



7 March 2023

Attorney General's Department

BY EMAIL: copyright.consultation@ag.gov.au

Response to the Copyright Enforcement Review Issues Paper

Thank you for the opportunity to provide these comments in response to the Copyright Enforcement Review Issues Paper. Google appreciates the Government's commitment to understanding current and emerging enforcement priorities and challenges and whether Australia's copyright enforcement regime remains relevant, effective and proportionate.

Google's approach to combating copyright piracy

Five principles guide Google in fighting copyright piracy:

1. Create More and Better Legitimate Alternatives

Piracy often arises when consumer demand goes unmet by legitimate supply. The best way to battle piracy is with better, more convenient, legitimate alternatives to consume content, which can do far more than attempts at enforcement can. By developing products with compelling user experiences, Google helps drive revenue for creative industries and steer people toward legitimate alternatives. Google also supports the larger ecosystem by providing the cloud infrastructure to B2B clients that their legitimate services depend on to deliver fast, reliable streaming to their customers.

2. Follow the Money

Rogue sites that specialise in online piracy are commercial ventures, which means that one effective way to combat them is to cut off their money supply. Google is a leader in rooting out and ejecting rogue sites from our advertising and payment services, and we help establish best practices across the industry.

3. Be Efficient, Effective, and Scalable

Google strives to implement anti-piracy solutions that work at scale. For example, as early as 2010, we began making substantial investments in streamlining the copyright removal process for search results. As a result, these improved procedures allow Google to process copyright removal requests for search results at the rate of millions per week. In 2021, Google was notified of 502,882,089 URLs with potential copyright infringement in Search, which equates to around 1.38 million URLs each day. In that year, 65% of the URLs we were notified of via our webform were not in our search index and therefore, had never appeared in our search results.

4. *Guard Against Abuse*

Fabricated copyright infringement allegations can be used as a pretext for censorship and to hinder competition. Google is committed to ensuring that it detects and rejects bogus infringement allegations, such as removals for political or competitive reasons, even as it battles online piracy.¹

5. *Provide Transparency*

Google is committed to providing transparency. In our external [Transparency Report](#), Google discloses the number of requests it receives from copyright owners and governments to remove information from its services to inform ongoing discussions about online content regulation.²

The [How Google Fights Piracy](#) paper illustrates how, across its various services, Google offers a variety of highly effective copyright management tools.³ Their deployment and take-up is testament to the fact that industry-led copyright management tools are working well. For example, YouTube's Content ID is a first-of-its-kind copyright management system that gives rightsholders the tools they need to effectively monitor and manage their works on YouTube. Using Content ID, rightsholders can be automatically notified of user-uploaded videos that contain their creative work and can choose in advance what they want to happen when those videos are detected. Over 98% of copyright issues on YouTube are handled through Content ID.

Voluntary agreements with copyright owners to enhance enforcement

As outlined above, Google is committed to combating piracy. Not only does Google comply with its legal obligations, it also enters into partnerships with copyright owners in the spirit of the enforcement regime and to give effect to orders made against third parties.

For example, since 2019 Google has removed from its search results for Australia, websites that are subject to site blocking Federal Court orders.⁴ Then in 2020, in partnership with Creative Content Australia and the Australia New Zealand Screen Association, that voluntary action went a step further, extending to blocking notified proxy or mirror sites.⁵ As reported in 2020, Google had removed more than 800 pirate websites and notified proxy sites under this voluntary partnership.⁶ This arrangement has continued in force and to date we have removed over 2,000 pirate websites and their mirrors.

¹ For more information, see for example:

<https://forbiddenstories.org/story-killers/the-gravediggers-eliminalia/>

² For more information, go to: <https://transparencyreport.google.com/?hl=en>

³ https://www.blog.google/documents/27/How_Google_Fights_Piracy_2018.pdf/

⁴ Sydney Morning Herald, 13 May 2019, 'From enemies to allies': Google removes piracy websites from search results,

<https://www.smh.com.au/business/companies/from-enemies-to-allies-google-removes-piracy-websites-from-search-results-20190510-p51m55.html>

⁵ Sydney Morning Herald, 27 August 2020, Google moves to block movie piracy loophole, <https://www.smh.com.au/business/companies/google-moves-to-block-movie-piracy-loophole-20200826-p55pg6.html>

⁶ Content Cafe, 15 December 2020, The fight against piracy continues during a tumultuous year, <https://contentcafe.org.au/articles-stories-everything/the-fight-against-piracy-continues-during-a-tumultuous-year/>

Supporting the commercial interests of copyright owners

Apart from equipping copyright owners with a range of copyright management tools, Google also seeks to provide commercial opportunities for copyright owners that are not only viable but also profitable.

Search ‘watch and listen actions’ are an example of this. When people search with the intention to watch or listen to media, we show them cards for those queries directing them to legitimate sources. For example, if someone searches for the movie “Wonder Woman,” Google displays a card with links to different legitimate services where they can stream, rent, or purchase a licensed copy of the film. These cards may also appear for queries to “stream” or “download” the movie, and also appear for similar music-related queries. Watch and Listen Actions make it easier for fans to find licensed movies and songs online.

In Australia, all fifteen major streaming platforms are now live on Google Search watch and listen actions. This includes: 10Play, 9Now, 7Plus, ABC iView, SBS onDemand, Stan, Foxtel, Binge, Netflix, Amazon Prime, Apple TV, Disney+, Paramount+, Google Play Movies and Viki.

YouTube also plays a critical role in helping copyright owners to monetise their content and has helped spur the growth of a new generation of digital-first creators through its industry-leading revenue sharing program and alternative monetisation options. Over the past three years, YouTube has paid \$50b to creators, artists, and media companies. According to a [recent study](#) by Oxford Economics,⁷ YouTube contributed A\$1.4b to the Australian economy in 2021 and helped support more than 18,000 full-time jobs in Australia. And these benefits to the creative economy are accelerating, as the number of YouTube channels making five figures or more in revenue is up more than 25% year over year.

In addition to YouTube’s best-in-class revenue sharing program—which was recently expanded to allow Shorts creators to participate—YouTube offers ten alternative ways for creators to earn income on the platform, from channel memberships to Super Chat to showcasing branded merchandise on their channel. Moreover, the success of Australian creators spurs further off-platform economic growth, increasing sales of products sponsored or reviewed on creator channels, boosting ticket sales for concerts from musicians discovered on YouTube, and spurring the growth of new businesses from entrepreneurs who learned new skills from YouTube videos.

Much of this economic potential is a result of YouTube’s global reach. Through the platform, Australian creators have access to a worldwide audience. According to Oxford Economics, 83% of creative entrepreneurs agree that YouTube helps them export their content to

⁷ For the full report see:

https://www.youtube.com/intl/ALL_au/howyoutubeworks/progress-impact/impact/

See also The Sydney Morning Herald, ‘It just went ballistic’: Rise of the YouTube entrepreneurs, https://www.smh.com.au/business/small-business/it-just-went-ballistic-rise-of-the-youtube-entrepreneurs-20210611-p580av.html?utm_medium=Social&utm_source=Twitter#Echobox=1626086861

international audiences they wouldn't otherwise have access to: 90% of watch time for Australian channels comes from outside of Australia.⁸

In relation to music, in March 2022, ARIA announced⁹ that the Australian recorded music industry hit a 15-year high in calendar year 2021 with wholesale sales of \$565.8 million. It was stated that “the strong growth posted in recent years reflects the rise of streaming, which accounted for 86% of music sales in Australia last year.”

The Goldman Sachs Music in the Air report¹⁰ found that streaming drove higher music forecasts and that “music streaming will be resilient in an economic downturn.”

As reported in the Australian Financial Review¹¹ “the average payout to rights holders from the major music streaming services – Spotify, Apple Music, YouTube – is up to \$8000 per 1 million streams.” Thanks to success via streaming services, artists now have the capacity to negotiate higher royalties through their publishing deals. In that same AFR article, it is reported that top Australian artists might “conservatively have received 60 per cent of the streaming income from their mega-hits. ... Riptide alone could have already grossed about \$7.5 million for Joy. Dance Monkey could have grossed about \$15 million for Tones (and I)...”

The importance of copyright safe harbours

Currently, Australia’s safe harbour scheme is available to internet access providers and certain other institutions including education and collecting institutions such as libraries and museums. Whilst comparable systems elsewhere are available to all online service providers, this is not the case in Australia.

Safe harbours provide a balanced approach to enforcement and have allowed the internet economy to flourish. They foster collaboration between copyright owners and the service providers and institutions covered by the scheme, giving rights owners a powerful ability to enforce their rights.

However Australia’s legislated safe harbour notice and take-down scheme is only available to some online service providers, rather than all. This means that a large group of online service providers are not able to rely on the scheme to collaborate with copyright owners and consumers in a balanced way, to enforce copyright. The inclusion of all online service

⁸ A Platform for Australian Opportunity: Assessing the economic, societal, and cultural impact of YouTube in Australia in 2021, Oxford Economics, <https://kstatic.googleusercontent.com/files/9f571eb6d4be86facba9c9fecc5bfe9828fc04ed4347a44f70f68df53d1beb4109c41d58e2bec2856a151faf19d90355916019523cbc12efc2bfc9236bf6508d>

⁹ ARIA Media Release, 23 March 2022, Australian recording industry hits 15-year high, <https://www.aria.com.au/industry/news/australian-recording-industry-hits-15-year-high>

¹⁰ Goldman Sachs, 8 September 2022, Music in the Air, <https://www.goldmansachs.com/insights/pages/music-in-the-air-2022.html>

¹¹ AFR, 26 October 2022, How the music industry’s great resurgence reached the Young Rich List, https://www.afr.com/young-rich/how-the-music-industry-s-great-resurgence-reached-the-young-rich-list-20221005-p5bnhk?utm_content=business_life&list_name=EBE726C6-38DF-4725-9BE4-5091999D8384&promote_channel=edmail&utm_campaign=the-brief&utm_medium=email&utm_source=newsletter&utm_term=2022-10-26&mbnr=MjI3NjU2NzY&instance=2022-10-26-12-35-AEDT&jobid=29425614

providers in the scope would be beneficial to copyright owners and providers alike by providing a more consistent system of collaboration in the online environment.

Other matters

AI technologies increasingly highlight areas of the law that require further examination. The potential of AI raises important questions about how Australia as a society and economy wishes to benefit from, drive and lead innovations in this field. Whilst beyond the scope of the current review, there is a need to consider whether Australian copyright law contains the necessary flexibilities to help support the development of AI and thus position Australia as a digital powerhouse and a leader in this field opening up a new stream of technology-related investments.

We specifically encourage Australia to review its existing copyright flexibilities and consider introducing fair dealing exceptions including for Text and Data Mining (TDM). The lack of such copyright flexibilities means that investment in and development of AI and machine-learning technologies is happening and will continue to happen overseas. AI-powered products and services are being created in other countries with more innovation-focused copyright frameworks, such as the US, Singapore, and Japan, and then exported to Australia for use by Australian consumers and businesses. Without these discrete exceptions, Australia risks only ever being an importer of certain kinds of technologies.

Google Translate is an example of a successful and widely used product based on machine learning. It is used by more than half a billion people each month to translate between 103 different languages. Though this product is developed in the United States, ninety-two percent of translations this system performs originate outside that nation. Australians have performed more than 6 billion translations using Google Translate over the past three or so years, using it to translate online materials, text captured in images and spoken language in real-time.

Google Translate was launched in 2006 as a rule-based system, where rules of grammar and syntax, along with vocabulary for each language, were manually coded into a computer. In 2007 Google Translate switched to a statistical machine translation system. Because of switching to a system that used AI techniques, Google Translate now produces translations that are comparable to professional human translators in many languages. To train the computing system, Google uses large amounts of publicly available data. The development of products like Google Translate is enabled by copyright frameworks with more built-in flexibilities - something that is currently lacking in Australia.

By updating the flexibilities within its copyright law to harness the potential of new technologies, Australia will have the opportunity to ensure copyright owners are protected whilst simultaneously ensuring that the existing legal framework does not stifle innovation and economic growth linked to new technologies.

Thank you for the opportunity to provide these comments.