

AI Inputs and Outputs – An example of key risks

As artificial intelligence (**AI**) continues to become more integral to business operations, it's critical to understand how data flows through these tools and who owns what. Below, our team has outlined key considerations that influence who owns, and has the rights to use, both the information you provide to the AI tool (**Inputs**) and the results it generates (**Outputs**), ensuring you're aware of the important considerations involved when using and procuring new AI tools.

1 Identify your goal



Start by identifying your goal for using AI. For instance, let's say you're using a large language model to review a data set (**Input**) to generate a useful visual infographic (**Output**) for a company presentation.

2 Review applicable rights you'll need to grant



Looking at the AI tool's terms of use, you see that the provider can use your Input to create the Output. But the provider also expects:

- To use your Input to train the underlying AI model and improve their services.
- To retain a copy of your Input for an indefinite period.
- To do this without infringing someone else's IP or privacy rights.

3 Assess the rights you have to that Input



Given those terms, you can use the AI tool if you're able to grant the AI tool's provider the rights it expects under its terms of use. You'll need to assess the following criteria:

- Whether you own, or can licence, the IP in the Input – including whether you're restricted under another contract, as the disclosure may put you in breach.
- Whether you're comfortable with the possibility that any commercially sensitive information you provide could be used by the provider to improve their product – meaning this information may effectively be released 'into the wild' and no longer under your control.
- That in sharing the Input with the provider, the Privacy Act is not being breached.

4 Review how you can use the Output



If you have confirmed that all the criteria in step 3 are met, the next thing to consider is how you're allowed to use any Output generated by the AI tool. This will depend on the provider's terms, which may:

- Some providers grant you ownership of Outputs, allowing you to use the Output freely.
- However, others retain ownership of the Output but grant you a licence – often with attribution conditions, or restrictions on commercial use.

A note on copyright

The prevailing view is that the human user (or their employer) is considered to own copyright over Outputs, but this is not settled law. Further, Outputs may infringe others' copyright where the AI tool relies on other works to create it. Businesses should factor this into their risk management strategies and consider implementing review processes for AI-generated content.

Managing data use with AI – Key strategies

Managing data in context of AI requires careful planning, compliance, and transparency. Below are some key points for developers and businesses procuring AI tools.



Developers

Plan how you'll collect training data

To train your AI model, you will need data. Be clear where your is coming from, secure all the necessary IP licences in order to use third parties' data, and document safeguards against misuse of any personal information.

Manage IP ownership

Ensure IP ownership is held by the correct entity (generally your company, not individual employees) to enable licensing to customers. Review this against your tax and corporate structuring obligations.

Align contracts

Be transparent about how Inputs will be used, including if they are intended for training purposes. Ensure you secure the rights to use those Inputs and confirm that your suppliers also adhere to these guidelines.

Review your compliance

You will subject to a range of compliance requirements, including the obligation to protect personal information under the Privacy Act. To ensure ongoing compliance, implement technical and organisational safeguards and regularly audit your processes.

Community expectations

Consider community expectations when using AI, such as in Australia's [voluntary AI safety](#) standards and [AI ethics principles](#). Commit to transparency and trustworthiness when using AI to ensure customer confidence and maintain your brand's reputation.w



Businesses procuring AI tools

Conduct due diligence

Assess the provider's security and data handling practices, and terms of service. Confirm how Inputs and Outputs will be managed, and whether your data might be used for model training to ensure you understand key risks.

Review rights to Inputs

Carefully review existing contracts and licences to ensure you have sufficient rights to legally share Inputs with the relevant provider – including IP rights, and rights to share personal information. Implement data minimisation and anonymisation measures to reduce risk where possible.

Transparency with customers

Update documentation, including your privacy policy and customer contracts to reflect your use of AI, especially if you're engaging in automated decision-making. This can include reflecting requirements under the Provider's term of service in your own agreements.

Internal policies

Restrict sensitive Inputs, whitelist approved providers and implement an AI Use Policy to guide staff behaviour. Provide training to ensure employees understand these requirements.

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