EQUITY

Equity's Copyright and AI Consultation response

February 2025

About

Equity is the largest creative industries trade union with 50,000 members united in the fight for fair terms and conditions across the performing arts and entertainment. Our members are actors, singers, dancers, designers, directors, models, stage managers, stunt performers, circus performers, puppeteers, comedians, voice artists, supporting artists and variety performers. They work on stage, on TV and film sets, on the catwalk, in film studios, in recording studios, in night clubs and in circus tents.

Equity membership includes access to our Distribution Services, which have been operating since late 2017, distributing over £100 million in royalties and contractual secondary payments to tens of thousands of performers. All payments administered by the distributions team are derived from our collectively bargained agreements with broadcasters, film studios, TV production, and theatrical recording companies.

Collective agreements operate across many sectors of the UK entertainment industry. For example, we have agreements with the BBC, ITV, SKY and the Producers Alliance for Cinema and Television (Pact). 95% of British TV drama is made on a union agreement and most films in the UK are produced under our Cinema Films agreement. We also have agreements with the major streaming platforms, such as Netflix, Disney+, and Apple+. These huge global companies recognise that it is in their best interest to work with Equity.

Contact

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Consultation responses

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

- No, Equity does not believe that Option 3 will meet the government's objectives. A text and data mining exception with rights reservation would *reduce* rightsholders' control over their content, by forcing them to pursue new claims over rights that are guaranteed by existing legal frameworks. It would also require that rightsholders have a detailed understanding of the law, and a relatively advanced understanding of computing.
- Option 3 would also further diminish trust and transparency between the creative industries and the technology sectors, by shifting the burden of copyright law compliance from those seeking to use protected works, to those who own them – a reversal of decades of established law, which will put the impetus on creators' to protect their life's works, at significant time and expense.
- The government consultation is premised on the unfounded claim that existing UK Copyright Law is uncertain or disputed. This is not the case. Under UK law, copyrighted works are protected from exploitation, including during the training and use of Generative AI (GAI) models, unless they are licensed for this purpose.
- Performers' rights are recognised under Part II of the Copyright, Design and Patents Act 1988 (CDPA) both as forms of "property" and "non-property" rights. A key performers' property right includes the "right of reproduction" - the right for performers to control who can record and make reproductions of their performances.
- The UK government has made clear that the right of reproduction under the CDPA covers all technology, including AI.[1] It is widely acknowledged that both the

[1] Lord Clement-Jones, Question for Department for Business, Energy and Industrial Strategy, UIN HL2336, tabled on 26 September 2022

processes of compiling machine learning AI datasets through text and data mining; and subsequent AI training using those datasets, involve the making of 'copies' and/or 'reproductions' of works that are within the meaning of the CDPA. Indeed, in its response to its own consultation on a possible text and data mining exception, the last government stated that *"data mining systems copy works to extract and analyse the data they contain. Unless permitted under license or an exception, making such copies will constitute rights infringement."*[2]

- Both compiling machine learning datasets and subsequent AI training processes therefore require the express consent of relevant copyright owners and performers - unless such rights have already been obtained under contract, or a copyright exception applies.
- There is no ambiguity in the existing legal frameworks covering the use of copyrighted material for input into GAI models. As with any other technology, Generative AI (GAI) companies that use copyrighted works to train foundational models without the express consent of copyright owners and performers in the form of licensing arrangements are in breach of the law.
- GAI companies are already perfectly able to obtain access to copyright protected works by approaching rightsholders under the existing contractual and legislative frameworks, to license copyrighted material for their purposes. Indeed, they must do so under the law. There are already many cases where such commercial licenses are being pursued within existing legal frameworks, demonstrating their adequacy. Given this context, and the lack of an existing rights reservation

[2] Intellectual Property Office, Artificial Intelligence and Intellectual Property: Copyright and Patents: Government response https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation

mechanism, we believe that the introduction of Option 3 is in essence a proposal to 'tackle theft by making it legal.'

- Finally, an exception with rights reservation will not address the significant quantities of copyrighted works which have already been used illegally in GAI model training. The UK has witnessed an unprecedented period of corporate illegality, to the significant and ongoing detriment of hundreds of thousands of creators. Our members now must compete for future work with GAI models trained on their own protected content, which was stolen from them without consent or remuneration.

5.	***Which option do you prefer and why?***

- Equity supports Option 1, with the addition of transparency requirements on GAI companies, and additional rights for performers and creatives.
- There is no generative artificial intelligence in the creative industries without the cumulative labour of creators, fixed over a century in audio-visual content. GAI technology in our industries derives all of its value from the creator data that it uses to train. It is astonishing that most GAI companies feel that they should be able to use this critical input resource for free.
- We want to ensure that all GAI models have been trained on 'clean' - ethically sourced and legally compliant - data. This can already be achieved in two ways.
- First is by direct licensing with individual creative workers, but using collectively bargained terms that are negotiated by trade unions. In this context, workers consent individually to remuneration rates tailored to individual uses, under transparent terms. This does not require legislative intervention. Equity is currently seeking to establish such collectively bargained frameworks that govern the use of AI models within different recorded media sectors, building on the existing agreements we have across film and TV. We are also negotiating with companies

who engage our members for the express purpose of creating content to train foundational AI models, with the appropriate remuneration and permissions expressly granted for these uses.

- The second avenue is collective licensing by creative sector trade unions on behalf of creative workers. These collective licenses could be established on a tripartite basis, for example between GAI companies, copyright owners who wish to grant access (or authorise prior access) to media content, and creators' trade unions (such as Equity). Equity already holds several collective licenses with engagers within recorded media for on demand services such as BBC iPlayer, ITVX, All 4, Channel 5, Sky, BBC Sounds.
- These two modes of industrial work represent the normal development of our existing industrial-regulatory frameworks, retaining trade unions as the natural representative of these workforces as both rightsholders and data subjects. As information frictions expand under technological innovation, these existing industrial architectures are already capable of enacting associated bargaining transactions and minimising inefficiencies in negotiation and bargaining for creatives, producers and AI companies. The high level of creative industries trade union coverage reflects in part the need for efficiencies in bargaining with the tendency towards collective representation also a reflection of the fragmented employment ('freelance') practices within the sector.
- Both methods however require transparency on the part of GAI companies, which is fundamental to protecting the creative industries under every policy proposal. GAI companies must publish the training data they have used and continue to be transparent about data used going forward.
- As outlined above, Equity also distributes remuneration on behalf of our members. If an extended collective licensing scheme is introduced, we will also collect and

distribute on behalf of non-members. Again, this does not require legislative intervention.

- But the government can further strengthen performers' rights if it is to better protect the creative industries through the period of AI development and adoption. Several additional measures would be wise:

    - Update the CDPA (1988) to include explicit reference to protections in the case of 'performance synthesisation'.
    - Recognise algorithmic training and commercial data mining as individual acts restricted by copyright and performers' rights, separately from the right of reproduction
    - Introduce a new system of personality rights, including image rights. Guernsey's *Image Rights (Bailwick of Guernsey) Ordinance 2012* provides one model that the government can adopt.
    - Adopt unwaivable moral rights through implementation of the Beijing Treaty on Audiovisual Performances, 2012.
    - Bolster the ability of individual creatives and their representative organisations in the UK to achieve fair returns for the use of creative content in new media services by introducing broad transparency obligations, contract adjustment mechanisms and a right of revocation, similar to Chapter III of the EU Directive on Copyright in the Digital Single Market.

- As stated above, changes which build on the current regulatory regime through increased transparency and additional rights (instead of weakening it) would still allow GAI companies to license the works necessary to build models, while

protecting our successful UK creative industries, which currently contribute over 6% to UK GDP and represent 14.2% of UK service exports.

6.	***Do you support the introduction of an exception along the lines outlined in section C of the consultation?***
7.	***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?***

- Equity does not support the introduction of an exception along the lines outlined in section C. This policy proposal will not adequately guarantee long-established rightsholder protections, or the related secondary payments necessary to sustain careers in the creative industries.
- This proposal runs counter to the rights-based approach set out by international organisations such as UNESCO, the Council of Europe, the Seoul Declaration and the G7.[3] We are also concerned that it is likely in breach of related international treaties, such as the Berne Convention, the Rome Convention and the WIPO Performance and Phonograms Treaty, to which the UK is a signatory.
- Option 3 is equivalent to the model in place in the European Union, since the Digital Single Market Directive was introduced in 2019. Yet there is no evidence that this approach has generated any additional licensing behaviour on the part of GAI companies within the single market or driven additional investment into the EU's AI sector. Since 2019, the European Commission has been forced to develop a series of legislative mechanisms by which to restrict the operability of the exception out of concerns over its impact upon the single market copyright framework, and the lack of a clear and effective rights reservation mechanism.

[3] UNESCO, 'Recommendation on the Ethics of Artificial Intelligence' (2022), Council of Europe, Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law 2024; 'Seoul Declaration for Safe, Innovative and Inclusive AI: AI Seoul Summit 2024' (*GOV.UK*); G7 'Guiding Principles for Organisations Developing Advanced AI System' (2023).

- The consultation claims that Option 3 would allow rightsholders to *"seek remuneration at the point of access".* This is not a novel innovation but is already the mechanism in place under existing Copyright law. Currently, rightsholders are only prevented from seeking remuneration for the use of their works by AI models due to a lack of transparency on the part of those GAI companies using these works opaquely and illegally.
- The government must urgently consider the implications of UK data protection law here also. The Information Commissioner's Office (ICO) is clear that where the data being processed during GAI training contains the voice or likeness of a performer, this is highly likely to be personal data. In its consultation series on generative AI and data protection, the ICO confirmed that *"legitimate interests remain the sole available lawful basis for training generative AI models using web-scraped personal data based on current practices."* [4]
- GAI companies processing such data are subject to the obligations which the Data Protection Act 2018 requires of data controllers. On this basis, any GAI company using data of performances to train GAI foundational models for application within theatre, film, TV, commercials or video games production, without the consent of the performer, is likely already operating in breach of UK GDPR law. This will continue to be the case regardless of which of the government's consultation options is implemented. GDPR is the basis of a further legal challenge to GAI companies, who must demonstrate that they are operating within the law.

[4] ICO (2024), The lawful basis for web scraping to train generative AI models, Information Commissioner's Office response to the consultation series on generative AI https://ico.org.uk/about-the-ico/what-we-do/our-work-on-artificial-intelligence/response-to-the-consultation-series-on-generative-ai/the-lawful-basis-for-web-scraping-to-train-generative-ai-models/

- In this context, trade union access to GAI company Data Protection Impact Assessments could be a useful initial step, in the context of the wider introduction of a culture of increased transparency, enforcement action and compliance.
- Finally, the UK Government itself recognises that there is currently no existing mechanism through which rights reservation could be operationalised. This is also confirmed in a recent paper on the 'insurmountable problems with generative AI opt-outs' by the Founder of Fairly Trained GAI company, Ed Newton Rex, who argues that rights reservation mechanisms are *"both hugely unfair to creators and rights holders, and woefully ineffective in practice."* [5]
- Newton Rex argues that; there is no feasible mechanism to reserve rights on downstream copies of protected works; most creator's will not be sufficiently aware or technically capable enough to reserve their rights on their works; a rights reservation mechanism is unlikely to keep up with technological advance or developments in the coding of web crawlers; and rights reservation does not tackle the significant infringements of copyrighted works which have already taken place by some GAI companies.[6] Equity agrees with this analysis.
- Equity is not opposed to the adoption of GAI within our industries, but we firmly believe that the only route to 'achieve the intended balance' between support for a thriving arts and entertainment sector and the safe and sustainable introduction of AI into our industries is to enforce and strengthen the existing law around copyright and intellectual property to further encourage licensing, to increase transparency, and to prevent ongoing illegality.
- Our consultation response proposes a fuller alternative policy approach above. Critical to this approach here is the introduction of unwaivable moral rights

[5] Newton Rex, E., (2024) The insurmountable problems with generative AI opt-outs, https://ed.newtonrex.com/optouts
[6] Idem

through the adoption of the Beijing Treaty, which would ensure that creators have advanced protections ensuring attribution and against derogatory treatment of their work.

8.	***What influence, positive or negative, would the introduction of an exception along these lines have on you or your organisation?***

- An exception would not only increase the pace of job displacement by AI in the creative industries. It would further encourage GAI companies to circumvent traditional licensing frameworks, by amassing data which has not had its rights reserved because of creator capacity of awareness.
- By shifting the legal impetus of copyright protection from requiring those seeking to use copyright protected works to get permission, on to requiring those creators seeking to protect their works to engage in rights reservation, this proposal actually makes it more difficult for creators to protect their works and pursue their rightful remuneration for the use of their intellectual property. A text and data mining exception would effectively allow GAI companies to build models which compete with human labour on the basis of value *they have extracted from that very same workforce* without remunerating them.
- The introduction of an exception is very likely to deny many creators their rights, who will not be aware of the law change, or how to enact their rights reservation. There is a very real risk that it will operate as a 'clean slate' for companies who have already stolen vast quantities of copyright protected works.
- AI is already impacting upon the experience of work in the creative industries. Recent research on the impact of AI on the creative workforce by Queen Mary University, the Alan Turing Institute and the Institute for the Future of Work found that 73% of creative workers believe that AI is already having an impact on job quality, that Generative AI is diminishing the skill and agency of creative workers,

that there is a lack of transparency on the part of engagers on how content will be used in relation to AI, and that most of the workforce believe this will get worse.[7] These negative feelings and experiences among the workforce are likely to be aggravated by an exception policy, which forces the workforce to spend significant time and money protecting their works.

9.	***What action should a developer take when a reservation has been applied to a copy of a work?***
10.	***What should be the legal consequences if a reservation is ignored?***
11.	***Do you agree that rights should be reserved in machine-readable formats?***
12.	***Is there a need for greater standardisation of rights reservation protocols?***
13.	***How can compliance with standards be encouraged?***
14.	***Should the government have a role in ensuring this and, if so, what should that be?***

- Equity does not believe that the rights reservation mechanism should be introduced or can be effective. Developers must use the existing collective bargaining frameworks to license the use of copyrighted works for GAI.
- The UK government must better support creators to pursue retrospective action and enforcement regarding any copyrighted works used already. This should include accessible and enforceable rights to request the removal of protected content from training datasets, backed by fines and damages where the law has been broken.
- Given the industrial scale illegality we have witnessed on the part of GAI developers, some of whom admit to using *"tens of millions"* of copyright protected works[8], and the extremely poor enforcement of the existing copyright and data protection regimes by government regulatory agencies, we do not have confidence in the ability of agencies to enforce an exception with rights

[7] Monks, A., Gilbert, A., & Leslie, D., et. al (2024) Crafting Responsive Assessments of AI & Tech Impacted Futures, *Queen Mary University https://www.qmul.ac.uk/media/news/2025/queen-mary-news/pr/creative-industry-workers-feel-job-worth-and-security-under-threat-from-ai-.html*

[8] "Answer of Defendant Suno, Inc. To complaint" in proceedings before Massachusetts District Court, Civil Action No. 1:24-cv-11611-FDS

reservation mechanism, which would be technically more complex and less well established in UK law than our existing frameworks.

- We struggle to see how a technical rights reservation solution could operate for our 50,000 members, who are not required to have technical IT skills or expertise in copyright law for their professional work.
- Legally, Equity members retain the rights over the use of their works for the purposes of GAI. Though they may have transferred (or waived) their rights to third parties via assignments or licenses in contracts relating to theatre, film, TV, video games or commercials productions, such contracts were not drafted to envisage the exploitation of performers' rights for AI training purposes. Nor has any provision been made for this new use in the underlying contract. Our members continue to retain rights over any new use of previously fixed audio-visual material.
- This means that, in practice, rights reservation could not be performed by producers *on behalf* of the performers and creatives in their productions (as the original contract does not transfer the rights for this purpose). Licensing between producers and GAI companies can only take place following further successful collective bargaining between the producers and the performers and creatives who contributed to the productions sought. In sum, performer rightsholders will have to reserve their ongoing rights individually and would need to consent and be remunerated before additional licenses are sold by producers on protected content.
- Furthermore, irrespective of whether a new commercial exception is introduced in the UK following the government's ongoing consultation, any such exception would only serve to authorise commercial TDM activities on 'input' material that has not been reserved by the relevant rightsholders for the training of AI models.

Any such commercial text and data mining exception (like that proposed under Option 3) would have no impact on any resulting 'output' of AI models, which may separately infringe intellectual property rights (including performers' rights) to the extent such output is deemed to have copied or reproduced rights-protected works without due authorisation.

- The government cannot expect performers and creative teams to become experts in technologically advanced rights reservation mechanisms to protect their own work. This is not necessary under the current copyright regime, which is fit for purpose.
- As above, the government must urgently consider the significant implications that UK data protection law has for all of the options it is proposing.
- Equity is against the proposals to introduce an exception with rights reservation protocols, believes that standardisation of those protocols is among the insurmountable challenges within this proposal, and regards the only way of ensuring compliance with ethical GAI standards is through the enforcement of the copyright and data protection laws already in place and the adoption of additional transparency and rights protections (detailed above).

15.	***Does current practice relating to the licensing of copyright works for AI training meet the needs of creators and performers?***
16.	***Where possible, please indicate the revenue/cost that you or your organisation receives/pays per year for this licensing under current practice.***
17.	***Should measures be introduced to support licensing good practice?***
18.	***Should the government have a role in encouraging collective licensing and/or data aggregation services? If so, what role should it play?***
19.	***Are you aware of any individuals or bodies with specific licensing needs that should be taken into account?***

- Our Copyright and Intellectual Property framework is broadly fit for the purpose of licensing copyright works for AI training. GAI companies wishing to use copyright protected works should simply seek to license the rights from rightsholders.

Collective bargaining and collective licensing frameworks are already in place to negotiate any further transfers of rights and remuneration as appropriate. Indeed, several GAI companies have already begun to approach some rightsholders to begin negotiations about licensing, demonstrating the effectiveness of the law as it stands.

- The UK creative industries have a mature industrial relations framework, with unusually high trade union membership density and broad coverage of collective agreements. Bargaining over the use of copyright material has been successfully undertaken under this framework for several decades – a critical component of the success of our creative industries. The only ambiguity in the current system, is that regulators appear unwilling to enforce the existing law, which requires that commercial generative AI models only use copyrighted works that are licensed.
- Government should further clarify current practice by introducing a new suite of intellectual property rights for performers, including strengthened performers' rights in relation to performance synthesisation, image rights and unwaivable moral rights.
- The secondary payments which arise from collectively bargained agreements are a vital source of income for performers and creatives. Our industries are currently premised on precarious, project-based work, often for relatively low wages. Additional income through secondary payments is what makes the arts a sustainable career for many in the workforce. It is this vital source of income for precarious arts workers with low earnings which the AI companies are currently refusing to pay, and which would be put further at risk by Option 3.
- Due to strong collective bargaining in the sector, and the trade union's role in enforcing and distributing secondary payments, we did not experience many issues with regard to licensing until GAI companies began to flout the law. The

Intellectual Property Office should send a message that breaking the law is unacceptable, and four decades of UK Copyright law must be respected. Transparency obligations for GAI companies are essential to facilitating this.

- UK GDPR law applies here also. Companies that are processing data which includes the voice or likeness of an individual must comply with this regulatory regime.
- Smaller creators will not have the knowledge or capacity to reserve their rights under Option 3. In practice, pursuit of this policy will negatively impact on the livelihoods of small independent creators, while large producers will likely invest the resource in rights reservation and are resourced to engage in licensing negotiations with both GAI companies and creator-rightsholders to agree a new GAI use of copyrighted works. In practice most individual creators would have individual licensing needs under a rights reservation model.

20.	***Do you agree that AI developers should disclose the sources of their training material?***
21.	***If so, what level of granularity is sufficient and necessary for AI firms when providing transparency over the inputs to generative models?***
22.	***What transparency should be required in relation to web crawlers? Please give us your views.***
23.	***What is a proportionate approach to ensuring appropriate transparency?***
24.	***Where possible, please indicate what you anticipate the costs of introducing transparency measures on AI developers would be.***
25.	***How can compliance with transparency requirements be encouraged, and does this require regulatory underpinning?***
26.	***What are your views on the EU's approach to transparency?***

- Statutory measures to increase transparency of the source data used to train GAI models are critical to every Option of this consultation. Increased transparency is essential to the government's third objective around 'promoting trust'.
- Equity wishes to see the maximum transparency obligations applied to GAI companies. The fundamental test for the appropriate level of transparency must

be 'can a creator easily find out if their copyright protected work has been used in the training or application of a GAI model?'.

- GAI companies that are processing data which includes the voice or likeness of individual performers and creators are 'data controllers' under UK GDPR law. Under Article 13 and 14 of current UK GDPR legislation, the data controller must legally provide several pieces of ongoing information to the data subjects (those whose voice or likeness is contained in the data) to ensure that they are compliant with UK law. We believe that these legal obligations are being ignored on a very significant scale by GAI companies operating in the UK.
- In practice, effective transparency must require that AI companies disclose any crawlers and scrapers they have used or are using, any automated rules by which they operated or operate, the timeframe they operated for, and a list of URLs accessed with timestamps; datasets compiled by them or by third parties; and the parties involved in any licensing deals. They should also detail any synthetic data they have used, and, if they created it themselves, the models used to create it and the data that was used to train those models; or, if a third party created it, where it was accessed and at what date.
- Equity supports the amendments made to the Data (Use and Access) Bill by Baroness Kidron addressing the regulation of web crawlers. Transparency regarding what works have been crawled is essential in determining any overlaps with Copyright law, and in supporting constructive negotiation with rightsholders' trade unions over the licensing of their creators' works.
- Equity has been working on the EU's approach to generative AI via our global federation, La Fédération Internationale des Acteurs (FIA), headquartered in Brussels, who have been supporting better regulation of the EU's flawed 'opt-out' model. The European Commission is now looking to reform the 'exception with a

rights reservation' model, that it introduced before the emergence of major artificial intelligence tools like Chat GPT. There is no evidence that this framework has led to any increase in the licensing of copyrighted works in the EU, or driven investment into its AI sector.

- Under these reforms, further work on transparency is being undertaken by the European Commission to build on Article 50 of the EU AI Act, by introducing a new Code of Practice that includes a 'Template for summary of training data'. The template sets out concrete ways that GAI companies must improve transparency. The UK government could draw upon this initiative.
- The EU's Digital Single Market also provides for significant additional transparency obligations, such as under Article 19. We would support the introduction of similar provisions, though tailored to reflect our systems of collectively bargained remuneration, rather than the statutory remuneration models which are common in the EU (but less common in the UK and US).
- The European Union is blocking the operation of any product within its territories which does not meet the standards laid out in its AI regulatory regime. This means that where training has happened outside of the EU, and breached its minimum regulatory standards, the AI product will not be legally available in EU markets. Should the UK end up with a more relaxed regulatory regime than the EU, there is then a risk that none of the products developed here would have access to its market. This is an argument against a weakening of our regime through Option 3 – a framework which the EU is gradually moving away from.
- In sum, AI companies must provide a full public list of their training data in an accessible manner. They should be forced to abide by their obligations as data controllers under existing UK GDPR law. This transparency is fundamental to licensing, and necessary to demonstrate that no illegality has occurred.

27.	***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?***
28.	***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?***

- There are many reasons why AI companies will wish to invest in the UK – whether our public services, infrastructure, strong integration with US markets, our world-leading creative industries, or our significant talent pool in both technology and the arts and entertainment.
- The best route to fostering a strong and accessible UK licensing market is to enforce the existing copyright law. AI companies can already invest in the UK and develop products for our creative industries here by using clean data. Option 3 will diminish the long-term growth prospects of our economically significant and successful creative industries, in the service of a nascent AI industry.
- The European Union is blocking the operation of any product within its territories which does not meet the standards laid out in its AI regulatory regime. This means that where training has happened outside of the EU, and breached its minimum regulatory standards, the AI product will not be legally available in EU markets.
- The Berne Convention is completely clear: under Article 9 countries can permit unlicensed copying *"provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."*[9] Generative AI competes directly for work with the creator's whose content is used in its own training. A broad copyright exception for training would therefore be in breach of the Berne Convention, to which the UK is a signatory.

[9] WIPO (1886), Article 9, The Berne Convention for the Protection of Artistic and Literary Works, https://www.wipo.int/wipolex/en/text/283698

- The UK should lead on this issue globally, by requiring any AI product used in UK jurisdiction to have met its own (high) regulatory standard and working internationally to drive high regulatory standards.

29.	***Does the temporary copies exception require clarification in relation to AI training?***
30.	***If so, how could this be done in a way that does not undermine the intended purpose of this exception?***

- The temporary copies exception does not require clarification in relation to AI training. Generative AI training involves many instances of copying and cannot come under this exception. Even GAI companies know this, which is why they are lobbying the UK government for a broader text and data mining exception.
- As the Educational Recording Agency puts it in their consultation response:

> *"AI developers are not intermediaries but the beneficiaries of copying and transmissions. The "lawful use" requirement cannot be argued by AI developers with respect to the compilation and storage in databases required for commercial training activities. Web crawling and reproduction and collection of copyright works has clear economic significance.*
>
> *Caveats 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."* [10]

[10] Educational Recording Agency response to Intellectual Property Office's Copyright and AI Consultation (2025)

- We do not believe that further clarification is necessary or could be done in a way that does not undermine its intended purpose.

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

- Equity broadly accepts the need and value of a non-commercial research exception. Though we are concerned by the potential for this to be used as a 'backdoor' by which GAI companies can access copyright-protected materials for the training of foundational models by operating downstream from non-commercial crawlers.
- One illustrative example of the potential risks here is the company Common Crawl, which is a US-based non-profit founded in 2007 to crawl the internet and provide a free and open dataset which has been already used in the training of many major Large Language Models. Common Crawl operates legally from the US under their 'Fair Use' provisions. But as a non-commercial entity building large datasets with significant research applications, it would likely be able to operate under the non-commercial text and data mining exception in the UK, were it to choose to do so.
- Though it operates legally and legitimately to crawl the internet and provide significant datasets for research purposes (as well as downstream commercial entities), as far as we are aware Common Crawl web-crawling activity does not currently exclude content which is protected by UK copyright law from its databases, unless it receives a direct request for content to be removed after crawling has already taken place. It is therefore possible at least that databases of this type contain copyright protected works, which have subsequently been used (for free) to train Large Language Model companies.
- Equity is not suggesting that Common Crawl has engaged in illegality. Their example illustrates though how, without stricter enforcement of copyright regulations and better acknowledgement of UK law within companies' policies and practices,

exceptions could be used – intentionally or unintentionally – as a gap in the UK copyright regime. One which allows commercial companies, acting downstream from non-commercial crawlers, to train on copyright protected works without a license.

- This matter is clearly of importance and one which the ICO, Competition and Markets Authority and the Charity Commission could each have an interest in exploring more closely, with support and resources from government, to ensure that non-commercial exceptions cannot be used to circumvent UK copyright law in the training of GAI models.

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

- The benefit of the current Copyright framework is that it is clear, well-established and functioning effectively to enact rights and provide remuneration to hundreds of thousands of creators across the arts. It is also broadly in line with other international regimes, having been developed via several international treaties.
- New rules relating to factors such as purpose and firm size would provide significant additional complication, and wider scope for gaming of the regulatory framework. This is not necessary or desirable. The law works, GAI companies just need to license their input material. Copyright law should continue to protect creators' rights, and the government should continue to enforce the law.

33.	***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.***
34.	***Do you have views on how the provision should be interpreted?***
35.	***Would CGW legislation benefit from greater legal clarity, for example to clarify the originality requirement?***
36.	***Should other changes be made to the scope of CGW protection?***
37.	***Would reforming the CGW provision have an impact on you or your organisation? If so, how?***
38.	***Are you in favour of removing copyright protection for computer-generated works without a human author?***

39.	***What would be the economic impact of doing this?***
40.	***Would the removal of the current CGW provision affect you or your organisation?***

- Equity is not in favour of a regime which offers copyright protection to those making computer-generated works. We are committed to the human-centered application of AI within the arts and entertainment – through a framework which recognises and protects human creativity as the sole source of value within our industries. We believe that the government should remove copyright protection for computer-generated works without a human author. Doing so would help to ensure continued investment in human creativity in the arts and entertainment.
- Many computer-generated works are created using a simple text prompt, using AI models that are trained on other people's work, to compete with those people. People prompting a model should not be afforded copyright protection. On the other hand, there is a good argument that the creators of the training data should own a share of the copyright in any output. This should be supported by government and negotiated via the appropriate trade unions.
- The provision says the author is the person "by whom the arrangements necessary for the creation of the work are undertaken". The creators who provide the training data - upon whom models that create computer-generated works function - are the most critical people in the process. Creative workers provide the essential value of AI, all of which is built on their creative output. There is no artificial intelligence without the human labour of creative work. Computer-generated works of this nature should therefore not be given copyright protection.
- If the government is however committed to providing computer-generated works with copyright protection, then this framework must ensure that the human creators upon which models are trained receive some rights to the copyright of

said works, this would ensure some remuneration for creators whose intellectual property is essential to the production of these works, as integral training data.

41.	***Does the current approach to liability in AI-generated outputs allow effective enforcement of copyright?***
42.	***What steps should AI providers take to avoid copyright infringing outputs?***

- Creators can raise enforcement issues regarding copyright and AI through the Intellectual Property Enterprise court, though this is likely to be too technical and expensive for most Equity members, the average earnings of whom are around £15,000.
- The Information Commissioners' Office also provides a route to challenge GAI companies that have been processing performance data (which contains personal data) without transparency or consent.
- The strength of the trade unions in the arts and entertainment, and the established processes around collective bargaining, also provide an industrial route to raise concerns directly with companies which may have breached performers' rights or data rights.
- As part of Equity's ongoing negotiations with the film and TV engager association PACT, we are proposing the establishment of a Joint Artificial Intelligence Panel to review and assess the impact of AI upon jobs, working conditions, and creativity within our industries, from the perspective of engagers and artists, as well as in relation to our collective agreements. This will help to build a framework for the ongoing amendments to the AI provisions in our collective agreements and to conciliate any related disputes.
- AI providers must respect the law, use licensing and meet their obligations as data controllers to avoid copyright infringing outputs. These companies should engage with the appropriate trade unions to negotiate rights.

43.	***Do you agree that generative AI outputs should be labelled as AI generated? If so, what is a proportionate approach, and is regulation required?***
44.	***How can government support development of emerging tools and standards, reflecting the technical challenges associated with labelling tools?***
45	*What are your views on the EU's approach to AI output labelling?*

- The government should require that all content that includes AI-generation is labelled. A broad approach would be stronger than partial requirements.
- Labelling could help to reduce the impact of deepfakes on performers such as Equity member Dan Dewhirst, whose image was recently exploited by an authoritarian regime without his knowledge.
- Labelling could therefore help to maintain creators' moral rights, in that it would counter 'distortion or mutilation' of a creators' likeness, for example. A more effective legislative tool though would be for the government to adopt unwaivable moral rights through implementation of the Beijing Treaty.

46.	***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?***
47.	***Could you share your experience or evidence of AI and digital replicas to date?***

- The approach outlined under the government's Option 3 is likely to weaken individuals' control over the use of their image and voice in AI outputs, by increasing the opportunities GAI models to train on their image and voice, and the likelihood that they will subsequently be identifiable in AI outputs to which they have not consented.
- With regard to digital replicas, it is important that government policy responds in more detail to the different degrees of use of generative AI within recorded media, across a spectrum of applications of differing intensity. For example, there are:

    - Fully AI-generated performances, known as 'Digital replicas' (where the performer is recognisable) or sometimes as 'Digital Clones'.
    - AI-generated 'Frankenstein' outputs, where specific physical traits of different performers are pieced together in a synthesisation, within which each human performer is not recognisable. These can be made using 2 performers or more.
    - Fully synthetic performances, including digital avatars, whereby the 'performer' does not resemble any real person.
    - AI modification of a 'real' performance, where the performer is recognisable, but their performance has been amended in post-production.
    - AI-modification of a performance, where the performer is no longer recognisable.
- Different types of assets are needed to train AI models capable of creating each of the above AI-generated (or modified) performances. For example:
    - data representing facial features, bodily features and/or movement
    - data capturing the voice (tone, pitch, rhythm, accents)
    - previous recordings & archives
    - previous recordings & archives in full public domain
    - previously made datasets, such as scans & others
    - new recordings made specially for the purpose of AI training
    - new datasets, such as scans and others, made for the purpose of AI training
- Across this spectrum of AI synthesisation and modification, Equity members might be engaged in different ways, including as the driving performer (which may be similar to motion capture services) or as the target performer (the likeness of the performer that is used in the output).

- Given these broad and diverse applications and engagements, Equity members are already facing significant professional consequences from the growing of AI across different sectors of recorded media sectors. An increasing number of our members have now been engaged directly by production companies for the purpose of training AI models and/or generating digital replicas of their image, voice or likeness. "Clean" AI models trained on properly licensed performance data are welcome and stand in stark contrast to most foundational AI models used today that have been illegally trained on content crawled from online sources.
- However, the contracts used to engage our members for this purpose have not been negotiated by Equity and are not construed within the terms of our collectively bargained agreements. Typically, these contracts do not have favourable terms for the performer with AI engagers often seeking to purchase the performers' data on a buyout basis and on all-encompassing terms, giving them absolute control ("ownership") of the data. The one-off payments offered to performers who engage in generative AI work often do not reflect the fact that their image, voice or likeness may be used forever and on thousands of different projects. Crucially, a 'buy once, use endlessly' model for digital replicas leave performers exposed to conflict in their contractual arrangements. This is because a performer could not guarantee exclusivity to one commercial client for a live performance (which is very common e.g. for advertising engagements) if a "performance" by their digital double could be sold by an AI platform to a rival client, without the performer's knowledge or permission.
- Our members will often sign contracts with the understanding that these would only be used in certain limited contexts. Some have, however, discovered their avatars used by customers of AI platforms for creating and spreading harmful content. Perhaps the most prominent recent case recently is that of Dan Dewhirst,

who took a professional contract to become a 'performance avatar' from a company called Synthesia, and later saw his likeness being used to promote the Venezualan government.[11]

- Various performers have discovered that their image or voice has been used to generate digital replicas without consent using pre-existing recordings. Notable examples include Stephen Fry who uncovered a history documentary being narrated by an AI generated voice that was trained on his reading of the Harry Potter audiobooks. Another prominent example is the production 'Deep Fake Neighbour Wars', which used deep fake technology to super-impose the features of high-profile celebrities, such as Idris Elba, onto the profiles of other actors. It was reported that these individuals did not give permission for their likeness to feature in this production.[12]
- Historical recordings are being repurposed using AI technology, raising serious issues for rightsholders. In exceptional cases, deceased performers are being reanimated and incorporated into films using AI. We saw this technology used for the Star Wars in 2016 with the deceased actor Peter Cushing, and Equity worked with the estate of the deceased to ensure that production paid for the use of his voice and image. More recently, AI-generated images or sound of deceased artists have showcased in UK productions, such as '*Gerry Anderson a Life Unchartered*', '*Virtually Parkinson*', and '*Hammer: Heroes, Legends and Monsters'.*
- We are particularly concerned about companies wrongly interpreting performer contracts, which transfer or waive performance rights (either broadly or in the context of specific commercial purposes), as providing a legal basis for exploiting such performance rights in the context of new technologies that were not

[11] Equity (2024), Actor's experience of AI gone wrong, https://www.equity.org.uk/news/2024/actor-s-experience-of-ai-gone-wrong

[12] Warrington, J., (2023) Deepfakes of Idris Elba and Kim Kardashian on ITV raise alarm for actors, *The Telegraph*

contemplated at the time of the contract, such as for commercial TDM, AI training or digital imitation purposes. A notable example can be found with voiceover artist Greg Marston who found his own voice being used for a demo online on the website Revoicer, which offers an AI tool that converts text into speech in 40 languages. Revoicer purchased his voice from IBM, who engaged Greg Marston in 2005 for a voiceover work recording for a satnav system. In the IBM contract, Marston had signed his performance rights away in perpetuity at a time before generative AI even existed.[13]

- It is Equity's position that any contract (including those currently construed under Equity collective agreements) in which creative workers have consented to transfers or waivers of performance rights (either broadly or in the context of specific commercial purposes) should not be interpreted as a legal basis for exploiting such performance rights in the context of new technologies that were not contemplated at the time of the contract, such as for commercial TDM, AI training or digital imitation purposes, unless the contract explicitly references those activities as an authorised form of exploitation. Read our 'Open Letter to the Industry' for more information.[14]
- The copyright framework should be strengthened however to provide sufficient control over the use of Equity members' image and voice in AI outputs. In most contracts, performers will assign their rights to a producer or third party for a creative production who are typically the copyright owner. Crucially, performers' rights are difficult to apply because digital replicas do not generally embody an actual performance by the relevant individual. Dr Mathilde Pavis has provided

[13] Murgia, M., (2023) How actors are losing their voices to AI, *The Financial Times*
[14] Equity (2025), Equity's Open Letter to the Industry on AI Training, https://www.equity.org.uk/advice-and-support/know-your-rights/ai-toolkit/equity-s-open-letter-to-the-industry-on-ai-training

excellent analysis on the challenges of the performers' rights framework in relation to AI-generated performances.

- In the UK there is no codified law of image rights. Instead, we have a patchwork of statutory and common law causes of action, which an individual can use to protect various aspects of their image and personality. Passing off remains the most common means of protecting personality rights in the UK. Though the individual must prove "goodwill" in their likeness/voice - which may be an issue for our members that do not have a public profile- and must also demonstrate that there has been a "misrepresentation", which in this context means that the public are confused into believing that the digital replica really is, or is somehow endorsed by, the affected individual. The latter could prove challenging in circumstances where digital replicas are obvious look-alikes or sound-alikes, or parodies, or accompanied by prominent disclaimers disclaiming any connection to the individual in question.
- Affected individuals can seek a defamation claim if they can demonstrate that their portrayal in the digital replica had caused or was likely to cause serious harm to their reputation. However, this will not be the case for all circumstances and does not address the core objection that someone else is commercialising or otherwise exploiting the individual's face and voice without their consent.
- Moral rights in the UK are also weak for our member's audio-visual performances because these rights only relate to the 'aural' or sound element of a performance. Crucially, due to the uneven bargaining position between individual performers and engagers, it is common practice for these rights to be waived in performer contracts. However, this is rarely necessary and almost never beneficial for the engager or the performer. The current practice of waiving performers' moral rights is based on the misconception that moral rights prevent standard

modifications to the performance or that they limit commercialisation. This is not the case as moral rights have been written into the law with limitations to protect the economic interests of the engager. Respecting moral rights is an essential legal safeguard available to performers against unauthorised uses of 'Generative AI' on their performances. Generative AI has increased the risk of a performance being altered, misrepresented or distorted in a way that could harm the performer's reputation. Performers can use moral rights to request the removal of illicit clones or 'deepfakes' of their performance from the internet.

- As detailed above also, uses of content for AI purposes also engage performers' rights as data subjects under the UK GDPR. These data protection rights are engaged wherever a performer's voice, face or other identifying features are captured, used and "processed" by third parties (and "processing" includes the "sharing" of personal data). Equity is already seeking to enforce our members' data protection rights to leverage fair contracts and tackle infringements. Whilst this legislation grants strong protections for our members and an important set of obligations for engagers who process our members' personal data, it is not being properly enforced through the courts.
- These complicated issues provide a further basis for Equity's arguments set out here, that we need a new suite of intellectual property rights for performers, including synthetised performance rights, image rights and unwaivable moral rights. This is the best policy path to better regulation of generative AI in recorded media.
- Legislative changes could also help to address exploitative performer contracts. Chapter III of the EU Directive on Copyright in the Digital Single Market bolstered the ability of individual creatives and their representative organisations in the UK

to achieve fair returns for the use of creative content in new media services. These measures include

  - transparency obligations, requiring parties to whom authors and performers have licensed or transferred their rights to provide information on the use of their works including revenues generated;
  - a contract adjustment mechanism to allow authors and performers to claim additional remuneration when the revenues received are disproportionally low.

- Similar obligations for UK creatives would make a significant difference for performers who are engaging directly with AI companies for the purpose of AI training and AI-generated outputs.
- We would also welcome the IPO making clear that previous contracts used to engage Artists before the development of generative AI, which transferred their intellectual property and associated rights to third parties, should not be interpreted as authorising performance cloning and require expressed written consent from the Artist.
- Alongside legislative changes, we are also seeking to regulate the use of AI in film and TV by modernising our existing collectively bargained framework. We are also seeking agreements directly with companies who engage our members for the purpose of AI training or AI-generated outputs. Consent, control, compensation and transparency are key principles we are looking to establish in performer contracts.

50.	***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?***
51.	***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?***

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

- Any use of copyrighted works at inference must be licensed. Further details can be agreed through industrial negotiation.
- All creative industry data has its roots in human creation. Synthetic data must itself come from models trained on copyrighted works. Using synthetic data amounts to laundering copyright and should be vigorously opposed by government, unless proper licensing is agreed and in place.
- Synthetic data also produces a worse product. It is likely to perpetuate the widely reported and concerning biases inherent in the outputs of some GAI models because of their training, which may result in the increased dissemination of discriminatory content or ideas.
- The increasing prominence of AI Agents among the bots on the internet (relative to crawling software) is one significant development raising many emerging questions, some of which are like those being asked about web crawlers. It is also possible for AI agents to breach copyright and GDPR for example. They challenge our notions about who the direct 'users' of many pages of the internet now are – given that in an increasing number of cases, the user will never visit the website from which they are receiving information, instead the URL will be visited by an AI Agent, which will extract the requested information and provide it back to the human user, without them ever having left the search page.

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