THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Submission to the Call for input for EMRTD study "Artificial Intelligence, Cultural Rights, and the Right to Development"

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Expert Mechanism on the Right to Development
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The NSW Young Lawyers Human Rights Sub-Committee and International Law Sub-Committee (**Sub-Committee**) makes the following submission in response to the call for input for the EMRTD study "Artificial Intelligence, Cultural Rights, and the Right to Development”

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to early career lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its multiple sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The Human Rights Sub-Committee comprises a group of volunteers and subscribers interested in human rights law, including lawyers working in academia, for government, private and NGO sectors, and other areas of practice that intersect with human rights law. The objectives of the Sub-Committee are to raise awareness about human rights issues and provide education to the legal profession and wider community about human rights and their application under both domestic and international law. The Sub-Committee shares a commitment to effectively promoting and protecting human rights and to examining legal avenues for doing so. The Sub-Committee takes a keen interest in providing comment and feedback on legal and policy issues that relate to human rights law and its development and support.

Summary of Recommendations

1. The Sub-Committee recommends that AI development and governance processes actively embed cultural rights and diversity as core principles, ensuring that indigenous and local communities can meaningfully participate in shaping technological systems that affect them.
2. The Sub-Committee recommends that states promote the inclusion of under-represented languages, cultural expressions, and traditional knowledge in AI training data, with the free, prior, and informed consent of knowledge holders.
3. The Sub-Committee recommends that international human rights bodies recognise digital access as integral to the right to culture and the right to development, and encourage funding mechanisms that support community-led technological innovation in the Global South.
4. The Sub-Committee recommends that states implement mandatory cultural impact assessments for AI systems, ensuring harms and benefits to cultural diversity and community self-determination are identified and addressed.
5. The Sub-Committee recommends that states support capacity-building programs that enable communities to leverage AI technologies to document, preserve, and promote their languages, arts, and cultural practices.
6. The Sub-Committee recommends that the UN introduce a Guiding Principles document on AI and human rights.

Background

Artificial Intelligence ("**AI**") is rapidly transforming societies, economies, policies and governance systems around the world. While AI offers opportunities for innovation and a potential for improved service delivery, it also poses significant challenges to the full enjoyment of cultural rights and the right to development. AI systems can influence access to information, participation in cultural life, and equitable economic opportunities and often reinforces existing social, economic, and structural inequalities. The Expert Mechanism on the Right to Development (**EMRTD**) has highlighted the importance of examining the intersection of AI with human rights frameworks to ensure that technological advancements do not undermine cultural diversity, exacerbate marginalisation, or impede the development aspirations of Indigenous peoples and other historically disadvantaged

communities. Internationally, cultural rights are protected by Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) which provides that everyone has the right to take part in cultural life. Article 15(2) further supports the right to culture by providing that state parties shall take steps to achieve the full realisation of this right, including steps necessary to conserve and develop culture.

To what extent, if any, do existing digital divides deprive developing and least developed countries from reaping the benefits of AI?

The term 'digital divide' refers to the gap between those who have access to computers and the internet and those who do not. This term encompasses not only access to computers and the internet but also the quality, affordability, and meaningful use of technology. The digital divide impacts participation in the digital economy, access to education, culture, information, and the benefits of innovation, including AI. Consequently, developing and least developed countries are often excluded from shaping or benefiting from AI systems.

Existing digital divides significantly impact the ability of developing and least developed countries to harness AI for development. Many of these countries face challenges such as limited digital infrastructure, unreliable electricity supply, and high connectivity costs, which restrict access to the technologies required to develop or deploy AI. Further, the lack of investment in education and digital literacy limits the capacity to create or maintain AI systems locally, resulting in dependence on technologies designed and controlled by actors in the Global North. This exclusion undermines the right to participate in cultural life and restricts the ability of Indigenous peoples and local communities to shape how their cultures are represented in digital spaces. This has many implications for how people interact with and experience cultural rights.

The development of AI in a select few developed countries means that most AI systems are trained on data and languages that reflect Western-dominant cultures, values, and perspectives.[1] As a result AI may perpetuate cultural bias, erode linguistic diversity, and marginalise traditional indigenous knowledge systems. For example, cultural heritage materials from the Global South may be underrepresented or misclassified in AI-driven databases, while Indigenous knowledge may be used without consent or proper attribution.[2] This means that existing digital divides deprive

[1] Hang Yuan et al, 'The Cultural Stereotype and Cultural Bias of ChatGPT' (2025) 19 *Journal of Pacific Rim Psychology* 2.
[2] Ibid.

developing countries of the opportunity to participate equally in the global digital culture, to shape AI in ways that reflect their own values, and to ensure that technological progress supports rather than undermines their development aspirations. In this sense, the digital divide fundamentally constrains these countries' ability to reap the cultural, social, and developmental benefits of AI, reinforcing a cycle of digital dependency and cultural marginalisation.

What are the main risks posed by and drawbacks already identified of Artificial Intelligence, including, amongst others, generative AI, to cultural rights in pursuing the right to development?

The use of AI, although having great potential to increase productivity, share knowledge and grow innovation, also has substantial risks, especially to the cultural rights of peoples throughout the world. While AI's benefits can assist in pursuing the right to development, care should be taken to not allow economic development through AI to take precedence over cultural, social and political development, which are also key aspects of the right to development.

The development of culture over time is an inherently human process, where social and environmental factors can develop a group's identity. This dynamic process continues globally, as cultures interact and confront new circumstances. However, it is crucial to provide adequate protections for existing cultures to safeguard their cultural rights and prevent disenfranchisement.[3] External factors can influence which cultures take priority as the cultural landscape develops. For example, targeted funding of arts from a certain culture has the potential to focus cultural development in a certain area (although this could also be used in a positive manner, such as by protecting the cultural rights of indigenous people through targeted funding). Involving AI in cultural development without adequate legal protections risks accelerating cultural shifts with a variety of risks, including:[4]

1. AI may be able to influence and prioritise the growth of some cultures over others, putting the cultural rights of some groups at risk; and
2. AI lacks the inherent humanity to carry out a true synthesis of information, instead relying on existing information, statistics and quasi-random decisions; and

[3]Caust J, 'Cultural Rights as Human Rights and the Impact on the Expression of Arts Practices' (2019) 3(1) *Journal of Citizenship & Globalisation Studies* 17–30
[4] See ibid.

3. AI may be unable to place sufficient value on the individuality of cultures. This may lead to AI artificially merging cultures it views as similar in some aspects, without recognition of the uniqueness and cultural rights of each group (see also [4]).

Prior to the recent rise of Large Language Models (**LLM**s), AI use in other contexts already raised community concerns. One of the most significant concerns being the potential for machine bias arising from bias within the datasets.[5] Using such results blindly could significantly impact the cultural rights of some groups, including by essentially permitting discrimination to occur due to previous historical patterns. Currently, most AI models lack transparency in their datasets and operations, arising from the commercial value placed on these aspects of a model.[6] Therefore, great care is necessary to prevent machine bias in the results of AI, including LLMs, even where the original computer processes and datasets are not obviously discriminatory.

As LLMs have gained popularity, one of their largest drawbacks has become more apparent. At a basic level, LLMs operate by predicting what word should occur next based on the given prompt and their extensive training datasets.[7] They do not simply draw data from a database and present it to the user. Consequently, it is quite common, especially in more specialised fields (and where the initial dataset may lack information), for the AI using the LLM to create results that it predicts are correct, but that are actually false.[8] The generated text may appear coherent and factual, because it is generated from other correct text, but the final outcome may be completely incorrect. In the legal field, AI hallucinations are particularly dangerous when preparing advice or submissions to courts, where accuracy to precedent is of the utmost ethical importance. However, AI hallucinations also offer the potential to distort the history of cultural groups, and negatively impact the cultural rights of people. Without sufficient protections in place, hallucinations may generate believable false-histories, that are easily adopted because they are generated based on other content the model views as popular. These false-histories could then be spread quickly via social media, potentially with other AI tools generating various media to drive interaction (such as realistic photos and videos).

[5] Toon Calders and Indrė Žliobaitė, 'Why Unbiased Computational Processes Can Lead to Discriminative Decision Procedures' in Bart Custers et al (eds), Discrimination and Privacy in the Information Society (Springer, 2013) 43, 55-56.
[6] See e.g. State v Loomis, 881 N.W.2d 749 where a challenge to the confidentiality of an algorithm used to assist in sentencing decisions failed on the grounds of trade secrets.
[7] https://www.sciencedirect.com/science/article/pii/S1364661323002024
[8] https://www.nature.com/articles/s41599-024-03811-x

As AI tools are becoming more popular, they are increasingly hard to avoid. This can lead to interferences both with the privacy of individuals and with cultural privacy norms.[9] Once information has been provided into an AI model, especially LLM type models, it can be difficult to identify how that information may be used. The use of AI tools amongst governments and other authoritative bodies is also growing, such as through the use of facial recognition surveillance, biometric data for immigration decisions and even decision making within governments. Cultures worldwide, including the First Nations people of Australia, often possess sacred practices that are only intended to be shared within specific groups of people.[10] There is a real and significant risk to the cultural rights of these groups, and the personal rights of individuals, that the implementation of AI will not give sufficient weight to these longstanding traditions and the importance of an individual's right to privacy.

The growing use of AI, including in particular LLMs, has led to serious concerns around infringement of intellectual property.[11] LLM training data is collected from a broad range of sources, often with insufficient consideration given to the intellectual property rights of the authors of such material, and the contractual terms for accessing the information imposed by publishers.[12] Existing copyright and intellectual property regulations appear to be ill-equipped to deal with these issues. In a similar fashion, cultural rights of groups of people surrounding traditional works and techniques are also at risk from the rising use of AI. Traditional cultural and intellectual property, such as that of the First Nations People in Australia, already lack sufficient protections within existing intellectual property legal frameworks.[13] It is therefore quite clear that AI presents a substantial risk of unauthorised access and exploitation of cultural and intellectual property of cultural groups throughout the world.

Do you think regulating AI would be an effective way to protect cultural rights when pursuing the right to development?

Regulating AI *can* be an effective way to protect cultural rights in the pursuit of the right to development, but only if such regulation is designed and implemented in a rights-based, inclusive and context-sensitive manner.

[9] Rehan Ullah, 'The Impact of Artificial Intelligence (AI) on Privacy Rights: An Analytical Exploration' (2025) 3(4) *Annual Methodological Archive Research Review* 327.
[10] https://www.jstor.org/stable/27904066
[11] https://www.sciencedirect.com/science/article/pii/S2444569X24001690
[12] Ibid 20.
[13] https://classic.austlii.edu.au/au/journals/UNSWLawJlStuS/2021/23.html

First, cultural rights (including the rights of individuals and communities to participate in cultural life, to enjoy and protect their cultural heritage, to have their languages and expressions valued) are clearly implicated by AI's growing role in cultural production, dissemination, language preservation and creative industries. As the Office of the United Nations High Commissioner for Human Rights (OHCHR) notes, AI technologies are *"already reshaping cultural landscapes… language preservation, artistic creation and expression"*[14] and carry risks such as disinformation, algorithmic bias and erosion of cultural diversity.

Secondly, the Right To Development (**RTD**) emphasises that all people are both authors and beneficiaries of development, which must enable meaningful participation, cultural self-determination and access to the benefits of science and technology.[15] If AI is unregulated, then the deployment of large-scale systems can reinforce power imbalances (for example, by privileging dominant languages, cultural forms or commercial actors at the expense of marginalised communities), thereby undermining both cultural rights and the RTD.[16]

Given these linkages, regulation offers an instrument to mitigate the risks of AI, safeguard cultural rights and thereby support the RTD. For example, regulatory measures can require impact assessments of AI systems on cultural diversity and minority language rights, ensure transparency and accountability of algorithms, enforce requirements for participation of cultural communities in design and deployment, and restrict uses of AI that appropriate or commodify cultural expressions without consent.[17]

However, and crucially, regulation is not sufficient in itself and must avoid unintended consequences. Overly rigid or top-down regulation may stifle innovation in creative industries (which themselves contribute to development) or entrench regulatory capture by large tech actors.

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[14] Office of the United Nations High Commissioner for Human Rights, 'Call for input for EMRTD Study "Artificial Intelligence, Cultural Rights, and the Right to Development"' (web page, 2025) <OHCHR | Call for input for EMRTD study "Artificial Intelligence, Cultural Rights, and the Right to Development">.

[15] Global Policy Forum, *Update on Right to Development (RTD)* (Fact Sheet No 8, March 2025) <GPF_Factsheet8_RTD2025>.

[16] Cathy Roche, P.J. Wall and Dave Lewis, 'Ethics and Diversity in Artificial Intelligence Policies, Strategies and Initiatives' *AI & Ethics* (2023, Vol. 3, pages 1095-1115) <Ethics and diversity in artificial intelligence policies, strategies and initiatives | AI and Ethics>.

[17] Dillion Reisman, Jason Schultz, Kate Crawford & Meredith Whittaker, *Algorithmic Impact Assessments: A Practical Framework for Public Agency Accountability* (AI Now Institute, 2018) <aiareport2018.pdf>; I Spano, 'Indigenous Data Sovereignty in Intangible Cultural Heritage Governance: A Complementary Approach to Public/Private Partnerships', *International Journal of Cultural Property* (Cambridge University,2025, 32(2)).

Academic research warns that AI regulation claimed to be “rights-based” may still reproduce existing power structures if it lacks democratic legitimacy and cultural sensitivity.[18]

Therefore, the effectiveness of AI regulation for protecting cultural rights in the RTD context depends on key design features, such as embedding cultural rights and the RTD explicitly (i.e., participation, non-discrimination, cultural self-determination), or ensuring meaningful involvement of affected communities in governance, and it should also be flexible enough to accommodate local cultural and developmental contexts. Additionally, it must be backed by institutional capacity (both national and regional) and complemented by measures to close digital divides (since unequal access undermines the benefits of AI).

To achieve the harmony of regulation and protection of cultural rights the Sub-Committee recommends that AI development and governance processes actively embed cultural rights and diversity as core principles, ensuring that indigenous and local communities can meaningfully participate in shaping technological systems that affect them, including through the promotion of under-represented languages, cultural expressions and traditional knowledge in AI training data, with the free prior and informed consent of knowledge holders.

The Sub-Committee further recommends that states implement mandatory cultural impact assessments for AI systems, ensuring harms and benefits to cultural diversity and community self-determination are identified and addressed. Furthermore, the Sub-Committee recommends that states support capacity building programs that enable communities to leverage AI technologies to document, preserve, and promote their languages, arts, and cultural practices.

If so, what kinds of AI uses or tools should be regulated, how, and by whom?

Several AI tools would benefit from regulation, particularly those AI able to recreate copyrighted or artistic material as this can fundamentally alter the original material's structure and presentation.[19] Generative AI programs (such as ChatGPT, Sora, Midjourney) can also create images and videos

[18] Eleni Christodoulou and Kalypso Iordanou, ‘Democracy under Attack: Challenges of Addressing Ethical Issues of AI and Big Data for more Democratic Digital Media and Societies’ (2021) *Frontiers in Political Science* Vol.3, article 682945).
[19] Marijana Krkić, ‘Cultural perspectives on AI usage and regulation in deepfake creation: how culture shapes AI practices’ (2025) 12(3) *International Communication of Chinese Culture* 225, 225-227.

from prompts which a user implements into the program. While these programs are gradually being regulated by their developers, it is vital to have a method of regulation for these programs and companies other than relying solely on internal self-regulation by AI companies.

AI regulation is crucial for promoting cultural progression and stability as generative AI models can hinder the cultural development that artists provide. This is mainly due to the way in which AI can be trained to derive material from other artists' works to create something based on the original works. For example, the Midjourney program has been alleged to use other artists' material in their training models in a class-action lawsuit where tendered evidence suggested that the program is able to mimic the styles of approximately 4,700 artists.[20] Additionally, AI should be regulated to prevent misuse of real individuals' likenesses and appearance, namely in the manner of deepfake imagery or technology. While many nations have independently implemented regulations to combat the misuse of deepfake technology, it is important for international regulations to be introduced to combat this issue, as there are currently no international regulations or standards that address this pressing issue. Deepfake technology (being a form of AI) is highly dangerous since it can be used to facilitate misinformation, identity theft and fraud as the technology is capable of replacing or manipulating faces and synthesising speech.[21] Additionally, deepfake technology poses risks for the privacy of individuals as it can be utilised to create malicious imagery or videos of a person's likeness, with immense negative impacts on women and children in particular.[22]

AI regulation would be possible if states were able to implement compulsory assessments to determine how AI models might harm or benefit cultural diversity and cultural impact in their legislation. States could also implement capacity building programs that would be used to enable communities to leverage AI models to preserve and promote societal cultural endeavours and changes. For example, Australia has implemented and developed a 'National AI Capability Plan' to assess AI's role in increasing economic growth and supporting local industries which are regulated through public consultation to promote responsible AI usage.[23]

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[20] Abby Poole, 'Does Midjourney Steal Art', *AIARTY* (Web Page, 18 April 2025) <https://www.aiarty.com/midjourney-guide/does-midjourney-steal-art.htm>.
[21] Jana Kazaz, *Regulating Deepfakes: Global Approaches to Combatting AI-Driven Manipulation* (Policy Paper) 1-2.
[22] Ibid
[23] 'Developing a National AI Capabilty Plan', *Department of Industry, Science and Resources* (Web Page, 13 December 2024) <https://www.industry.gov.au/news/developing-national-ai-capability-plan>.

Is the current institutional framework in your country equipped to deal with the new AI challenges to cultural rights? If not, what are some of its blind spots or shortcomings?

The Sub-Committee notes that Australia's current institutional framework is not yet equipped to coherently address new AI-related challenges to cultural rights. While it possesses important building blocks, these operate in silos and do not form a coordinated response to the challenges posed by AI.

At Australia's federal level, several regulators already touch on AI:

- Office of the Australian Information Commissioner (in relation to privacy and data protection)
- Australian Competition & Consumer Commission (in relation to misleading and deceptive conduct of AI service providers)
- eSafety Commissioner (in relation to harmful online content)
- IP Australia (in relation to copyrights disputes)

In addition, public agencies such as the Australian Human Rights Commission can, in principle, address algorithmic discrimination and other human-rights impacts. This has not been utilised to-date.

However, none of these institutions has a clear, overarching mandate for AI as such, and none is specifically tasked with safeguarding cultural rights in the AI context. The result is that AI-related cultural harms are often treated as side-effects of other problems (privacy, consumer protection, online safety), rather than as a distinct governance concern. Because each regulator focuses on its own statute, AI risks are typically addressed piece-by-piece (privacy here, content there, copyright somewhere else).

There is no national action plan or strategy that explicitly links AI governance to the protection of cultural diversity and minority expression, the right to participate in cultural life and benefit from scientific progress, or the specific cultural interests of Indigenous peoples and other minorities. Even current federal proposals (such as high-risk AI "guardrails" and a voluntary AI Safety Standard) are framed broadly around "risk-based" regulation and do not yet embed cultural-rights benchmarks or specific redress pathways for cultural harms.

For an aggrieved person, this means that when AI harms their cultural rights (for example, deepfakes, misrepresentation of heritage, or platform moderation that systematically down-ranks minority cultural content), there is no obvious entry point or regulator to go to.

A major blind spot concerns Indigenous Cultural and Intellectual Property (**ICIP**). Australia currently lacks standalone ICIP legislation; ICIP is only partially and indirectly protected through ordinary IP laws, contract and sector-specific regimes, which are widely recognised as inadequate for communal, intergenerational cultural rights. The Government, through the National Cultural Policy Revive, has committed to introducing new stand-alone ICIP laws and is currently developing this legislation through First Nations-led consultations. However, these reforms are still in progress and not yet in force. In the interim, generative AI systems can ingest and replicate Indigenous artworks, stories, language and designs without consent, produce outputs that approximate or distort ICIP, or misattribute cultural material altogether. As ICIP is not yet fully recognised in law, communities have limited and uncertain remedies when their cultural expressions are scraped, reproduced or altered by AI systems.

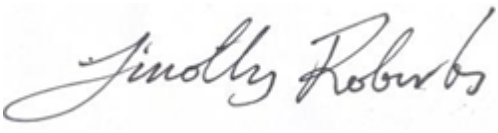
Another blind spot is algorithmic bias and discrimination. Recommender systems, content moderation tools and generative models can systematically under-represent or stereotype certain cultural and linguistic groups. These impacts threaten equal participation in cultural life, but there is no specific AI anti-discrimination regime and no case law testing how existing discrimination statutes apply to AI-driven systems in Australia.

The Sub-Committee considers that a binding global treaty alone will not automatically enhance states' capabilities to respond to AI's impacts on cultural rights. Treaties become effective only when translated into domestic law, institutions and budgets – areas where Australia currently faces gaps. By contrast, a soft-law instrument, similar to the UN Guiding Principles on Business and Human Rights, specifically focused on AI and human rights (including cultural rights), could articulate clear expectations for both states and private AI developers. This could encourage the uplift of industry standards even before legislation catches up and catalyse domestic debate and norm-setting in countries where AI reforms are still underway.

Concluding Comments

NSW Young Lawyers and the Sub-Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

Contact:



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