to the U.S copyright regime and litigation rulings for guidance on this issue.¹⁵

The Australian Government established the Copyright and Artificial Intelligence Reference Group (CAIRG) to better prepare for future copyright challenges emerging from AI in December 2023, of which SBS is a member. The Select Committee on Adopting Artificial Intelligence recognised the inadequacy of the current copyright regime in protecting copyright materials from AI exploitation in its Final Report in November 2024, including the following recommendations (emphasis added)¹⁶:

"Recommendation 8: That the Australian Government continue to consult with creative workers, rightsholders and their representative organisations through the CAIRG on appropriate solutions to the unprecedented theft of their work by multinational tech companies operating within Australia.

*Recommendation 9: That the Australian Government require the developers of AI products to be transparent about the use of copyrighted works in their training datasets, and that the **use of such works is appropriately licenced and paid for.***

*Recommendation 10: That the Australian Government urgently undertake further consultation with the creative industry to consider an **appropriate mechanism to ensure fair remuneration is paid to creators for commercial AI-generated outputs based on copyrighted material used to train AI systems.**"*

SBS supports further work and consultation being undertaken on these recommendations.

The exploitation of copyright material by AI developers is harmful, and puts at risk the sustainability of vital Australian creative sectors that are already under pressure.

As highlighted above, Australia's media, cultural and creative sectors play crucial roles in our society. AI developers' use of copyright material without permission, attribution or compensation negatively impacts the future output of these sectors, diminishing returns from the use of work and in some cases, replacing the demand for human-made creations, while creators and rightsholders

¹³ See for example: The Guardian, 20 June 2025, *BBC threatens legal action against AI startup over content scraping*, <https://www.theguardian.com/media/2025/jun/20/bbc-threatens-legal-action-against-ai-startup-over-content-scraping>; Australian Financial Review, 6 August 2025, *AI firms crawling Nine Entertainment's news sites 10 times a second*, <https://www.afr.com/companies/media-and-marketing/ai-firms-crawling-nine-entertainment-s-news-sites-10-times-a-second-20250806-p5mkop>

¹⁴ NPR, 5 September 2025, *Anthropic settles with authors in first-of-its-kind AI copyright infringement lawsuit*, <https://www.npr.org/2025/09/05/nx-s1-5529404/anthropic-settlement-authors-copyright-ai>

¹⁵ The Guardian, 26 June 2025, *Anthropic did not breach copyright when training AI on books without permission, court rules*, <https://www.theguardian.com/technology/2025/jun/25/anthropic-did-not-breach-copyright-when-training-ai-on-books-without-permission-court-rules>

¹⁶ Select Committee on Adopting Artificial Intelligence, November 2024, *Final report*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI/Report/List_of_recommendations

continue to bear the costs of creating original content. These threats compound the pressures already confronting these sectors.

As an example, the sustainability of Australian journalism and news is already under significant pressure. The number of Australian journalists declined by 19% in the decade to 2021.¹⁷ According to the Australian News Data Project (ANDP) launched in 2020 by Public Interest Journalism Initiative (PIJI), there is a rise in areas where whole communities — especially in regional and remote areas — lack any local journalism.¹⁸ At the same time, there are rapidly increasing levels of misinformation and disinformation — particularly online, and accelerated by AI.

The pressure faced by the industry reflects a global competitive environment for audiences and ad spend and the impacts of global multinationals — device manufacturers and digital platforms — which play the role of gatekeepers between businesses and consumers. The dominance of these market entrants and their ability to unilaterally set terms of engagement have impacted advertising revenues and the visibility and accessibility of services for audiences. The ACCC recommended timely action to legislate a new digital competition regime to address risks of consumer harm and the anti-competitive practices demonstrated by digital platforms, and the Treasury consulted on a proposed new regime.¹⁹ The television prominence framework will soon come into effect in relation to connected TVs to address the issues arising with device manufacturers.

AI is also having an impact. A recent study²⁰ demonstrated that a website previously ranked first in a search result could lose about 79 per cent of its traffic for that query if search results were delivered below an 'AI overview' (e.g. by Google search service) of that website's content.

The freely-available, public interest journalism such as that created every day by SBS is increasingly important and valuable in this ecosystem to ensure Australians have access to trusted, high-quality news and information. It is essential that impartial and accurate news and information is easy to find, and that news providers are compensated for their work so that they can continue to invest in the production of original public interest journalism.

SBS also wishes to take this opportunity to particularly highlight the importance of protecting First Nations intellectual property. NITV is the important custodian of many First Nations intellectual property and materials, including content in First Nations languages. AI scraping can undermine Indigenous Cultural and Intellectual Property (ICIP) protocols such as obtaining free, prior, and informed consent, which ensures communities maintain control over how their knowledge and traditions are represented.²¹ Further, AI scraping can result in AI products and services that disregard cultural protocols in the generation of outputs and create false, misleading, or offensive representations of First Nations people and culture.²² This is in addition to the direct financial impact where creators are not compensated for the secondary use of their work.

¹⁷ ACMA, March 2025, *News media in Australia 2025* report, <https://www.acma.gov.au/news-media-australia>

¹⁸ ANDP reports available at <https://piji.com.au/news-mapping-draft/reports-analysis/report-library/>

¹⁹ ACCC, 31 March 2025, *Digital platform services inquiry 2020-25*, <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25/march-2025-final-report>; The Treasury, December 2024, *A new digital competition regime – Proposal paper*, <https://treasury.gov.au/consultation/c2024-547447>

²⁰ The Guardian, 24 July 2025, *AI summaries cause 'devastating' drop in audiences, online news media told*, <https://www.theguardian.com/technology/2025/jul/24/ai-summaries-causing-devastating-drop-in-online-news-audiences-study-finds#:~:text=A%20new%20analysis%20by%20the,delivered%20below%20an%20AI%20overview>.

²¹ National Indigenous Times, 7 August 2025, *AI must not be allowed to exploit Indigenous culture*, <https://nit.com.au/07-08-2025/19527/ai-must-not-be-allowed-to-exploit-indigenous-culture-racism-cultural-appropriation-intellectual-property>

²² For example, see The Conversation, 14 August 2025, *'Australiana' images made by AI are racist and full of tired cliches, news study shows*, <https://theconversation.com/australiana-images-made-by-ai-are-racist-and-full-of-tired-cliches-new-study-shows-263117>

A text and data mining (TDM) exception in the Copyright Act should not be introduced, as it would sanction the exploitation of copyright material.

A TDM would allow AI developers to scrape copyright material legally, without permission from, attribution of, or compensation to creators and rightsholders. In doing so it would undermine Australia's media, creative and cultural sectors, adding to the financial pressures they already face.

A TDM exception for non-commercial uses or based on standard fair dealing "fairness" factors is unworkable and meaningless in circumstances where:

1. AI development lacks transparency as to the materials AI developers use for model development;
2. AI developers are predominantly generating revenue from the development of AI models that are deliberately designed to replace the demand for human-made creations, and in turn diminish financial return for copyright owners and the sector generally.

For these reasons, a TDM exception in any form should not be introduced.

As noted above, an emerging licensing practice by AI developers to use copyright material in AI model development with permission, attribution and compensation of copyright owners provides encouraging guidance. Already in Australia and around the world, AI developers are striking licencing deals for the use of copyright owners' work. For example, OpenAI which has made a number of deals with news media providers such as Associated Press²³, NewsCorp²⁴, and the Financial Times.²⁵

The Copyright regime should be clarified and strengthened to prevent unauthorised scraping of content and incentivise AI companies to negotiate licensing of content on fair terms.

A clear, effective, and well enforced copyright regime enables both AI model development and a market for copyright material that supports the ongoing sustainability of Australia's media, creative and cultural sectors. A range of enhancements to the regime should be considered, including:

- Explicit recognition that the access to and use of copyright material for AI model development and training purposes is an exclusive right of the copyright owner, and therefore copyright owners' permission is required.
- Measures to enable transparency in the materials AI developers use for model development to ensure works are used legally and to facilitate attribution of copyright owners.
- Embedding copyright protection at the data level for proactive, scalable management of copyright issues in AI (e.g. by way of metadata tagging or watermarking).
- Effective tools to block unauthorised use/scraping.
- Placing requirements on AI companies to prevent the reproduction of copyright materials in response to user prompts.

²³ The Associated Press, 13 July 2023, *ChatGPT-maker OpenAI signs deal with AP to license news stories*, <https://www.ap.org/media-center/ap-in-the-news/2023/chatgpt-maker-openai-signs-deal-with-ap-to-license-news-stories/>

²⁴ OpenAI, 22 May 2024, *A landmark multi-year global partnership with News Corp*, <https://openai.com/index/news-corp-and-openai-sign-landmark-multi-year-global-partnership/>

²⁵ Financial Times, 29 August 2024, *Financial Times announces strategic partnership with OpenAI*, https://aboutus.ft.com/press_release/openai

- A transparent and fair approach to licensing copyright material for AI model development and training purposes, so that licensing in this context is less ad-hoc and subject to the relatively weak negotiating power of many copyright owners relative to AI developers.
- Supporting greater awareness and education on how to legally use copyright works.

Any change to copyright law should strengthen and clarify the regime for copyright holders, ensuring that the law sufficiently protects the value of works in the creative and media industries, and that these protections are effectively enforced. Copyright plays a key role in the sustainability and future productivity of these industries, which deliver benefits for the Australian economy, local jobs and skills, as well as broad social and cultural benefits through the provision of news, information, and entertainment.

In its interim paper, the PC highlights the risk of poorly designed regulations for AI, and the need for regulatory analyses to ensure regulations mitigate risk of serious harm without stifling innovation. We urge the PC to take a similarly considered approach to the amendment of existing regulations and protections that play key roles in other sectors.

The PC further notes in its interim paper the option of policy measures to better facilitate the licensing of copyrighted materials, such as through collecting societies. As noted above, the capacity to enter into licensing arrangements already exists. There are also multiple collecting societies or associations which deal with different types of copyrighted materials (e.g. text-based, images, or music). Policy measures considered must safeguard the choice of rightsholders to participate in collecting societies and negotiate the terms of, and agree to, licencing arrangements for their work.

Other regulatory mechanisms should be advanced to ensure the sustainability of Australia's news publishers

SBS has previously highlighted the urgency of addressing the ongoing power imbalance between digital platforms and news providers,²⁶ which currently results in the use of public interest news and other content on some digital platforms without fair remuneration. The News Media Bargaining Code did not provide sufficient incentive to bring Meta to the negotiating table with SBS and has not resulted in an ongoing incentive for Meta to agree terms or renew their agreements with other Australian news media operators. The consultation paper to develop the proposed News Media Bargaining Incentive that was announced in December 2024 has not been released. It is critical that these issues are prioritised to safeguard the sustainability of Australia's news media industry.

At the same time, new challenges are emerging in relation to AI that require the attention of lawmakers. The market for AI products and services is dominated by large technology companies, including those that already hold positions of market power in important digital markets (e.g., Microsoft, Amazon, and Google). SBS has raised concerns about generative AI products and services in its previous submissions, including the risks of anti-competitive behaviours, the lack of attribution and compensation for the use of copyrighted material or intellectual property, and the risk of misinformation.²⁷

AI services are also increasingly offering content to consumers that purports to be news. The *Digital news report: Australia 2025* revealed that 6 per cent of Australians surveyed reported using AI

²⁶ SBS, 28 February 2025, *SBS Submission to the Treasury – A New Digital Competition Regime Proposal Paper*, <https://www.sbs.com.au/aboutus/wp-content/uploads/2025/04/SBS-submission-Treasury-A-new-digital-competition-regime-proposal-paper.pdf>

²⁷ SBS, 28 February 2025, *SBS Submission to the Treasury – A New Digital Competition Regime Proposal Paper*, <https://www.sbs.com.au/aboutus/wp-content/uploads/2025/04/SBS-submission-Treasury-A-new-digital-competition-regime-proposal-paper.pdf>

chatbots as a source of news in the week prior.²⁸ This is the beginning of the Report's tracking of this emerging trend. Recent research from the United States found that from January 2024 to May 2025, news-related prompts on ChatGPT rose by 212 per cent, while equivalent Google searches fell by 5 per cent, and there has been a surge in zero-click searches [search that does not result in a click through to the original news publisher's website] since the launch of Google's Ai Overview in May 2024, resulting in the decline of organic traffic to publishers.²⁹

News publishers must be fairly compensated for the use of their content by AI services, which repurpose it to generate alternative material and divert audiences away from the original publisher. Failing that, there is a risk that AI services will further diminish Australia's news media industry, and with it the public interest journalism that provides vital information, transparency, and informed public discourse in a democratic society. An amended News Media Bargaining Code and/or effective News Media Bargaining Incentive may provide a means of ensuring that AI developers engage from a licensing perspective with news publishers on fair terms for the use of their material.

III. NEW PATHWAYS TO EXPAND DATA ACCESS

PC draft recommendation 2.1: Establish lower-cost and more flexible regulatory pathways to expand basic data access for individuals and businesses

SBS response: The media sector is unlikely to be the source of significant additional benefits at low cost from establishing new pathways to data access.

The PC should engage with the ACCC on regulatory measures to address anti-competitive behaviour by digital platforms.

The media sector is not expected to deliver significant additional benefits from new data-sharing pathways, as effective consumer- and market-driven mechanisms are already in place.

Through SBS On Demand, which is a freely available services, audiences already have access to their account information. SBS further has agreements in place to share viewing data with platforms including OzTam and Nielsen, and provides its advertisers with campaign data specific to their requests.

If new sectors or sub-sectors are considered for designation, further consultation would be required to ensure that these are well designed to avoid risks to individual privacy and data security, and unnecessary additional compliance burden.

The Treasury has consulted on a proposed new digital competition regime for digital platforms to promote effective competition.³⁰ This follows the findings and recommendations of the ACCC to address anti-competitive behaviours by dominant digital platforms, which have a negative impact on productivity and innovation. As SBS has highlighted in previous submissions, there are issues relating to a lack of transparency across digital platforms in the ad tech, app marketplace and

²⁸ Park, S., Fisher, C., McGuinness, K., Lee, J., Fujita, M., Haw, A., McCallum, K. & Nardi, G. (2025). *Digital News Report: Australia 2025*. Canberra: News and Media Research Centre, University of Canberra., <https://apo.org.au/node/330740>

²⁹ RadioInfo, 17 July 2025, *generative AI is reshaping how people discover and consume news*, <https://radioinfo.com.au/news/generative-ai-is-reshaping-how-consumers-discover-and-consume-news/>

³⁰ The Treasury, December 2024, *A new digital competition regime – Proposal paper*. <https://treasury.gov.au/consultation/c2024-547447>

search markets.³¹ The proposed new digital competition regime should be progressed to address the range of competition harms identified in digital platform markets.

IV. PRIVACY REGULATION

PC draft recommendation 3.1: An alternative compliance pathway for privacy

SBS response: In principle, SBS supports the exploration of an alternative dual-track compliance pathway that enables regulated entities to fulfil their privacy obligations by meeting criteria that are targeted at outcomes.

SBS's initial view is that a dual-track approach to privacy compliance, whereby an alternative pathway of outcomes-based obligations is introduced alongside the existing Privacy Act controls, could be beneficial. This is because the Privacy Act controls provide a guarantee of minimum expectations for how privacy obligations will be met, while allowing the implementation of new outcomes-based approaches where this is sensible.

Further consultation and careful consideration in the design of alternative privacy requirements is required to ensure individual privacy is appropriately protected and any new obligations do not infringe on reasonable and responsible business operations.

Any introduction of outcomes-based requirements must be supported by clear and robust regulatory and implementation guidance. Guidance is needed to support entities in identifying what best-practice compliance looks like, and in doing so, support the implementation of outcomes-based regulatory models.

Before a dual-track compliance regime is progressed, there is a need for more detailed consultation and consideration of how different models would influence privacy practices and behaviour, so that the implications of these models can be thoroughly examined and tested. With regards to the framing of outcomes-based privacy obligations, SBS highlights the following considerations:

- A best interest obligation — SBS is concerned that this would introduce unreasonably high regulatory and administrative burdens, partly due to a lack of clarity on how privacy interests would be balanced against reasonable and legitimate business uses of user data. As an example, users' viewing behaviour can help inform content recommendations on content services, improving the users' experience of the services. SBS also uses audience data to determine the language settings of a user's device, to ensure that they are served content and information in their preferred language.

It is unclear whether these use cases would be impacted by any of the changes being explored. Entities bound by privacy requirements will require clear and consistent pathways to compliance, and individuals will have varying views on what constitutes acting in their best interest in relation to privacy.

- A duty of care – this framing may be more practicable as it involves consideration of foreseeable harms to individuals' privacy, and taking appropriate action to mitigate risk. However, as outlined above, consultation on specific proposals for obligations would be

³¹ SBS, 28 February 2025, *SBS Submission to the Treasury – A New Digital Competition Regime Proposal Paper*, <https://www.sbs.com.au/aboutus/wp-content/uploads/2025/04/SBS-submission-Treasury-A-new-digital-competition-regime-proposal-paper.pdf>

needed, and clear and robust guidance is required if this type of option is pursued.

PC Draft recommendation 3.2 Do not implement a right to erasure

SBS response: Any new privacy rights of the individual – including the proposed right to erasure – should be subject to appropriate exemptions and must be applied flexibly and proportionately. There should be no absolute rights which would impact on significant matters of public interest such as freedom of speech and freedom of the media in public interest journalism; or legitimate business reasons to retain data.

SBS has highlighted in previous submissions the importance of there being appropriate exemptions in place for any new privacy rights of the individual, including the proposed right to erasure.³² This is to ensure that significant matters of public interest including freedom of speech and public interest journalism, in addition to legitimate business operations, continue to be protected. In particular, there should be no right of erasure that requires the deletion of material that is in the public interest, or historic or archival content or programming.

In addition, any re-examination of privacy requirements should maintain or extend protections for content creation and creators. SBS has previously highlighted a number of concerns with reform to the Privacy Act. We continue to be concerned about the potential chilling effects of the journalistic exemptions from the statutory tort in the Privacy Act. The current limited categories of "journalistic material" exempt from the tort could impact how content creators investigate and produce important stories outside of news, current affairs, and documentary offerings. Many potential storytellers also fall outside the Act's exemption for a 'journalist'. As the *Privacy and Other Legislation Amendment Act 2024* (Cth) has only received Royal Assent on 10 December 2024, it remains to be seen how these provisions will be interpreted when tested in any court proceeding, and how the long-term impacts of the Act could manifest. However, a clear exemption for public-interest media providers such as SBS from the tort would be beneficial to support the provision of public-interest content across genres.

SBS has further previously highlighted the following considerations for privacy reform:

- APP entities should retain flexibility in how they inform their consumers about the handling of personal information. The inclusion of additional prescriptive matters in collection notices can make these notices longer, more complex, and less consumer friendly.
- Measures which require periodically refreshed or granulated consents may lead to consent and notice fatigue and would not improve consumer privacy outcomes, while also imposing significant administrative burden on APP entities.
- Privacy measures should be appropriately balanced with legitimate business operations. As an example, if privacy settings for online services were required to default to the most restrictive privacy settings, this could compromise legitimate interests in data collection and use for the delivery of services.

³² SBS, April 2023, *SBS submission to the Australian Attorney-General's Department Privacy Act Review Report*, <https://www.sbs.com.au/aboutus/2023/04/06/privacy-act-review-report-2023/>

CONCLUSION

SBS welcomes the opportunities that innovation in data and digital technology can offer for its audiences, including the potential for AI to support greater efficiency and investment of resources in the vital news, information, and entertainment services we deliver under our Charter to foster social cohesion.

These opportunities must be supported by a balanced regulatory framework that fosters innovation and keeps pace with technological change, while ensuring appropriate safeguards are in place. This includes safeguards that support the ongoing sustainability of Australia's media, creative and cultural sectors, which play vital roles in Australian society through the provision of news, information, and entertainment services. SBS strongly opposes the introduction of a text and data mining (TDM) exception to copyright law, which would create risks to the future of these industries by removing compensation and attribution for the use of copyright works. The capacity for AI developers to use works already exists through the ability to strike licencing agreements. Australia's copyright regime should be appropriately clarified and strengthened to recognise the value of access to and use of copyright material for AI model development and training, the exclusive rights of copyright owners to provide access to and use of copyright material for these purposes, and to ensure licensing of materials by AI developers takes place on fair and transparent terms, to support the ongoing sustainability of Australia's media, cultural and creative sectors.

SBS supports in-principle, an alternative dual-track compliance pathway that enables regulated entities to fulfil their privacy obligations through outcomes-based requirements. We recognise the potential opportunity for outcomes-based regulation to enable new means of compliance that deliver better privacy outcomes for individuals. However, more in-depth consultation on the potential design of outcomes-based requirements is required, to evaluate the potential benefits and drawbacks of these requirements.