Responsible AI UK response to the Public Consultation on Copyright and Artificial Intelligence

Date: 25 February 2025

We are submitting this response to the Intellectual Property Office (IPO), the Department for Science, Innovation and Technology (DSIT) and the Department for Culture, Media and Sport (DCMS) joint consultation on Copyright and Artificial Intelligence[1] on behalf of Responsible AI UK (RAi UK), an open and multidisciplinary network that brings together researchers from across the four nations of the UK to understand how we should shape the development of AI to benefit people, communities and society. To arrive at this response, we sent out a call to our Principal Investigators' community.

RAi UK acknowledges the need for greater clarity at the intersection of copyright law and AI, and supports the government's efforts to address this issue. Currently, the copyright legal framework is not clear or user-friendly; more precision around AI and how it aligns with established creative intellectual property protection is welcomed, especially relating to transparency requirements and standardisation. Nonetheless, RAi UK does not believe that the policy option commonly referred to as the 'opt-out' approach is the most effective way to strike the desired balance, particularly for copyright holders and creators who object to their work being appropriated in this way and may be disadvantaged by this option. Our contributions below aim to offer further guidance on developing a copyright framework that better aligns with the concerns of the creative industries, and Small and Medium Enterprises (SMEs).

Executive Summary: Key Concerns and Policy Recommendations

Copyright Law and AI

- The current legal framework lacks clarity on AI's interaction with copyright, and RAi UK community welcomes Government efforts to that end.
- When AI's processing of copyrighted works is substantial and commercial it is unlikely to fall under fair dealing/fair use exceptions.

[1] Copyright and AI Open Consultation: Copyright and Artificial Intelligence - GOV.UK

- Stricter, absolute copyright law without carefully balanced limitations and exceptions risks favoring large tech and media companies while creating barriers for smaller actors.

Data Mining and Rights Reservation

- RAi UK researchers are critical of a broad “opt-out” approach, arguing that it can disproportionately burden self-employed creators and small rights holders.
- Aligning the UK framework with EU copyright law through an “opt-out” approach can help with interoperability, but it raises concerns about implementation challenges from a technical and regulatory standpoint.

Impact on Creative Industries

- Current commercial AI development prioritizes value capture over creator rights, leading to potential displacement of artists, writers, and musicians.
- Some of the RAi UK researchers advocate for a tiered licensing model, distinguishing between training data access and AI output monetization, ensuring fairer remuneration for rights holders. Others add that creating an Intellectual Property marketplace could help scale such a model.

Transparency and Technical Standards

- RAi UK community understands that AI firms should be required to disclose training data sources and comply with standardized metadata protocols with respect to privacy and other legal and ethical considerations.
- Regulatory incentives, such as compliance grants and certification schemes, can help to promote responsible AI development.

Memory Institutions and Public Access

- RAi UK researchers point out the need for copyright policies to balance protections for rights holders with the needs of libraries, museums, and research institutions.
- Licensing agreements should not restrict long-term access to knowledge or disproportionately benefit large publishers.

Government and Industry Collaboration

- The UK Government should play a role in harmonising AI and copyright policies with international standards while supporting SMEs and startups in navigating compliance.
- Understanding the AI purpose and companies’ size is seen as an important measure to a proportional policy approach.
- While some of RAi UK's researchers understand that greater support for collective licensing schemes can streamline rights management and revenue-sharing models, others are sceptical about licensing structures.

Conclusion

RAi UK supports responsible AI development that respects intellectual property rights while ensuring equitable access to creative works. The Government's policies should focus on transparency, fair compensation, and regulatory balance, fostering an AI ecosystem that benefits both innovators and creators.

Policy Options

Consultation's Inferred Assumptions

Overall, the options provided in this consultation assume that current copyright law is out of date or cannot 'keep up' with new technologies and innovations. As the recent Thomson Reuters judgement in the United States illustrates,[2] such an assumption does not stand out. When applying the decision's rationale, it is clear that the processing of copyrighted works by Large Language Models (LLMs), either in respect of training or in relation to producing outputs, is substantial and often commercial, leading to concerns that it unfairly appropriates creators' work to undermine their interests, including their intellectual property protections, moral rights, and market position.

When applying the rationale of economic analysis of law, one can anticipate that not updating and adapting copyright laws to address AI risks the so-called big tech companies treating fines and infringement costs as a standard expense, internalizing them into their usual operations. This could create entry barriers for smaller developers, who will have to deal with the litigation cost as a new operational risk to be accounted for.[3] At the same, overly restrictive laws run the risk of fostering an environment in which consolidated media companies license and contract their content libraries with powerful AI companies, which disadvantages smaller actors in both the creative and technology industries.[4]

Copyright Limitations and Exceptions

The RAi UK community recognises that copyright is typically viewed as an exclusive right to control the commercial distribution of works, balanced by limitations and exceptions for uses such as quotation, education, research, preservation, commentary, and parodies. These

[2]See: Thomson Reuters Wins First Major AI Copyright Case in the US | WIRED and Surprise Move: Judge Walks Back AI Copyright Ruling in Thomson Reuters v. ROSS | IP Intelligence
[3] See: The Economic Analysis of Law (Stanford Encyclopedia of Philosophy)
[4] See: 'The New York Times' takes OpenAI to court. ChatGPT's future could be on the line I NPR

exceptions are a fundamental aspect of copyright. Only some uses require consent from (or payment to) the rights holder.[5]

These limitations serve to protect users seeking access to material for research and engagement - along with creators accessing the world's culture and knowledge to build new works, and institutions like libraries, museums, archives, and schools that collect, preserve and teach such content. Exceptions and limitations serve the public interest in accessing creative works for learning, teaching, and fostering creativity. The protection of these uses and the values they uphold, and their relationship to commercial uses of AI, should be better clarified within the UK's policy framework.

Consultation Options: Creative Industries, Creators, and Creativity

Considering only the pathways laid out in the consultation, the data mining exception, allowing right holders to reserve their rights (Option 3), is not the most harmful upon right holders. In previous Government consultations, creative industries bodies have argued the need for the UK to uphold copyright protections against unauthorized commercial use - such as introducing a wide exception to copyright for reproduction for text and data mining purposes, with no opt-out for rights holders.[6] In this regard, distancing away from policy Option 2 (A broad data mining exception) is a step forward.

Many creators object to the way the tech industry appears to be capturing the value they provide without regard for the impact on their capacity to earn a livelihood and receive fair remunerations. From this standpoint, AI appears to be imposed by force to dominate the market, running a high risk of displacing creators who, working in competitive and challenging industries already dominated by large companies and with highly uneven profit sharing[7], feel their work is being 'stolen' and used to undermine their place in the market.

Similarly, the objectives chosen as parameters for evaluating the policy approaches align with the creative industries perspective that UK's action in this sector should be focused on transparency, consent, recognition and remuneration, when dealing with the advancement of AI technologies.[8] However, RAi UK researchers are especially concerned about how the parameter of control is supposed to align with the qualification and fixation requirements for authors within the UK copyright framework.

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[5] See: Creative Commons - Open Culture Background & Context Report (2024); New IFLA Publication: Navigating Copyright for Libraries – IFLA (2022)

[6] Creative UK response to the Business and Trade Committee Industrial policy inquiry, 12 February 2024, Available at: committees.parliament.uk/writtenevidence/128403/pdf/

[7] See Creative Commons - Open Culture Background & Context Report (2024) section "The Contemporary Creative Economy", Cory Doctorow and Rebecca Giblin, Chokepoint Capitalism, 2022, Penguin Random House; Ben Beaumont-Thoma. Nearly half of working UK musicians earn less than £14,000, new census finds, The Guardian, 11 Sept 2023.

[8] Ibid.

More specifically, the recognition that right holders will have oversight of their content when licensing it and receiving proper remuneration for its use by AI, might suggest that the AI will play a role in the authorship of works for copyright, when such a technology is used as a tool for creativity. This also raises queries over the originality requirement for copyright works (including databases/compilations in UK law).

New work builds upon existing material, and small-scale creators often benefit from the wide availability of resources to inspire their creations. For a provocative example, *The People's Joker* openly challenged DC Comics' copyright, using characters from the Batman universe as a 'Fair Use Film'. Its director argued in an interview that superheroes are hailed as 'modern myths' and that seriously treating them as such suggests individuals should have greater freedom to adapt and reuse them.[9] While some may view this stance as extreme with respect to copyrighted characters, it is worth noting that Batman was first introduced in 1939; his rights holders have as of this consultation enjoyed largely exclusive publication rights for around 85 years. Corporations have sought to restrict or demand payment for uses of famous characters including Sherlock Holmes and Tintin when they are by law in the public domain for all to use[10]. Far from stifling profits, more flexibility in copyright enables more people (especially smaller-scale creators) to create more and more diverse works.

Much of the debate around Generative AI concerns whether work produced by AI competes directly with the original creators whose work it draws from. The reality of how AI affects creative producers and production is complex[11], and law and policy should proceed utilizing evidence about how AI affects small scale, often precarious creators. It is unfair to foster a regulatory environment that affects or encourages large-scale re-skilling of creative workers, placing the financial and industrial onus on them, particularly if it is based on far-from-proven assumptions about the inevitability, utility, and profitability of AI. Silicon Valley's AI models have yet to develop sustainable profit models[12], are highly volatile amid rapid technological and market changes[13], and extract unsustainable tolls on the environment.[14] Regulators should not encourage mass displacement of workers for a technological and business model that may not be viable in the near or long-term future.

Consultation Limitations

It is worth noting that the consultation only provides for a limited number of future options - which do not fully consider: (i) the socio-economic reality of small-scale and self-employed professionals, nor (ii) the diverse public interest stakeholders whose interests are being

[9] See: Vera Drew's 'The People's Joker' Isn't About to Leave the Stage - Splinter; Inside the fight to save unauthorized Joker movie WB quashed - Los Angeles Times
[10] Their Copyrights Expired. The Legal Threats Keep Coming. | Copyright Lately
[11] CREATE - Is AI replacing creative work? New study finds complexity and continuities
[12] The Subprime AI Crisis, Ed Zitron.
[13] Nvidia stock plummets, loses record $589 billion as DeepSeek prompts questions over AI spending
[14] AI has an environmental problem. Here's what the world can do about that.

balanced in copyright law (see Exception with Rights Reservation session herein). Our comments below (e.g., tired framework for licensing models) demonstrate that other options are available, including to ensure that the monetisation of outputs of LLMs are fairly dealt with in terms of licensing for the benefit of copyright holders. The comments also explain why Option 3, while the least detrimental of the proposed options, might lack effectiveness in protecting rights holders in the creative industries, highlighting the need for additional safeguards or a somewhat different approach.

Exception with Rights Reservation

Operationalisation Concerns

The UK's Government proposal of a data mining exception with rights reservation resembles the European Union framework set in the Digital Single Market Directive (CDSM). On one hand, aligning the UK's approach to the European Union (EU) can benefit AI's interoperability, facilitating the legal landscape to be navigated by developers and copyright holders. On the other hand, part of the assessments made under that context, including critics and pushbacks, can also be applied here.

During the *Creating Policy Futures: A Responsible AI and Careful Industries Unconference*[15] hosted in November 2024, copyright policy professionals noted that the EU 'opt-out' approach for commercial data mining presents implementation challenges, with some arguing it is impractical or even unachievable. As Margoni (2024)[16] demonstrates, the 'opt-out' framework raises questions regarding how it will be operationalised, and under which conditions. The author specifically mentions the following aspects:

- **Univocity of Expressions:** Conflicting statements about the same work can arise on different websites where it's hosted for various reasons, such as different copies being uploaded, licensed, or made available under different legal grounds (e.g., exceptions, illegal copies). When contradictory statements occur, it's uncertain who holds responsibility for ensuring the proper implementation of opt-out measures and preventing "opt-out shopping" caused by illegitimate behaviour.

- **Transactive Costs and Multiple Opt-Outs:** When multiple permissible opt-out statements exist, it raises the question of whether this could be exploited by rights holders as a business opportunity. Centralizing or coordinating opt-out systems could

[15] See: RAi UK I Creating Policy Futures: A Responsible AI and Careful Industries Unconference
[16] Margoni, T., 2024. TDM and generative AI: Lawful access and opt-outs. *Auterus & Media* [forthcoming]. Available at SSRN: https://ssrn.com/abstract=5036164 or http://dx.doi.org/10.2139/ssrn.5036164 [Accessed 14 February 2025].

allow rights holders to set varying prices based on usage types. If opt-out statements are not lawful, the challenge is how rights holders can effectively enforce their rights. The issue is also relevant to users, text and data mining, and AI developers, who need assurances that the opt-out statements they rely on are legally valid and how the "authenticity" of such statements could be verified through technical means.

- **Remuneration:** There are proposals to help rights holders benefit from their entitlements once a valid opt-out is made. However, it is widely agreed that the monetary value of a single work used for text and data mining/AI is very small. To prevent only large platforms from profiting, it's important to find ways to remunerate individual authors for many small uses of their work, potentially through micro-payments. Technological solutions are key to creating an efficient system that doesn't incur higher costs than the benefits individual authors would receive.

- **Temporality:** The timing of opt-outs must be considered from both legal and technical perspectives. Legally, it's important to determine whether opt-outs have retroactive effects, particularly in relation to scraping/training that occurred before certain exceptions were enacted. From a technical standpoint, it's crucial to have a clear record of when an opt-out was made to ensure proper enforcement. According to Paul Keller, Open Future, "*the opt-out can only apply to reproductions that have been made after the opt out request has been received. At the current stage of technology, the works cannot be removed from models that have already been trained*."[17]

Impact on Self-Employed Creators

Another aspect of the 'opt-out' approach that raises concerns relates to its impact on self-employed professionals of the creative industries. As discussed in the *Creating Policy Futures Unconference*, such a policy option might place a heavier burden into some creators rather than providing a systemic compliance oversight. Such a burden might mischaracterize the acceptability of the policy within the creative industries, who might be placed in a difficult position to enforce their choice.

As Yan and Yates (2019)[18] show, opt-out approaches are known as a nudge technique in which the default is understood as the desirable option from the policy makers perspective, and thus more people end up with that option. In the exception with rights reservation envisioned by the Government, the default is that creators will have their works used for data mining purposes, and right holders need to take further action to see their work protected.

[17] Available at: Considerations for implementing rightholder opt-outs by AI model developers – Open Future [Accessed 15 February 2025].
[18] Yan, H. and Yates, J.F., 2019. Improving acceptability of nudges: Learning from attitudes towards opt-in and opt-out policies. *Judgment and Decision Making*, 14(1), pp. 26–39. Available at: https://doi.org/10.1017/S1930297500002886 [Accessed 14 February 2025].

Therefore, creative industries are prone to acknowledge the policy as a message that the preferred Government option is to facilitate data mining rather than reinforce copyrights.

In addition, the fact that right holders are required to take proactive measures to ensure their copyrights are protected tends to be a hardship for a large portion of the creative sector. Significant number of creators in the UK are freelance professionals, with self- employment accounting for 32% of the sector's workforce, compared to 14% across the broader UK economy.[19] This high proportion underscores the sector's dependence on flexible, project-based work structures[20], relaying that such professionals may lack resources and infrastructure for legal enforcement in an 'opt-out' scenario. In practice, then, opt-out rules would not entail effective protection for a significant part of the creative industries, requiring further mechanisms to empower creators to act.

Below, RAi UK community points out a few empowering mechanisms that Government can consider and further elaborate as means to minimise the action burden placed on creators:

- Provide additional opportunities and incentives for the creative industries with special focus on local and freelance creators.
- Establish publishers' liability for any rights infringements by AI when sharing authors' work since publishers have more resources to check compliance, and for creators it is easier to seek relief from publishers rather than AI companies.
- Facilitate collective action systems for creators to seek relief, since individual action is hampered when there is lack of resources. As Redish and Berlow point out, "in some cases the prohibitive cost of bringing an individual claim would, as a practical matter, preclude individuals from pursuing their claims without pooling their resources as part of a class".[21] Such collective action systems can be thought of in terms of both:
    a. Access to justice in case of infringement (ex-post scenario). For example, via class actions; and
    b. Access to professional guidance and resources to actively choose and enforce opt-outs (ex-ante scenario). For example, offering learning opportunities, and incentivizing collaborations.

Impact to Memory Institutions

The press has often framed the debate in the UK as a conflict between large (primarily US) tech companies and UK creatives. However, RAi's researchers notice that part of the debate within academics and the creative communities focuses on how expanding rights reservations

[19] See: Freelancers in the arts and creative sectors - House of Lords Library
[20] See: Creative UK response to the Business and Trade Committee Industrial policy inquiry, 12 February 2024, Available at: committees.parliament.uk/writtenevidence/128403/pdf/
[21] Redish, M.H. and Berlow, C.W., 2007. The class action as political theory. *Washington University Law Review*, 85(4), pp. 753–814. HeinOnline.

often benefits large institutions and corporations, while potentially harming smaller creators, researchers, and memory institutions. This issue plays out particularly with libraries, where several challenges arise.

Many large physical collections, some dating back several decades, are in need of attention. In cases where rights holders cannot be located or large-scale rights holders block access to materials, they are unlikely to monetize, institutions must navigate the risk of legal penalties while trying to provide essential research access - sometimes to preserve a collection for future use.[22] Physical collections can be lost to fire, war, and other disasters[23]; digitization provides backups. A recent example of access to material facilitated by digitization is the 2025 launch of the Video Game History Foundation's digitized library, which includes historic magazines, production material, and promotional material[24]. At the same time, large-scale rights holders in the field have often aggressively restricted access to material that is otherwise not legally available. s.[25] The possibility to digitize and digitally analyse collections is vital to preservation and holds research possibilities that are often hampered by aggressive copyright enforcement.

Technical Standards

Need for Standardisation

As stated above in the Section Policy Options of this response, an ‘opt-out’ approach to copyrights raises operationalisation concerns, which are related to the lack of technical standards and protocols. Therefore, standardization efforts are welcomed.

As the consultation acknowledges (paragraphs 82-89), developers and right holders are currently creating various technical solutions that often cater to their individual needs. However, these solutions are not always compatible with one another. This means that by adopting one particular solution, right holders may be protected in some AI training contexts, but not in all. A situation where a small set of standardized identifiers can accommodate all types of works and distribution strategies would be beneficial for both right holders and AI model trainers.[26]

[22] Copyright & cross-border challenges in preservation: empirical evidence, IFLA, 2023.
[23] Burning the Books by Richard Ovenden review – the libraries we have lost | History books | The Guardian; ‘The damage is total’: fire rips through historic South African library and plant collection
[24] See: The VGHF Library opens in early access | Video Game History Foundation
[25] See: Video Game History Foundation: Nintendo Actions 'Actively Destructive To Video Game History' | Techdirt; 87% Missing: the Disappearance of Classic Video Games | Video Game History Foundation
[26] See: Considerations for implementing rightholder opt-outs by AI model developers – Open Future

Greater standardisation is crucial to establishing a transparent and fair system for both AI developers and content creators, especially those within the SME and startup ecosystem. The current fragmented approach, where multiple SMEs and AI-focused businesses adopt varying rights reservation protocols, leads to uncertainty and inconsistency in implementing guidance and transforming it into standardized procedures and enforcement. The RAISE project guidelines highlight the importance of clear governance structures in AI adoption, particularly for SMEs that lack the resources to navigate complex, non-standardized protocols.[27]

The Responsible Generative AI for SMEs in the UK and Africa project (RAISE) sustains that a standardised rights reservation protocol should:

- Be interoperable across platforms and across business adopting or applying AI under the same context or application area e.g. health, financial investment, or art.
- Support granular control, allowing right holders to specify permissible uses (e.g., search indexing vs. generative AI training).
- Include machine-readable metadata that AI systems must recognise and respect.
- Provide transparent compliance mechanisms, ensuring AI firms disclose their content usage practices.

Encouraging Compliance

RAi UK researchers recognize that ensuring compliance to any standardisation effort is a task that requires a combination of technical solutions, regulatory incentives, and industry collaboration. To that end, based on the RAISE project, RAi UK researchers propose the following:

Industry-led frameworks & accreditation:

a. AI developers should adopt certification schemes that verify compliance with standardised rights reservation protocols. These certification schemes should also be extended to organisations adopting various AI solutions in their services and products.
b. An industry-wide code of conduct could encourage AI focused businesses and developers to commit to best practices.

Technical enforcement & transparency mechanisms:

[27] The RAISE (Responsible Generative AI for SMEs in the UK and Africa) project (https://raise-project.uk/), based at the University of Nottingham and involving researchers from the Responsible Digital Futures group (https://www.responsible-digital-futures.org/), explores ethical, legal, and technical considerations surrounding the adoption of generative AI by SMEs. The research emphasizes the importance of providing guidance, particularly for SMEs.

a. Blockchain-based registries could be used to record and track permissions across platforms.
b. AI firms should be required to publish transparency reports outlining their data sourcing and rights compliance efforts.

Incentivising adoption among SMEs, Developers & Right holders:

a. Many SMEs, startups and AI focused businesses struggle with navigating complex AI policies and frameworks. Clearer, standardised systems will reduce the burden on businesses especially SMEs, charities and startups that lack legal and technical expertise.
b. Financial or regulatory incentives (e.g., tax benefits, compliance grants) could encourage smaller businesses to adopt best practices leading to greater compliance.

Government's Role

Harmonization is essential for the effectiveness of the proposed Government policy, and centralizing this responsibility within the Government is a logical approach, as it holds the authority to enforce binding regulations on both companies and right holders. In the EU context, for example, the regulatory role of the AI Office will be crucial in defining the specific obligations of both right holders and AI companies.

The Government should play a facilitative role, ensuring that standards are adopted fairly, transparently, responsibly and equitably. Some RAi UK researchers point towards the need for regulation being outcomes-focused rather than overly prescriptive, allowing flexibility for technical advancements. As identified in some of the outcomes of the RAISE workshops, a key call by startups and SMEs is for self-regulation with the Government overseeing the adoption of standards. Based on RAISE's research, below are some recommended actions that can facilitate the Government's role in the promotion of technical standards:

Mandate AI firms to recognise standardised protocols:

a. Require AI developers to respect opt-out signals embedded in metadata.
b. Introduce a minimum compliance requirement for AI firms operating in the UK while also ensuring compliance in any subsidiaries existing outside the jurisdiction.

Promote international alignment: Engage with the EU, IAB, and other global bodies to develop harmonised frameworks that prevent regulatory fragmentation. Also key to this alignment are incubator hubs and businesses aiming to develop or adopt AI.

Support SMEs & right holders in compliance efforts:

a. Provide funding for SMEs and startups who integrate or are looking to integrate AI in their services and products to also integrate rights management tools.

b. Develop accessible, government-backed guidance on navigating AI rights protections.

Enforce transparency obligations: Require organisations using AI to disclose training data sources and provide accessible means for right holders to verify whether their content has been used leading to greater transparency while also enhancing accountability.

Contracts and Licensing

The "Fair Use" Debate in AI Training

Despite recognizing the argument made by some scholars to the effect that training AI models on copyrighted data should qualify as "fair use" or "fair dealing"[28], RAi UK researchers do not completely agree with that position, particularly in the case of GenAI.

While AI-generated works that infringe on copyright clearly violate existing laws, humans also 'ingest' diverse fixed copyrighted works and then create new ones. A legal attempt to address AI at the processes or training levels via copyright law, when involving training material acquired through means otherwise considered legal, would have to delineate what AI does from what a human does when they (for example) read numerous books and then write a book.

With respect to licensing challenges: GenAI models do not just consume training data; they integrate it into a dynamic system that continuously influences outputs. AI models are trained on vast datasets, but the output generation process extends far beyond the initial training phase. As Rashid and Kausik (2024)[29] explain, "*AI models are trained on extensive data sets to make intelligent decisions autonomously*." Copyrighted material contributes to AI models' knowledge bases,[30] influencing outputs indefinitely. As a result, current licensing practices do not adequately address the complexities of AI training and usage. A key issue is the lack of clarity on whether licensing should apply solely to the training phase or also extend to AI-generated outputs – especially when those outputs are monetised. Given that some AI firms[31]

[28] For instance, Lemley (2021) contends that machine learning (ML) systems primarily copy works to extract uncopyrightable elements – such as ideas, facts, and linguistic structures – rather than the creative expression itself. They distinguish between AI models that replicate artistic expression and those that use copyrighted data for entirely different purposes, suggesting that most fall into the latter category. (Lemley, M.A. and Casey, B., 2021. *Fair Learning*. *Texas Law Review*, 99(4). Available at: https://texaslawreview.org/fair-learning/. Accessed 14 February 2025).

[29] Rashid, A.B. and Kausik, M.A.K., 2024. AI revolutionizing industries worldwide: A comprehensive overview of its diverse applications. *Hybrid Advances*, 7, 100277. Available at: https://doi.org/10.1016/j.hybadv.2024.100277 [Accessed 14 February 2025].

[30] Kretschmer, M., Margoni, T. and Oruç, P., 2024. Copyright law and the lifecycle of machine learning models. *IIC*, 55, pp. 110–138. Available at: https://doi.org/10.1007/s40319-023-01419-3 [Accessed 14 February 2025].

[31] See: AI's $600B Question | Sequoia Capital

generate substantial revenue through paid services, this gap creates an imbalance between rights holders and AI developers.

A Tiered Licensing Framework

While AI models are trained on vast datasets, not all of these datasets are copyright-protected. Especifically for works with copyright protections attached, RAi UK researchers propose a tiered licensing model which could distinguish between (1) training data access licences; and (2) AI output monetisation license.

The model presented here should be viewed as a means to enhance the existing licensing structure, rather than a definitive solution. This is particularly important given the scepticism surrounding licensing frameworks and the role of collection management societies by creators who do not share in large scale benefits of remuneration, and institutions like libraries that may be saddled with new fees. Close attention should be paid to how much remuneration will actually be seen by small-scale, individual creators. Below, the proposed tired framework is discussed in further detail.

1. **Training data access licences** – AI firms should pay for permission to use copyrighted works in their training datasets. This aligns with the proposal in the consultation document (page 13) allowing right holders to reserve their rights under a data mining exception, but goes further to suggest that structured next steps (e.g., the option of a training data access licence) should be in place once rights holders have exercised that reservation.
2. **AI output monetisation licences** – If AI-generated outputs are monetised (e.g., through paid services), a revenue-sharing model should apply. This is akin to how music streaming services compensate artists, and it would ensure that copyright holders receive fair remuneration for the continued use of their works.

Such a tired licensing model could be enhanced by the creation of an IP licensing marketplace, as some have suggested. It is considered practical for allowing non-commercial and research applications to access training data with reasonable fees, while commercial AI outputs contribute a portion of their earnings to the original creators whose works informed the AI model.

Currently, individual copyright holders struggle to negotiate fair licensing agreements with AI firms. Since large-scale AI training datasets aggregate millions of works, it is impractical for AI firms to embark on one-to-one negotiations. In this regard, RAi UK researchers agree with the proposal on page 18 of the consultation document to wit – government should facilitate the establishment of collective licensing schemes, similar to the Copyright Licensing Agency (CLA) or the music industry's PRS for Music[32], where, for instance:

[32] See: PRS for Music: royalties, music copyright and licensing

- AI firms obtain licenses from a collective body instead of negotiating with individual rights holders.
- Copyright holders receive royalties based on AI firms' usage and outputs.
- Transparency measures ensure creators can track if their work is used in training datasets.

In this sense, the economic impact of the proposed licensing model (which is a major factor for copyright holders) should be taken into account. To put in context, according to a 2025 report by the CLA[33], in the past four decades, collective licensing in the publishing sector generated over £1.5bn in revenues that have been distributed to over 200,000 authors, publishers, and visual artists. Applying similar models to AI training could provide substantial financial benefits to content creators while ensuring fair market access for AI developers. Also, such a system would streamline fair compensation for rights holders while giving AI developers legal clarity and ease of access to training data.

Moreover, the proposed licensing model resonates not only with the EU Directive on Copyright in the Digital Single Market (Directive (EU) 2019/790), but also with case law about the matter in the United States, as follows:

- Article 17 of the Directive requires platforms using copyrighted content to enter into licensing agreements with rights holders. This framework offers a model for AI licensing, ensuring that platforms profiting from AI-generated content compensate original creators.
- In ReDigi v. Capitol Records (2018), ReDigi attempted to create a marketplace for resale of legally purchased digital music files. The court ruled against ReDigi, stating that resale of copyrighted digital works still constituted unauthorised reproduction. This ruling is relevant to AI licensing, as it underscores the importance of ongoing copyright protections beyond initial sales, reinforcing the need for continuous licensing models for AI training datasets.
- In Authors Guild v. Google, Inc. (2015), the Second Circuit Court ruled that Google's book-scanning project, which created a searchable database of copyrighted books, constituted fair use, since the *"brevity of the snippet search results and the cumbersome, disjointed, and incomplete nature of the aggregation of snippets made available through snippet view make it unlikely that Google's use could provide a significant substitute for the purchase of the author's book."* However, right holders argued that Google derived commercial benefits from their works without proper compensation. While Google ultimately prevailed, the case highlighted the need for clearer licensing frameworks to ensure remuneration in AI-driven content generation.

[33] Available here: PLS-Chair-Appointment-Brief.pdf

Transparency

Data Training Disclosure

RAi UK researchers agree that standardized transparency requirements for AI model data are essential for two reasons: (i) ensuring compliance with copyright law and facilitating its enforcement, and (ii) helping consumers understand the provenance of the content they access. Building on Taylor (2024),[34] transparency is valuable as it enables the evaluation of fairness in decisions, protects autonomy regarding outcomes, and assesses the potential for social harm caused by technology.

Transparency measures regarding data sets also align with the data protection law framework regarding accuracy and processing. According to the Information Commissioner Office, "*Transparency is a key data protection principle which is fundamental to a 'data protection by design and by default' approach. It facilitates the exercise of individuals' rights and gives people greater control.*"[35]

As BBC research (2025)[36] demonstrates, in a context where GenAI inaccurately processes and misrepresents copyrighted works, transparency is crucial to protecting original works and the rights of their authors from harmful or misleading uses, such as summarization. This is particularly important given the potential for further degradation of online content as a result of these actions. When shaping copyright law, policymakers can draw valuable insights from existing data protection frameworks to ensure that copyright protections are not unduly weakened.

In this regard, AI developers should disclose the sources of their training data to ensure copyright compliance, build trust, and enable accountability. Transparency allows right holders to understand how their works are used, while helping businesses and end users assess the reliability of generative outputs. However, disclosure should be balanced to avoid excessive administrative burdens, particularly for SMEs and smaller AI developers. While large AI firms should publish structured summaries of their training data sources, smaller developers and SMEs, including charities conducting in-house development, should have access to simplified reporting mechanisms to comply without facing significant resource constraints.

Level of Granularity

RAi UK researchers understand that a summary-level disclosure approach is both sufficient and necessary for organisations to promote transparency through responsibility. This would

[34] Taylor, E., 2024. Explanation and the right to explanation. *Journal of the American Philosophical Association*, 10(3), pp. 467–482. Available at: https://doi.org/10.1017/apa.2023.7 [Accessed 15 February 2025].
[35] See: Transparency | ICO
[36] See: AI chatbots unable to accurately summarise news, BBC finds - BBC News

require developers to publish a categorised list of the datasets and repositories used in training, along with an indication of whether the data was sourced from open-access materials, licensed content, or proprietary datasets. The model does not need to disclose every individual work used in training, as this would be impractical given the scale of data collection. Instead, transparency requirements could focus on ensuring that AI developers provide meaningful summaries that allow for public scrutiny while maintaining operational feasibility. The key focus here would be to promote responsibility, which could indirectly encourage transparency and accountability.

Web Crawlers

RAi UK researchers suggest that web crawlers should be required to disclose their ownership, purpose, and the types of content they collect. They should also implement mechanisms that respect the rights of content creators, such as recognising and complying with robots.txt directives and metadata signals that indicate a preference for exclusion from AI training. Regular audits and reporting mechanisms could be introduced to verify that web crawlers operate within ethical and legal boundaries. By requiring AI based organisations and developers to provide transparency about their web crawling practices, content owners will have better control over the use of their works in AI systems, products and services.

Proportionality

A proportionate approach to transparency could differentiate between large-scale AI developers, SMEs, and research-focused AI initiatives. Large AI firms should be held to higher transparency standards, including detailed reporting on the datasets used and mechanisms for right holders to verify the use of their works. SMEs and startups, however, should not face excessive compliance burdens that could hinder innovation. A tiered reporting framework that scales requirements based on firm size and AI model complexity would ensure a balanced approach. Furthermore, government-backed initiatives, such as a centralised transparency registry, could provide standard reporting templates to simplify compliance for smaller organisations or AI based initiatives such as charities that make use of AI.

Costs

RAi UK researchers understand that the costs of introducing transparency measures will vary depending on the size and nature of the AI firm. Large AI companies may need to allocate significant resources to compliance teams, dataset documentation, and automated tracking systems, leading to estimated costs in the millions per year. SMEs and startups, including bootstrapped businesses and charities, however, may struggle with the financial burden of detailed data disclosure requirements. For smaller firms, the cost of implementing transparency measures could range from tens to hundreds of thousands of pounds, potentially creating barriers to entry in the AI market. To mitigate these challenges, as supported by the RAISE project, the Government could consider financial support mechanisms such as

research and development tax credits or grants for SMEs implementing responsible AI practices.

Encouraging Transparency

Compliance with transparency requirements can be encouraged through a combination of regulatory enforcement and incentive-based mechanisms. A voluntary certification scheme, such as a "Transparent AI" badge or a “Responsible AI” badge, could encourage firms to adopt best practices in data disclosure while allowing them to demonstrate their commitment to ethical AI development. Additionally, government-backed incentives, including funding for compliance tools and technical support for SMEs, would help ease the burden of transparency obligations. However, regulatory underpinning is necessary to ensure that larger AI firms comply with disclosure requirements and do not exploit loopholes. Any regulatory framework should be designed to support responsible innovation while maintaining accountability in AI development.

EU’s Approach

As recognised in the consultation (paragraph 111), transparency measures would be aligned with Article 53(1)(d) of the EU AI Act, which is regarded as a relevant provision about the matter, establishing for GenAI models the obligation to make publicly available a sufficiently detailed summary about the content used for training. What exactly this summary shall contain, and its specificities, are still to be determined by the AI Office.

The EU’s approach to transparency under the AI Act offers a valuable model for striking a balance between disclosure and feasibility. By requiring AI developers to provide a sufficiently detailed summary of their training data, rather than exhaustive lists, the EU ensures copyright compliance and accountability while avoiding undue burdens on AI firms. This approach aligns with international best practices and supports the potential for interoperability between UK regulations and emerging global AI standards. However, RAi UK researchers highlight the need to ensure that SMEs and startups are not disproportionately burdened by transparency requirements. Therefore, it is suggested that the UK adopt a similar framework, with tailored provisions to help smaller AI firms meet their obligations without hindering responsible innovation.

Public Sector Considerations

Standardized transparency requirements are particularly important when considering public sector users of AI tools, especially when these tools are involved in decision-making processes that impact individuals' rights and freedoms. This is especially true in contexts such as law enforcement agencies, including the police force. Without clear transparency, there is a significant risk that agencies may rely on systems they do not fully understand, making it

difficult to assess potential bias or reliability. As the PROBabLE Futures research explores,[37] this lack of oversight could undermine trust and accountability, and in the case of law enforcement, could lead to miscarriages of justice or critical information being overlooked. Under these circumstances, RAi UK researchers suggest the adoption of a certification process to ensure AI tools meet transparency standards before they are approved for public sector use.

Encouraging Research and Innovation

Data Mining Exception

While the UK's current data mining exception (Section 29A, Copyright, Designs and Patents Act 1988) provides essential support for non-commercial research, its limitations may hinder AI-driven research and innovation. Many SMEs and research institutions conduct research that blends non-commercial and commercial applications. Therefore, this can result in the unintentional exclusion of commercial research - which can be a key challenge.

Also, unlike the EU's Article 3 of the EU Directive on Copyright in the Digital Single Market (Directive (EU) 2019/790), the UK's exception: (i) does not allow commercial research, creating barriers for SMEs exploring AI-driven innovation; and (ii) does not extend to databases, whereas the EU exception does. This creates difficulties in areas like healthcare AI, corporate intelligence, and financial analytics, where structured datasets are crucial. In this context, RAISE project research reinforces:

- Expanding the UK exception to include commercial research, similar to the EU's approach, to support SME innovation.
- Extending the exception to cover databases, ensuring fair access for AI-driven research beyond copyright-protected works.
- Introducing clearer licensing mechanisms to reduce legal ambiguity and allow SMEs and independent researchers to use AI responsibly.

Proportionality

Copyright regulations should be proportionate and consider both the purpose of an AI model and the size of the firm. The RAISE project's research on SMEs highlights the risks of applying one-size-fits-all regulations that disproportionately impact smaller innovators. Therefore, a Purpose-driven differentiation is recommended. For example, AI models used for research,

[37] See: PROBabLE Futures: Probabilistic AI Systems in Law Enforcement Futures – Responsible AI

healthcare, education, or financial risk assessment have different ethical and economic implications compared to large-scale generative AI models used in entertainment.

Another recommendation for a proportional regime is for regulatory burdens to distinguish between AI models that contribute to the public good and those designed for commercial content generation. Regulations should support responsible, but feasible compliance.

Finally, considering that SMEs and startups - and even charities - often lack the legal and financial resources to navigate complex copyright compliance requirements, it is recommended the enforcement of a tiered compliance framework (similar to the EU AI Act). Such a framework could reduce administrative burdens on SMEs, while ensuring accountability for larger AI firms.

AI Outputs

Background Information

The Government is reconsidering the provisions in section 9(3) of the Copyright, Designs and Patents Act 1988 (CDPA), which states that computer-generated literary, dramatic, musical, or artistic works, created without a human author, are owned by the person who made “the arrangements necessary for the creation of the work to be undertaken.”

There are concerns that AI-generated works conflict with the modern legal test for originality, which requires a work to be an “author’s own intellectual creation.” This traditional notion of authorship reflects human qualities and creative expressions. Therefore, section 9(3), which applies to works without a human author, appears contradictory.

The Government has acknowledged this contradiction, questioning whether section 9(3) could ever be applied in practice. They note that, “in the absence of case law, it is unclear how an 'original' yet wholly machine-authored work would be defined.” Some argue that the protection of computer-generated works (CGWs) undermines human creativity.

Legal scholars and practitioners have called for clarifications to section 9(3) of the CDPA. The current provision was drafted at a time when no generative AI systems existed and primarily addressed digital media creations - such as music, art, or literary works. As it stands, the CDPA does not define what constitutes "making the arrangements necessary" for the creation of such works.

Depending on the system involved, there could be various parties perceived as owning copyright for works generated by computer systems, particularly cloud-based systems.

For greater legal certainty, Section 9 could be amended to clarify that original, qualifying works generated as digital media using non-generative computer systems (whether AI-based or not) should maintain copyright protection. It may also address under what circumstances output from generative AI systems could attract copyright protection, if any. In this context, “generative AI systems” refers to AI systems trained directly or indirectly using works - protected by copyright or not - with or without consent from the copyright owners, to generate output based on user input or other computer programs.

Interpretation of Section 9(3) of the CDPA

Section 1 of the CDPA 1988 currently states that copyright is a property right that subsists in “*original literary, dramatic, musical or artistic works*.” Section 9 of the CDPA 1988 defines the “author” of a work, referring in sub-section (1) to the person who creates it and in sub-section (3) to “*the person by whom the arrangements necessary for the creation of the work are undertaken*” for computer-generated works.

As mentioned, section 9(3) does not define “computer-generated” within the CDPA 1988, nor does it provide guidance on whether originality should be assessed differently for such works. Section 9(3) also does not specify what "arrangements" refers to or what qualifies as "necessary" for generating the work.

Section 9(3) could, therefore, extend protection to a variety of literary, dramatic, musical, and artistic works generated by computer systems. These could include works generated using music synthesizers, digital styluses, word processors, or 3D printers. Until the advent of generative AI, these systems required human input - whether by pressing a key, speaking audio, or using a stylus - to generate original works eligible for copyright protection under UK law.

General Technology Considerations

To varying degrees, when a computer system processes input, it may modify or enhance the output. The degree to which the system contributes to the work’s content depends on the system's capabilities. In the case of generative AI, however, the enhancement can be seen as so extreme that the resulting output may only loosely resemble the input.

A prompt to a generative AI system may take the form of various digital formats, such as audio, image, or text. The input may even be a copyrightable work, like a music or image file. The resulting output, however, is produced by an AI algorithm trained to process any input by extracting features from an extensive training dataset, which often includes copyrighted works in the same genre.

Generative AI algorithms typically process input to extract features that best match the input, based on the dataset. The match is determined by how strongly the output aligns with the user’s input. Since the output reflects the AI system's algorithm and training data, it can be

viewed as a compilation of features extracted from existing works - some of which may be copyrighted.

This raises the question: can AI-generated output be considered an original work eligible for copyright? While generative AI systems seek to minimize human involvement in the creation process, the output may be seen as a compilation work that could potentially attract copyright protection. However, a generative AI system's output may differ fundamentally from a traditional compilation, as it requires minimal human intervention in its creation.

Historical Perspective on Technology

Understanding the technological landscape at the time the CDPA was drafted is an important factor for interpreting the original intent of the legislation and explaining why some legal scholars and practitioners may recommend a clarification or amendment with the advent of generative AI systems.

Section 9(3) of the CDPA 1988 was enacted before generative AI systems were developed. At that time, a “computer-generated” work typically referred to a work created using digital media tools, such as music synthesizers, word processors, and digital canvases. “Making arrangements” could be interpreted as programming the computer or providing input to a computer program, which generated the work. This approach reflected the technological landscape of the time, where human input played a significant role in creating original works.

Generative AI systems, however, can create original content from a simple prompt, and their output may or may not reflect the input’s intent. Additionally, generative AI systems may “hallucinate” responses, generating results that were not requested by the user.

Preliminary Considerations on Originality and Ownership

The CDPA 1988 grants copyright ownership to the author(s) of qualifying works. For a work to qualify, it must be original. Historically, there has been a divergence between UK and European law on how originality should be interpreted. While Brexit has removed the tension between the two approaches, it is helpful to note that UK law emphasizes originality based on a degree of labour, skill, or judgment by the author. EU law, on the other hand, focuses on the author's personal intellectual creation.

The UK approach to assessing originality is the focus here, particularly for works generated by computer systems. One possibility to handle the legal uncertainty discussed so far is to introduce an intellectual creation qualification and a collective work copyright ownership amendment to section 9(3) of the CDPA 1988.

Proposal for Possible Clarification

A. Non-Generative AI computer works

Computer-generated works that are original and sufficiently align with the creative intent of a human who provides input into the computer system should be eligible for copyright protection under UK law, provided that such human input reflects a degree of personal creativity, labour, and skill, which is reflected in the output of the system.

Such works may include those generated by computer systems that do not use AI algorithms, as well as those using rule-based AI (as opposed to generative AI technology, for example).

B. Works Created Using a Generative AI System

First, if the output of a generative AI system is not original, it should not attract copyright. This ensures that when a generative AI system is provided with a prompt to copy an existing work, no copyright is granted to the output.

Second, if computer-generated works do not reflect any original skill, labour, or judgement beyond the prompt given to the generative AI system, one approach could be to deny copyright protection, as the output would not be considered an original work. Alternatively, a more equitable approach might be to grant copyright in the output of the generative AI system while acknowledging the copyrights in any training data used to train the system. This would ensure that ownership of the copyright in the resulting work reflects the contributions made during the training phase, especially when the AI system generates content derived from copyrighted training datasets.

Independently, copyright in the prompt may exist if it forms a qualifying work.

C. Section 9(3) Amendment

One possibility is amending Section 9(3) to clarify that when the computer system generating the work includes an AI system trained, wholly or in part, using a training dataset comprising works created by identified or unidentified authors, the copyright in any original qualifying work output by the generative AI system should be regarded as a new form of collective work. If copyright exists, it would be owned by both:

1. The person providing the input to the AI system, assuming the input demonstrates a degree of originality that attracts independent copyright; and
2. The owner(s) of any copyrighted works used to train the AI system.

Additionally, Section 9(3) could benefit from the introduction of a provision under UK law regarding the enforcement of copyright for such collective works:

3. For a collective work generated by a generative AI system, all identified owners with a share in the collective copyright must be acknowledged in any legal action and must give consent to enforce the collectively owned copyright.

D. The Objective of Collective Ownership

The purpose of provisions (1) and (2) is twofold. Provision (1) ensures that if the input prompt is trivial and does not attract independent copyright, no copyright exists in the collective work, as the output would likely be primarily contributed by the generative AI system.

Provision (2) ensures that if the generative AI system has been trained on copyrighted material, the owners of such works benefit from the output, provided the output qualifies as an original work.

If the AI system has been trained on material not protected by copyright, the owner of the AI system's collective work output will default to the copyright owner of the prompt, as long as the output qualifies for copyright.

Where the output qualifies for copyright protection, and the AI system has been trained mostly on out-of-copyright material but with some copyrighted works, the copyright owners of the copyrighted material will also benefit from the collective ownership of the work.

These provisions ensure transparency and differentiate collective ownership from joint authorship, where different legal principles apply. Joint authorship requires specific collaboration, where intellectual input is shared and inseparable. The distribution of joint ownership is governed by distinct principles.

The concept of a collective work ensures that all generative AI output qualifying for copyright protection has its ownership equitably allocated. How the allocation occurs is beyond the scope of this document but could be administered by a digital rights management body or bodies.

E. Enforcement and Transparency

As mentioned above, the aim of including a provision for enforcement is to ensure that when a generative AI system uses copyrighted works in its training without the consent of the copyright owners, any copyright in the output will be unenforceable. This approach also encourages transparency by allowing generative AI outputs to potentially attract enforceable copyright if the training data includes works contributed by copyright owners and a collective rights management body is established to acknowledge and administer these rights, similar to existing systems that distribute royalties to creators.

This approach aligns with the current provisions of the CPDA and promotes ethical behaviour in the creation of training datasets for generative AI systems. It also allows for generative AI

systems, operating on principles different from those of existing large language models (LLMs) like ChatGPT, to attract some form of collectively owned copyright in their output.

For example, where a public LLM AI system is trained on data without the copyright owner's permission, the resulting work may still be original but would not attract enforceable copyright unless the owners of the copyrighted works used in training are acknowledged and give consent in legal actions. This is different from joint authorship, where individuals can independently assert their copyright.

This approach also benefits creatives whose work, with their consent, may be used to train such generative AI systems.

F. Extending Copyright Protection to Non-Generative AI Input

This approach would also allow input from non-generative AI systems, where the input is sufficiently complex to reflect a human's labour, skill, and judgement. In other words, input representing a degree of original human creativity could result in a work that attracts some degree of copyright protection, provided that the creation process involves intent.

For instance, input that reflects a human’s labour, skill, and judgement can be provided via a keyboard, mouse, stylus, audio input, or a mind-machine interface. The method of generating the actual work, whether through a simple macro or a more complex AI-based (non-generative) algorithm, becomes secondary to the human contribution.

Amending the Act in this way would allow digital artists and others who create original artistic, musical, and literary works with intent using software to gain copyright protection for their work, regardless of the software tools used to assist in creation. However, if an original work or part of a work is created using a generative AI tool, the collective ownership provisions may result in a copyright that is unenforceable unless ethical practices are followed by the providers of the AI system, respecting the ownership of any data used in training the system.

About Responsible AI UK

RAi UK brings together researchers from across the four nations of the UK to understand how we should shape the development of AI to benefit people, communities and society. It is an open, multidisciplinary network, drawing on a wide range of academic disciplines. This stems from our conviction that developing responsible AI will require as much focus on the human, and human societies, as it does on AI. Funded by the Technology Missions Fund, we convene researchers, industry professionals, policy makers and civil society organisations.

The organisations and research teams involved in this response to the the consultation include:

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