

# Submission to the open consultation on Copyright and Artificial Intelligence from Chris Hodgkins

## Executive Summary

### 1 Background and Author Credentials

Chris Hodgkins, an established jazz musician and industry leader with decades of experience—ranging from co-founding the Welsh Jazz Festival and Welsh Jazz Society to directing nationally funded Jazz Services Ltd—submits this response. His career in music, combined with his role in shaping cultural policy (including establishing the Parliamentary Jazz Awards), underpins his authority to speak on how copyright law affects creative industries.

### 2 Context of the AI Boom and Financial Imperatives

The document outlines that the UK's rapidly expanding AI sector is generating billions in revenue while rapidly increasing its investments. However, this financial boom comes with an expectation that AI companies incorporate the costs of using copyrighted material into their business models. The submission criticizes how current consultation proposals—especially the data mining exception identified as "Option 3"—seek to allow AI systems unrestricted access to copyrighted content without due remuneration to rights holders.

### 3 Critique of the Proposed Data Mining Exception

The author argues that Option 3, which would permit AI companies to extract and use copyrighted works through a reserved opt-out mechanism, falls drastically short of protecting creators' rights. He stresses that copyright is a fundamental legal entitlement enshrined in longstanding legislation (beginning with the Statute of Anne in 1710 and reinforced by the Copyright, Designs and Patents Act 1988). The proposed framework, by effectively letting AI companies "scrape" content without proper licensing or fees, risks undermining these indispensable protections.

### 4 Legal and Economic Considerations

The submission details that existing copyright laws offer robust protection for rights holders. It emphasizes that any move toward a data mining exception not only challenges established legal norms but also risks diluting the financial sustainability of creative industries. By comparing the enormous profits of major tech companies to the relatively modest expectations of remuneration for creative works, the document argues that AI firms have both the means and the obligation to pay for content that fuels their models. The opt-out mechanism is labelled as legally precarious, potentially leaving creators exposed if they are unable to actively protect their rights.

### 5 Regulatory and Policy Recommendations

The author calls for a modernisation of copyright laws to align with the digital age rather than tampering with existing protections. Key recommendations include:

- Reforming Outdated Legislation: Update the Copyright, Designs and Patents Act to address the realities of mass digital reproduction and AI training while preserving creators' rights.
- Mandating Transparency: Require that AI companies disclose, in a clear and machine-readable format, the sources and volume of copyrighted materials used to train their models. An independent "Watchdog" (such as a proposed Office for Artificial Intelligence) should be empowered to enforce these transparency measures.
- Incorporating Copyright Costs: Ensure that the costs related to licensing and remunerating the use of creative works are factored explicitly into AI companies' business plans, thus safeguarding the economic interests of artists and creators.
- Preventing Foreign Direct Investment Pitfalls: Address the risk of asset stripping by foreign companies, ensuring that strategic intellectual property remains under secure and well-regulated control in the UK.

## 6 Conclusion

The submission firmly rejects the notion of allowing an unchecked data mining exception, asserting that such a policy would lead to a wholesale wealth transfer from the creative industries to tech giants. Instead, it argues for a forward-thinking, enforceable framework in which AI companies face clear financial and legal obligations to respect and pay for copyright. By modernising copyright law and enforcing full transparency and accountability, the UK can support AI innovation while preserving the cultural and economic value of creative works.

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### 1 Foreword

**Chris Hodgkins MBA FCIM** was raised in Cardiff. In 1974 he co-founded the Welsh Jazz Festival and four years later established the Welsh Jazz Society. As a trumpet player Chris toured the UK and Europe and appeared at the Sacramento Jazz Festival in the States. With his own band he made a number of television and radio appearances. Wild Bill Davison commented, "It's a hell of a good band."

He relocated to London to play professionally and in 1985, was appointed Director of Jazz Services Ltd, the national organisation for jazz funded by Arts Council England and was Chair of the National Jazz Archive 2005-2014. Chris helped establish the annual Parliamentary Jazz Awards.

Chris retired from Jazz Services Ltd in May 2014 and returned to the road, radio and the recording studio to focus on playing. Chris presents two programmes on Jazz London Radio and Pure Jazz in New York

Chris published a business planning manual for jazz musicians: *Where Do You Want To Be?* is available on the Online Music Business Resource as a free download at [www.chrishodgkins.co.uk](http://www.chrishodgkins.co.uk).

Chris is secretary to the All-Party Parliamentary Jazz Group <https://appjag.org/>

### 2 Introduction

#### 2.1 The Sting

Estimates produced for this 2023 study indicate that UK AI companies generated a total of more than £14 billion in revenues.<sup>1</sup> In 2020, the 432,000 companies in the UK who had adopted AI, spent a total of £16.7 billion on AI technologies.<sup>2</sup> Spending could increase by £13.5 billion to £30.3 billion between 2020 and 2025, at a compound annual growth rate of 12.6%<sup>3</sup>.

These are sums of money that makes anyone and everyone "richer than the dreams of avarice" – revenues where one would assume production costs, such as payment for use of copyright is accounted for. Yet a consultation exercise is being conducted whose sole purpose regrettably appears to be to sign away the rights of copyright holders in favour of tech companies so they can generate even more revenues without certain production costs.

The Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology in Assuring a Responsible Future for AI stated:

*"There are early indications that the UK AI market could grow to over \$1 trillion (USD) by 2035, demonstrating its enormous economic potential.*

*However, to fully realise its potential, AI must be developed and deployed in a safe and responsible way with its benefits more widely shared. Like all technological innovation, the use of AI poses risks; for example, bias, privacy, and other socio-economic impacts like job loss. Identifying and mitigating these risks will be key to ensuring the safe development and use of AI and driving future adoption"*<sup>4</sup>.

<sup>1</sup> Perspective Economics. Artificial Intelligence Sector Study. (Published Artificial Intelligence Sector Study March 2023). p25

<sup>2</sup> Andrew Evans Anja Heimann. AI Activity In UK Businesses. (Published DCMS. January 2022). p42

<sup>3</sup> Ibid 2 p42

<sup>4</sup> Assuring responsible future for AI - Accelerating the growth of the UK's AI assurance market. (Published Department for Science, Innovation and Technology November 2024) p4

Here lies the rub, as there are other attendant risks which are substantive and perilous if ignored for political expediency or in the 'dash for growth' taken at all costs. With figures like these what is the problem with AI companies paying for copyright material. These costs should be an explicit part of their business plans.

## 2.2 Asset strippers and carpet baggers

An ever present danger is the ease with which UK tech companies are taken over by foreign firms who only want the intellectual property and then wind it down. As Angus Hanton asks in Vassal State:

*"are the British retaining the illusion of independence while being ever more financially and functionally under the control of others?"*<sup>5</sup>

Examples are many and various. In 1990 there was a plan for a joint venture between GEC and Siemens makers of semiconductors. Faced by objections from the Ministry of Defence Siemens withdrew.

*"In April 1990 the entire heritage of the former microchip operations of GEC, Plessey, Marconi, Plessey and Ferranti was amalgamated into GEC Plessey Conductors (GPS).*

*Plessey's renowned research team was cut back and dispersed. Moreover, the deal had put what was left of UKJ semiconductors into a tidy saleable package. As the terminal dismemberment of GEC got underway in the late 1990's GPS was sold to Canada's Mitel which in turn parcelled it off for sale to others"*<sup>6</sup>

As Harold Macmillan said, in a speech to the Tory Reform Group, 8 November 1985, *"First of all the Georgian silver goes, and then all that nice furniture that used to be in the saloon. Then the Canaletto's go."* To bring it up to date after the Canaletto's the family silver of the tech companies goes.

In 2018 the British Information Commissioner obtained a search warrant and at 8pm on the 28<sup>th</sup> March 2018 they entered and searched the premises of Cambridge Analytica.

*"The Cambridge Analytica Scandal sparked fevered questions about the unregulated Wild West of Digital politics. What exactly are political campaigns doing online? Is technology destroying democracy? Can anything be done to stop what a British Parliamentary inquiry called silicon Valley's 'digital gangsters'".*<sup>7</sup>

## 2.3 The mirage of Foreign Direct Investment

Add to the sale of the "family silver" the problem of Foreign Direct Investment or FDI which is :

*"is defined as investment in an enterprise operating in a foreign economy, where the purpose is to have an 'effective voice' in the management of the enterprise."*<sup>8</sup>

*"For over 40 years Westminster Politicians have been extolling the virtues of FDI , but there has always been a deep deception at the heart of their claims. Incoming investments can be two forms: genuine new investment in physical plant and new buildings or – quite differently – foreign purchases of existing companies. These are chalk and cheese. By deliberately confusing these two ideas, politicians can imply they are drawing into making new and creative investments in the UK, while in reality they are encouraging a sell off of the UK's best businesses".*<sup>9</sup>

The music streaming company Spotify has made a number of Artificial Intelligence investments and acquisitions. In 2015, Spotify acquired data science company Seed Scientific. UK based company Chippenham. In 2017, Sonalytic a London based company was acquired by Spotify. Sonalytic uses

<sup>5</sup> Angus Hanton. Vassal State – How America Runs Britain (Swift Press 2024) p30

<sup>6</sup> Anthony Warwick-Ching. Stolen Heritage – The Strange Death Of Industrial England. (Published Matador 2020) p257-258

<sup>7</sup> Peter Geoghegan. Democracy For Sale – Dark Money and Dirty Politics. (Apollo Book 2020) p186

<sup>8</sup> Matthew Ward. Foreign Direct Investment (FDI) Statistics. Research Briefing (House of Commons Library 9<sup>th</sup> December 2024) p4

<sup>9</sup> Ibid 5 p31

machine learning to detect audio and recommend music. In its most recent AI-related acquisition, Spotify in 2022 acquired Sonantic, an AI-powered text-to-speech generator.<sup>10</sup>

Will Hutton in a recent article in the Observer “Britain will never be great again until we stop flogging our top companies to the US”.

*“Britain is so blind to the negative dimensions to the lack of control – from tax avoidance to being stripped of strategic technologies – that amazingly politicians blithely laud the process as ‘being open for business’. Thus, over the past 20 years there has been a tsunami of acquisition of brilliant British tech companies by US corporations and private equity houses. The path breaking artificial intelligence company DeepMind, for example is now owned by Google. Cyberspace pioneer Darktrace was recently bought by US private equity company Thomas Bravo and bio tech Abcam by Washington DC’s Danaher”*<sup>11</sup>

The Governments report on The role of United States-owned businesses in the United Kingdom Published in 2021 stated:

*“In 2019, US-owned businesses accounted for 17.6% of all UK business turnover in the scientific, technical and IT services industry. In the manufacturing industry, US-owned local units also accounted for 17.6% of total turnover.”*<sup>12</sup>

The Annual Business Survey, UK Non-Financial Business Economy Foreign Owned Businesses showed that in 2016 1% of business were foreign owned and in 2021 it was 2%. The figures for turnover of the companies showed that 2016 the UK owned companies accounted for 66% of total turnover and in 2021 61%. Foreign owned companies accounted for 34% of turnover in 2021 and 39% in 2021. This gives an indication of what lies in the future:<sup>13</sup>

*“WorldPay executives would no doubt say US companies are big investors, enhancing and expanding the UK businesses they buy, often with a long-term vision. Except that the vision includes domination and control of the economy, holding the government to ransom with threats of cutting investments if tax subsidies are not generous enough or tax rates low enough”.*<sup>14</sup>

## 2.4 Startups and scaling up

Communications and Digital Committee of the House of Lords in their recent report *AI and creative technology scaleups: less talk, more action* noted:

*“Enabling homegrown startups to develop into global competitors will be vital to meeting the Government’s ambitions for growth.*

*The consequences of failure are significant. The UK risks being an ‘incubator economy’ for other nations, as innovative British technology firms pursue greater growth potential in other markets or seek acquisition by foreign companies. A continuation of this trend could lead to decreased global competitiveness, weaker economic prospects and a ‘brain drain’ of talented individuals, at a time when technology is rapidly advancing”.*<sup>15</sup>

Baroness Stowell, who chaired the inquiry, said:

*“The UK has some great advantages when it comes to AI and creative tech; a strong university sector undertaking groundbreaking research and generating commercial spinouts, and a proud tradition of world-leading creative industries. These sectors have the potential to deliver the fast-paced economic growth the Government wants to achieve. But we have a real problem turning startups into scaleups.*

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<sup>10</sup> Marketing Artificial Intelligence Institute. <https://www.marketinginstitute.com/blog/spotify-artificial-intelligence>

<sup>11</sup> Will Hutton. Britain will never be great again until we stop flogging our companies to the US. The Observer 29<sup>th</sup> December 2024 p46

<sup>12</sup> Department for International Trade. The role of United States-owned businesses in the United Kingdom. Published December 2021. P7

<sup>13</sup> Office for National Statistics. Foreign-owned businesses in the UK: business count, turnover and a GVA, from the Annual Business Survey. July 2023

<sup>14</sup> Phillip Inman. Undertaxed and over here: why does the UK welcome US mega-firms? The Observer. 24<sup>th</sup> March 2024

<sup>15</sup> Communications and Digital Committee 2nd Report of Session 2024–25. AI and creative technology scaleups: less talk, more action p3

*Every UK unicorn that gallops overseas to list, or sells out to foreign investors, is a blow to UK PLC and our aspirations for growth.*

*“The Government’s new AI Opportunities Action Plan is a good start, but a plan in itself is not enough. The key is its delivery”<sup>16</sup>*

## **2.5 Look before you leap**

As Peter Kylie MP as said AI poses risks in terms of privacy ,bias and socio economic impacts such as job losses. This is just scratching the surface. Matt Clifford in his report – “AI Opportunities Action Plan”, states:

*“No one can say with certainty what AI will look like a decade from now. My judgement is that experts, on balance, expect rapid progress to continue. The risks from underinvesting and underpreparing, though, seem much greater than the risks from the opposite. Even if AI progress slows, we will see large benefits from deploying today’s frontier capabilities and investing in our infrastructure and talent base”.<sup>17</sup>*

Matt Clifford in “AI Opportunities Action Plan” recognised the dangers in an unregulated AI environment:

*“The UK’s current pro-innovation approach to regulation is a source of strength relative to other more regulated jurisdictions and we should be careful to preserve this.*

*Well-designed and implemented regulation, alongside effective assurance tools, can fuel fast, wide and safe development and adoption of AI. Regulators themselves have an important role in supporting innovation as part of their Growth Duty. Government must protect UK citizens from the most significant risks presented by AI and foster public trust in the technology, particularly considering the interests of marginalised groups. That said, we must do this without blocking the path towards AI’s transformative potential.*

*Ineffective regulation could hold back adoption in crucial sectors like the medical sector. But regulation, safety and assurance have the power to drive innovation and economic growth too”<sup>18</sup>*

However, as the UK public has seen with regulators such as utilities – water in particular, banking AI regulators must have draconian powers to act for the benefit of the public, complete transparency and be structured in such a way that there is no “regulatory capture” or they end up serving the very people they are supposed to be regulating.

The regulatory system will be set up by the Government. But in terms of trust:

*“Few in the UK are highly satisfied with the political system, with the country ranking below many peer nations. One in six (17%) people in the UK give a response indicating they are highly satisfied with how the country’s political system is functioning, compared with around double this proportion (32%) who say they are dissatisfied with it and half (50%) who rate it somewhere in between.” <sup>19</sup>*

A recent report by APPG Music demonstrated the British publics strength of feelings on the matter: t

*“four out of five (80%) of UK adults agree that the law should prevent an artist’s music from being used to train an AI application without their knowledge or permission. Another four out of five (83%) of UK adults agree that if AI has been used to generate a song, it should be clearly labelled. Over two-thirds (69%) of UK adults are concerned about the risk of AI generation eventually replacing human creativity”.<sup>20</sup>*

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<sup>16</sup> [The Communications and Digital Committee publishes its report 'AI and creative technology scaleups: less talk, more action'.](#)

<sup>17</sup> Matt Clifford CBE. AI Opportunities Action Plan.( Published Department for Science, Innovation and Technology. January 2025) p6

<sup>18</sup> Ibid 12 p13

<sup>19</sup> The Policy Institute. Kings College London. Democracy in theory and practice: how UK attitudes compare internationally. Published 2023. P11 compare internationally

<sup>20</sup> APPG on Music report: [Artificial Intelligence and the Music Industry – Master or Servant?](#) 2024. P7

One would hope that before the headlong rush for growth there is a risk analysis on investing in AI and “What if” Analysis which must be placed before the public so that trust is genuinely created.

There is no question that AI can benefit the UK for example Artificial intelligence is providing a cheaper, faster and more efficient service for cataract patients while easing pressure on NHS staff, according to researchers<sup>21</sup>.

Yann LeCun, the chief AI scientist at Mark Zuckerberg’s Meta, has minimised the threat of AI to the human race and has said AI “could actually save humanity from extinction”.<sup>22</sup>

Prof Geoffrey Hinton, who was awarded the Nobel prize in physics for his work in AI and resigned from his job at Google Brain in 2023 interviewed on Radio 4 said there was a:

*“10% to 20% chance that AI would lead to human extinction within the next three decades.....My worry is that the invisible hand is not going to keep us safe. So just leaving it to the profit motive of large companies is not going to be sufficient to make sure they develop it safely,” he said. “The only thing that can force those big companies to do more research on safety is government regulation.”<sup>23</sup>*

As Phil Kear, Assistant General Secretary of the Musicians’ Union said:

*“At the moment, It’s like the Wild West out there. AI systems are just scraping the internet with out any permission at all.”<sup>24</sup>*

The author is mindful of the inscription on the gates of hell in Dante’s Inferno, “Abandon all hope, ye who enter here”.

### 3 Responding to the Consultation

**Please note that this response is answering the questions as laid out in the Open consultation Copyright and Artificial Intelligence Published 17 December 2024**

<https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence#bcopyright-and-artificial-intelligence>

#### **Question 1. Do you agree that option 3 is most likely to meet the objectives set out above?**

For the avoidance of doubt option 3 is a data mining exception which allows right holders to reserve their rights, underpinned by supporting measures on transparency.

The objectives are:

Control: Right holders should have control over, and be able to license and seek remuneration for, the use of their content by AI models

Access: AI developers should be able to access and use large volumes of online content to train their models easily, lawfully and without infringing copyright

Transparency: The copyright framework should be clear and make sense to its users, with greater transparency about works used to train AI models, and their outputs.

Option 3 will not meet the objectives that this consultation has set out for the reasons laid out below.

#### **3.1 The law (Control)**

##### **3.1.1 The law**

The first consideration should be the copyright holder and their Inalienable rights enshrined in law. The rights holder should not under any circumstances have the control of their rights diminished or diluted in any way shape or form. If for example a rights holder failed to reserve their rights for

<sup>21</sup> AI assistant eases NHS pressure in cataract care. <https://www.bbc.co.uk/news/articles/cprgg03ggzyo> August 2024.

<sup>22</sup> <https://www.theguardian.com/technology/2024/dec/27/godfather-of-ai-raises-odds-of-the-technology-wiping-out-humanity-over-next-30-years>

<sup>23</sup> Professor Geoffrey Hinton. The Today Programme. BBC Radio 4 27<sup>th</sup> December 2024.

<https://www.theguardian.com/technology/2024/dec/27/godfather-of-ai-raises-odds-of-the-technology-wiping-out-humanity-over-next-30-years>

<sup>24</sup> Neil Crossley. Musicians and AI: How it works and why you should care. Amplify. Musicians’ Union Journal 2024. P31

reasons of ill health, diminished responsibility then their work could be appropriated by an AI company at no cost. This egregious treatment of the rights holder, albeit proposed, has an air of desperation about it and it would appear that little thought has gone into the effect or impact this “reservation of rights” would have on existing UK, international law and international conventions.

As the headline in the leading article in the Guardian **headlined “AI data crawling is theft and government ministers must protect artists”**<sup>25</sup>

Set out below is the existing legislation, for the avoidance of doubt and to remind the Government of the scale of legislation against infringement of copyright. Common sense and natural justice dictate the sensible course of action - why bother to fix the wheel if it is not broken.

The first copyright act was the Statute of Anne, which was passed in 1710. It was the first copyright law in the English-speaking world.

The Copyright, Designs and Patents Act 1988 gives the owner of the copyright gives exclusive right to the following acts in the UK:

- To copy the work.
- To issue copies of the work to the public.
- To rent or lend the work to the public.
- To perform, show or play the work in public.
- To communicate the work to the public.
- To make an adaptation of the work or do any of the above in relation to an adaptation.

This absurd notion that a rights holder should have to reserve their rights when their rights are protected by law seems designed to circumvent existing UK law and international agreements in favour AI companies and the Governments drive for growth at any cost.

The author asked DeepSeek the following question:” If an AI machine used unauthorised copyright material what UK laws would they be breaking?”

The reply was unequivocal:

*“If an AI machine uses unauthorized copyrighted material in the UK, it could potentially breach several laws under the Copyright, Designs and Patents Act 1988 (CDPA). Here are the key legal issues that may arise:*

#### *1. Copyright Infringement*

*Primary Infringement: Unauthorized use of copyrighted material (e.g., copying, distributing, or adapting it) without the copyright owner's permission constitutes direct infringement under Sections 16–21 of the CDPA.*

*Secondary Infringement: If the AI system facilitates the distribution or use of infringing material (e.g., by providing access to it), this could also be considered secondary infringement under Sections 22–26 of the CDPA.*

#### *2. Database Rights*

*If the material is part of a database, the AI system might also infringe on database rights under the CDPA, which protect the investment in obtaining, verifying, or presenting the contents of a database.*

#### *3. Moral Rights*

*If the AI system modifies or uses the material in a way that harms the author's reputation, it could infringe on the author's moral rights under Sections 77–89 of the CDPA.*

#### *4. Licensing and Contractual Breaches*

*If the material was obtained under a license or agreement, using it in a way that violates the terms of that license could lead to a breach of contract claim.*

#### *5. Liability of the AI Operator*

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<sup>25</sup> The Guardian. Leader article. Saturday 1st February 2025



*The person or organization operating the AI system could be held liable for the infringement, even if the infringement was carried out by the AI. Under UK law, liability typically falls on the human or entity responsible for the AI's actions.*

## **6. Fair Dealing Exceptions**

*The AI's use of the material might be exempt from infringement if it falls under the "fair dealing" exceptions (e.g., for research, criticism, or news reporting). However, these exceptions are narrow and would not apply to most commercial uses of copyrighted material.*

## **7. Potential Criminal Offenses**

*In severe cases, particularly where the infringement is deliberate and on a large scale, criminal offenses under Sections 107–110 of the CDPA could apply, leading to fines or imprisonment.*

## **8. EU Retained Law (if applicable)**

*Although the UK has left the EU, some EU-derived copyright laws remain in force under the European Union (Withdrawal) Act 2018. These could also be relevant depending on the specifics of the case.*

## **Practical Considerations**

*Training AI Models: If the AI was trained on copyrighted material, this could raise additional legal questions. UK copyright law does not explicitly address AI training, but using copyrighted material without permission for this purpose could still be considered infringement.*

*Defences: The AI operator might argue that the use was transformative or fell under fair dealing, but these defences are not guaranteed to succeed.*

## **Conclusion**

*The unauthorized use of copyrighted material by an AI system in the UK would likely breach copyright law, and the operator of the AI could face legal consequences. It is essential to ensure that any material used by an AI system is either original, properly licensed, or falls within an exception under the law. Consulting a legal professional is advisable to navigate these complex issues.”<sup>26</sup>*

It is not just the breach of the Copyright, Designs and Patents Act 1988 but other laws could be breached by unauthorised copying. Stuart Mill Solicitors provide a useful synopsis of other laws where unauthorised copying could be breaking a number of laws:

*“In English law, digital piracy and copyright offences involve various statutes and crimes related to the unauthorised reproduction, distribution, or infringement of copyrighted material. Some key statutes and offences in this context include:*

- *Fraud Act 2006:  
Section 2: Fraud by false representation, which may apply in cases of copyright fraud.*
- *Computer Misuse Act 1990:  
Section 1: Unauthorised access to computer material.  
Section 3: Unauthorised modification of computer material.*
- *Communications Act 2003:  
Section 127: Offences related to improper use of public electronic communications network.*
- *Digital Economy Act 2010:  
Contains provisions related to online copyright infringement”.*<sup>27</sup>

Copyright offences could include the illegal downloading, sharing, or distributing copyrighted material, as well as engaging in activities that infringe upon the intellectual property rights of others.

There are also existing international agreements and the UK is a member of a number of international conventions.

- Berne Convention for the Protection of Literary and Artistic Works
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

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<sup>26</sup> DeepSeek enquiry Wednesday 5<sup>th</sup> February 2025

<sup>27</sup> <https://www.stuartmillersolicitors.co.uk/what-happens-for-a-first-offence-of-digital-piracy-and-copyright/>



- World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty (WPPT)
- WIPO Copyright Treaty (WCT)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>28</sup>

Legal protection exists for rightsholders in the UK with international agreements in place to put this protection in jeopardy is foolhardy in the extreme. In the light of the laws, acts and statutes above reservation of rights could lead to a legal quagmire and a stripping away of the rights of copyright holders. The legal quagmire has already commenced with:

*“In 2023, OpenAI the company behind the world’s most prominent chatbot was hit by multiple lawsuits from authors, including Sarah Silverman and John Grisham, over its alleged use of copyrighted book texts. In their complaints, the authors said that ChatGPT offers detailed plot summaries of copyrighted books on demand, citing this as evidence that OpenAI used the books to train its AI.*

*In November (2024), German music royalty collection and licensing body GEMA sued the company over alleged unauthorized use of lyrics. ChatGPT “reproduce[es] protected song lyrics by German authors without having acquired licenses or paid the authors in question,” GEMA said.*

*But that’s not the end of OpenAI’s legal troubles. The company is also facing a copyright lawsuit in India, which record labels are seeking to join.*

*Reuters reports that Saregama, T-Series and the Indian Music Industry (IMI) went before a court in New Delhi on Thursday (February 13) to voice concerns about the “unauthorized use of sound recordings” in training OpenAI’s artificial intelligence models.*

*The music companies are ‘concerned OpenAI and other AI systems can extract lyrics, music compositions, and sound recordings from the internet’.”<sup>29</sup>*

In any event would there be trust in the government to deliver legislation good enough to do the job it was designed to do? In *“How Westminster Works . . . and Why It Doesn’t”* by Ian Dunt describes the process of a bill passing through the House of Commons which makes dismal reading:

*“As it leaves, the more thoughtful MPs in the Commons chamber might recognise something. That despite all the soothing after-dinner speeches and the grand send-off they just witnessed; no real scrutiny of that bill took place*

*It did not take place at the Parliamentary Business and Legislation Committee. It did not take place through the needlessly rushed writing process at the Office of the Parliamentary Counsel. It did not take place at first reading, which was a formality. It did not take place at the second reading, which was a general debate. It did not place at committee, which was purposefully structured to prevent meaningful assessment or improvement. It did not take place at report stage, which was stitched up between opposition and government to prioritise theatrics over substance. And it certainly did not take place at third reading, which acted as if the preceding stage had been more meaningful.*

*But they will know something else too, which may or may not be a source of comfort to them: that the bill is now in the Lords. The adults are in charge”<sup>30</sup>*

### **3.1.2. The cost and pitfalls of opting out.**

Baroness Kidron in the Bookseller summarised the mess that the government getting into:

*“Ministers have been keen to emphasise that this preferred option includes transparency and an opt-out system for creatives – while also admitting that there are no protocols for either the transparency nor the opt-out, and they haven’t a clue how an individual creator would be able to police the thousands, maybe millions, of AI products and services based on their IP.*

*I can think of no government policy in any other sector that makes a citizen or business proactively opt out of the market – a corner shop from which you can steal, unless they post a message saying*

<sup>28</sup> <https://www.gov.uk/guidance/protecting-your-copyright-abroad>

<sup>29</sup> <https://www.musicbusinessworldwide.com/now-record-companies-in-india-want-to-sue-chatgpt-maker-openai/> Accessed 18<sup>th</sup> February 2025

<sup>30</sup> Ian Dunt. *How Westminster Works...and why It Doesn't*. Weidenfeld and Nicholson. Published 2023 p3306-307

you must not. There is no dictate from government that suggests that software licences, travel tickets or drugs must be given away for free unless you withdraw them from the marketplace.”<sup>31</sup>

The notion that copyright holders can opt out so their works cannot be used is fanciful, as there is no explanation, plan or even an outline as to how this would work in practise. The landing page of the PRS website shows 147,000 members with 47 million works – this gives an idea of the scale of the problem<sup>32</sup>

The Office of National Statistics in its Annual Population Survey September 2023 to October 2024 gives the numbers of people of whom most will have copyright works. Table 1 below is just scratching the surface as the majority will have a number of copyrights to their name.<sup>33</sup>

Occupation	Number
Web design professionals	31,500
Graphic and multimedia designers	127,300
Architects	50,000
Newspaper and periodical editors	23,600
Public relations professionals	73,800
Newspaper and periodical journalists and reporters	58,500
Artists	48,800
Authors, writers and translators	92,500
Actors, entertainers and presenters	52,900
Dancers and choreographers	9,100
Musicians	45,300
Arts officers, producers and directors	117,000
Photographers, audio-visual and broadcasting equipment operators	83,300
Interior designers	41,400
Clothing, fashion and accessories designers	17,700
<b>Total</b>	<b>872,700</b>

**Table 1**

### 3.2 Access

“AI developers should be able to access and use large volumes of online content to train their models easily, lawfully and without infringing copyright”. There is an omission in this statement of “or paying for it” after “without infringing copyright”. This leads to the assumption that AI companies want access to online content at no cost.

In Artificial Intelligence Sector Study - Research report for the Department for Science, Innovation and Technology (DSIT) there are sections on estimated revenue, estimated employment and estimated Gross Value Added (GVA is the value of an industry's outputs minus the value of intermediate inputs used in production). The report mentions GVA:

*“As such, GVA among AI SMEs is driven more by remuneration of highly skilled people than by profits. In fact, among dedicated AI companies, in many cases operational losses outweigh employee remuneration, leading to negative GVA values and emphasising the significant role that private investment plays in the development of the sector. GVA-to-turnover ratios among SMEs are understandably much lower (0.2:1 for medium sized companies and negative for small and micro businesses), but are reflective of the capital intensive, high R&D nature of deep technology development”.*<sup>34</sup>

Wittingly or unwittingly, there is a coyness in not mentioning the costs of production such as paying for online content – remuneration for use of copyright.

The large AI companies are on the record as not being interested in paying for copyrighted materials to use as training data. Set out below in table 2 giving three of the largest companies their reasons

<sup>31</sup> <https://www.thebookseller.com/comment/a-crossroads-for-copyright> Accessed 16th February 2025

<sup>32</sup> <https://www.prsformusic.com/> Accessed 16th February 2025

<sup>33</sup> <https://www.nomisweb.co.uk/datasets/aps218/reports/employment-by-occupation?compare=K02000001> Accessed 16th February 2025

<sup>34</sup> [In Artificial Intelligence Sector Study - Research report for the Department for Science, Innovation and Technology](#). Published March 2023 p30

for not paying copyright and their gross profit for the year ending 31<sup>st</sup> December 2024. These companies avoid paying appropriate fees and are thriving on the backs of copyright holders.

Company	Reason for not paying copyright <sup>35</sup>	Gross Profit <sup>36</sup>
Meta	Copyright holders wouldn't get much money anyway.	Meta Platforms gross profit for the twelve months ending December 31, 2024 was \$134.340 billion
Microsoft	Changing copyright law could hurt small AI developers	Microsoft gross profit for the quarter ending December 31, 2024 was \$47.833 billion
Apple	Let us copyright our AI-made code	Apple gross profit for the quarter ending December 31, 2024 was \$58.275 billion

**Table 2**

The Tech companies can afford to pay for copyright with a combined expenditure in 2024 of \$246 billion as John Naughton pointed out in the Observer on 16<sup>th</sup> February:

*“Listening last week to the spending plans of the techlords who run Microsoft, Alphabet, Amazon and Meta leads one to wonder if something analogous might have happened to them on their graduation nights. Except that in their cases, the magic word would have been “AI”.*

*How else could one explain why four companies that reported combined capital expenditure of \$246bn in 2024 – up from \$151bn in 2023 – now propose to spend more than \$320bn this year on AI, a technology for which no business model currently exists that could conceivably provide a reasonable rate of return on such an investment?*

*.....But the most persuasive explanation for the collective madness is the most mundane. It is that tech companies are so obscenely profitable that if they don't do something risky and exciting with their Everests of spare cash they might – shock, horror! – have to give most of it back to their shareholders”<sup>37</sup>*

### 3.3 Transparency

It should be a matter of urgency that AI companies are required to be totally transparent. A “Watchdog” organisation is required – the Office for Artificial Intelligence (OAI) and one of its roles should be to enforce transparency along the lines of the European Union's, Artificial Intelligence Act published on 12 July 2024. One of the OAI's responsibilities would be to

*“draw up and make publicly available a sufficiently detailed summary about the content used for training of the GPAI model, according to a template provided by the AI Office”.*

#### Question 2. Which option do you prefer and why?

##### Option 0: Do nothing: Copyright and related laws remain as they are.

As it stands this is not an option and clearly the instigators of this consultation clearly want an opt out clause which is unacceptable. It is framed as a foregone conclusion that option one won't work no effort has been found to find a solution.

The solution is modernising the archaic copyright laws and making them fit for the digital age.

*“The 1988 Copyright, Designs and Patents Act was already outdated when it was introduced. It was built for a pre-digital age, failing to anticipate the internet, social media, and now AI. The Act is based on a model of ownership and enforcement that assumes a world where copying is rare - not instant and infinite.*

*..... The Solution: Strengthening Copyright, Not Abandoning It. Rather than gutting copyright, the UK should modernise it. A clear, enforceable framework should be in place to ensure AI companies cannot exploit creative work without permission. Creators should have transparency and*

<sup>35</sup> Wes Davis. [The Verge](https://www.theverge.com/2023/11/4/copyright-ai) 4<sup>th</sup> November 2023

<sup>36</sup> <https://www.macrotrends.net/> Accessed 15<sup>th</sup> February 2025

<sup>37</sup> <https://www.theguardian.com/technology/2025/feb/15/if-the-ai-roundheads-go-to-war-with-tech-royalty-dont-bet-against-them> Accessed 16<sup>th</sup> February 2025

*accountability mechanisms in place so they know when their work is used and can seek fair compensation.”<sup>38</sup>*

AI should pay for the use of copyright materials. They should be transparency in the use of copyright materials and AI companies should remunerate rights holders. AI companies as mentioned in above in table 2 are investing eye watering sums of money in development and they should cost in use of copyright materials.

**Question 3. Do you support the introduction of an exception along the lines outlined above?**

An emphatic no. I have stated my reasons in my answer to question 1. Please see 3.1.2 above

**Question 4. If so, what aspects do you consider to be the most important? If not, what other approach do you propose and how would that achieve the intended balance of objectives?**

I have an overwhelming sense when responding to this consultation that as Baroness Kidman has noted:

*“A consultation on changes to UK copyright law is “fixed” in favour of artificial intelligence companies and will lead to a “wholesale” transfer of wealth from the creative industries to the tech sector, according to a crossbench peer campaigning against the mooted overhauls.*

*Beeban Kidron said the government was undermining its own growth agenda with proposals to let AI companies train their algorithms on creative works under a new copyright exemption.”<sup>39</sup>*

The crucial aspects are remuneration of rights holders and transparency provided by the AI companies

**Question 5. What influence, positive or negative, would the introduction of an exception along these lines have on you or your organisation? Please provide quantitative information where possible.**

The key point in this question is:

*It would apply only where the right holder has not reserved their rights in relation to the work. If a right holder has reserved their rights through an agreed mechanism, a licence would be required for data mining.*

It is as simple as night follows day. AI companies in their business plans should cost in use of copyright materials. The onus should not be on rights holders to opt in or out.

**Question 6. What action should a developer take when a reservation has been applied to a copy of a work?**

**Question 7. What should be the legal consequences if a reservation is ignored?**

**Question 8. Do you agree that rights should be reserved in machine-readable formats? Where possible, please indicate what you anticipate the cost of introducing and/or complying with a rights reservation in machine-readable format would be.**

All these questions assume that the reservation of rights is a done deal. If AI companies want copyright material and in a format that they require then they should pay for it.

**Question 9. Is there a need for greater standardisation of rights reservation protocols?**

**Question 10. How can compliance with standards be encouraged?**

**Question 11. Should the government have a role in ensuring this and, if so, what should that be?**

All these questions would be dealt with in a modernised and reformed copyright act. The government with rights holders and AI companies should hammer out a standard indexing system. For example:

<sup>38</sup> David Salariya. <https://www.thebookseller.com/comment/a-crossroads-for-copyright> Accessed 17th February 2025

<sup>39</sup> <https://www.theguardian.com/technology/2025/feb/11/uk-copyright-law-consultation-fixed-favour-ai-firms-peer-says> Accessed 16th February 2025

*“International Standard Recording Codes (ISRCs) are an internationally recognised system to identify recorded music tracks and music videos. Each ISRC code identifies a specific unique recording and can be permanently encoded into a product as a kind of digital fingerprint”.*<sup>40</sup>

If DeepMind can work with the NHS and Moorfields Eye Hospital in east London to build a machine learning system which will eventually be able to recognise sight-threatening conditions from just a digital scan of the eye the surely AI companies can solve this problem.<sup>41</sup>

This whole consultations seems to be full of problems that could be solved by AI

**Question 12. Does current practice relating to the licensing of copyright works for AI training meet the needs of creators and performers?**

No

**Question 13. Where possible, please indicate the revenue/cost that you or your organisation receives/pays per year for this licensing under current practice.**

Not applicable

**Question 14. Should measures be introduced to support good licensing practice?**

There appears to be a problem with licensing practise hence the question. Please see the answer to question 2 – copyright reform.

**Question 15. Should the government have a role in encouraging collective licensing and/or data aggregation services? If so, what role should it play?**

Please see the answer to question 2

**Question 16. Are you aware of any individuals or bodies with specific licensing needs that should be taken into account?**

I am sure there will be organisations that have specific licensing needs

**Question 17. Do you agree that AI developers should disclose the sources of their training material?**

Yes

**Question 18. If so, what level of granularity is sufficient and necessary for AI firms when providing transparency over the inputs to generative models?**

Full disclosure. Please see the answer to question 11

**Question 19. What transparency should be required in relation to web crawlers?**

Full transparency

**Question 20. What is a proportionate approach to ensuring appropriate transparency?**

There is no proportionate approach. Full transparency is required

**Question 21. Where possible, please indicate what you anticipate the costs of introducing transparency measures on AI developers would be.**

AI developers should have these costs readily to hand as in their business planning these costs would be itemised and accounted for.

**Question 22. How can compliance with transparency requirements be encouraged, and does this require regulatory underpinning?**

Yes. I refer you to the answer to question 2 – a copyright act that is fit for the digital age.

**Question 23. What are your views on the EU's approach to transparency?**

<sup>40</sup> <https://help.prsformusic.com/s/article/what-is-an-ISRC-code> Accessed 17th February 2025

<sup>41</sup> <https://www.theguardian.com/technology/2016/jul/05/google-deepmind-nhs-machine-learning-blindness> Accessed 17th February 2025

Not strong enough. AI companies know exactly what they are scraping or appropriating without permission and should publish accordingly. If AI companies can develop digital scanning of the eye they can develop a system that is completely transparent

**Question 24. What steps can the government take to encourage AI developers to train their models in the UK and in accordance with UK law to ensure that the rights of right holders are respected?**

A reformed copyright act with teeth that ensures that their models take into account and declare the rights they have exploited.

**Question 25. To what extent does the copyright status of AI models trained outside the UK require clarification to ensure fairness for AI developers and right holders?**

Full disclosure

**Question 26. Does the temporary copies exception require clarification in relation to AI training?**

There should be no exceptions

**Question 27. If so, how could this be done in a way that does not undermine the intended purpose of this exception?**

In the digital age there should be no exceptions

**Question 28. Does the existing data mining exception for non-commercial research remain fit for purpose?**

No – a new copyright act is required

**Question 29. Should copyright rules relating to AI consider factors such as the purpose of an AI model, or the size of an AI firm?**

No – copyright rules are there to protect the rights holder

**Question 30. Are you in favour of maintaining current protection for computer-generated works? If yes, please explain whether and how you currently rely on this provision.**

There should be no protection for computer generated works

**Question 31. Do you have views on how the provision should be interpreted?**

No as there should not be a provision for computer generated works

**Question 32. Would computer-generated works legislation benefit from greater legal clarity, for example to clarify the originality requirement? If so, how should it be clarified?**

There should be no provision for computer generated works. These works will have been arrived at by “scraping” the efforts of creative people. So, there should be no copyright protection especially for tunes generated by AI and used in playlists where they somehow get royalties.

**Question 33. Should other changes be made to the scope of computer-generated protection?**

There should be no provision for computer generated works

**Question 34. Would reforming the computer-generated works provision have an impact on you or your organisation? If so, how? Please provide quantitative information where possible.**

Yes. Please see my answer to question 32

**Question 35. Are you in favour of removing copyright protection for computer-generated works without a human author?**

Yes

**Question 36. What would be the economic impact of doing this? Please provide quantitative information where possible.**

The economic impact would affect the AI companies

**Question 37. Would the removal of the current CGW provision affect you or your organisation? Please provide quantitative information where possible.**

As a sole trader working in a niche market – but that is not the point – There should be no provision for computer generated works. These works will have been arrived at by “scraping” the efforts of creative people. So, there should be no copyright protection especially for tunes generated by AI and used in playlists where they somehow get royalties.

**Question 38. Does the current approach to liability in AI-generated outputs allow effective enforcement of copyright?**

**Question 39. What steps should AI providers take to avoid copyright infringing outputs?**

In answer to Question 38 and 39 what is required is a copyright act that is fit for the 21<sup>st</sup> century and will have ironed all this stuff out,

**Question 40. Do you agree that generative AI outputs should be labelled as AI generated? If so, what is a proportionate approach, and is regulation required?**

Yes and regulation is required

**Question 41. How can government support development of emerging tools and standards, reflecting the technical challenges associated with labelling tools?**

A new copyright act to take all this into account and ensure that it is constantly updated.

**Question 42. What are your views on the EU’s approach to AI output labelling?**

Not strong enough

**Question 43. To what extent would the approach(es) outlined in the first part of this consultation, in relation to transparency and text and data mining, provide individuals with sufficient control over the use of their image and voice in AI outputs?**

See all my answers above

**Question 44. Could you share your experience or evidence of AI and digital replicas to date?**

Not applicable as so far no one so far has seen fit replicate me. A grateful nation gives thanks

**Question 45. Is the legal framework that applies to AI products that interact with copyright works at the point of inference clear? If it is not, what could the government do to make it clearer?**

**Question 46. What are the implications of the use of synthetic data to train AI models and how could this develop over time, and how should the government respond?**

**Question 47. What other developments are driving emerging questions for the UK’s copyright framework, and how should the government respond to them?**

The answers to questions 45, 46 and 47 is a new copyright and patents Act fit for the digital age and beyond. Failure to provide one will ensure that everyone is mired in endless legal wrangles

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