Legal & Compliance Fact Sheet:
Artificial Intelligence (AI)
Generative AI tools

This fact sheet provides information on potential legal issues arising from use of Generative AI tools.

What is Artificial Intelligence and Generative AI?

Artificial Intelligence or AI is the broad term used to describe the ability of machines to perform tasks or produce content of a nature typically requiring human intelligence, such as reasoning, learning, problem solving and creativity.

A common example of AI is Generative AI - an emerging field within AI that creates new content such as text, images, voice, video, and code by learning from data patterns.

***Examples** of Generative AI tools are:*

- *ChatGPT*
- *Microsoft Co-Pilot Studio*

Some AI Systems are free to use (such as certain versions of ChatGPT), others are subscription based.

How do Generative AI tools work?

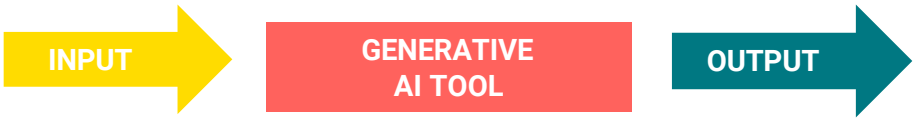
Generative AI uses Machine Learning techniques to generate new content. 'Machine Learning' is defined as a subset of AI that allows computers to autonomously learn and improve without being explicitly programmed. Machine Learning algorithms are trained on data to make predictions or decisions. Generative AI tools are eventually so well trained that they can start to generate new content based off the data they have learned from.

Are there legal risks in using Generative AI tools?

While Generative AI tools offer novel capabilities, they do not come without risk.

Potential legal issues arise from the input of information into Generative AI tools as well as the outputs they create, including how these outputs are used.

Refer to the following pages for risks associated with input and risks associated with output.



Understanding some of these issues requires a basic understanding of copyright.

Copyright

Copyright is an intellectual property right that protects the original expression of an idea.

- Importantly, there is **no copyright** in an idea, concept, fact or information itself.
- It is only once an idea has been expressed in tangible form (written, drawn, recorded) or information is compiled in a list or database that copyright may apply.

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Copyright (continued)

- Copyright in a work (literary, artistic, dramatic or musical) must satisfy the criteria of 'originality'.
- Originality in Australian copyright law is not concerned with the uniqueness, creativity, literary or artistic value of a work, but whether the work originated from the author's application of skill and labour.

Copyright also protects more technical subject matter such as:

films (including video and multimedia games)

sound recordings

broadcasts and published editions

Relevantly, **literary works** are broadly defined and may include:

- song lyrics
- scientific articles
- computer software
- databases
- compilations of information

The owner of copyright has the **exclusive** right to use (and prevent others from using) copyright content in certain ways, including making copies of it or sharing it online.

In Australia, copyright:

- is free
- is an automatic right covered by the *Copyright Act 1968* (Cth)
- vests on creation of protected articles
- **does not** need to be registered to be enforceable

For more information on Copyright visit the Australian Copyright Council website:

Australian Copyright Council

Risks associated with content input into Generative AI tools

Legal issue	Risks
Copyright infringement	The **input** of content into Generative AI tools carries with it **potential risks of copyright infringement** if this is done without the permission of the copyright owner of the content. This is because the owner of the copyright (or their exclusive licensee) has the exclusive right to reproduce the work or communicate it, which may happen when you upload content to an AI tool. Uploading, downloading and/or copying copyright content into a generative AI tool without consent may constitute copyright infringement. To **minimise risk** of copyright infringement, prior to inputting information into a Generative AI tool, it is important to determine whether there are any restrictions on how, and for what purposes, it may be used. ***Example***: *UNSW student theses deposited into UNSWorks are subject to UNSW's Deposit Licence.* *Under this licence, the student, as the copyright owner of the thesis, grants UNSW a limited licence to the thesis (which may be sub-licensed)* ***solely*** *for the purpose of enabling open access to the public.* *This means that any additional use by UNSW (or its sub-licensee) of a thesis uploaded onto UNSWorks, including copying the thesis into a generative AI tool for a research or commercial objective,* ***would constitute a breach*** *of the copyright licence where it was not for the purpose of enabling open access to the public.*
Confidentiality	A person's receipt of **confidential information** will be subject to specific obligations of how such information can be used and with whom such information can be shared. In the absence of the discloser's consent to the input of confidential information into a generative AI tool, there may be a **breach** of an obligation of confidence. Given Generative AI tools 'learn' from the content input into their system, there are significant risks that confidential information entered into an AI tool may be disclosed in later outputs to persons **not authorised** to receive such information and may constitute an **unauthorised disclosure** of **confidential information.**
Contravention of privacy laws	Receipt of **personal information** will be subject to specific obligations on how such information can be used and with whom such information can be shared. In the absence of consent to the input of such information into a Generative AI tool, such an act may be considered a **breach** of applicable privacy laws.

Legal issue	Risks
	As Generative AI tools are trained on the content input into their system, there is a **risk** that personal information entered into a tool may re-emerge in its outputs in contravention of privacy laws. In many international jurisdictions, privacy laws afford individuals the **right to be forgotten.** This means that, on request by the individual, the person or company which retains their personal information is **obliged** to delete all information in their possession. Given that Generative AI tools cannot easily delete information that has been entered into their system, the input of personal information into these tools poses significant privacy risks.
Acceptable Use	Each Generative AI tool will have its own Acceptable Use Policy (AUP), which is a set of rules that describes **what you can and cannot do** with your inputs. By using a Generative AI tool, you contractually agree to abide by their AUP. An AUP exists to: • Prevent real-world harm and misuse • Set clear expectations for responsible use, which sits alongside laws, professional duties and ethical obligations • Support safety and trust Tips for complying with an AUP: • **Use a Generative AI tool for legitimate, constructive tasks** by treating it as a productivity and drafting tool, not a way to cause harm or break rules • **Pressure-test your prompts** before sending by asking yourself *"could this prompt enable harm, illegal activity or targeted wrongdoing?"* • **Do not try to bypass guardrails** by attempting to circumvent restrictions or safety measures (including jailbreak style prompts) • **If you get blocked or warned, treat it as a compliance signal** and an opportunity to adjust usage, otherwise continued violations may lead to restrictions or deactivation If you use an enterprise version of a Generative AI tool provided by UNSW, you will also be subject to the *Code of Conduct and Values* and *Information Governance Policy*. Violation of these policies will result in disciplinary action by UNSW.

To **minimise legal risks** related to unauthorised disclosure of confidential, personal, private, or sensitive information when using Generative AI:

- **Avoid** sharing with open AI tools - sharing information with ChatGPT is in effect sharing information with an uncontrolled third party.
- **Do not** enter such information into public facing open AI models.
- **Ensure** de-identification and redaction of personal and sensitive data.
- **Understand** and use data management options for security and privacy settings in Generative AI tools.
- **Engage** with AI tools provided on UNSW enterprise systems.

Risks associated with content output from Generative AI tools

Legal issue	Risks
Copyright infringement	While credited for their ability to create 'new' content, in practice, any end product created by these tools is based off or 'learned from' existing works on similar subjects which have been input into the AI tool. It is possible that **output** of a Generative AI tool may include material that infringes copyright of an existing work. **Copyright infringement** occurs when a work has used a 'substantial' part of another work without the consent of the copyright owner of the other work. What is a 'substantial' part of a work is assessed qualitatively, not quantitatively. You **must** be careful when using Generative AI outputs. Copyright infringement will occur if the output has used a 'substantial' part of an existing work.
Risk of infringement	The **risk** of an **end product** using the exact same terminologies or expressions of a specific existing work may be low because of the vast quantities of data and existing works input into Generative AI tools. The risk increases where Generative AI tools are instructed to produce content of a highly specific nature or style because the pool of existing material from which the AI tool has 'learnt' from is likely to be smaller.
Copyright ownership and protection	**Copyright Act** • The *Copyright Act* **does not** deal explicitly with AI generated works. • Under the *Copyright Act*, copyright protection requires human contribution of independent skill and labour to the creation of a work. **Human contribution** • It is possible that AI generated content **may lack** the level of **intellectual human effort and skill** required to be deemed a work of human authorship to qualify for copyright protection under the *Copyright Act.* • The general view is that the human user or director of a computer to create a work will be regarded as the author for the purpose of copyright. • For example, work generated using graphic design software is regarded as having human authorship. **Protection of AI generated work under Copyright Act** • In an *Australian Federal Court case*, copyright was not considered as subsisting in source code produced by a computer program because it lacked necessary involvement of human effort. • This outcome supports the view that computer generated content is **not protected** under current Australian copyright law.

Legal issue	Risks
	Lack of copyright protection currently afforded to AI generated works under Australian copyright law and uncertainties about ownership of outputs **may create challenges for UNSW** in protecting and commercialising any technology that uses AI generated content.
Licensing restrictions on use of AI tools	While many Generative AI tools allow users to use their end-products for any purpose (including commercial), some specify their end-products can only be used in specific ways and for limited purposes. You **must** review the terms and conditions of use of an AI tool to ensure that its proposed use is not contravening any licence terms and any contemplated usage of the end-product is permitted to avoid breach of contractual terms. To **avoid risk** of infringing licence terms, consider how a Generative AI tool (which is software protected by copyright) is licensed for use.
Confidentiality and privacy laws	Content created by Generative AI tools may include personal, sensitive or confidential information that has been previously input into the tool, with or without consent of the original discloser of that information. There is a risk that AI outputs may include such information and will breach confidentiality obligations and privacy laws. There is a **risk** that information generated by AI tools in relation to a particular person may be inaccurate or false, given Generative AI tools in some instances may "hallucinate" and create fictional content in response to a prompt.
Contravention of Australian Consumer Law provisions	For AI generated content, **misleading** and **deceptive conduct** or **false representations** **may** look like: • representing to a client that a report will be produced by a specific UNSW academic or 'key personnel' but the report is significantly comprised of content produced by Generative AI. • UNSW **failing** to disclose that goods or services it has been contracted to provide a third party will include or involve content produced by Generative AI, such as the creation of summaries, or collection of data or facts. Australian Consumer Law **prohibits** misleading and deceptive conduct and the making of false representations with regard to goods or services in trade or commerce.
Contractual warranties and representations	In a contract for research services or development of course content, UNSW is often required to give **warranties** or **represent** that the goods or services it has been contracted to provide do not infringe the intellectual property or other rights of third parties. If there is content created by Generative AI tools, there is a **risk of breach** of such a warranty due to possible copyright infringement in outputs of Generative AI. The Generative AI tools do not themselves provide warranties that their outputs do not infringe the intellectual property rights of third parties and there is a risk of potential for infringement of third-party rights. If a representation has been made that work is that of an individual but an AI tool was used, there would be a breach of such representation. Disclosure of use of an AI tool should be made.

Document control	
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Resources

UNSW Library | Copyright https://www.library.unsw.edu.au/copyright

AI@UNSW https://www.unsw.edu.au/myit/emerging-technologies/ai

Using Artificial Intelligence (AI) in university | current students https://www.unsw.edu.au/student/managing-your-studies/academic-skills-support/toolkit/ai

More information

This Fact Sheet provides general information only. For legal advice tailored to your situation contact UNSW Legal & Compliance.

Contact us

For legal advice in relation to AI please contact UNSW Legal & Compliance on (02) 9348 1198 or legalandcompliance@unsw.edu.au

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