

Feryal Clark MP
Parliamentary Under-Secretary of State for AI and Digital Government
Department for Science, Innovation and Technology
100 Parliament Street
London
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25th October 2024

Dear Minister,

Thank you so much for your time on 17th September to meet with the British Copyright Council and others from the creative industries to discuss the impact of generative AI. We are delighted to have the opportunity to work with you and are very grateful for the opportunity to respond with some overarching recommendations around transparency measures which might address some of the “gordian” knots in AI regulation that were discussed at the meeting.

We are conscious that further consultation with stakeholders is expected, and we welcome further opportunity for discussion on these issues. Our comments are therefore fairly top-line for the purpose of this note. Please do not hesitate to contact me directly should it be helpful to discuss these further.

Exceptions

The opt-out provisions introduced by Article 4(3) of the Copyright Directive (Directive (EU) 2019/790) create unnecessary ambiguity and complexity for both rightsholders and AI providers. Therefore, we do not support adoption of this approach under UK law.

Our view is that given the globally valuable nature of the UK’s creative industries, it would be remiss, in the urgency to find a solution, for the UK not to take this opportunity to develop a best-in class-framework which secures a fair-play field for growth for both rightsholders and AI developers.

Our recommendations

1. UK copyright

The strong UK copyright framework (Copyright, Designs and Patents Act 1988) 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. The UK’s competitive strength deriving from our existing copyright regime can underpin world-leading innovation in AI.

As the Lords Committee on Large Language Models (LLMs) 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 principles remain clear. The point of copyright is to reward creators for their efforts, prevent others from using works without permission, and incentivise innovation.”¹

It is therefore critical that the Government:

- 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 where, when and how the data is to be used for AI development and that it is accessible for rightsholders to help define licensing structures. AI developers should state the legal basis upon which the works are mined.

¹ [House of Lords - Large language models and generative AI - Communications and Digital Committee 2023-24](#)

2. Transparency measures

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.

Labelling: a requirement for the labelling or watermarking of outputs developed by AI generative systems. These outputs must be easily identifiable. In addition, links should be available 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 transparency obligations, irrespective of where the AI service originates, or the data secured for its development. This will ensure a level playing field for AI developers 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.

Regulator

At present, we don't believe there is a ready-made regulatory solution to support and ensure delivery of the transparency required. Possibilities could include either the IPO being put on statutory footing or for another regulator to be given additional AI-related duties for example the ICO. Increasingly our members are of the view that a new AI regulator with statutory footing would provide both the creative industries and AI developers with clarity and certainty on roles and responsibilities.

As ever, we look forward to working with you going forward and please don't hesitate to contact me directly to discuss these further.

Yours sincerely,

Stephanie Reeves



Director of Policy and Public Affairs
British Copyright Council