International Artist Organisation Of
M U S I C

IAO Response to Consultation on Copyright and Artificial Intelligence

International Artist Organisation

IAO is a nonprofit umbrella association for national organisations representing the rights and interests of Featured Artists in the Music Industry. IAO was officially founded in 2015. Artificial Intelligence and the need for copyright protection impacts all of these artists and therefore we are grateful for the opportunity to express our views on their behalf.

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

No. The premise of Option 3 is fundamentally flawed. It is wrong to say:

"*This approach would appear to have the potential to meet our objectives of control, access, and transparency,* ***and enable licensing agreements, ensuring right holders are remunerated where appropriate***."

The DCMS Economics of Streaming report showed that licensing agreements, without supplementary measures, rarely remunerate performers fairly. This is also the case internationally, not only in the UK. Applying the same approach in the area AI is both unimaginative and destined to fail. Further, an opt-out system brings with it immense practical problems for all categories of rightholders.

Concerning data-mining you state (paragraph 73): "*While the EU approach is a useful precedent, there is some uncertainty about how it works in practice and some aspects are still being developed. For example, the EU opt-out should be machine readable, but the practical application of this has not been consistent."*

It should be noted that the EU approach to data-mining and opt-out is founded upon legislation that is now almost 5 years ago and was never designed to apply to AI, something which the EU Commission has already admitted. Obviously, it is not fit-for-purpose.

However, if the UK is keen to borrow from the approach of the EU, it should remember that the TDM exception is at least supplemented by provisions on **fair remuneration, transparency, contract adjustment, alternative dispute resolution and rights revocation** (CDSM Directive 2019/790) articles 18-22). If the UK chooses to follow the EU position, they should at the very least include introduce these additional provisions so that the **continuing discrimination that UK performers face** as a result of its failure to grant UK performers these rights, is not perpetuated.

Question 2. Which option do you prefer and why?

The sentiment behind option 1 has merit. It supports the principle that copyright infringement, **past**, present and future cannot be tolerated. We support the position that performers' rights may not be exploited by AI companies, unless performers having explicitly consented, and unless fair remuneration is paid for **past**, present and future usage.

We support the approach of licensing rather than a TDM exception, however experience (and the DCMS Economics of Streaming report) show that a system based solely on licensing is ineffective for a large majority performers. Accordingly, we would support the introduction into UK law of the aforementioned provisions in the CDSM Directive 2019/790.

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

No. The TDM exception is unworkable and insufficient for many reasons.

- It does not address historic copyright infringement. That cannot be accepted.
- Putting the administrative responsibility to opt-out on performers is overly burdensome and costly.
- Legally, it is invalid. It amounts to imposing a "formality", something that is forbidden by international copyright law to which the UK is a party e.g. WPPT : "*The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality*" (see art. 20) and does not comply with the three-step test, again set out in international copyright treaties.
- It is not technically feasible to ensure that every recording available somewhere on the internet can be identified as "opted-out content".

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?

If option 3 is introduced, it should be supplemented with the introduction of an unwaivable right to fair remuneration, subject to compulsory collective management, payable by AI companies. This would be payable to all performers who have not expressly exercised their right to opt-out. This solution ensures that performers who do not wish their performances to be used by AI companies, (e.g. for financial or moral reasons) have the ability to prohibit such use, while other performers would receive remuneration in the most practicable manner. It would be totally unacceptable (and "imbalanced") if AI operators were to be able to operate a business model in which performances were exploited, but no remuneration was paid. Such a right should be accompanied by the other provisions in chapter 3 of the DSM directive.

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.

There will inevitably be a decrease in remuneration that performers will suffer as they compete with the cheaper AI versions of their own creations. Equally, it will devalue (both in terms of quality, and financially) the creative content that is such a huge asset for the UK both financially and in terms of soft-power. In addition, facilitating the growth of AI without appropriate guardrails for creators will result in a huge number of jobs losses

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

Clearly, the action a developer should take is to respect the opt-out i.e. to comply with the law. They must also comply with it in terms of historic copyright infringement. There is no justification for treating developers any differently to other parties who indulge in copyright infringement/piracy.

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

A system of statutory damages should be introduced to act as a deterrent and ensure compliance.

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.

No. Firstly, it is unworkable and secondly, it is likely that the costs will be borne by performers, i.e. those who can least afford it.

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

Again, rights reservation is unworkable, certainly for individual performers. Any policy introduced cannot be designed to only benefit those entities with the highest financial resources.

Question 10. How can compliance with standards be encouraged?

Effective sanctions should be put in place for copyright infringement e.g. statutory damages.

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

Yes. The CDPA 1988 should be amended to introduce statutory damages.

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

No, it does not currently meet the needs of creators and performers, as consent is not being sought as standard for use of their work and they are not being remunerated in a clear and transparent way, as a result.

We believe that the music industry and the Government must ensure that explicit consent is secured from music-makers before their works are licensed for AI ingestion. Resolving this requires a robust framework that makes it easier for performers to enforce their rights and act against unauthorised use of their works. A strong licensing market is reliant on a strong copyright framework, hence our support for Option 1.

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

This question misses the point. 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.

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

Measures should be introduced to support a good "AI practice". Licensing is just one part of that. Fair remuneration, transparency, respect for copyright and performers' neighbouring rights must also form part of that practice.

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

If licensing will become its preferred option, the UK Government should indeed promote collective licensing schemes.

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

Not applicable.

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

Yes. Full transparency is essential to ensure compliance with copyright law, effective licensing and more importantly payment of appropriate and proportionate remuneration.

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

The level must be sufficient to allow the individual recording to be (directly or indirectly) identified, without being overly costly or burdensome efforts on the part of rightholders or their representatives.

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

In addition to the general principles on transparency, web crawlers in particular should provide full transparency by maintaining a record of every opt-out mechanism they have respected.

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

It is not a question of proportionality. The starting point must be that that AI operators are obliged to comply with copyright law and that where they fail to do so, they should be liable for that infringement. No policy should be introduced that departs from a fundamental respect for existing law.

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

Again, this is the wrong starting point. AI companies must comply with copyright law, and as with any other business, this requires paying for licenses or paying remuneration. ***If*** those costs do not fit with their business model, then they must adapt that model or cease operating it.

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

We reject the premise of the question. It is irrational to imply that any entity let alone AI operators need to be "encouraged" to comply with requirements on transparency or copyright law. They should be treated no differently to any other entity.

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

The outcome is so far unknown. It is working on a Code of Practice but it is not complete.

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?

It can ensure that any licensing system in place is as simple as possible. By introducing a statutory remuneration right as proposed above. This would ensure that AI operators can

use performances in a copyright compliant manner, without the need for obtaining a license from the vast majority of performers.

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?

Clarification is welcome. It could be clarified that all models must comply with UK law regardless of where the training has taken place.

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

No.

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

Not applicable.

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

Only if AI operators do not abuse it to subvert existing copyright law. If they do so, they should be subject to sanctions.

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?

Performers rights must be respected and fair remuneration paid in all circumstances regardless of the purpose or size of an AI company. There is no justification to depart from these fundamental principles.

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.

The advent of AI requires legislative change. This must be structured in a way that the net effect will not be to devalue humans both creatively and financially. Computer-generated works are just one part of that equation.

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

Not applicable.

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?

Not applicable.

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

Not applicable.

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

Not applicable.

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

As a general comment, copyright protection should not be granted to any work where there has been insufficient human contribution.

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

Not applicable.

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

Not applicable.

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

See answer to question 35.

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

Comply with copyright law.

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?

It is important that labelling is in place so that human content is recognised and remains a "premium" product in terms of societal value. It is proportionate that AI operators are obliged to do so, but they should be allowed to take whatever steps they wish in ensuring that this happens.

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

The government can endeavour to get the creative community onboard to be an active and cooperative partner. To do so, they must ensure the fundamental principles of respect for performers' rights and fair remuneration are enshrined in law.

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

It is too early to state definitively what the approach of the EU is. However, the position that output must be identifiable as AI generated or manipulated is supported.

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?

They would provide little or no control over the use of their image and voice in AI outputs, for the reasons set out above regarding opt-outs being unworkable (at least for individual performers). Greater control would be achieved by the introduction of personality rights and improved moral rights.

This is always an infringement which falls outside of the scope of copyright and related rights. The UK government should provide individuals with the necessary tools to react rapidly and penalise such infringements with fines in a meaningful amount.

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

Not applicable.

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?

AI is producing numerous issues (including issues related to inference) which the current copyright framework in the UK and elsewhere is unequipped to deal with. The best way to address this is to try to future-proof existing legislation 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 DSM 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?

See answer to question 45.

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

The fact that the UK supported the DSM directive while still a member of the EU, but has still not introduced equivalent provisions in UK law needs 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 DSM 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 DSM 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.

24 February 2025