AI and Copyright Consultation 2024

About The British Copyright Council

The British Copyright Council (BCC) represents those who create, perform, hold interests, or manage rights in literary, dramatic, musical, and artistic works. The following response has been developed with our membership which includes professional associations, industry bodies and trade unions which collectively represent the voices of over 500,000 creators and performers, spanning the creative industries.

These rightsholders include many individual freelancers, sole traders and SMEs, as well as larger corporations within the creative and cultural industries. Our members also include trade associations and collecting societies which represent rightsholders, and which provide licensed access to works of creativity.

We are grateful for the opportunity to provide a response to the Government's AI and Copyright Consultation 2024.

Executive Summary: Copyright and Artificial Intelligence

Overview

- The Government's preferred policy approach (Option 3) would be ineffective, unworkable and damaging to the UK creative industries sector. We do not agree that this approach will meet the Government's policy objectives of control, access and transparency.

- We strongly encourage the Government to introduce granular and enforceable transparency measures. This will enable the enforcement of copyright and unlock licensing opportunities which are the appropriate mechanism for the development of the market in a legal, ethical and sustainable manner.

- The Government has repeatedly said that promoting licensing is the ambition of this policy but introducing this TDM exception with rights reservation which, in effect, equates to free access to UK copyright works, will not do this.

- The opt-out provisions introduced by Article 4(3) of the Copyright Directive (Directive (EU) 2019/790), which form the basis of the UK Government's preferred approach, create unnecessary ambiguity and complexity for both rightsholders and AI providers.

- We encourage the Government to look at other international examples including non-circumvention provisions and granularity of the transparency provisions, as well as retrospective application. California provides a useful example of these.

- We strongly reject the Government's assertion that there is ambiguity in the current copyright regime.

- The existing strong UK copyright framework (Copyright, Designs and Patents Act 1988 (as amended)) (CDPA) provides the incentive for creators, performers, other rightsholders and third parties to invest in the high-quality creative works that can support the development and application of better-quality AI models. The UK's competitive strength deriving from our existing copyright regime can underpin world-leading innovation in AI.

- Changes to the copyright and related rights regime risk a reduction in the quality and quantity of creative innovation and, over time, will diminish the value of creative work, potentially impacting the UK economy, trade and soft power. The Government should defend, uphold and enforce copyright to protect our creative industries, creators and performers.

- Our view is that, given the globally valuable nature of the UK's creative industries, in large part because of the value of English language copyright protected works for the development of Large Language Models (LLMs), the UK is best placed to develop a world class framework which delivers an easy-to-use system for recognition of the rights of individual creators, and transparency regulation which allows for effective permissions-based systems promoting licensing.

- It would be remiss, in the urgency to find a solution, for the UK not to take this opportunity to develop a framework which secures a fair playing field for growth by creating an easy to use but bespoke solution supporting both rightsholders and AI developers.

It is therefore critical that the Government:

- **Commits to respecting creators' and rightsholders'** choice by ruling out any new copyright exceptions or extensions to existing ones and promotes the licensing framework.

- **Upholds and supports our successful copyright regime** through transparency provisions. This, in turn, should enable stronger enforcement and penalties for those who fail to comply with transparency requirements.

- **Ensures that meaningful information (Transparency Measures)** on what, where, when, how and why data is used for AI development is accessible for rightsholders to help define licensing structures.

Our approach: Enforcing copyright law and implementing transparency measures

The approach we would suggest maintaining the current world-class strong copyright law framework in addition to the implementation of clear transparency measures which meet the requirements of rightsholders and creators, in conjunction with the implementation of a reinvigorated enforcement process in the UK (including the use of technical protection measures) to encourage more licensing of copyright work by AI developers.

We are supportive of the approach outlined in the Kidron amendments 135-137 currently inserted into the Data (Use and Access) Bill (Annex 2).

Requirements include:

Transparency measures will be an essential mechanism for AI developers to demonstrate compliance with copyright law. They will support licensing and remuneration structures for creative works along the value chain and, where necessary, enable rightsholders and individual creators to enforce their rights. Appropriate transparency regulation must be meaningful to ensure:

- Permission is sought by AI developers for use of copyright-protected work prior to its use. This should include AI developers stating the legal basis upon which the work may be copied.
- Meaningful transparency requirements are delivered to rightsholders - to include:

Record Keeping: Requiring those using creative and performed works as part of the AI training process to maintain technically detailed records of works scraped and used in pre-training, training and fine-tuning, including each time they are used. This should include:

- identification of works that will be, or have already been, used to train LLMs, in order to demonstrate compliance with UK law.
- detailed metadata about the sources of training data including the accommodation of applied technological protection measures or rights management information.
- how and when copyright works are accessed. This must be maintained throughout the value chain so that it is clear each time the creative work and its data are used (for example at the point of ingestion and subsequent use in generating AI- generated outputs or new datasets).
- information on the method of data collection applied by the AI developer because different models (e.g. repertoire-based or general web scraping)

require different licences. Licensing also requires transparent information for the actual uses of the AI-generated output.

Labelling: requirements for the labelling or watermarking of works developed linked to AI generative systems to ensure they are identifiable, supporting links to the human sources of all works used within the value chain.

Jurisdiction

AI services developed using copyright works which are made available on the UK market should be required to comply with UK copyright law and proposed transparency obligations, irrespective of where the AI service originates, or data was secured for its development. This will ensure a level playing field for AI firms operating in the UK and uphold vital protections for UK creators and consumers. This condition of market access would mirror that included in the EU AI Act.

How copyright works in practice

- The law recognises copyright. It is given automatically to human creators of original literary, musical, dramatic, artistic and other creative works and productions to enable rightsholders to control the use by others and, therefore, exploitation including activities such as posting on the web.

- These works include books, articles, reports, poetry, plays, literary translations, music, lyrics, paintings, photographs, illustrations, sculptures, games, web pages, videos and computer programs. Creators of films, sound recording producers and broadcasters are entitled to copyright in their productions and performers have similar rights in their performances. A person, a group of people, or a company can own copyright.

- The strong UK copyright framework, the CDPA, provides the incentive for creators, performers, other rightsholders and third parties to invest in high-quality creative works that can support the development and application of better-quality AI models. It is the strength of the UK copyright framework as underpinned by UK and international law which has ensured and continues to ensure the creative industries contribute enormously to the UK economy, trade and exports and our soft power overseas (See Annex 1).

    - The creative industries contributed around £124 billion to the economy in 2023 (in terms of gross value added). This was around 5% of total UK economic output[1].

[1] DCMS Sectors Economic Estimates - GOV.UK

- There were around 2.4 million jobs in the creative industries in the year from July 2023 to June 2024, around 7% of all UK jobs.
- Goods and services exports for the creative industries were worth £54.7 billion in 2021, equal to 7.7% of UK exports [2].
- It is the UK's strong copyright and enforcement regime which ensures the economic success of the creative industries to the UK export market.

Together, copyright law and the current licensing framework, permit the non-commercial use of copyright works and databases by AI. They provide researchers with access to these materials under specified conditions.

- Rightsholders are well versed in accommodating uses for accepted non-commercial purposes by research originations whether though Open Access or other Technological Protection Measures (TPM). If copyright materials are used to train Generative AI (GAI), it is in our view only reasonable that rightsholders are provided with transparency over what materials are being used and why, how and when. Rightsholders should then be fairly remunerated for the use of the material. In many cases the licensing framework is the most effective way to achieve this.
- Other legal aspects to be considered are: (i) the Séjourné report on "Intellectual property rights for the development of artificial intelligence technologies" (2020/2015 (INI)), which was approved in the JURI Committee in the European Parliament on 28th Sept 2020; and (ii) to the extent not covered by other parts of the IPO consultation, the privacy implications of the biometric data of individuals depicted in photos and other copyright works being used by AI systems.

The problem

AI developers overwhelmingly based in the US are routinely using personal data and copyright protected works of UK creators and performers without express permission prior to use and are not being fair or transparent about this. This risks devaluing the rights of rightsholders and individual creators and conflicts with existing UK copyright and data protection law.

As the House of Lords Communications and Digital Committee in their inquiry on Large Language Models and AI concluded last year:

> *"We do not believe it is fair for tech firms to use rightsholder data for commercial purposes without permission or compensation, and to gain vast financial rewards in the process. There is compelling evidence that the UK benefits economically, politically and societally from upholding a globally respected copyright regime... the*

[2] Creative Industries - House of Commons Library

principles remain clear. The point of copyright is to reward creators for their efforts, prevent others from using works without permission, and incentivise innovation"[3].

The Government is aware of the threats to the creative industries from piracy and illegal use. The BCC believes that unauthorised use for TDM falls into this category.

Our members already work with AI developers who do seek permissions and licences in advance. Those companies that are challenging UK law and ignoring licensing requirements are doing so knowingly. The fact that reputable developers are obtaining permissions and licences prior to use is evidence that practical solutions can be found to identify rightsholders of creative works made available on the internet.

The UK's existing strong copyright framework provides the necessary framework for the reservation of rights. The decision of AI providers to ignore these legal protections for their own commercial gain is not a rationale for the introduction of Option 3. In our view, the Government should not be advocating for this at the expense of rightsholders and individual UK creators' livelihoods.

The successful operation of the current market

The market in its present form has the potential to work well and we have seen no evidence that growth in AI is being hampered by current licensing requirements.

- For example, none of our members have reported refusing licences for the existing TDM in principle to our knowledge.
- There are a range of business models for the existing TDM. In some cases, TDM permissions are integrated into licences, sometimes with a slight increase in price, sometimes for free. Some for example only add TDM permissions at the request of customers, and some offer them separately.
- We have not seen any evidence from our members supporting the claim that licensing for commercial TDM deters SME innovation. For example, some publishers are already taking active steps to ensure material is accessible to as many customers as possible, including smaller firms.

[3] Large language models and generative AI: House of Lords Communications and Digital Committee report - House of Lords Library

Consultation Questions

The Government's proposed approach	
Question 1. Do you agree that option 3 is most likely to meet the objectives set out above?	No. The Government has highlighted its three objectives in relation to AI and copyright policy being control, access and transparency. Option 3, the Government's preferred option, fails on all three of these objectives. In addition, the opt-out provisions introduced by Article 4(3) of the Copyright Directive (Directive (EU) 2019/790), which form the basis of the UK Government's preferred approach, create unnecessary ambiguity and complexity for both rightsholders and AI developers. Therefore, we do not support adoption of this approach under UK law as suggested in this consultation. 1. **Supporting rightsholders' control of their content and ability to be renumerated for its use** The TDM exception with rights reservation as proposed in this policy option would be wholly unworkable and ineffective. • Under existing opt-out schemes such as in the EU , it is impossible for rightsholders to successfully opt their works out of training at a level relevant to protection of the rights of individual rightsholders. • Location-based and unit-based opt-outs are inadequate, and there are no alternative solutions currently available. The burden of opting out on rightsholders is unfair and biased towards AI developers as inevitably opt-out schemes lead to many works being used in Generative AI (GAI) training when the rightsholders of these works don't want them to be used. This can be because rightsholders: • don't realise they have to opt-out • because the administrative burden of opting works out is far too great because creators and rightsholders might not have been able to opt-out as their content is hosted on sites they do not control

- because the changing landscape of web scrapers means creators and rightsholders fail to opt- out successfully
- because the binary choice and lack of information leads to delay and indecision.

2. **Supporting the development of world-leading AI models in the UK**

There is no evidence that changing copyright law and introducing a new TDM exception with rights reservation will result in the development of models in the UK nor the boom in economic growth that the AI Opportunities Plan[4] alludes to.

Largely US based AI developers have already trained GAI on UK copyright materials without permission. Evidently, other factors are much more important for the development of world-leading AI models in the UK, for example costs of energy, a skilled work force, capital investment[5]. There is no evidence that copyright is a barrier to AI development in the UK.

3. **Promoting greater trust and transparency**

As highlighted above, opt-outs are either inappropriate or unfeasible for individual creators. Therefore, the Government's preferred policy option will not promote trust and transparency. It risks devaluing the UK creative industries and jeopardising jobs and livelihoods.

We wholeheartedly support Ed Newton-Rex's view that "The only way to effectively ensure that rights holders' works are not used for GAI training against their wishes, in a way that is fair to both rights holders and AI companies, is for training to be based on opt-in consent"[6].

[4] AI Opportunities Action Plan - GOV.UK
[5] Scaling up - AI and creative tech - Committees - UK Parliament
[6] The UK's AI & copyright proposals would irreparably harm the country's creators.

	Access to copyright protected works is already achieved through licensing. Our members disagree with the basic premise of introducing a new TDM exception and a rights reservation model as a means of facilitating access to copyright material. **Economic Growth** The Government has, through its support for the AI Opportunities Plan and as part of this consultation process, promoted a view that allowing AI developers to train GAI on copyright protected works through a new TDM exception will see economic growth for the country.[7] The Government has not demonstrated how the theft of human created works and the subsequent loss of jobs and livelihoods will be a source of economic growth for the UK. Nor has the Government been able to outline the purpose of AI developers having unlimited free access to UK creative copyright content beyond the scope of the existing UK TDM exception. AI developers have already scraped content from UK creators over the last 5 + years and there has been no 'boom' to the UK public purse from this. We challenge the Government to be clear on the purpose of allowing AI developers to take further human-created creative content when there is no evidence of AI-generated creative works having benefited the UK economically. Option 3 as proposed in this consultation will result in inevitable economic harm, both in the immediate term, due to forgone licensing revenues, and over a longer period in the form of reduced investment. No evidence has been provided of the overall economic impact of proposing economic benefits to one group of copyright users by lowering UK standards of protection for copyright generally.

[7] AI Opportunities Action Plan - GOV.UK

	The Government should not go for Option 3, if it does consider it further the Government must provide a full and detailed Impact Assessment on this proposed approach and how changing copyright law to allow a TDM exception will bring about economic growth as per the Government's wider objective. In addition, the Government's proposed approach sanctions the retrospective tactics and actions of AI developers to steal UK content.
Question 2. Which option do you prefer and why?	The BCC does not support any of the policy options as proposed in this consultation. • Option 1 is the closest to our proposed solution as it allows rightsholders to keep control of their work and for AI developers to access data legally and sustainably. • We are disappointed that the Government hasn't proposed the implementation of transparency requirements on AI developers and the enforcement of these as a policy option to be considered in this consultation. The Government is wrong to link the introduction of transparency requirements with the introduction of a TDM exception with rights reservation in Option 3. The Government should urgently introduce transparency requirements irrespective of the approach to TDM and the timetable for that approach. • We disagree with the assumptions set out in paragraphs 60-62 that Option 1 would make the UK less competitive than jurisdictions such as the EU and US. • In the EU, TDM provisions have not led to an increase in licensing nor a significant boost to the AI market. Any suggestion that it would is not based on fact. • It would be irrational for the Government to proceed to make such a fundamental change to copyright law in the absence of any evidence base for the proposition that the current laws are a barrier to development.

	• As a matter of proper due process, and to enable the views of the creative industries to be fairly taken into account, the government should have first established what the alleged evidence was and then invited industry to comment. As a result of its failure to do so, the process is fundamentally flawed. In considering the other policy options as proposed in the consultation: **Option 0:** We do not support Option 0. Implementing transparency measures as outlined in this consultation response and enforcing these alongside the existing copyright regime would be our preferred approach. **Options 2 and 3:** We do not support either option 2 or 3 for the reasons outlined above and further detailed below: Opt-outs are unworkable. For example: 1. Opt-out mechanisms cannot cover all the copies (for example images shared over the internet) of copyright protected works. The cost of implementing opt-out for all these works will largely outweigh the benefit or the value of the original work, both for the rightsholder and for the AI developer. 2. Opt-out mechanisms need to be updated continuously and are never fit for purpose. Many proposed solutions are not fit for images. Robots.txt, for example, lacks granularity as it is only applied at a domain level and not at a work level. 3. Standardisation of opt-out mechanisms for the UK as proposed by the UK Government may never prove workable. 4. Five years after implementation of the EU Copyright in DSM Directive, concerns remain that there is no mechanism in place that allows creators and rightsholders to reserve their rights, as provided by Article 4.3. of the Directive, in an effective manner.

	5. Opt-out mechanisms depend on the willingness of AI developers to use them. Present negotiations around the GPAI Code of Practice of the EU AI Act show that AI providers are unwilling to provide the level of transparency necessary to establish whether and how works have been used in training[8]. 6. The exception outlined in Option 3 (and also Option 2) contravenes the internationally binding Berne Convention Three-Step-Test. This test is mandatory for the UK primarily as a member of the World Trade Organisation, but also as signatory to international copyright treaties. Furthermore, the Three-Step-Test is a key element of many of our successfully concluded free trade agreements, not least the Comprehensive and Progressive Transpacific Partnership. This Three-Step Test limits exceptions cumulatively to (1) certain special cases (2) which do not conflict with a normal exploitation of the work; and (3) which do not unreasonably prejudice the legitimate interests of the rightsholder. (1) The exception in Option 3 is very broad, by definition it covers large volumes of web-based material and thus does not concern a specific case. A good example for such special cases concerns the production of accessible format copies for visually impaired people, specific use for specific beneficiaries for a societally valuable reason. The rights reservation does not change this step: (2) It does conflict with a normal exploitation of the work; authors and rights holders generally license the copying of their creative works; the scope of Option 3 competes with actual or potential sources of income from normal economic exploitation and thereby would deprive them of significant or tangible commercial gains.

[8] https://techcrunch.com/2025/01/01/openai-failed-to-deliver-the-opt-out-tool-it-promised-by-2025/

	(3) It does unreasonably prejudice the legitimate interests of the rightsholder. The loss of actual or potential income from licensing is, by definition, unreasonable. Furthermore, it is unreasonable for creators to accept a use of their creative works for any purpose without being identified as the author or being able to reject derogatory treatment (infringing creators' moral rights). Options 3 and 2 infringes every one of the accumulated clear applicable steps as defined for instance by the WTO Dispute panel (case WT/DS160/R).
Question 3. Do you support the introduction of an exception along the lines outlined above?	No. We have outlined above some of the reasons why opt-outs don't work. In addition, we have outlined below some of the risks associated with the Government's preferred policy approach. **Economic harm:** A direct and quantifiable contribution to the UK economy would be lost if the TDM exception with rights reservation as proposed by the Government is introduced. • The anticipated economic benefits of the proposed exception are unquantified and speculative, particularly given the lack of provided evidence that the current licensing regime is deterring UK AI innovation in any way. • To the contrary, the Global AI index 2024[9] referenced in the consultation ranks the UK at 4th place, the only problem being infrastructure. • The burden of proof should be on the handful of people and organisations who benefit from the proposed exception. • Licensing for AI is a rapidly growing and evolving market with significant potential for future growth. In 2021[10], in the face of the government's proposed exception for text and data mining, the PA undertook a survey of its members to understand what this relatively new and growing industry was worth.

[9] https://www.tortoisemedia.com/intelligence/global-ai#rankings
[10] Publishers Association briefing on text and data mining (TDM) 2022, 22-8-Briefing-note-for-IPO-on-TDM.pdf

	• At the time, commercial TDM licensing was already worth an estimated £335 million to UK publishers directly. Although we do not have accurate modelling here (this is made more difficult given the confidentiality restrictions that surround most deals), it would be reasonable to say that the market is greater than £1bn and growing. The proposed Option 3 puts this at risk. **Social and cultural harm:** A negative impact on the social value of UK creative industries: • The UK's creative industries contribute £124billion to the UK economy. They are a global success story and fly the flag for British culture at home and abroad[11]. • According to the Creative Industries Policy and Evidence Centre, the creative industries accounted for 67% of the UK's digital exports in 2021[12] • They are the foundation for soft power and influence around the world, with value far beyond economic benefits. From Harry Potter to Doctor Who, our worldclass creativity and innovations are many people's first encounter with the UK, driving cultural exchange and trade. The Government has recognised the importance of the creative industries' soft power ability to punch above its weight in trade deals. Most recently this has been demonstrated through the creation of the UK's Soft Power Council[13]. • At home, the creative industries bring opportunities for cultural expression, education, wellbeing and economic growth to all four corners of the UK, supporting the rich diversity of identities for people and places.

[11] DCMS Sectors Economic Estimates - GOV.UK
[12] International-Trade-and-the-UK-Creative-Industries-Creative-PEC-Policy-Brief-July-2024.pdf
[13] UK Soft Power Council: membership and terms of reference - GOV.UK

	• A globally recognised copyright and IP regime has long underpinned the success of the UK's creative sector. The broad coalition of voices that have spoken out against the Government's proposal – from news publishing to music, from magazines to photos – underlines how it would harm this world-leading sector and deter future creativity and growth.
	• The Government's approach puts UK creativity and human expression at risk. The idea of UK creators having their entire output copied then badly mimicked by AI algorithms, which then compete with them for their livelihoods, is a deeply dystopian one in our view. The Government should not be supportive of this.
	
	Legal Risks: The risk of breaching international obligations:
	
	• We do not believe that the proposed exception is compatible with the UK's obligations under the Berne Convention and other international treaties.
	• The Three-Step Test, which first appeared in the Berne Convention, is an international copyright instrument which sets out basic copyright principles that signatory countries, including the UK, agree to abide by. It was also adopted in subsequent international instruments such as the WIPO Copyright Treaty and the TRIPS Agreement, to which the UK is also a signatory, and features in the EU InfoSoc Directive whose provisions remains part of UK law following Brexit.
	• The Three-Step Test requires copyright exceptions to meet the following three criteria:
	  ○ certain special cases; and
	  ○ which do not conflict with a normal exploitation of the work; and
	  ○ which do not unreasonably prejudice the legitimate interests of the rightsholder.
	• The steps are independent, cumulative and each must be satisfied for the exception to pass the test. We believe the proposed exception will fail the three-step test.

	• Special cases' mean that the exception must have a narrow scope. The proposed exception would allow TDM for any purpose, including commercial, beyond just GAI. • It is also unclear how access could possibly be limited to either UK firms or only for AI purposes, suggesting the exception would allow any entity anywhere to conduct TDM for any commercial purpose. • A conflict will exist if the uses covered by the exception compete economically with the ways in which rightsholders normally extract economic value from their copyright and databases and thereby deprives them of significant or tangible economic gain. • This extends to potential effects i.e. not only the prevailing commercial and technological conditions in the market but also those which may arise in the near future. • In other words, it is necessary to consider not only those forms of exploitation that currently generate significant and tangible revenue for right holders, but also those which could in the future acquire considerable economic or practical importance. • Legitimate interests include, though are not confined to, the economic interests of the rightsholders. While a certain amount of prejudice to these interests may not be considered unreasonable, the health, size, and growth potential of this market means this proposal would represent an unreasonable loss of current and future income to rightsholders. **Judicial Review** BCC and our members believe the introduction of an exception of the type proposed would give rise to grounds for judicial review, similar to the situation which arose out of the 2014 exception relating to private copying.

	The challenged private copying exception was quashed in 2015 given the lack of evidence justifying the introduction of such a broad unspecified exception[14]. This is a comparable situation. In this context we also refer to the concerns of some of our members about predetermination; whilst the above cited case permitted a preferred option, the Government seemingly already approved Option 3 in the AI Opportunities Plan published 13 January 2025; this exceeds the concept of presenting a preferred option. • Lack of evidence The consultation is not underpinned by an economic impact assessment. While we understand that the IPO wishes to issue the assessment after the consultation, it is our concern that the lack of evidence coupled with the Government's stated preference for a policy approach (as signalled by the Government's response to the recently published AI Opportunities Plan and the recent refusal to sign the EU Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet) points to the Government having made the decision on wanting to introduce a TDM exception without giving its full consideration to the alternatives. • Lack of proportionality It is our strong belief that Option 3 would disproportionately affect creators and rightsholders in the creative industries. Rightsholders would not only be deprived of their property right, but they will be forced to compete with synthetic content generated at a click of a button. This places rightsholders, bearing costs of production of copyright works, at a considerable disadvantage. No case has been made as to why GAI platforms should be given an additional advantage of being able to cannibalise human-created works without compensation under a TDM exception.

[14] https://www.judiciary.uk/wp-content/uploads/2015/06/basca-v-sofs-bis-judgment.pdf

	• Illegality A copyright exception must meet the Three-Step Test for the UK to comply with its international obligations under the copyright treaties. As set out above, AI generated content (graphic works, music, film) will unfairly compete with human created works and thus conflict with the normal use of copyright works and unreasonably prejudice human creators. For example, an advertising agency may choose to create an AI generated advert instead of procuring the same content from a photographer or film-maker. The implementation of the TDM exception may therefore be open to judicial review on the grounds of illegality through the breach of the UK's international obligations. We note that similar arguments were raised in the judicial review relating the private copying exception introduced in 2014.
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?	As outlined above, our recommendation to Government is that it: • **Commits to respecting creators' and rightsholders'** choice by ruling out any new copyright exceptions or extension to existing ones. • **Upholds and supports our successful copyright regime** through a strengthened regulatory framework and, as part of this, introduces stronger enforcement and penalties. • **Ensures that meaningful information (transparency measures)** on what, where, when and how works/data is used for AI development is accessible for rightsholders to enforce their existing rights and help define licensing structures. AI developers should state the legal basis upon which the works are mined. AI services developed using copyright works, which are made available on the UK market, should be required to comply with UK copyright law and transparency obligations, irrespective of where the AI service originates, or the data secured for its training and development.

	This will ensure a level playing field for AI developers operating in the UK and uphold vital protections for UK creators and consumers. To that end, providers of general-purpose AI models should put in place a policy to comply with UK law on copyright and related rights, in particular seeking licenses for commercial text and data mining. Any provider placing a general-purpose AI model on the UK market should be required to comply with this obligation, regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place. **Transparency provisions** Clear regulation on the transparency and auditability of AI tools must encompass: • detailed record-keeping of metadata attached to ingested materials, • publication of detailed information on all data ingested on the AI developer's website or equivalent and • appropriate labelling of AI-generated outputs. Legislation must recognise that these provisions serve the purpose of enabling rightsholders to exercise and enforce their rights. In relation to legislation, it is important to note that different creative industry sectors will have different requirements, but it should set out the specific information required, including but not limited to: • Source and owners of each dataset, including any datasets used to generate synthetic data. • This should include but not be limited to third-party data or datasets, online sources, publicly available online data or datasets, apps, licensors, offline purchases. For data publicly available online, information disclosed must include all relevant URLs and a description of the information gathered from the URL. • Work-level information of all data ingested.

	• Timeframe of data collection. • Specific legal basis on which each data source was ingested and processed. • Percentage/weighting of each data source to overall training/fine-tuning. • Region in which training took place. • Description of the measures taken to ensure compliance with UK copyright law. • List of third-party providers used to acquire data. • Where applicable, the types of automated data collection tools e.g. web crawlers used to acquire data, including by third parties. **Workability** The Government should not proceed with Option 3 but if it does it would be important to ensure that Option 3 is workable for rightsholders. These workability criteria could include: • Enabling an opt-out system which does not place an administrative, technical, financial or practical burden on rightsholders, particularly smaller rightsholders and individuals, who may lack the resources to engage productively with, it resulting in poor understanding and low take-up • Allowing optout in a timeframe which gives rightsholders a meaningful opportunity to consider the pros and cons of opting out, and to do so comprehensively without undue time pressure • Enabling comprehensive opt-out throughout the AI supply chain for example in downstream copies of works. • Enabling opt-out in a way that keeps up with the changing landscape of web crawlers. • Enabling opt-out of gen AI training which does not also amount to opt-out from being findable on the internet • Enabling optout that works with emerging technologies (data is not going to continue to be ingested by web scraping).

	• Enabling opt-out at a stage which is not too late to be effective because AI models have already been trained on the works in question. • Enabling opt-out in a way that does not exonerate past infringement or allow continued benefit from works that have been opted out. • Enabling opt-out in a way that does not amount to a formality to the enjoyment and exercise of copyright in contravention of international law. We would support sandboxing these workability criteria with AI developers to consider technical solutions.
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.	Negative. There is no need for the TDM exception with rights reservation as proposed by the Government. • Our members are clear that the Government's preferred approach will cause irreparable damage to the UK creative industries, individual jobs and livelihoods and will damage the UK economy. • We have outlined a number of concerns above, including the Government policy objectives, and would damage the UK economy and individual creators' livelihoods.
Legal effects of the rights reservation	
Question 6. What action should a developer take when a reservation has been applied to a copy of a work?	The law is clear. Consent must be sought before a copyright protected work is used. Unless there is a legitimate use of an existing exception, this will be done mostly through licensing • If, against the arguments put forward here, the Government decides to introduce an exception with a rights reservation; such reservation needs to be respected by AI developers in a transparent way. • The developer must ensure that it builds systems that automatically respect rights reservation for works along the supply chain. • In order to ensure compliance, the remedies must constitute a real deterrent.

	We do want to challenge the terminology used in this question; reference should not be to a copy of the work, rather to the work in which copyright may subsist itself.
Question 7. What should be the legal consequences if a reservation is ignored?	To ignore a rights reservation will result in an infringement of copyright. The BCC supports calls for greater regulation and enforcement alongside dispute resolution processes that rightsholders could readily use to seek redress for infringement. This should be without prejudice to the ability to take court actions. For example, • Penalties should be sufficient to act as a deterrent to infringement and, where necessary, to act as compensation. • Any infringement of copyright law and/or the Government's proposed approach should be subject to both civil and where necessary criminal penalties based on the same standard in law as Technological Protection Measures. • We would suggest that a suitable compensation package which acts as a true deterrent. Members' suggestions including aligning this with the CMA and seeing the introduction of a 10% of annual income applied for infringement. It is the view of the BCC that, rather than seeking to extend exceptions to protection in ways which may lead to judicial challenges t, a requirement relating to transparency measures which will support graded licensing for legal access is a more effective approach. This will in turn also address practical ways to work with and around the technological protection measures necessary to moderate wider market uses.
Question 8. Do you agree that rights should be reserved in machine-readable formats? Where	We believe that rights reservation is not necessary if the current system based on consent is upheld. If the Government proceeds with its proposed approach, then any opt-out must be flexible enough to allow all different types of creative works to easily opt-out. The system should

possible, please indicate what you anticipate the cost of introducing and/or complying with a rights reservation in machine-readable format would be.	also be as simple as possible and low cost for individual creators and rightsholders. It is important to make clear that rightsholders anticipate costs associated with this opt-out to be very high. We refer you to DACS's submission for further costings and case studies on this.
C2 Technical Standards	
Question 9. Is there a need for greater standardisation of rights reservation protocols?	We do not support the Government's proposed option (3). However, if the Government proceeds with this approach, standardisation of rights protocols is helpful. The challenge is how standardisation can be applied to the multi-tier combination of copyright works which reflects effective application of existing licensing (within the many markets) which support the creation of composite works published for the benefit of consumers (for example sound recording and films). The Government should be mindful not to allow this standardisation to lead to technical monopolies.
Question 10. How can compliance with standards be encouraged?	We do not support the Government's proposed policy approach. However, if the Government proceeds with this approach it must be legally enforceable. This should include deterrent penalties set at a sufficiently high level to deter infringement.
Question 11. Should the Government have a role in ensuring this and, if so, what should that be?	We do not support the Government's proposed policy option (3). However, if the Government proceeds with this approach it would seem sensible to BCC members that the Government should have some oversight of the creation of a regulatory and/or administrative body to manage this process involving all stakeholders Government should oversee compliance, in addition to direct challenges of non-compliance by creators and right holders.

C.3 Contracts and licensing	
Question 12. Does current practice relating to the licensing of copyright works for AI training meet the needs of creators and performers?	The BCC's members strongly support strengthening licensing solutions over the broadening of exceptions and the introduction of a rights reservation model. The licensing framework is responsive, it has already evolved and continues to evolve to support the needs of creators and performers. It also provides certainty for AI developers and ultimately consumers. Here are some examples from across the creative industries and the sectors our members represent: • Images, together with associated metadata, are incredibly rich sources of training data and if the human creators of those images are to share in the value generated by this new technology, it is critical that they are licensed at the outset. • Image libraries use a range of AI-based applications to better store and separate images, as well as providing search and discovery functions that drastically improve usability. They use image recognition APIs to provide image tags, auto-generated keywords, and automatic categorisation tools based on visual categories, often across devices. Image library websites use AI image recognition tools to assist both in the upload and appropriate tagging of image content thereby giving better support to customers to find images they intend to license. These examples demonstrate why the licensing of copyright protected works used in the development and training of AI systems is of paramount importance.
Question 13. Where possible, please indicate the revenue/cost that you or your organisation receives/pays per year for this licensing	None. Please refer to submissions by individual BCC members for further information[15].

[15] https://www.britishcopyright.org/members/

under current practice.	
Question 14. Should measures be introduced to support good licensing practice?	All our members are supportive of good licensing practice. Indeed, the UK is one of the most advanced countries for licensing. The pressing issue that needs to be addressed is AI developers acting against the spirit of the law and often choosing not to seek consent and license the use of works protected by copyright.
Collective licensing and data aggregation	
Question 15. Should the Government have a role in encouraging collective licensing and/or data aggregation services? If so, what role should it play?	Ultimately it is for creators and rightsholders to decide how to license their work. However, in promoting and enforcing transparency requirements on AI developers wanting to train their models on UK copyright protected work, the Government must encourage more collective licensing services. Voluntary collective licensing has an important role to play in the overall licensing market and should complement the direct licensing that may be taking place between large rights holders and AI developers. Collective licences for the use of AI are already being developed for specific creative sectors. Collective licensing is well-established in the UK, has adapted to keep pace with technological change and the changing use of content, and has an important role in ensuring that the rights of, in particular, smaller rightsholders are respected and that they are renumerated for the use of their works. We don't see that the Government should have any direct role in licensing beyond encouraging AI developers to license, individually or collectively.
Use of AI in education	
Question 16. Are you aware of any individuals or bodies with specific licensing	A variety of our members are licensing their works for education directly or collectively. We refer you to their specific responses.

needs that should be taken into account?	
C.4 Transparency	

Question 17. Do you agree that AI developers should disclose the sources of their training material?	Yes. Transparency measures will be an essential mechanism for AI developers to demonstrate compliance with copyright law. They will support licensing and remuneration structures for creative works along the value chain and, where necessary, enable rightsholders to enforce their rights.
	
	Appropriate transparency regulation must be meaningful to ensure:
	
	• **Permission** is sought by AI developers for use of copyright-protected work prior to its use.
	• **Meaningful transparency requirements** are delivered to rightsholders to include:
	• **Record Keeping**: Requiring those using creative and performed works as part of the AI training process to maintain technically detailed records of works scraped and used in pre-training, training and fine-tuning. This should include:
	  ○ identification of works that will be or have already been used to train LLMs in order to demonstrate compliance with UK law.
	  ○ detailed metadata about the sources of training data.
	  ○ how and when copyright works are accessed throughout the value chain (for example at the point of ingestion and use in generating AI-generated outputs or new datasets).
	• information on the method of data collection applied by the AI developer because different models (e.g. repertoire-based or general web scraping) require different licences.
	
	In addition, transparency is vital for the AI eco-system as a whole, to ensure that the public has trust in the outputs of AI models.

Question 18. If so, what level of granularity is sufficient and necessary for AI firms when providing transparency over the inputs to generative models?	We refer you to our response to question 4 on transparency requirements. The level of granularity needed by different sectors of the creative industries must be taken into account. A code of conduct may help here.
Question 19. What transparency should be required in relation to web crawlers?	The full list of web crawlers used should be disclosed, as well as the relevant time of the crawling.
Question 20. What is a proportionate approach to ensuring appropriate transparency?	The requirement should be that AI developers make public a list of all their sources of training data, in a manner that lets any third party fully understand the training data used. The process should be easy and low cost to rightsholders and users. The onus of compliance should be on the AI developers and therefore appropriate transparency leading to licensing should be the priority.
Question 21. Where possible, please indicate what you anticipate the costs of introducing transparency measures on AI developers would be.	The use of copyright protected works and the licences for using the works are for direct licensing arrangements or CMOs and creators to agree. If AI developers wish to use this material, the costs for identifying the rightsholders should be borne entirely by the AI developer as part of their business operation. This is a cost of doing business, akin to data protection compliance.
Question 22. How can compliance with transparency requirements be encouraged, and does this require regulatory underpinning?	Yes. Enforcing copyright and ensuring that transparency requirements are met requires regulatory oversight in our view. A voluntary approach would not offer the necessary safeguards required and would not demonstrate compliance with UK copyright law.

	Given the concerns that AI developers have already infringed UK copyright law, we don't feel that a voluntary intervention here is appropriate. To ensure compliance, any sanctions need to have a deterrent effect.
Question 23. What are your views on the EU's approach to transparency?	As outlined above, the opt-out provisions introduced by Article 4(3) of the Copyright Directive (Directive (EU) 2019/790) which form the basis of the UK Government's preferred approach create unnecessary ambiguity and complexity for both rightsholders and AI providers. Therefore, we do not support adoption of this approach under UK law as suggested in this consultation. The EU has gone some way to strike a balance between AI developers and rightsholders in terms of principles, but as outlined above, the reality is that the EU approach does not work. Concerns around transparency and the code of conduct are very much live issues and, as yet, there is no evidence that the EU approach provides rightsholders with the ability to know whether and how their data has been used, nor how to reserve their rights. We are aware of significant concerns around the EU's approach to transparency including: • AI developers have sought to argue that records of training data are commercially sensitive. Although such information may give commercial advantage, it does not qualify as a trade secret in our opinion. Further, a rightsholder's legitimate interest to know if copyright works have been exploited always prevails over the commercial interests of an AI developer. • The summary (Recital 107 EU AI Act) must be "generally comprehensive in its scope instead of technically detailed. This could include listing the main data collections or sets" and can be in narrative form. This risks insufficient data being disclosed for rightsholders to exercise and enforce their rights, the stated aim of the transparency measures.

C.5 Wider clarification of copyright law	
Question 24. What steps can the Government take to encourage AI develop ers to train their models in the UK and in accordance with UK law to ensure that the rights of right holders are respected?	Evidence provided to Parliament as part of the recent Scaling AI inquiry[16] as well as the AI Opportunities Action Plan[17] highlight a number of areas to which the Government might want to turn its attention to encourage AI developers in the UK. These include fragmentation, skills gaps, a predominance of microbusinesses and freelancers, and underinvestment in R&D, below-average educational attainment, lack of diversity and a substantial digital skills deficit outside of London[5]. We would suggest that the Government look again at the available levers in these areas to encourage AI developers to train in the UK. Specifically, to how the Government should ensure the rights of rightsholders are respected, the Government could: • Invest in Government-backed datasets that are ethically sourced, diverse, and rights-compliant, enabling AI developers to access high-quality training data without legal uncertainty. • These datasets should not include creative outputs without permission. • AI clusters: Establish regional AI innovation hubs with strong legal and technical support as well as training in IP. • Establish a code of conduct for AI developers, emphasising respect for intellectual property rights. • Introduce a certifications and compliance system for AI developers who use these resources and comply with UK copyright law; • Financial incentives: Provide grants, subsidies or tax breaks to AI developers who base their operations in the UK and comply with UK law.

[16] Scaling up - AI and creative tech - Committees - UK Parliament
[17] AI Opportunities Action Plan - GOV.UK

	It seems evident to us that changing copyright law has nothing to do with encouraging investment in the UK from AI developers as other factors will have far greater impact. As referenced in our response to question 4, the only concern identified in the ranking in the Global AI index 2024[18] relates to infrastructure, i.e. the reliability and scale of access infrastructure, from electricity and internet to supercomputing capabilities, and not to copyright. It would be helpful to have explicit acknowledgement that data crawled from websites does not constitute "lawful access" under Section 29A(1) of the TDM exception, especially if the website includes user T&Cs that prohibit such data mining or extraction.
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?	From a rightsholder perspective, it is key that AI developers which are based outside the UK, must comply with the rules and regulations in the UK. AI developers should not get a competitive advantage by circumventing the UK copyright and enforcement framework. This could be achieved by clarifying and reinforcing the civil and criminal secondary infringement provisions under the CDPA or by specific rules regulating market access. The EU AI Act for example protects the creative industries of European member states in this regard. Similarly, AI developers training outside the UK need to comply with transparency and rights reservation mechanisms, should Government pursue its preferred option. The question of the copyright status of AI models, might refer to the copyright protection of the model itself as a literary work. As far as the copyright status of AI generated works is concerned, we refer to our detailed response later in this consultation.
Question 26. Does the temporary copies exception require	No. The copies/ reproductions made by AI developers in the training process are neither temporary/ ephemeral, nor transient/incidental.

[18] https://www.tortoisemedia.com/intelligence/global-ai#rankings

clarification in relation to AI training?	The AI developers are not intermediaries but are the beneficiaries of the copying and transmissions and the "lawful use" requirement linked to the developer is not established for the compilation and storage of databases required for the commercial training activities. Therefore, crawling, reproduction and collection of the works does indeed have economic significance. The limits already in place under s 28A of the Act are therefore important to note in any future impact assessment. Caveats already in place to limit the scope of the exception for making temporary copies under s 28A of the Act make it clear that the exception is not a replacement for the licensing of restricted acts involved in the commercial crawling and database compilation and storage of works linked to generative AI model developments.
Question 27. If so, how could this be done in a way that does not undermine the intended purpose of this exception?	As stated under question 26, the temporary copying exception is not applicable. The temporary copying exception does not alter the need for commercial text and data mining to require licensing. In order to create greater certainty (and in consultation with relevant stakeholders) a guidance note from the IPO might helpfully be published recognising the limits of the exception.
C.6 Encouraging research and innovation	
Question 28. Does the existing data mining exception for non-commercial research remain fit for purpose?	The current TDM exception for non-commercial research is fit for its intended purpose. As previously outlined, introducing transparency provisions for text and data mining will enable rightsholders to know and understand when their works are to be reproduced and mined. Within this, declarations supporting the non-commercial nature of the uses would be helpful.
Question 29. Should copyright rules relating to AI consider	No.

factors such as the purpose of an AI model, or the size of an AI firm?	Current copyright law should continue to apply and, as for all other users of copyright works who are required to license, the size or scale of user is not relevant. Copyright law applies fairly to all. This should apply to AI developers too.
D.1 Computer-generated works: protection for the outputs of generative AI	
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.	BCC members recognise that there is little evidence of reliance on the existing s 9 (3) provisions. In terms of definitions used around s 9(3) there are concerns over lack of clarity in the way that the authorship provision links to the authorship and ownership provisions applied to types of copyright works recognised under Berne and TRIPS.
Question 31. Do you have views on how the provision should be interpreted?	The BCC is always concerned to see the removal of potential copyright protections which might benefit rightsholders. Whilst recognising that the debate over clarification of chains of title and ownership of copyright works which are generated independently and distinctly from the types of work otherwise recognised under existing copyright treaties must continue at an international level, members recognise the Government's suggested approach of removing the currently confusing UK provision in s 9(3) and links to it at this stage.
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?	Originality must remain intrinsically tied to human creativity and authorship, which illustrates the modern legal test for originality. This includes: • identifying that there would be no other reason to upend the originality framework other than creating economic incentives for AI companies, • in recognising that, given the low likelihood of that being achieved through 9(3) CDPA, it is an insufficient and entirely speculative reason to question the very foundations of intellectual property. This is as set out in paragraph 135.

	Please also see comments under question 35 below. There is no evidence that changing the originality test would encourage more AI investment to the UK. The Government could explore other, more provenly effective avenues to incentivise AI growth and investment, in line with the recommendations in the AI Opportunities Plan[19] , e.g. investment in compute resources, support for AI education, and attracting AI talent from overseas. We have outlined these in our response above.
Question 33. Should other changes be made to the scope of computer-generated protection?	No
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.	Not the BCC directly. The provision has scarcely been used since it passed so has had little impact to date.
Question 35. Are you in favour of removing copyright protection for computer-generated works without a human author?	Little evidence exists of reliance on the specific provisions which it is now suggested should be removed in the interests of clarity. However, it is vital that protection of "traditional" works made with the assistance of AI tools (authorial and entrepreneurial) must remain unaffected. There is a misleading assumption in paragraph 140 of the consultation that copyright in an AI output "is likely to belong to users". This ignores the chains of title which rightsholders are entitled to assert when works (whether authorial or

[19] AI Opportunities Action Plan - GOV.UK

	entrepreneurial) are reproduced or used in the course of an AI application being "used" by a consumer.
Question 36. What would be the economic impact of doing this? Please provide quantitative information where possible.	The BCC does not hold this information.
Question 37. Would the removal of the current CGW provisio n affect you or your organisation? Please provide quantitative information where possible.	It would not affect the BCC directly. We have no experience of direct reliance upon the provisions. Caveats about the importance of continuing and improving protection for all "traditional" types of copyright work (both authorial and entrepreneurial) should continue to be recognised as outlined above. Enforcement provisions for these works will be supported and enhanced by the transparency obligations on "data users" recommended in this response.
D.4 Infringement and liability relating to AI-generated content	
Question 38. Does the current approach to liability in AI-generated outputs allow effective enforcement of copyright?	In any dispute in relation to whether an AI-generated output is infringing, a critical question will be whether there is evidence of copying of the original work. If there is no evidence of copying, any claim will fail. The resolution of that issue typically turns, in practice, on whether the creator of the allegedly infringing work had access to the original work. In the AI context, this issue can only be determined by knowing whether the original work formed part of the dataset on which the AI model was trained. Without that knowledge, a rightsholder faced with an AI output which *appears* to infringe the rights in their original work would be 'blind' as to their prospects of success. It is therefore crucial that transparency provisions are introduced which require AI developers to identify, at a work-by-work level, the copyright protected material on which their models were trained. Without that level of detail, the risks

	faced by a copyright owner in bringing an infringement action, given the costs-shifting rules in UK litigation, would in practice be likely to deter all but the very wealthiest rightsholders from pursuing claims. Of course, had AI developers demonstrated a pattern of behaviour of seeking consent and paying licence fees in advance of suing copyright protected works to train their models, such an approach would not be necessary. But this is not, in practice, how things have evolved.
Question 39. What steps should AI providers take to avoid copyright infringing outputs?	The only practical answer is for permission and consent to be sought by AI developers before they use creative works. Many of our members have licences in place in place to meet the needs of AI developers, and rightsholders across all forms of copyright work are used to creating licences at scale. The evidence deployed in the various US, UK and others claims brought by rightsholders against AI developers demonstrates that, without a licence, when an AI model is trained on a large dataset of copyright protected works it will inevitably produce outputs which infringe.
D.5 AI output labelling	
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. The BCC is supportive of calls to implement the simplest and fairest approach whereby all outputs that include material from a GAI model are labelled. Regulation is required as it is not currently being done voluntarily. Consumer protection with appropriate flagging and labelling in line with developing industrial relations and CMO licensing will help here.
Question 41. How can Government support development of emerging tools and standards, reflecting the technical	The Government should mandate that all content that includes AI-generated output be labelled as such.

challenges associated with labelling tools?	
Question 42. What are your views on the EU's approach to AI output labelling?	Our members are broadly supportive of the EU AI labelling provisions. It should be noted that this is not yet implemented in practice.
D6 Digital Replicas	
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?	Our members are of the view that none of the options outlined in the consultation address issues that will be relevant to how individuals might control the use of their image and voice in AI outputs. It is clear across a number of sectors that individuals require greater protection against digital replicas. Voice and image are not always directly protected by copyright under UK law. Therefore, any authorisation sought to cover text and data mining at input stage does not equate to authorisation for the use of voice and image in AI outputs further down AI value chains. Most are familiar with the numerous images and videos of celebrities or notable figures on the internet and the challenges they have controlling uses of these. Taylor Swift and deepfakes is often cited. An individual's personality or likeness i should be specifically protected in addition to the existing copyright protections for copying in the input stage. Our members believe that individuals require greater protection against digital replicas and that a legal framework should protect people from misrepresentation of their voice or likeness by AI-generated outputs and prevent others, whether that be AI services or users, from extracting value out of a misappropriation of an individual's voice or likeness.

	Careful analysis and assessment of what changes to the legal framework would mean for the application of long-standing industrial relations procedures within creative industry production sectors is needed, before recommendations for change are put forward. We draw the Government's attention to the recent developments in the US Copyright Office which reported on the urgent need for legislation to prevent harm resulting from unauthorised digital replicas[20]. The report recommends that: • all individuals, not just celebrities, performers, or those whose identities have commercial value, should be within scope of legislation on digital replica. We broadly support these recommendations as everyone is vulnerable to the harms caused by unauthorised digital replicas and liability should therefore not be limited to commercial uses. Exceptions for certain, limited, non-damaging uses can be included to protect freedom of expression. • Individuals should be able to license and monetise their digital replica rights, subject to certain protections, whether contractual or developed under industrial relations agreements. • Remedies should include both injunctive relief and monetary.
Question 44. Could you share your experience or evidence of AI and digital replicas to date?	There are many well-known examples of unauthorised deepfakes of famous artists such as Taylor Swift and Drake, but notably this issue is not confined to music or the creative industries. For example, we have seen the AI-generated deepfake of trusted consumer champion Martin Lewis and a deepfake audio of Sir Keir Starmer MP verbally abusing staff members.

[20] Copyright and Artificial Intelligence, Part 1 Digital Replicas Report

	We should also like to draw your attention to the snow leopard example provided by AOP in their submission. The first US-filed copyright case on text-to-image generative-AI by three visual artists, showed that over 16,000 prominent fine artists had been appropriated by Midjourney's program to enable users to mimic the style of these artists.
D7. Other emerging issues	
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?	The existing legal framework is clear that authorisation must be sought prior to an act of reproduction. this applies regardless of whether the act takes place at the point of inference or during model training. There is no ambiguity requiring Government clarification. We would support the Government making a statement reconfirming that copyright law applies to restricted acts at the point of inference.
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?	The Government's definition of synthetic data "refers to data that we create to mimic the properties and patterns of real-world data… the statistical properties, relationships and distributions of that original data, often with some corrections or modifications … make it especially beneficial in the development and tuning of machine learning models[21]". The Government must introduce transparency obligations for AI developers, as outlined in our response. These obligations should explicitly apply to synthetic data, ensuring that developers disclose information about the original data sources. This is important because: • AI developers increasingly rely on synthetic data to train their models in an attempt to sidestep the need for licensing of large catalogues.

[21] AI Insights: Synthetic Data (HTML) - GOV.UK

	• The unauthorised manipulation of copyright works to create synthetic datasets for AI training is of great concern to rightsholders as, owing to the complete absence of transparency, it becomes almost impossible to monitor use of copyright works and for rightsholders to legally and properly enforce their rights. We remind the Government that documentation requirements in the second draft of the EU Code of Practice for General Purpose AI Providers include i) a description of the methods used to synthetically generate training data, ii) the name(s) of any AI model(s) or system(s) used to synthetically generate training data, iii) the time period during which data was collected and iv) a general description of the data processing involved.
Question 47. What other developments are driving emerging questions for the UK's copyright framework, and how should the Government respond to them?	The BCC is not aware of other issues relating to copyright that should be within the scope of this consultation.

Appendix

Annex 1: Contribution of the creative industries to the UK economy

The creative industries contributed around £124 billion to the economy in 2023 (in terms of gross value added). This was around 5% of total UK economic output[22].

There were around 2.4 million jobs in the creative industries in the year from July 2023 to June 2024, around 7% of all UK jobs.

Goods and services exports for the creative industries were worth £54.7 billion in 2021, equal to 7.7% of UK exports in 2021.

Remuneration and attribution are afforded to creators through licensing and copyright provisions. £124 bn is evidence of the existing copyright provisions working effectively for creators and the UK economy.

This contribution is greater than that of the aerospace, automotive, life sciences, and oil and gas sectors combined. It is through the UK copyright regime, a strong system which recognises and rewards creative work, that fair remuneration for the work of creators, performers and other rightsholders should be ensured.

Copyright is relevant for all parts of the UK trading economy, including our export market, but crucially enables the operation and renumeration of the creative industries.

The Government's proposed TDM exception risks economic loss for the UK by damaging the creative industries and the successful UK copyright framework. We touch on this further in our consultation responses.

[22] DCMS Sectors Economic Estimates - GOV.UK

Annex 2. Kidron Amendments

135 Compliance with UK copyright law by operators of web crawlers and general-purpose AI models

(1) The Secretary of State must by regulations make provision (including any such provision as might be made by Act of Parliament), requiring the operators of web crawlers and general-purpose artificial intelligence (AI) models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to comply with United Kingdom copyright law, including the Copyright, Designs and Patents Act 1988, regardless of the jurisdiction in which the copyright-relevant acts relating to the pre-training, development and operation of those web crawlers and general-purpose AI models take place.

(2) Provision made under subsection (1) must apply to the entire lifecycle of a general-purpose AI model, including but not limited to— (a) (b) (c) (d) pre-training and training, fine tuning, grounding and retrieval-augmented generation, and the collection of data for the said purposes.

(3) The Secretary of State must lay before Parliament a draft of the statutory instrument containing regulations under subsection (1) within six months of the day on which this Act is passed and the regulations are subject to the affirmative procedure.

136 Transparency of crawler identity, purpose, and segmentation

(1) The Secretary of State must by regulations make provision requiring operators of web crawlers and general-purpose artificial intelligence (AI) models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to disclose information regarding the identity of crawlers used by them or by third parties on their behalf, including but not limited to—
(a) the name of the crawler,
(b) the legal entity responsible for the crawler,
(c) the specific purposes for which each crawler is used,
(d) the legal entities to which operators provide data scraped by the crawlers they operate, and
(e) a single point of contact to enable copyright owners to communicate with them and to lodge complaints about the use of their copyrighted works.
(2) The information disclosed under subsection (1) must be available on an easily accessible platform and updated at the same time as any change.

(3) The Secretary of State must by regulations make provision requiring operators of web crawlers and general-purpose AI models to deploy distinct crawlers for different purposes, including but not limited to—
(a) web indexing for search engine results pages,
(b) general-purpose AI model pre-training, and
(c) retrieval-augmented generation.
(4) The Secretary of State must by regulations make provision requiring operators of web crawlers and general-purpose AI models to ensure that the exclusion of a crawler by a copyright owner does not negatively impact the findability of the copyright owner's content in a search engine.
(5) The Secretary of State must lay before Parliament a draft of the statutory instrument containing regulations under this section within six months of the day on which this Act is passed and the regulations are subject to the affirmative procedure.

137 Transparency of copyrighted works scraped

(1) The Secretary of State must by regulations make provision requiring operators of web crawlers and general-purpose artificial intelligence (AI) models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to disclose information regarding text and data used in the pre-training, training and fine-tuning of general-purpose AI models, including but not limited to—
(a) the URLs accessed by crawlers deployed by them or by third parties on their behalf or from whom they have obtained text or data,
(b) the text and data used for the pre-training, training and fine-tuning, including the type and provenance of the text and data and the means by which it was obtained,
(c) information that can be used to identify individual works, and
(d) the timeframe of data collection.
(2) The disclosure of information under subsection (1) must be updated on a monthly basis in such form as the regulations may prescribe and be published in such manner as the regulations may prescribe so as to ensure that it is accessible to copyright owners upon request.
(3) The Secretary of State must lay before Parliament a draft of the statutory instrument containing regulations under subsection (1) within six months of the day on which this Act is passed and the regulations are subject to the affirmative procedure.

Annex 3: Transparency Good Practice an example (CLA licenses Media Monitoring Organisations (MMOs))

About CLA

CLA is a collective management organisation (CMO) in the UK and is a regulated not-for-profit organisation which licenses organisations to lawfully use, copy, and share text and image based content owned by authors, publishers, and visual artists. Revenues are distributed to CLA's member-owners, the Authors' Licensing and Collecting Society (ALCS), the Design and Artists Copyright Society (DACS), the Picture Industry Collecting Society for Effective Licensing (PICSEL) and Publishers' Licensing Services (PLS), ensuring fair compensation for rightsholders and support for the UK's creative economy.

The Media Monitoring and Media Evaluation Industry

The MMO industry focus is to provide detailed analysis of the news and media to their clients. This includes the passing on of copyright protected content to their clients as well as using copyright protected content to evaluate how their client is perceived in the media. MMOs generate revenue from a suite of products and services all of which are based, to a varying degree, on published content. It is therefore critical that a robust licensing environment is in place to ensure content is protected and rightsholders receive fair payment for use of their work.

CLA and MMOs

CLA licenses Media Monitoring Organisations (MMOs) operating in the UK and overseas for scraping, indexing and TDM of magazine and news website content. The CLA MMO Licence is available to all MMOs. As a condition of the licence terms, MMOs are required to be transparent and report to CLA, on a quarterly basis, exactly which articles the MMO has scraped and which clients have received articles. Since 2021, MMOs have reported more than 89 million instances of articles being copied or shared under licence, comprising valuable content from more than 6,000 magazines, journals and websites. The detailed data received from MMOs is used to support the distribution of revenue to publishers, authors and visual artists, as well as providing CLA with data on businesses which may need a licence for the internal use of any articles received from MMOs. This in turn ensures rightsholders are fairly remunerated when their works are being used, whilst providing a solution for businesses to comply with copyright law and support the creative economy.

The provision of data by licensed MMOs to CLA, on a regular basis under voluntary agreements, demonstrates that licensing is a flexible and practical solution which enables transparency as part of the lifecycle of content use, and accurately informs payment to rightsholders. The Media Monitoring industry is a clear example of a tech-focused sector where licensing works.

Annex 4: Transparency requirements: data sources and collection[23]

Scraped from the internet.	○ Crawling approach methodology used to obtain data, including seed and link selection criteria. ○ Type/modality of data scraped (text, image, audio, video) and whether includes associated metadata. ○ Link to a List of 100 % URLs of files for images, video and audio files that are scraped, as well as URLs of web pages from where they are scraped ○ Identifier for any datasets used containing scraped data. ○ Owners or curators of any datasets containing scraped data that are used. ○ Domains (i.e. subject matter, e.g. humans, objects, etc.) of any datasets containing scraped data that are used. ○ Language(s) (if applicable, e.g. of metadata accompanying images) of data within scraped datasets. ○ Date ranges over which scraping of data has taken place. ○ Any selection and filtering criteria applied.
Obtained from Public repositories.	○ Names of public repositories. ○ Any selection and filtering criteria applied.
Obtained from Proprietary (owned) databases.	○ Source and owner of proprietary databases. ○ Any selection and filtering criteria applied.
Third-party licensed data.	○ Third-party licensor. ○ Whether licensed exclusively or non-exclusively. ○ Whether there is a licensing fee and if this fee is recurring (e.g. revenue share and/or instalments)
User-generated data.	○ Products or services from which user generated data is collected. ○ Copy of terms of service agreed to by users and how these terms were agreed to by users.
AI Provider-generated data.	○ Name and version of generative AI model used to generate AI Provider-generated data, including where the AI model is owned by the AI developer or a third-party developer. ○ Methods used to collect this data.
Data derived from Retrieval Augmented Generation (RAG)	○ Methods used to source data using RAG ○ Link to a List of 100 % URLs of files for images, video and audio files that are scraped, as well as URLs of web pages from where such copyright works are scraped

[23] CEPIC – Global Hub for Visual Media Licensing and Copyright Advocacy

Obtained by other means.	○ Details of those means (e.g. synthetic data from 3D environments, screenshot recordings of movies, etc)
Any Intermediaries or Entities Involved?	If yes, refer to items 1.1 to 1.8 above.