**British Equity Collecting Society - representing audiovisual performers**

**Response to Government Consultation on Copyright and Artificial Intelligence**

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The British Equity Collecting Society (BECS) is a not-for-profit organisation, established in 1998. BECS has perhaps the largest representation of performers with audio-visual fixations in the UK. Representing over 30,000 direct members and over 100,000 performers through our network of bilateral partners, BECS manages and enforces their rights and collects remuneration for the use of their audio-visual work through licensing agreements. We are a Collective Management Organisation (CMO), subject to the Collective Rights Management Regulations 2016 and governed by our members. We have audiovisual performers' best interests, accountability and transparency at the heart of everything we do.

For the avoidance of doubt, when we use the word "creators" or "rightsholders" in this submission, we intend to include performers within its meaning.

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

No, it would be extremely damaging for the creative industries, particularly individual creators, including BECS members. Opt-out mechanisms do not work technically or practically, particularly in relation to downstream copies (further detail on this in subsequent answers) and especially so in the case of the individual creators and rightsholders who do not have the resources of large corporations. Even in the small minority of cases where opt outs may be possible from a technical perspective, the vast majority of rightsholders would not have the requisite knowledge, time or expertise to opt out their works and would face an unacceptable administrative burden.

This would mean that the vast majority of copyright works would therefore be available to AI developers to use for free, without consent. We appreciate the government's desire to support AI developers but it would be better to do this through grants and subsidies, building data centres and making immigration of skilled staff easier, not by allowing them to train on the UK's vast wealth of creative works and unique cultural heritage for free, so that they can create products which compete with and replace those very creators.

The negative consequences of this will not be limited to financial damage to those creators – human creativity and performance powered by human emotions and individuality have an immense value to society. *"Rather than creating something new and fresh based on human individuality, AI technology is fed by preexisting training data, selecting out and discarding any deviation from the norm. While this might be helpful and appropriate when used for, say, scientific analysis, it could lead to a troubling*

*amplification of the biases, inaccuracies, and prejudices that lurk in those training sets when used in an arts context, which could have a detrimental impact on society if left unregulated."*[1]

BECS members are businesses themselves, individuals, the vast majority residing in and paying tax in the UK. It is not fair that creators should foot the bill for AI developers' progress and profits. Nor is it sensible from an economic and policy perspective, in our view, because many of the AI developers are companies established in other jurisdictions and their profits will be funnelled to shareholders overseas. This proposal would give rise to a vast and unjustified transfer of value from one world leading industry (which includes many individual creators and small business and contributes £124.8 billion GVA annually to the UK's economy, in addition to its immeasurable cultural value and soft power) to another as yet unproven industry in terms of long-term value (many of the players in which are large foreign corporates with already huge profits and the benefits to the UK of which are speculative). A significant number of creators may no longer be able to sustain a living in creative roles and be forced to leave the industry to seek non-creative work, to the detriment of society.

We also question whether Option 3 would be in compliance with the UK's obligations under international treaties. Article 5(2) of the Berne Convention provides that the enjoyment and the exercise of the rights provided for in the Convention shall not be subject to any formality. The Berne Convention also provides that legislation may permit the reproduction of works in certain special cases, "provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate rights of the author". The TRIPS agreement also contains the same three step test in relation to limitations and exceptions to the rights granted to right holders under that agreement. The Beijing Treaty, which the UK has committed in its trade agreements to implement, contains exclusive reproduction rights and making available rights for performers in audiovisual fixations. Article 13(2) of the Beijing Treaty also contains the same three step test in relation to limitations or exceptions to the rights in the Treaty.

While the benefits to society of training AI systems on scientific and factual copyright works are obvious, we would query whether there is societal value in general purpose AI models being trained on creative works, such as films, music, novels etc. scraped from the internet. Clearly there is a place in the market for specialised AI models, trained on such creative works, with informed consent and for fair remuneration, for use within the creative industries but these already exist and are being trained on curated, licensed datasets. We consider it highly unlikely that even such specialised models which claim to be fairly trained have actually obtained consent from and provide remuneration to all contributors to the works on which they are trained (such as actors). As things stand, many of the general-purpose models that have been trained on creative works without consent or payment are being made available for free and our members are not remunerated for this use of their work.

Option 3 also does not address the issue that people who have contributed to the creation/performance of a copyright work but who do not hold rights in that work/performance, for

[1]Bouvard, L., Cooper, E. and Thomas, A. (2024) Evidencing the value of human performance: towards re-thinking performers' rights for an AI world. European Intellectual Property Review, 46(6), pp. 336-345 https://eprints.gla.ac.uk/322354/1/322354.pdf

example because the rights are controlled by a producer or distributor, must have the ability to control whether their work is used for AI training and outputs and, if so, to be remunerated when it is. This is particularly the case as they are at risk of being replaced by AI.

Where such contributors have retained relevant rights, it is not clear how the Option 3 regime would function in relation to works which have multiple rightsholders, such as films and TV programmes, in circumstances where some rightsholders wish to enter into a licence and others do not. Many performers in the audiovisual industry may lose their livelihoods completely as they are replaced by AI and this is already being seen in the dubbing and voice over sphere.

It should be noted that the EU approach to data-mining and opt-out is founded upon a legislative provision contained in the Copyright in the Digital Single Market Directive 2019/790 ("CDSM Directive") Article 4; a piece of legislation that is now half a decade old. The EU Commission has already admitted on multiple occasions that this article was never designed to apply in the context of AI, most certainly not for Generative AI. It is not fit-for-purpose.

No group of rightholders has successfully been able to make their opt-out known in a way that is readable and respected by all methods of mining.

It should also be noted that despite its failings, Article 4 is at least supplemented with the provisions in Chapter 3 of the CDSM Directive addressing among other things fair remuneration and contract adjustment. If the UK chooses to go for "lowest common denominator" legislation and mirror the EU position, UK performers will be much worse off than their EU counterparts unless equivalent provision to those in Chapter 3 are introduced.

Whichever route the government takes, copyright law must be enforced in relation to the large scale past copyright infringement by AI developers. This must not be overlooked and thus tacitly condoned.

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

Options 0 and 1 appear to have been worded in such as way as to deter respondents from supporting them (primarily by excluding reference to transparency) and neither provides a complete solution to the problem.

We dispute that there is a lack of clarity in the current copyright law in the UK or that AI developers are "finding it difficult to navigate copyright law in the UK". As stated in paragraph 5 of the consultation's Executive Summary "copying works to train AI models requires a licence from the relevant rights holders unless an exception applies". We believe that AI developers have chosen not to license or get consent for the use of copyright works because it is quicker and cheaper to ignore their legal obligations (whichever company gets its product to market first has a huge advantage) and they know it will be impossible for rightsholders to enforce their rights due to lack of transparency about what has been used for training, and the lack of resources that most rightsholders will have in comparison to the large AI companies to fund legal battles in court.

If compelled to choose an option, we will opt for Option 1 with modifications. We accept that there is a place for clearly defined exceptions to the requirement for a licence, such as for non-commercial research, which are generally accepted to be in the public interest and not unreasonably detrimental to contributors to the works – as long as models trained under those exceptions are not later put into commercial use, or synthetic data generated by them used to train other commercial models. It is also clear that the introduction and enforcement of transparency obligations on AI developers, so that licensing and rights enforcement would actually be workable in practice, is an essential part of any approach taken by the government and an issue on which the creative industries are united.

BECS' position is that the transfer of rights in the current and previous iterations of the collectively bargained agreements between Equity and producers and broadcasters, (or any non-Equity agreements pre-dating recent generative AI developments) should not be interpreted as granting rights in relation to AI training or performance synthetisation. Exceptions may be where performers' contracts with a producer explicitly describe AI uses and then only in relation to the production of the specific film or TV series for which the performer has been engaged. However, it has yet to be established whether some producers may challenge this interpretation and unfortunately, not all contracts are on Equity terms. Some performers have entered into non-Equity agreements which allow the use of their voice, image and performance for AI training, for a one off buy out fee, due to their weak bargaining power and lack of understanding of the potential exploitation and ramifications and this is likely to become increasingly prevalent. Whenever performers have assignable exclusive rights in their performances, rather than unassignable remuneration rights, they have always been compelled to assign these in their contracts with producers.

We have doubt about how effectively any licensing regime will serve the interests of actors and other audiovisual performers (such as dancers and stunt people) and whether they will, in practice, have the ability to choose whether or not their work is used in AI training and outputs and receive a fair share of any licence fees generated. They are extremely vulnerable to being replaced by AI – it is not only their work but their likeness, voice, mannerisms etc. that can be reproduced by AI (more on this later). Their livelihoods are already extremely precarious and unpredictable, and their median income is well below the national average annual wage[2]. We have highlighted, in responses to other questions, how difficult it will be for them, for technical reasons and as they are individuals rather than well-resourced companies, to opt out of AI training.

An ideal opt out scheme would enable any creator who has contributed to/appears in a creative work to prevent its use for AI training but in practice, it seems likely that the copyright owner/distributor of a film would be very resistant to allowing an individual performer to wield the power to prevent the licensing of the film for this use. It is very unclear how opt outs will function in relation to works with multiple rightsholders or creators who have transferred their rights (who usually have weak bargaining power).

[2] UK Audiovisual Performers: A survey of earnings and contracts
Behind the Scenes: The Realities Facing UK Audiovisual Performers

Furthermore, it is likely that most of the films, TV programmes and adverts that have ever been made (especially in the English language), have already been scraped for training by developers of general-purpose generative AI systems (without consent or payment), due to their ubiquitous availability online worldwide. Performers have no ability to control where their work within films and TV programmes is publicly available and no control, in practice, over the opting out of those works. They also lack the resources to take legal action in the overwhelming majority of cases and the current lack of transparency also renders this unfeasible.

For all the reasons mentioned above, it is essential that whichever route the government takes, it ensures that actors and other audiovisual performers are fairly compensated for the use of their work for training and in AI outputs. We support the continued development of a licensing market for AI uses. However, there is a real danger that audiovisual performers may not benefit equitably from any licensing regime that develops under Option 0, 1 or 3 (for example, in circumstances where they have assigned the relevant rights under the terms of their contract, a rights reservation and opt-out system is introduced and they are unable in practice to do this, or producers/copyright owners enter into licenses to allow AI developers to use films and TV programmes in which they appear and do not share licensing revenues with them).

If it becomes apparent that a licensing regime is unlikely to give performers control over the use of their work by AI developers and adequately compensate them for that use, we suggest that a way to ensure AV performers are compensated for this use of their work would be via the introduction of a right to statutory remuneration, payable by AI developers, that is not assignable except to a collective management organisation ("CMO") and involves a fair payment for the duration of the time that the model trained on their work is in use (not just an initial one off payment which would inevitably be made before anyone knows the value of the uses). See the Fair Internet for Performers Campaign for a similar proposed scheme in relation to remuneration in connection with making available[3].

This could and should be done in tandem with implementing the Beijing Treaty in the ways advocated for by BECS in its submissions to those consultations, which include statutory remuneration for certain uses, for example where new uses emerge and uses that are remote from the producer. AV performers also urgently need the moral rights set out in Article 5 of the Beijing Treaty, (applying even when their economic rights have been transferred) to claim to be identified as the performer of their performances and to object to any distortion, mutilation or other modification of their performances that would be prejudicial to their reputation, which would help them to take action against the unauthorised creation of look- and sound-alikes by AI.

CMOs are regulated, not-for-profit, trusted by their members, have networks of contractual relationships with CMOs in other countries and already have systems in place to process large amounts of data about works used, cast lists and allocating payments based on usage.

[3] https://fair-internet.eu/q-and-a/

It should also be noted that AI developers are currently in breach of data protection legislation in relation to the processing of personal data, including the voice and likeness of any individual whose performance has been used for AI training. See the ICO's recently published response to its consultation series on generative AI[4]. The ICO should be given resources to take action against AI developers in relation to these breaches and AI models available in the UK should have to demonstrate compliance with data protection legislation, including timely removal of personal data when requested by data subjects.

Whichever route the government takes, copyright law must be enforced, including in relation to past copyright infringement by AI developers. This must not be overlooked and thus tacitly condoned.

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

No, see answer to question 1. An opt-out scheme would not give control or a route to remuneration for our members or other creators as they cannot opt-out of the innumerable downstream copies of their work which are available and easily accessible on-line globally. Most will not be aware of the ability to opt-out, know how to opt-out or be able to, since their work is available from numerous publicly available sources worldwide over which they have no control. Many proposed opt-out solution, such as robot.txt are not fit for audiovisual works and can only be applied at a domain level, not at a work level.

Exercising an opt-out may have the undesirable side effect of preventing works from appearing in internet search results. Arriving at a workable technical opt-out solution could take years, if indeed it is even possible. Even if it were technically possible, it would present an unacceptably huge administrative burden on those seeking to exercise it, especially smaller rightsholders/individual creators[5]. It is also hard to see how such a scheme would simplify the current situation and promote licensing since many copyright works (such as films) have multiple rightsholders/contributors all of whom would have the ability to block the licence.

**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?**

See answer to Question 2 for proposed approach.

Although our proposed approach would involve more cost and effort on behalf AI developers, it is necessary to minimise harm to creators, including our members, with whom AI outputs will inevitably compete. The existence of successful "ethically trained" AI models in the film and TV space (executives from which gave evidence in December to the Culture, Media and Sport Committee Inquiry on British Film and High-End TV) which already license the content on which they are trained[6] demonstrates that an exception is not required – though BECS maintains that an AI model cannot be ethically trained

[4] Information Commissioner's Office response to the consultation series on generative AI | ICO
[5] The insurmountable problems with generative AI opt-outs
[6] committees.parliament.uk/oralevidence/15129/html/

unless the consent of all contributors to the training works (including performers) has been obtained, and they have been fairly remunerated. An exception coupled with the impossibility of opting out in relation to the majority of works would cause damage to the burgeoning licensing market and the companies that want to train their AI models ethically.

The key point is that generative AI outputs compete with the works on which AI is trained and thereby reduces opportunities for human creators and damages their already precarious livelihoods. Therefore, the only fair system is one based on consent (rather than rights reservation) and fair remuneration.

If, despite objections from the creative industries, the government decides to proceed with Option 3, and there are creators who cannot realistically opt-out or enforce their rights, or have assigned their rights, or do not benefit in practice from a licensing regime, it should also introduce a statutory remuneration right paid for by AI developers which is not assignable, except to a CMO (as explained in our answer to Question 2), which ensures that such creators are fairly compensated on an ongoing basis, when their work is used. The existence of such a statutory remuneration scheme should not however, deprive creators of the ability to withhold consent to the use of their work for AI training if they so wish.

Similarly, it should not absolve AI developers from their liability for historic copyright infringement. It is concerning that in discussions on AI, there appears to be a growing tolerance for copyright infringement. It has become the "elephant in the room" – everyone knows that copyright infringement has taken place on an industrial scale, however it seems to be being ignored in the pursuit of a new AI strategy. Regardless of which Option is chosen, this infringement should not be excused and rightholders should be compensated.

The government clearly sees value in alignment with the EU legal position in this sphere. The EU's TDM exception was introduced (a) when no-one knew about the potential disruptive impact of generative AI and (b) as part of a package of measures in the CDSM Directive, which was supported by the UK government when it was introduced, prior to Brexit, and which includes measures to protect creators and including Article 18, providing that:

*"Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration."*

If the UK government wants to be aligned with the EU and does implement Option 3, it should ensure that similar protections are afforded to UK performers. A statutory remuneration right would be a way to achieve that.

This view is supported by the European Copyright Society, which stated in its recent Opinion:

*"The fair remuneration of authors and performers for all acts of exploitation of their works and performances occurring in the life cycle of Generative AI models and systems (including when an opt-*

*out from the application of Art. 4 CDSM Directive has been exercised and when their works or performances are included in a dataset that has been licensed to an AI provider) needs to be reaffirmed as a fundamental principle of the EU acquis. The Commission should look at the best ways to ensure such a remuneration, including remuneration rights or other compensation mechanisms, in concert with Member States."* [7]

Statutory remuneration for uses of works by AI models may well be introduced in the EU, to comply with the requirements of Article 18 of the CDSM Directive because it is clear that the opt-out and licensing model is not working there. If such a system is introduced, UK rightsholders should receive a share of the remuneration because models will be trained on UK copyright works in the EU. However, multiple EU Member States are campaigning for access to a share of remuneration from other statutory schemes for nationals of third countries to be restricted to countries where reciprocal schemes are in place[8]. Therefore, the lack of such a scheme in the UK could also jeopardise UK rightsholders/performers ability to obtain a share of statutory remuneration from other countries where such schemes are introduced.

It is unclear how the government thinks Option 3, or any of the options in this consultation, achieve the objective of giving rightsholders control over and the ability to license and seek remuneration for, the use of their content by AI models, in respect of the billions of works which have already been used for AI training purposes without consent or payment, so we would welcome clarification on that.

**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.**

Generative AI competes with our members and will reduce the pool of work available to them in an already extremely competitive environment. Given that it will be impossible for them to effectively opt their works out of training, an exception would allow AI developers to build highly scalable competitors with our members for free and against their will. This will result in even more audiovisual performers living in poverty, leaving the profession or being deterred from entering it in the first place and will reduce diversity as only people from wealthy families will be able to enter the profession[9].

In addition, facilitating the growth of AI will result in a huge number of job losses. Job losses that will not be compensated by the recruiting power of the AI industry, no matter how well it prospers, given that its purpose is to replace humans.

[7] ecs_opinion_genai_january2025.pdf
[8] joint-letter-regarding-the-need-for-a-legislative-proposal-on-rules-and-boundaries-of-international-application-of-eu-law-on-copyright-and-neighbouring-rights.pdf
[9] UK Audiovisual Performers: A survey of earnings and contracts
Behind the Scenes: The Realities Facing UK Audiovisual Performers

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

*The answer to this question should not be read as detracting from our position that introducing a reservation requirement is contrary to international copyright law and practically unworkable.*

When a reservation has been applied, and in all other circumstances, a developer must (not "*should*") comply with copyright law. Thus, a developer must respect the opt-out where that is in place; and be transparent about all works utilised. However, regardless of whether an opt-out is in place or not, an **AI operator remains liable for historic copyright infringement**. It is impracticable for individual performers to enforce their rights and therefore provisions should be put in place to facilitate their representatives (such as CMOs) being able to enforce them on their behalf.

AI developers should retire all models previously trained on any work where consent has not been obtained and (if an exception and opt-out mechanism is introduced) trained on any work that has been opted out and any synthetic data that used opted out works and models trained on such synthetic data. It would be much more straightforward for AI models to be trained on work where consent has been obtained in the first place, as required by existing law.

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

*The answer to this question should not be read as detracting from our position that introducing a reservation requirement is contrary to international copyright law and practically unworkable.*

There need to be statutory damages or fines at a sufficient level to deter future breaches. Statutory damages would remove the need for plaintiffs to prove damage which would be difficult in this situation and simplify court proceedings. There should be greater regulation and enforcement which does not rely on individual rightsholders having the means and capacity to take action on a private basis, with criminal penalties applying where appropriate. There should be a legal requirement to retrain and the possibility of banning the model from the UK if there are repeated breaches.

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

We do not believe that rights should need to be reserved in any format but if they are, requiring rights to be reserved in machine readable format would make it extremely difficult, expensive and burdensome for creators to opt-out. It would not even be possible in some cases, such as photographs or videos of original works that have been created and uploaded by third parties and recordings made with smart glasses.

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

*The answer to this question should not be read as detracting from our position that introducing a reservation requirement is contrary to international copyright law and practically unworkable.*

Standardisation will not solve the problem that such protocols cannot be used to opt-out downstream copies of works, most individual creators will not be aware of the ability to use them or be able to manage it from a technical perspective, models trained on a work can be available for years after a work has been opted out, giving rise to synthetic data based on that work and any rights reservation protocol unfairly places a huge administrative burden on creators. Standardisation would need to take into account the specifics of each sector which will vary.

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

Compliance with standards needs to be enforced, not just encouraged. The government should prohibit AI models which have been trained on copyright works without consent or payment from being available in the UK, should require them to provide evidence that they comply with UK law in relation to copyright and related rights and data protection as a condition of doing business in the UK and introduce and enforce regulations around good practice in relation to transparency concerning works that have been used in training and outputs.

Effective sanctions should be put in place for copyright infringement. These should include the introduction of statutory damages and criminal penalties where appropriate. It is not fair to leave it to individual creators to take legal action against huge AI developers.

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

Yes. See answer to question 10.

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

In so far as many AI models have already been trained on copyright works without licenses, clearly not.

There is currently no licensing of the related rights of performers in audiovisual recordings for AI purposes. Some AI developers do licence copyright works to train their models but in the case of audiovisual works, such licences are only obtained from the copyright owner/distributor. The informed consent of the performers should also be obtained and the licence fee shared with them.

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

If any financial assessment is to be done, it must balance any new licensing revenue against **the loss of revenue from other sources and the damage caused to the creative sector as a whole**.

From the individual performer's perspective the financial significance of their specific performance in a sea of millions of other performances is not large. However, the financial damage to the individual performer as well as the creative sector as a whole caused by GenAI in terms of unfair competition (human versus AI), loss of revenue, job losses etc is very large. With the possible exception of a few very famous actors and musicians, anything gained by way of licensing will be vastly outweighed by the negative aspects of GenAI.

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

Measures requiring transparency about copyright works used for training and in outputs are essential. Also, AI developers wishing to make their models available on the UK market, should be required to demonstrate how they comply with existing UK copyright and related rights and data protection law, just as a manufacturer of goods would have to demonstrate compliance with UK health and safety laws.

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

It should introduce a statutory right to equitable remuneration as described in the answers to questions 2 and 4 and promote collective licensing schemes to ensure all categories of rightholders are fairly remunerated. Collective management organisations are regulated entities that are not-for-profit in nature and have transparency obligations.

Question 16: Are you aware of any individuals or bodies with specific licensing needs that should be taken into account? N/A

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

Yes, without such disclosure it is likely to be impossible for creators to negotiate payment or 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?**

Clear regulation on the transparency and auditability of AI tools must encompass:

i) detailed record-keeping of metadata attached to ingested materials,
ii) publication of detailed information on all data ingested on the AI developer's website or equivalent and
iii) labelling of AI-generated outputs.

Legislation must recognise that these provisions serve the purpose of enabling rights holders to exercise and enforce their rights.

In relation to ii), legislation should set out the specific information required, including but not limited to:

1. Source and owners of each dataset, including any datasets used to generate synthetic data.
a. *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.*
2. Work-level information of all data ingested.
3. Timeframe of data collection.
4. Specific legal basis on which each data source was ingested and processed.
5. Percentage/weighting of each data source to overall training/fine-tuning.
6. Region in which training took place.
7. Description of the measures taken to ensure compliance with UK copyright law.
8. List of third-party providers used to acquire data.
9. Where applicable, the types of automated data collection tools e.g. web crawlers used to acquire data, including by third parties.

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

The full list of web crawlers used should be disclosed. and the relevant time of the crawling.

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

The requirement should be that Generative AI developers make public a list of all of their sources of training data, in a manner that lets any third party fully understand the training data they used.

The process should be straightforward and low cost to rightsholders and users. The onus of compliance should be on the tech companies - appropriate transparency to enable licensing and enforcement of rights should be the priority.

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

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

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, particularly as AI developers have already infringed copyright law on a massive scale. To ensure compliance any sanctions need to have a deterrent effect. It should be required by law for any model available in or trained in the UK.

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

In the EU, consultations are currently ongoing concerning a Code of Practice that would cover such issues as transparency. Broadly speaking, the creative sector maintains that under the Code of Practice AI developers should be obliged to provide sufficient transparency so as to be able to demonstrate compliance with copyright law. This is a principle that we support. However, the reality is that the EU approach does not work.

As yet there is no evidence that the EU approach provides rightsholders ability to know whether and how their data has been used nor how to reserve their rights and Member States have raised concerns about this[10].

We are aware of significant concerns around the EU's approach to transparency including:

- The summary (Recital 107) 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.

AI developers have argued that records of training data are commercially sensitive. Such information 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 provider.

[10] https://data.consilium.europa.eu/doc/document/ST-16710-2024-REV-1/en/pdf

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

The government can invest in data centres and AI education and skills training, give grants and tax breaks to AI companies who base their operations in the UK and comply with UK law and make it easy for people with AI skills from overseas to get a visa to work in the UK.

It can implement transparency requirements and require that any model trained in or available in the UK complies with existing law, as well as introducing new statutory remuneration rights as detailed in previous answers. Technical measures can be employed to prevent access to models trained by disreputable AI developers, thus ensuring a healthy market for those developers who comply with the law. This will enable AI companies and the creative industries to work together rather than being pitted against each other and locked in litigation. Responsible AI developers will be attracted to the UK. Consumers will soon realise their outputs are better and more accurate as they are trained on licensed and curated data, rather than scraped from all the junk on the internet and people will be willing to pay a premium for such services.

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;
- 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, emphasizing respect for intellectual property rights;
- Introduce a certifications and compliance system for AI developers who use these resources and comply with UK copyright laws.

**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?**

It is key that AI models trained outside the UK and put on the UK market, need to comply with the laws and regulations of 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 protects the creative industries of European member states in this regard.

The UK should lead by example.

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

It has been shown that the copying that occurs during generative AI training does not fall under this exception. The copies made by AI developers in the training process are neither temporary/ ephemeral, nor transient/incidental.

Furthermore, the copies made in the training process represent the economic value for the AI developer; they have an independent economic significance.

It is clear that the exception does not apply to AI training for commercial models but if the developers of such models are claiming that it is unclear, the government should clarify the position.

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

The temporary copying exception is not applicable but in order to create certainty for rights holders and AI developers, government might consider guidance on the scope of the temporary copying exception

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

Commercial AI companies must not be permitted to use it as a loophole to avoid complying with copyright law. Safeguards are required so that models trained under the non-commercial research exception or synthetic data generated by such models should not then be utilised by commercial AI developers.

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

No, copyright law should continue to protect creators' rights irrespective of these considerations. If a small business wants to create an advert which includes a photograph, it either needs to use one in respect of which it owns the copyright, find one which is in the public domain or pay to license it. The vast majority of creators are small business or individuals so there is no justification in transferring the value in their work to other businesses, no matter the size or purpose.

**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.**

No, many computer generated works are created using simple text prompts by AI models that have been trained on human creators' works. There is the risk that the market will be flooded with computer generated works without human authorship, reducing the share of the "remuneration pie" available to human creators, should these works be afforded copyright protection.

The current legislation was put in place before the existence of software that lies behind generative AI training and development. The Consultation recognises that many other countries, including the US

and most EU member states, do not include similar provisions and that the UK provisions have little, if any effect on the production of content or on AI development or the real commercial concerns behind unauthorised text and data mining address elsewhere by the consultation.

Developers and right owners have not sought to rely upon current CGW provisions and therefore greater clarity would be provided by removing the provisions.

This should not mean removing protection for original copyright works which are made or adapted through the application of computer programs, which are themselves "original literary works", nor the removal or reduction of protection for copyright works which are used or disseminated in digital form making use of online or other telecommunications technologies.

The summary of findings set out in Part 2 of the US Copyright Office examination of copyright law and policy issues raised by artificial intelligence, including the scope of copyright in AI-generated works and the use of copyrighted materials in AI training[11] published on 29 January 2025 concludes that:

*"• Questions of copyrightability and AI can be resolved pursuant to existing law, without the need for legislative change.*
*• The use of AI tools to assist rather than stand in for human creativity does not affect the availability of copyright protection for the output.*
*• Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material.*
*• Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.*
*• Whether human contributions to AI-generated outputs are sufficient to constitute authorship must be analysed on a case-by-case basis.*
*• Based on the functioning of current generally available technology, prompts do not alone provide sufficient control.*
*• Human authors are entitled to copyright in their works of authorship that are perceptible in AI-generated outputs, as well as the creative selection, coordination, or arrangement of material in the outputs, or creative modifications of the outputs.*
*• The case has not been made for additional copyright or sui generis protection for AI generated content."*

These points seem to support the fact that a similar approach will be helpful in applying the Act under UK law and that removing the unclear historical provisions will be helpful for future application and analysis of the law.

Question 31. Do you have views on how the provision should be interpreted?
N/A
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?

[11] https://www.copyright.gov/ai/?loclr=eanco

N/A

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

N/A

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.

N/A

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

Yes, provided that he current provisions for the recognition of authorship of sound recordings and films and broadcasts continue to be respected

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

N/A

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

N/A

**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, a 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 copyright owner 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, in particular given the costs-shifting rules in UK litigation, would in practice be likely to deter all but the very wealthiest rights owners from pursuing claims.

**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.

The evidence deployed in the various US, UK and others claims brought by copyright owners 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.

**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. All outputs that include material from a Generative AI model should be labelled.

Regulation is required as it is not currently being done voluntarily.

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

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

While the AI Office is still consulting on this and other elements which may form part of a Code of Practice, it is too early to state definitively what the approach of the EU is. We support output labelling and agree that it is extremely important that members of the public remain aware of the importance of human creativity and can choose to support the individuals behind it. Nevertheless, we are aware of the technical limitations associated with it.

However, by introducing a statutory remuneration right, consumers would be reassured that any "harm" caused by their consumption of AI output, would be mitigated by the fact that they knew creators were being remunerated.

**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?**

The approaches outlined in this consultation do not provide individuals with sufficient control over the use of their image and voice in AI outputs.

Unwaivable moral rights for audiovisual performers need to be introduced into law, ideally via ratification of the Beijing Treaty without further delay.

The US Copyright Office has also reported on the urgent need for legislation to prevent harm resulting from unauthorised digital replicas[12]. BECS agrees with the recommendations of the report. This should cover all individuals, not just celebrities, performers, or those whose identities have commercial value, since everyone is vulnerable to the harms caused by unauthorised digital replicas and liability should 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 guardrails but not to assign them outright. Remedies should include both injunctive relief and monetary damages, including statutory damages to ensure that protection

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

is available to individuals regardless of their financial resources and criminal liability may be appropriate in some circumstances.

We also reiterate the rights of data subjects whose voice and likeness are used for data processing which are currently being ignored by AI developers without consequence. The ICO has acknowledged this but need to be adequately resourced to take action in relation to these breaches of data protection law.

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

Below is an extract from the report of the Create team at Glasgow University on their recent research about audiovisual performers' earning and contracts[13]:

"The common sentiment among performers is one of worry about the ever-evolving capabilities of AI. The rapid pace of technological advancements is difficult for many to grasp, creating a sense of unease about their future in the industry. **An overwhelming 94% of performers surveyed said they were pessimistic about the potential impact of AI on their performing activities**.

Worryingly, this report evidences instances of labour displacement in what is an already precarious environment. Indeed, one performer interviewed reported being replaced for a voice acting job in a commercial after being unavailable on a particular day to which he added *"AI did the voiceover. It's extraordinary. And it's not even a robotic voice. It sounds human and sincere and warm*". If such cases become widespread, which will likely be the case, this will create a hierarchy within the industry, where human actors are primarily used for marketing high-profile productions. While this may benefit the star actors who remain employed, it will deprive many others of opportunities, especially in areas deemed 'less important' such as commercials or non-principal characters. In essence, this shift will further exacerbate the star effect, concentrating opportunities and income among a small group of well-known performers, while the long tail of performers - those who rely on a variety of smaller roles to sustain a living - will find it increasingly difficult to secure work.

*"If they can get AI to sell deodorant or soft drinks, why would they pay for an actor?"*

Performers are increasingly concerned about the terms in their contracts that might include clauses giving away their likeness. This concern stems from the fear that their image, voice, or overall persona could be replicated and used without their consent. In one notable case, **a major production attempted to introduce an AI clause that would have granted the right to use an actor's likeness in perpetuity for any future productions. Alarmingly, this clause was inserted into the contract through deceptive practices** - the new contract was presented to the actor early in the morning as they arrived on set, with the misleading implication that their agent had already reviewed it, which was not the case. However, on a positive note, for the moment, most performers (79%) have not been asked to provide images or audio to create digital replicas of their image or voice. Nonetheless, and perhaps

[13] UK Audiovisual Performers: A survey of earnings and contracts
Behind the Scenes: The Realities Facing UK Audiovisual Performers

due to the 'agent effect', some of the performers interviewed are worried that they have unwittingly signed contracts containing a clause related to AI: *"I'm absolutely sure I have signed contracts in the last year that will have included it, and I just won't have understood the language around it."*

**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.

We would support the government making a statement reconfirming that copyright law applies to restricted acts at the point of inference.

Existing legislation could be future proofed by including general provisions on fair remuneration that apply regardless of the means of technical exploitation. This was the EU's intention with Chapter 3 of the CDSM Directive on fair remuneration. Introducing equivalent measures in the UK would address many of the legal problems that have arisen due to AI and that will arise in the future when other new technologies appear.

**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?**

Our understand is that the quality of the outputs of AI models declines when synthetic data is used, therefore this must not be seen as preferable to or easier/cheaper than using original, curated, data sets.

The government must introduce transparency obligations for AI developers, as outlined in our response. These obligations should explicitly apply to synthetic datasets, ensuring that developers disclose information on 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.
- 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.

The second draft of the EU Code of Practice for General Purpose AI includes 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 and ii) 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 government should ratify the Beijing Treaty without further delay, which will provide AV performers with moral rights (which should be unwaivable) and help with enforcement of their rights in an international context.

It should use the opportunity of the changes to copyright law to provide for a rights to statutory remuneration paid by video on demand platforms to audiovisual performers CMOs, in addition to remuneration due under contracts between performers and producers, as now exists in a number of countries around the world, to enable AV performers to share in the success of their work on these platforms as advocated for by The Association of European Performers' Organisations (which consists of many performers' CMOs, The International Federation of Actors, The International Federation of Musicians and the International Artists Organisations[14].

It should implement the Smartfund, which has the support of the CMS Select Committee and numerous MPs and members of the House of Lords, to provide for payments from manufacturers and importers of devices such as smartphones to a fund which compensates creators when their work is privately copied on those devices and supports local arts projects.

The fact that the UK supported the CDSM Directive while still a member of the EU but has still not introduced equivalent provisions in UK law, needs to be urgently addressed. These provisions (which to an extent future-proof performers against new technologies or other developments) should be introduced in the legislative initiative addressing whichever option the UK chooses to pursue in light of this consultation. The Article 4 opt-out in the CDSM Directive must not be viewed in isolation. It should be borne in mind that in the EU and in the context of AI, the position of performers (and authors) is not governed solely by Article 4. It is governed by the overriding provisions in Chapter 3 of the CDSM Directive and in particular the right to fair remuneration for *any* exploitation of their performances, including exploitation by AI operators. This is a consideration that was missing from the consultation document.

All of the above measures would help to provide income for audiovisual performers between jobs to reduce the precarity of their profession and mitigate, to some extent, the reduction is work which is likely to result from adoption of AI technologies.

[14] Questions & answers | Fair Internet for performers!Fair Internet for performers!