Society of Audiovisual Authors

UK PUBLIC CONSULTATION ON COPYRIGHT AND ARTIFICIAL INTELLIGENCE

SAA's submission

Q1 to Q5 (B.4 Policy options; C.1 Exception with rights reservation)

1. Do you agree that option 3 is most likely to meet the objectives set out above? 2. Which option do you prefer and why? 3. Do you support the introduction of an exception along the lines outlined above? 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? 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.

Option 3, which aims at introducing an exception for AI training with the possibility of rights reservations, thus similarly to the EU one, is far from helpful for the objectives of the UK in enhancing innovation, while protecting the creative sector. Options 0 and 2 are also to be discarded. Instead, Option 1 that aims at strengthening copyright by 'requiring licensing in all cases' is the most acceptable in the current landscape.

As things are, and as calculated by a study commissioned by CISAC on the music and audiovisual sectors, AI companies are only going to increase their turnover, while the turnover of the two mentioned sectors is going to decrease. In the case of the audiovisual authors**, CISAC has estimated a 21% revenue loss from now to 2028,** while the market for AI-generated content will increase from EUR 3 billion to EUR 64 billion in the same time span.

To stop this trend that is impoverishing the creative sector, remuneration to authors for works used in the context of AI should be ensured. The government should ensure that authors are remunerated for the use AI companies do of their works by reaffirming the principles of authorisation and remuneration and introducing collective licensing mechanisms. CMOs are best placed to handle the ample repertoire that is needed by AI companies to train and develop their AI models and systems, and represent a single point of contact that is able to drastically reduce the cost of multiple individual licences.

Indeed, it is a well-known fact that copyright-protected works are considered high-quality by AI companies, as these ensure an optimal development of the technology. Open AI itself has admitted so to the UK parliament. On the contrary, works that are not created by humans and are instead synthetic lead to a deterioration of the technology.

As much as AI companies need copyright-protected works, the legislator should recognise that innovation cannot be encouraged by not respecting the rights of the authors. Letting AI companies use protected works without any form of authorisation and remuneration would lead to a constant devaluation of human-authored works. It is unacceptable that innovation in an emerging technology is being encouraged on the shoulders and on the future of another sector.

A solution similar to the one picked by the EU legislator (i.e., exception with rights reservation) is far from being balanced. A balance would instead be found in the proper remuneration of authors by AI companies. As the UK is currently seeking for options, the country has the chance to learn from EU's mistakes and pioneer the correct application of copyright law in the context of AI. This would bring clarity and encourage a synergic collaboration between the authors of the works and the AI companies.

Q6 to Q11 (C.1 §Legal effects of the rights reservation, C.2 Technical standards)

6. What action should a developer take when a reservation has been applied to a copy of a work? 7. What should be the legal consequences if a reservation is ignored? 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. 9. Is there a need for greater standardisation of rights reservation protocols? 10. How can compliance with standards be encouraged? 11. Should the government have a role in ensuring this and, if so, what should that be?

In case a rightsholder reserves their rights, the developer should seek licensing of the works subject to the opt-out. While this should be the basic practice, the situation in the EU already tells us that this is far from happening. Even in the presence of a reservation of rights, the works are still being used, only further alimenting the growing number of court cases against AI companies and creating an atmosphere of distrust by authors towards AI companies.

Liability for copyright infringement should be the basis when a rights reservation declaration is not respected, but the uncertainty created by AI companies around the wordings used for instance by the EU legislator is only giving AI companies the chance to not follow a rights reservation declaration when it is not 'machine readable', even though AI should be smart enough to understand all languages, including natural language (as a judgement by the Hamburg Regional Court has specified). Moreover, in case a rights reservation model is followed by the UK, the resulting legislation should clarify who is in charge of this declaration and where it should appear: on the CMO's website? On the creator's or producer's website? In the content of the work? On the website of the model supplier or gen AI system? All these questions would need to be answered and clarified before following a model (such as the EU one) that creates more problems than it wants to solve.

Additionally, pushing standards such as robots.txt, or more generally establishing a rights reservation scheme, as the EU is doing, is merely giving the chance to AI companies to escape their liabilities. Not to mention that it is yet to be established how the AI can be un-trained, meaning that it is not possible to remove works that have already been used for AI training: this fact should further encourage the creation of a licensing market and liability provisions to which AI companies should respond.

If a rights reservation regime similar to the EU one is going to be established in the UK (which however we strongly disagree with), the rightsholders should be given the chance to express their rights reservation in all languages, including natural one. It is in fact impossible for each rightsholder to go after every AI company that appears any other day. It is instead easier for AI companies to conduct proper rights compliance before they start training their models and ensure that, if there is a rights reservation declaration in place, a licensing agreement is due. Encouraging a licensing market would also cover the issue of un-training the AI.

Rightsholders are open to collaborate with AI companies and provide their works for AI development and deployment, if basic copyright law is respected. Any approach that goes against the application of copyright law is going to be met with resistance and further litigation in court.

Q12 to Q15 (C.3 Contracts and licensing)

12. Does current practice relating to the licensing of copyright works for AI training meet the needs of creators and performers? 13. Where possible, please indicate the revenue/cost that you or your organisation receives/pays per year for this licensing under current practice. 14. Should measures be introduced to support good licensing practice? 15. Should the government have a role in encouraging collective licensing and/or data aggregation services? If so, what role should it play?

The current market of licensing of copyrighted works for AI training is practically inexistent, except for very few cases that, in any case, do not concern the biggest AI actors. It is therefore imperative

that the government introduces measures that are going to oblige AI companies to conclude licences and remunerate authors for the use of copyright-protected works.

Considering the amount of content that is needed for optimal AI development, collective management solutions are the best way to ensure that AI companies can obtain permission to use entire repertoires by CMOs and the revenues generated from this use are duly shared between the authors. Any other solution, including individual licensing, would only introduce difficulties in the conclusion of agreements and elevate costs for AI companies, that should conclude thousands of agreements and face the dangers of being accused of copyright infringement by claimants they have not concluded licences with.

The UK government should take into account the positive impact that collective management has already had in other occasions (e.g., as shown in this study by SAA/CISAC, remuneration rights managed by CMOs have led to industry growth) and expect that the same positive impact can be repeated in the case of the AI market. Authors are in fact more than willing to take part to AI development, but they are rightfully due a remuneration for it, also because AI companies financially earn from the exploitation of protected works.

As in other cases where use of high amounts of works is necessary, remuneration to authors can be ensured by relying on collective management systems [scholarship has long agreed with this, see for instance Xalabarder who believes that collecting management is the best solution when dealing with copyright protected works in the digital environment]. The management of this right by CMOs would ensure that remuneration actually reaches the authors and comes from all AI operators in the market.

- **Q17 to Q23 (C.4 Transparency)**

17. Do you agree that AI developers should disclose the sources of their training material? 18. If so, what level of granularity is sufficient and necessary for AI firms when providing transparency over the inputs to generative models? 19. What transparency should be required in relation to web crawlers? 20. What is a proportionate approach to ensuring appropriate transparency? 21. Where possible, please indicate what you anticipate the costs of introducing transparency measures on AI developers would be. 22. How can compliance with transparency requirements be encouraged, and does this require regulatory underpinning? 23. What are your views on the EU's approach to transparency?

The current approach of the EU on the transparency obligations in AI matters is encouraging AI companies to be too general in their information sharing, and is stopping rightsholders from having acceptable and updated information about which works are being used. The current AI framework in fact only obliges to publicly disclose a summary of the content used, and AI companies shield themselves behind trade secrets to justify their unwillingness to collaborate. Rightsholders are left to guess and anticipate that all protected works are being used – even works gathered from illegal sources.

Transparency obligations are a fundamental part of the AI framework and should lead the rightsholders to know which works are being used, in order to duly license the works and get or redistribute (in the case of CMOs) the revenues from the use of the works. Without such information, it is impossible for rightsholders to operate.

The UK government should therefore oblige AI companies to share lists of works, at least with rightsholders and their representatives, notably CMOs. At minimum, the list of works shall include the location of the works. For instance, this information could be expressed via an URLs list. In this case, the information is not going to be public and will remain confidential between two parties, superseding any concern about trade secrecy. Indeed, CMOs are more than able to handle confidential information and do so every day.

In any case, it should be noted that, although CMOs are capable of handling confidential information, sharing a list of URLs has recently been considered not to undermine any trade secrets. A report commissioned by the French Ministry of Culture has specified that a list of URLs does not represent a trade secret, since it would merely be the 'ingredient' of the AI. Filtering methods, which rightsholders do not need nor aim at obtaining, can instead be considered the 'recipe' and therefore can be protected by trade secrets' regulations.

- **Q24 to Q25 (C.5 §Treatment of models trained in other jurisdictions)**

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? 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?

In order to operate in the UK market, AI companies should ensure they have the authorisations to all the works they have used, otherwise they should be presumed to be accepting liability for copyright infringement. This should be true also with regards to datasets AI providers have acquired from third parties.

To encourage AI companies to do so, licensing agreements managed by CMOs should be prioritised. It would be easier for AI companies to deal with CMOs that can grant authorisation for a large number of authors, rather than having to close agreements with all authors individually.

The extenuating process of individual licensing would certainly discourage AI companies to comply with copyright protection measures and entering the UK market. It is more time consuming and overwhelming for both businesses and authors to deal with authorisations work-by-work, than having an entity such as a CMO that is able to handle all authorisations and to ensure the revenues for the use of works go from the AI companies to the authors.

- **Q26 to Q27 (C.5 §The "temporary copies" exception)**

26. Does the temporary copies exception require clarification in relation to AI training? 27. 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 apply to AI training. As clarified by a court in Germany and by a much-discussed article by Tim W. Dornis, AI does not temporarily copy the works but stores them for the whole lifetime of the AI until it is practically dismantled and put out of use. This is the contrary to temporary. The temporary copies exception was introduced for other purposes that were merely functional in a technical sense and apply when copies are automatically destroyed.

If any clarification is considered needed by the UK, it should highlight that the temporary copies exception does not apply. Any other interpretation would be wrong and go against the rightful application of said exception.

- **Q28 to Q29 (C.6 Encouraging research and innovation)**

28. Does the existing data mining exception for non-commercial research remain fit for purpose? 29. Should copyright rules relating to AI consider factors such as the purpose of an AI model, or the size of an AI firm?

The EU TDM exception for non-commercial research purposes (Art 3 DSM) is valid if one looks at the original scope. However, the way it is currently being abused should alert on the issues related to the application of this exception especially when it comes to AI and its value chain. Indeed, in the EU, not only has this exception been extended to AI – and this is already a questionable choice since AI is not equal to TDM [see Tim W. Dornis] – but also the way it is applied in the AI context is reaching far beyond its already enlarged scope.

The problem has emerged in the judgement of the Hamburg Regional Court. The case involved a photographer (author) and the provider/developer of a dataset. This provider had created the dataset by taking advantage of the research exception. However, this dataset was later used by an AI company with commercial purposes. Unfortunately, despite the author pointing out the abuse, the court did not recognise the practice as problematic and granted the applicability of the TDM exception for research purposes.

This choice has serious consequences on the application of said exception: this loophole, if used by dataset providers, would put into question even a system that is based on rights reservation. Therefore, the UK should be aware of the research purposes masked as commercial ones and should architecture strong rights clearance and compliance provisions, including by ascribing liabilities for the commercial use of datasets created for research purposes.

- **Q30 to Q37 (D.1 Computer-generated works: protection for the outputs of generative AI; D.2 Policy options)**

[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. 31. Do you have views on how the provision should be interpreted? 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? 33. Should other changes be made to the scope of computer-generated works protection? 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. 35. Are you in favour of removing copyright protection for computer-generated works without a human author? 36. What would be the economic impact of doing this? Please provide quantitative information where possible. 37. Would the removal of the current computer-generated works provision affect you or your organisation? Please provide quantitative information where possible.]

One of the founding principles of copyright protection is the incentivisation of human creativity. The need for protection to incentivise the production of generative AI outputs, does not seem to apply in this case. In fact, production of content via generative AI is far from stopping. Moreover, copyright exists in case of human authorship. When using generative AI, human authorship is lost, further arguing against the protection of AI-generated works.

Slightly different is the case of AI-assisted works. Creation with the assistance of AI has been common for long and has proved to be helpful in the creative sectors. In the audiovisual sector, AI tools have been used for years to improve visual effects and streamline post-production processes, enhancing the visual experience of the audience. AI-assisted creation would however always need human intervention and direction. Eligibility for copyright protection should continue relying on the originality and the creative choices of the human beings.

Therefore, it is clear that purely generative-AI outputs should not be protected and any provision that creates uncertainty on this matter shall be clarified in order to take into account the nuances brought by technological developments.

- **Q38 to Q39 (D.4 Infringement and liability relating to AI-generated content)**

38. Does the current approach to liability in AI-generated outputs allow effective enforcement of copyright? 39. What steps should AI providers take to avoid copyright infringing outputs?

Considering the dangers of AI outputs being infringing, and the difficulties in controlling end-users' behaviours, licensing of works should cover AI outputs as much as AI inputs, and AI providers should enact technological measures, including keyword filtering, to reduce the dangers of reproduction of works (in full or in part) in the output.

The years that have seen the emergence of content-sharing platforms have demonstrated that it is practically impossible for a rightsholder to go after every end-user. That is why platforms – more explicitly in the EU - have been asked to get authorisation for the content their end-users make available to the public. This obligation should also be applied to AI output, which are not much different from other types of user-generated content.

On top of this, AI companies could also introduce more significantly technologies that are able to block the generation of infringing content, including copies in full or in part of the protected works they have used for training. This would be an added benefit, that might be more suitable to stop slavish copies.

More in general, it is worth considering developing a framework regarding the liability of AI providers resulting in a limited liability system for end-users. This should cover both input and output related infringements. It is also worth striving to establish rules on the burden of proof and rules for removing content infringing copyright.

The proposed measures would ensure that AI applications are still attractive for end-users, while at the same time providing the remuneration due to authors of the protected works used.

Q40 to Q42 (D.5 AI output labelling)

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? 41. How can government support development of emerging tools and standards, reflecting the technical challenges associated with labelling tools? 42. What are your views on the EU's approach to AI output labelling?

Generative AI outputs should certainly be labelled as AI generated. It is important that consumers understand the difference between AI-generated content and a human-created work via a clear label on all works, as it is often difficult to distinguish between the two, and it will become even more difficult as AI further develops. Labelling, other than for consumers, is important for the value of human works. Indeed, by keeping the public aware of the differences, human authorship will be able to maintain its value over time.

It is appreciable that the EU has included output labelling provisions in the AI Act. However, it is yet to be seen how these provisions will be applied and what is going to be the effect on the markets. Considering that often AI-generated output is posted on social media platforms, these platforms too should be asked to adopt measures regarding labelling of AI-generated output. To this day, certain platforms are already doing so, but the practice can still be considered quite experimental.

For labelling to reach its goals, not only AI companies but also platforms' providers should be included in the discussions and in finding appropriate solutions.

Q45 to Q47 (D.7 Other emerging issues)

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

The framework that currently applies to AI products is not enough to ensure the remuneration of the authors of the works used to train the models. Although the UK – as any other country – already has copyright laws in place, a clarification is needed in order to encourage AI companies to license the works they use for training and to pay the authors of those works. A clarification is also needed in the sense that CMOs should be explicitly considered as the actors best placed to handle the vast amount of content that is needed for AI development.

Moreover, the issue of using dataset created under research-based exceptions should be considered an emerging issue in this field. This issue has not been properly addressed, and it risks undermining all efforts to create a harmonious framework where both authors and AI companies can thrive.

The government should therefore oblige AI companies to conclude licensing agreements and remunerate authors and should sanction the companies that try to escape their obligations by abusing and re-purposing datasets for their own financial gains.