Digital Transformation of Workplaces Inquiry

MEAA Submission

The Media, Entertainment and Arts Alliance (MEAA) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Employment, Education and Training inquiry into the Digital Transformation of Workplaces.

MEAA is the largest and most established union and industry advocate for workers in the media, entertainment, and arts industries, with a history going back more than 110 years.

MEAA makes this submission in response to the Digital Transformation of Workplaces terms of reference. In particular, this submission focusses on risks, opportunities, and consequences relating the rapid development and uptake of automated decision making and machine learning techniques in the workplace; the effects of these techniques on the scope of managerial prerogative, labour rights, ability for workers to organise, procedural fairness, equality, discrimination, and dignity at work; and appropriate safeguards or regulatory interventions to guide responsible implementation in the workplace.

It is important to note – in relation to these terms of reference – that a significant portion of Australians now work under non-typical working arrangements and that these are often governed by platforms. Many creative workers, for example, are gig workers who are often reliant on digital platforms to sell or promote their work. This is emblematic in the music streaming industry; increasingly common in journalism; and widespread in the film and entertainment industry. As such, MEAA urges the committee against applying this inquiry only to normal enterprises, and to adopt a broader definition of 'workplaces' that incorporates gig, freelance, and other non-traditional forms of work.

Generative AI

Technological change, in particular the emergence of generative Artificial Intelligence (GenAI), comes with significant potential risks for Australia's creative and media industries.

MEAA recently conducted a survey of members' attitudes towards AI. The survey showed that a majority of members (56%) are extremely concerned about the rise of AI, whereas only one in fifty members (2%) are not at all concerned about the rise of AI. The survey also revealed that a majority of members are extremely concerned about key issues associated with the emergence of AI, including the theft of intellectual or creative work (72%); potential loss of human-led creativity (66%); and AI-related job losses (59%) (see appendix for full details).

The threats that AI poses to creative and media workers can be classified into two broad categories. The first can be categorised as 'input-side' threats. These primarily relate to issues associated with the sourcing of copyrighted materials used for the purposes of training AI. The second can be categorised as 'output-side' threats. These primarily relate to the replacement, or partial replacement, of human work in the creative and media industries by AI.

It is crucial to note that it is only through the digestion of training materials that AI models can 'learn' to produce synthetic content. In this sense, the theft of creatives' and journalists' intellectual and creative work is directly related to the development of the very tools designed to replace them.

Input-side risks

Copyright violation

Generative AI models are trained on huge sets of data, including books, news articles, films, photographs, and musical compositions. These are typically scraped from the internet or so-called 'public domain' and then used without the permission or compensation of rightsholders.

The practice has already prompted several high-profile allegations of copyright theft. One case involves a group of Australian authors who have alleged that up to 18,000 books were pirated as part of the Books3 AI-training dataset. Renowned Australian author Richard Flanagan has referred to the incident as "the biggest act of copyright theft in history".[1]

Similarly, a group of Australian artists, including Archibald finalist Kim Leutwyler, have claimed that their work has been stolen for training purposes as part of the AI-training

dataset LAION-5B.[2] In comments to the Guardian, Leutwyler described her feelings of frustration upon discovering her work had been used without consent: "It's frustrating and it feels like a violation. We've not been compensated, we've not been credited".[3]

The issue is also widespread in news media, with recent revelations that AI companies have been using proprietary content in training.[4] This has prompted – among other lawsuits – the high-profile litigation of OpenAI by The New York Times. The Times' lawsuit claims that "millions of articles" from its archives "were used to train chatbots that now compete with it".[5]

The ongoing and prior use of creative work must be subject to consent and compensation, as well as the ability to opt out. Any companies that wish to operate inside of Australia should have to compensate creators for any unlicenced use of copyrighted content abroad. Text and Data Mining (TDM) exceptions should be strictly limited, and any existing exemptions should be revised around this new technology and require informed consent by rightsholders.

Recommendation 1: Ensure that the use of content to train generative AI models is subject to consent and compensation. Text and Data Mining (TDM) exceptions should be strictly limited.

Recommendation 2: AI developers that have engaged in the unlicenced use of copyrighted content abroad uphold Australian creators' entitlement to fair compensation as a condition of doing business in Australia.

MEAA is also concerned about attempts of some platform-based AI developers to circumvent the need to pay creators for the use of their work to train AI through the use of terms of service agreements. These terms effectively grant platforms the right to use creators' content, including images, video, and text, to train AI, as a condition of use of that platform. This practice is problematic given the existing dependence of creators on platforms to promote their work and engage audiences. Opting out of such use therefore comes with enormous financial ramifications for creators, putting them in a lose-lose situation.

Take, for example, recent revelations that Meta is using data collected from Instagram and Facebook as far back as 2007 to train its AI.[6] X (formerly Twitter) has also revised its terms of service to enable it to "use the information [they] collect…to help train [their] machine

learning or artificial intelligence models".[7] In another example, Adobe has announced that any work uploaded to Adobe Stock marketplace can be used to train its Firefly AI product.[8]

The use of these kinds of clauses in terms and conditions constitutes a clear example of platforms using their market dominance to extract value from creators. Platforms should not be able to leverage their dominant market position to force creators to cede rights over copyrighted content for the purposes of training AI. Governments should ensure that users retain the right to opt out of the use of any content shared on platforms to train AI.

Recommendation 3: Legislate a right for users of digital platforms to opt-out of their content being used to train AI.

Some AI companies are now turning to the use of licencing agreements to mitigate the risks of litigation. A number of rightsholders have now made deals with AI companies, including news academic publishers (e.g. Axel Springer[9] and Taylor & Francis[10]), and image databases (e.g. Shutterstock[11]).

Worryingly, however, many of these licencing deals are failing to benefit the original creators of licenced works, and there is evidence of a lack of consultation or prior authorisation for this use. For example, authors of book publisher Taylor & Francis report that they were not consulted prior to deal with Microsoft. There is also evidence that authors were not offered additional payment in relation to the deal.[12]

As such, while MEAA supports the move towards a model of compensation for the use of copyrighted content to train AI – as opposed to the unfettered scraping of copyright materials without authorisation or payment – we nonetheless remain concerned that original creators are being cut out from such deals.

MEAA holds that as data licencing deals become more common, attention needs to be given to whether such agreements equitably benefit the original creators of work – whether they be journalists at a news media company, musicians signed to a record label, or photographers who have sold their work to a third-party image catalogue.

To ensure that the benefits of licencing deals are fairly distributed, MEAA holds that rightsholders that seek to licence their proprietary content to third-party AI developers or use it to develop in-house AI models should seek the prior permission of original creators, as well as negotiate additional payments for use.

Transparency

There is also a critical lack of transparency regarding the use of materials for the purposes of training AI. Many creatives and journalists do not know the extent to which their work has been scraped because there are no current laws in place to require the public disclosure of such information.

This means that – while well-resourced rightsholders may be able to afford the costs of auditing AI outputs to infer whether their copyrighted content has been used in training – it is extremely onerous for smaller or independent rightsholders to determine if their work has been used.[13] This is an unfair and inequitable system, and places less well-resourced actors at risk of unaccountable copyright theft. It is necessary, therefore, that all AI companies publicly disclose all materials used in the process of training AI.

Recommendation 4: Mandate the full public disclosure of all materials used to train AI.

Output-side risks

Work replacement

If left unchecked, it is conceivable that the increased use of AI tools could lead to a loss of jobs and the degradation of conditions in the creative sector. This is because almost all work that requires the use of digital tools – including image generation, audio and music production, photography, video production the production of written work including scripts, musical scores and run sheets – can (at least to some extent) be achieved by using generative AI tools.

For example, ChatGPT can produce written content; Canva's Magic Media and Adobe's Firefly products can generate images and video content; Suno can generate musical compositions; and various AI tools can be used to generate synthetic performers. This means that the jobs of those working in the production of these kinds of digital content – including actors, musicians, set and costume designers, and voice artists – are under significant pressure.

AI is already being used to cut jobs and wages across a range of industries. While AI advocates spruik the technology's capacity to improve the productivity of workers and "democratise" the production of creative content, the reality is that businesses are utilising

AI tools to replace their workforce with automation products. We know in the media and entertainment sectors that businesses are about to roll out AI tools that will affect employees and contractors.[14]

The main risk posed by this development is not that it will necessarily create a mass class of unemployed workers (though these fears are not unfounded), but rather that it will flood the pool of workers competing for low-skill and low-wage work, further driving down wages and conditions of an already financially precarious sector of the economy.

Degradation of value of creative and journalistic work

The practice of replacing human-led work with AI also carries several risks to the actual or perceived value of that work. For one, the use of AI carries with it significant risks in terms of introducing error and bias into outputs. AI cannot meaningfully be relied upon to report facts, dates, and information correctly, and, as a result, has been known to routinely produce misinformation. This development has the potential to exacerbate journalism's crisis of trust by reducing the transparency, objectivity, and accuracy of news media, and in turn, degrade its perceived quality and value.

Creative production is also vulnerable to the same devaluation. Award-winning illustrator Dapo Adeola, for example, argues that "[AI generated art] reinforces the argument that what [artists] do is easy and we shouldn't be able to earn the money we command".[15] Another artist, Rob Biddulph, contends that "there's no question that AI-generated art devalues illustration. People will…think that their [AI-generated] 'work' is as valid as that created by someone who has spent a career making art".[16] This process potentially leads to a vicious cycle whereby the presumed value of art is degraded because AI-generated outputs are easy and cheap to produce, thereby undermining creatives' already-precarious incomes.

Digital replicas

The production of digital replicas is also a critical output-side issue. Digital replicas are synthetic performers that have the same appearance, voice, and likeness as existing

performers. Digital replicas can also be made of singers and voice artists/actors, whose voices can be copied and synthetically replicated.

One obvious issue that arises from this practice is the fact that creators may be forced to compete with synthetic versions of themselves which may be able to be generated at a much lower cost than it would be to actually pay the actor to perform. This practice takes from an artist the basis of what makes their performance valuable and unique – something built on hard work and personal investment, without compensation or consent.

For example, MEAA member Cooper Mortlock has alleged that his voice was stolen and replicated by AI to produce several episodes of a YouTube series after he was let go from the project.[17] This case is illustrative of the ways that AI can be used to replace the work of actors, undercutting their incomes.

It is crucial that any use of a performer's biometric data to construct 'digital replicas' of their voice or likeness is protected from unlicenced exploitation via a system of non-transferrable moral rights.

Recommendation 5: Protect performers from unauthorised digital replicas through a system of moral rights.

<u>Copying of style</u>

The mimicry of artistic or creative style by AI is also critical issue. Many AI applications offer the ability for users to generate outputs 'in the style of' particular artists, musicians, writers or other creatives. Artist Kim Leutwyler, for example, claims that self-portrait AI Lensa replicated core aspects of her work, including "brush strokes, colour, composition – techniques that take years and years to refine".[18] Writers, too, have been targeted by the technology. In August 2023, well-known author Jane Friedman found several AI-generated books being sold on Amazon, written in her style, and sold under her name.[19] Other authors and journalists have reported similar issues.

This practice raises important concerns about a possible future where writers, musicians, artists, and content creators may be gradually replaced by their digital selves by AI applications capable of mimicking their style. Jane Friedman, for example, has stated that

she "worr[ies] there's going to be this kind of downward competition to use AI to replace human creators".[20]

It is imperative that there are general protections for any creators from their style being copied or 'passed off' without authorisation or payment. Copyright and intellectual property law should protect against AI-generated outputs that clearly connect to a discernible artist, writer, or musical style. As an example, AI making music that mimics an existing creator should be in breach of that copyright.

Recommendation 6: Protect a creators' discernible style from being passed off or otherwise copied by AI.

Indigenous Cultural and Intellectual Property

The copying of artistic style is particularly concerning in the case of First Nations creatives. There are now numerous reports of AI-generated 'Indigenous art' being commodified and sold online.[21] Merchandise, graphic designs, and other products are now flooding the market – appearing for sale on a range of different websites, including Adobe, Etsy and eBay. These are adding to the competition Indigenous artists already face from the fake 'Indigenous art' market, threatening to further undermine their livelihoods.

It is MEAA's strong view that First Nations' traditional cultural modes of production and performance must be protected from AI-facilitated imitation through a system of Indigenous Cultural and Intellectual Property (ICIP), and that these protocols must be incorporated into existing legislation, including copyright law, to ensure proper enforcement.

Recommendation 7: Enact an enforceable system of Indigenous Cultural and Intellectual Property (ICIP).

Automated Decision-Making

Digital platforms are rapidly coming to dominate both the creative and media industries. This process subjects workers in these industries to automated decision-making – especially as it is used to manage advertising, content moderation, and content curation.[22] For example, digital platforms such as Spotify utilise ADM to determine which artists, authors or

podcast producers will appear in the recommendations for users, giving them incredible power over musicians by being able to set prices and manage whether an artist is seen or not.

Australian academic Rebecca Giblin and Canadian tech writer Cory Doctorow have extensively researched these phenomena, and in their study of Spotify found evidence to suggest that the company has negotiated lower-than-normal royalty agreements with some production houses and in turn, promoted them in their recommended playlists over other artists.[23]

News media has become increasingly reliant on digital platforms like 'X' (formerly Twitter), Facebook, and Instagram to promote their content, grow their subscription base, and generate revenue from advertising. Algorithms often determine what content users see on their feeds. These systems are extremely opaque, leaving organisations to simply 'best-guess' how to achieve prominence.[24] Changes to the algorithm are often sudden and unexpected – and can have a huge impact on viewership. For example, news organisations can suddenly find their content systematically deprioritised – as occurred during the News Media Bargaining Code negotiations in 2021.[25]

This feature of digital platforms generates a significant degree of instability and unpredictability within news organisations, with serious repercussions for staff. For example, journalists have reported that 'specialist hires' recruited to produce content for social media platforms are often given only short-term contracts. This, they are told, is because of the degree of uncertainty related to the future of news media on platforms, and the potential for sudden and unexpected changes to the algorithm. A such, MEAA holds that more transparency around ADM on digital platforms is critical to ensure greater sustainability of Australia's news media and creative sectors.

Recommendation 8: Government mandate a higher level of algorithmic transparency with respect to digital platforms.
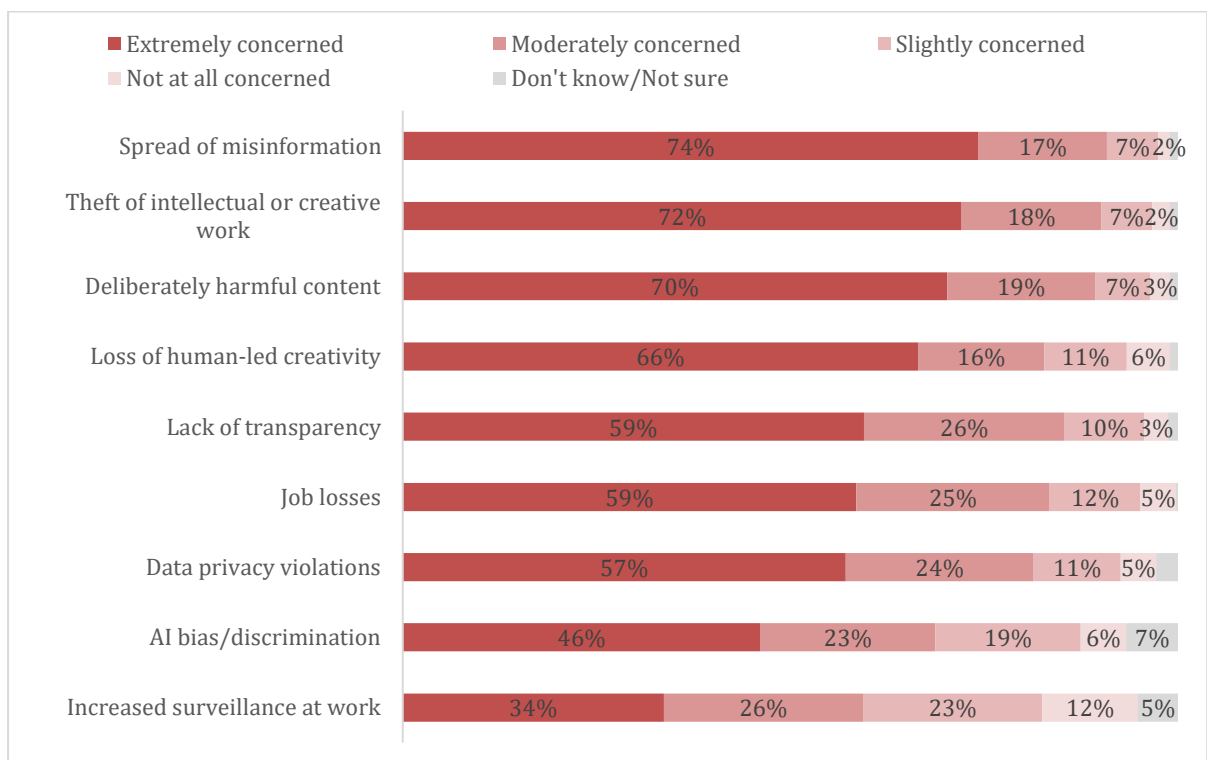
Appendix

From March to April 2024, MEAA surveyed 394 members about their attitudes towards Artificial Intelligence (AI). The results can be taken as representative of the views of MEAA's membership, subject to a margin of error of ±5%.

Figure 1: Responses to 'How concerned are you about the rise of AI?' (%)
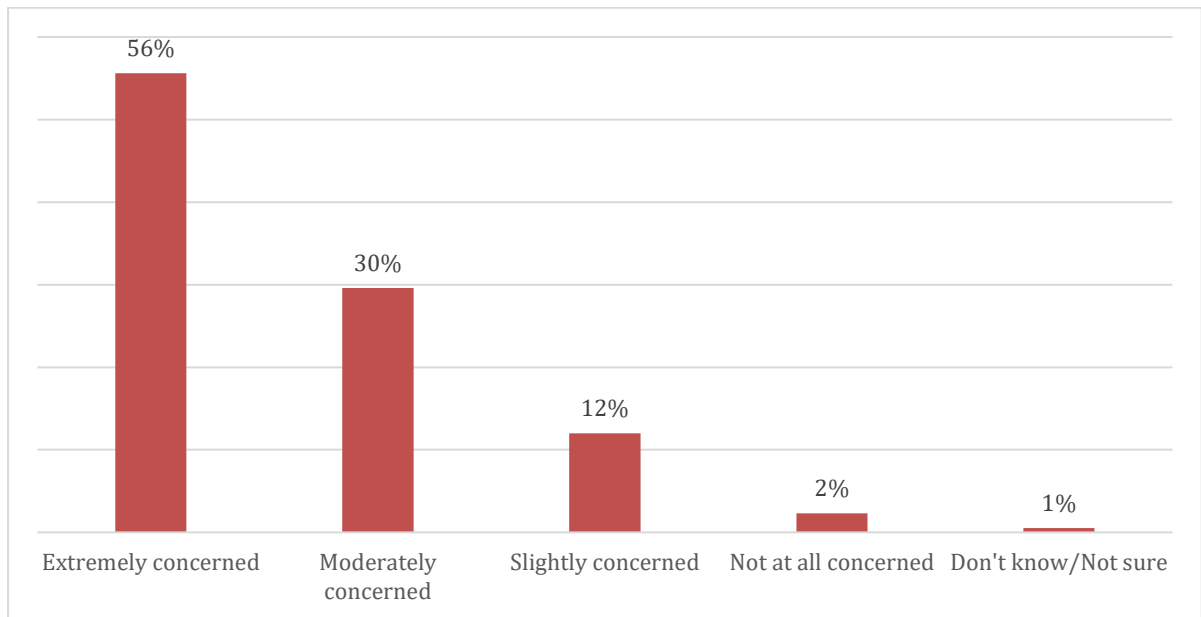
Figure 2: Concern about potential AI-related issues (%)

References

[1] Burke (2023) 'Biggest act of copyright theft in history': thousands of Australian books allegedly used to train AI model', *The Guardian,* https://www.theguardian.com/australia-news/2023/sep/28/australian-books-training-ai-books3-stolen-pirated

[2] Kelly (2022) 'Australian Artists accuse popular AI imaging app of stealing content, call for stricter copyright laws', *The Guardian*

[3] *Ibid*

[4] Di Stefano (2023) 'News Corp in talks with AI firm about compensation', *The Australian Financial Review,* https://www.afr.com/companies/media-and-marketing/news-corp-in-talks-with-ai-firm-about-compensation-20230308-p5cqcp

[5] Grynbaum and Mac (2023) 'The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work', *The New York Times*, https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html

[6] Elsaadi (2024) 'Meta using Instagram and Facebook posts from as far back as 2007 to train artificial intelligence tools', *ABC News,* https://www.abc.net.au/news/2024-06-10/instagram-facebook-train-meta-ai-tools-no-opt-out-australia/103958308

[7] Tan (2024) 'When the Terms of Service Change to Make Way for A.I. Training', *The New York Times,* https://www.nytimes.com/2024/06/26/technology/terms-service-ai-training.html

[8] Roth (2024) 'Adobe's new terms of service say it won't use your work to train AI', *The Verge*, https://www.theverge.com/2024/6/18/24181001/adobe-updated-terms-of-service-wont-train-ai-on-work

[9] Cullen and Davalos (2023) 'OpenAI to Pay Axel Springer Tens of Millions to Use News Content', *Bloomberg,* https://www.bloomberg.com/news/articles/2023-12-13/openai-axel-springer-ink-deal-to-use-news-content-in-chatgpt

[10] Battersby (2024) 'Academic authors 'shocked' after Taylor & Francis sells access to their research to Microsoft AI', https://www.thebookseller.com/news/academic-authors-shocked-after-taylor--francis-sells-access-to-their-research-to-microsoft-ai

[11] Ford (2024) 'Shutterstock's AI-Licensing Business Generated $104 Million Last Year', *Bloomberg,* https://www.bloomberg.com/news/articles/2024-06-04/shutterstock-s-ai-licensing-business-generated-104-million-last-year

[12] Australian Society of Authors (2024) 'AI clauses more urgent than ever', https://www.asauthors.org.au/news/ai-clauses-more-urgent-than-ever\

[13] For example, see Cait Kelly (2022) 'Australian Artists accuse popular AI imaging app of stealing content, call for stricter copyright laws', *The Guardian,* https://www.theguardian.com/australia-news/2022/dec/12/australian-artists-accuse-popular-ai-imaging-app-of-stealing-content-call-for-stricter-copyright-laws

[14] See https://www.theaustralian.com.au/business/financial-services/cba-slashes-jobs-in-automation-push/news-story/c44146b64597d7640409637e0fa5732d; https://www.abc.net.au/news/2023-12-04/australian-jobs-being-lost-to-ai/103123682;

https://www.theguardian.com/media/2024/feb/08/news-corp-in-advanced-negotiations-with-ai-companies-over-access-to-content-ceo-says

[15] Shaffi (2024) ''It's the opposite of art': why illustrators are furious about AI', *The Guardian,* https://www.theguardian.com/artanddesign/2023/jan/23/its-the-opposite-of-art-why-illustrators-are-furious-about-ai
[16] *Ibid*

[17] Scott (2024) 'Cooper heard his voice on a show. But he never recorded the script', *SBS,* https://www.sbs.com.au/news/article/cooper-heard-his-voice-on-a-show-but-he-never-recorded-the-script/1fxhgs18k

[18] Kelly (2022) 'Australian Artists accuse popular AI imaging app of stealing content, call for stricter copyright laws', *The Guardian*

[19] Duffy (2023) 'An author says AI is 'writing' unauthorized books being sold under her name on Amazon', *CNN*, https://edition.cnn.com/2023/08/10/tech/ai-generated-books-amazon/index.html

[20] *Ibid*

[21] Wilson (2024) 'AI is producing 'fake' Indigenous art trained on real artists' work without permission' Crikey https://www.crikey.com.au/2024/01/19/artificial-intelligence-fake-indigenous-art-stock-images

[22] Nguyen, Meese, Burgess, Thomas et al (2023) *AI and automated decision-making in news and media*, ARC Centre of Excellence for Automated Decision-Making and Society, https://apo.org.au/node/325202

[23] Giblin and Doctorow (2022), *Chokepoint Capitalism: How Big Tech and Big Content Captured Creative Labor Markets and How We'll Win Them Back*, Beacon Press

[24] Wilding, Fray, Molitorisz, McKewon et al, (2018) *The Impact of Digital Platforms on News and Journalistic Content*, University of Technology Sydney.

[25] Taylor (2024) 'Fears grow Meta will block news on Facebook and Instagram as Australian government faces pressure to act', *The Guardian,* https://www.theguardian.com/australia-news/2024/mar/28/meta-facebook-news-tab-instagram-fears-blocked-australian-government-regulation