Response to the Call for Evidence by the Joint Committee on Human Rights

About The British Copyright Council

We represent creators, performers and other rightsholders in literary, dramatic, musical, artistic and broadcast works. Our members include professional associations, industry bodies and trade unions which collectively represent the voices of over 500,000 creators and performers, spanning all sectors of the creative industries driven by human endeavour and co-operation.

The creative endeavours of our members, and their copyright works are key raw materials in the development of artificial intelligence (AI) models.

General themes of our response :

1. Our response focuses on the Convention rights that are most relevant to our members, and in particular the right to property under Article 1 of Protocol 1 ECHR.

2. While the call for evidence refers to individuals, it is important to emphasise that the Convention rights under the Human Rights Act 1998 (HRA) are bestowed on both legal and natural persons. The HRA extends to corporations and unincorporated bodies. Businesses can challenge decisions of public bodies if their human rights are impaired.

3. We note that certain topics (social media, misinformation and harmful algorithms) are excluded from the call for evidence. We caution against siloed regulation of technology (addressing some but not all pertinent human rights, for example). In many cases it is impossible to neatly distinguish between actors in the AI ecosystem and those in social media. Social media companies such as Meta and X apply the same commercial logic to their online platforms as they do to the development of AI models. Furthermore, the two are often interdependent - data obtained through social media is used to train AI algorithms. We consider it essential to view the emerging AI technology, and its impact on human rights, in the context of lessons from the wider data-driven services, including social media. Inadequate regulation has plagued social media platforms and the risks to privacy, property rights and discrimination emerging from AI echo the issues resulting from earlier digital technologies. Only a principled holistic approach can ensure that regulation will apply uniformly to technology past, present or future.

Consultation questions and response

Human Rights Issues

1. How can Artificial Intelligence (AI) affect individual human rights for good or ill, in particular in the areas of:
    - privacy and data usage
    - discrimination and bias
    - effective remedies for violations of human rights?

It is often claimed that AI facilitates increased access to information (including its ability to analyse large volumes of information) which falls under the right of freedom of expression under Article 10 ECHR. Our position is that, as far as copyright is concerned, this benefit is already addressed under the Copyright, Designs and Patents Act 1988 (CDPA) in accordance with the principles asserted in *Neij and Sunde Komisoppi v Sweden*. Article 10 does **not** guarantee unrestricted access to information - the rights subject to a range of third-party rights, including property rights.

Freedom of expression (including by AI platforms) is not without restriction, despite public discourse to the contrary. The invitation of Mr Farage to the US Congressional hearing regarding the alleged UK and European threats to free speech targeting US innovation would appear to support the perception that any limitation amounts to a human rights breach.

This understanding is erroneous and should be resisted. It fails to acknowledge duties and responsibilities necessary for the correct functioning of the right. Freedom of expression does not automatically supersede the lawful rights of others, such as the right to property. Breach of property rights erodes important lawful protections and economic opportunities of the UK creative industries.

Privacy and data usage

The risks relating to breaches of privacy and personal data rights have recently been discussed in the ICO's consultation on the topic.

We welcome the ICO's prioritisation of the issue of AI, including biometric technologies, and the risks it poses. Personal information fuels much of these technologies' innovation: responsible use is key to building public trust, driving growth and improving efficiency.

However, the BCC is concerned about the synergies between the use of personal data and the application and use within the creation and use of copyright works.

Throughout 2024, we provided input to ICO on the relationship between data, copyright and AI. We highlighted:

- The routine use of personal data by AI developers without express permission from either the individuals concerned or data controllers (such as content libraries, film producers etc) is contrary to existing UK copyright and data protection law. This is particularly concerning for creators and performers where personal data includes voice, likeness, biometric data and individual style for example.
- The urgent need for creative companies to be able to secure information from data scrapers to demonstrate compliance with personal data processing rules and to avoid misattribution of liability for breaches where they have no control.
- The responsibility of AI developers as data controllers to ensure transparency, diligent record-keeping of ingested materials and the consideration of data protection principles to align with existing UK copyright and data protection laws.

Right to Property

The right to protection of property guarantees all persons, natural and legal the peaceful enjoyment of their possessions. No one may be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

"Peaceful enjoyment" is defined by ECHR case law by a number of characteristics such as: the right to use and control of property (*Beyeler v Italy*), protection from unlawful interference (*Sporrong and Lönnroth v Sweden*), and the right to compensation in the event that the right is infringed (*Lithgow*

and Others v United Kingdom). *Neij and Sunde Komisoppi v Sweden, Anheuser-Busch Inc v Portugal, Melnychuk v Ukraine* and *Korotyuk v Ukraine* all affirmed that intellectual property rights are captured within the scope of Article 1 Protocol 1 of the ECHR. All cases concerning property, including cases concerning intellectual property, should be approached in a uniform manner.

Copyright is a property right under section 1 of the Copyright, Designs and Patents Act 1988 (CDPA).

The training of AI models is dependent on copyright works and unauthorised use is rampant, as exemplified by litigation around the world (see, e.g. Getty Images v Stability AI in the UK and US), New York Times v Open AI (US), Nikkei and Asahi Shimbun v Perplexity (Japan)). These lawsuits are facing overwhelming evidential burdens on the claimants (see our comments on enforcement further below).

Under *Neij and Sunde Kolmisoppi v. Sweden*, states have an obligation to protect copyright under both the relevant copyright legislation and the Convention, and that this can lawfully restrict the right to freedom of expression.

Article 1 further provides that "no one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law". We emphasise that, where such rights are interfered with by the state, a meaningful compensation system must be put in place.

Discrimination and bias

AI development is reliant on mining text and data, often through unauthorised copying. Lack of authorisation may mean that the data is of poor quality. AI-created synthetic data can further reinforce bias and discrimination.

Furthermore, generative AI systems (e.g. Midjourney, Stable Diffusion) can generate synthetic works (e.g. graphic works, music, text), that compete with human-generated copyright works. Any regulation introduced that would legitimate actions of generative AI developers and remove the requirement of obtaining copyright permissions for training purposes would effectively discriminate against humans in favour of the machine-created output.

Effective remedies for violations of human rights

The CDPA is increasingly significant to the issue of human rights. The Act contains remedies for infringement by unauthorised copying, but the limitations of the enforcement procedure under the Civil Procedure Rules (the CPR), combined with the international nature of AI infringement, mean that the provisions are not fully enforceable against AI companies. We discuss the possible solutions further below.

Existing Legal and Regulatory Framework

2. To what extent does the UK's existing legal framework provide sufficient protections for human rights in relation to AI?

The strength of the existing UK copyright framework incentivises creators, performers, other rightsholders and third parties to invest in the high-quality creative works that can support the development and application of better-quality AI models. The creative industry contributed £124 bn in GVA to the UK's economy in 2023[1]. The UK's competitive strength deriving from our existing copyright regime can underpin world-leading innovation in AI.

[1] https://lordslibrary.parliament.uk/creative-industries-growth-jobs-and-productivity/

Section 16 of the CDPA provides that it is an infringement of copyright to copy, communicate to the public and make publicly available works protected under the CDPA without a licence from the copyright owner. This vital right enables copyright owners to enjoy the Convention right to protect their property.

AI development requires extensive copying of copyright works to train AI models. For example, photographs of street signs are used to train AI for driverless cars. Photographs of works of art are commonly mined by AI to train generative AI platforms, facilitating recreation of an artist's or photographer's style[2]. This, and the recreation of substantial parts of the original work in AI-generated outputs constitutes a breach of copyright owners' human rights.

The CDPA contains an exception to copyright whereby some uses are considered to be in the wider societal interest. For AI development, an exception under s.29A CDPA allows for some text and data mining of copyright protected works for non-commercial purposes. More evidence is necessary to effectively determine the extent of legitimate reliance on this exception. However, we believe this exception provides balance between the development of AI systems in research and education and the right of content creators to protect their investment against other commercial entities capitalising on it. Therefore, it facilitates the development of market mechanisms to regulate the licensing of content and data between commercial entities.

Licensing solutions and permissions from copyright owners are the effective solution to support the human rights of rightsholders. The size and contribution of the UK creative Industries to the UK economy provides evidence of where these licensing systems are most effective (e.g. Kobalt / ElvenLabs licensing agreement).

However, as protected works continued to be mined for AI development without permission, rightsholders find themselves without an effective remedy. S. 16 CDPA provides statutory recourse, but the fragmented and multinational nature of the AI development ecosystem renders it meaningless.

Enforcement of copyright against AI platforms presents unique evidential difficulties:

- the copying and model training may take place on decentralised servers;
- the copying and training may be conducted by different entities indifferent parts of the world;
- data sets used by AI developers are vast and, without adequate records, technically difficult to fully disclose;
- interrogation of defendant's data sets is complex and requires collaboration of both parties, which, in a dispute is unlikely.

These challenges amount to an evidential smoke screen which may result in the abandonment of claims. In *Getty Images v Stability AI* (awaiting judgment), the first UK case to deal with infringement of copyright and AI, demonstrates this difficulty, with the key claim that the training of Stable Diffusion amounted to copyright infringement was abandoned during closing submissions at the High Court, due to jurisdictional issues (Stable Diffusion was trained outside of the UK) and the inability to conduct full disclosure due to the defendant's lack of records (making searches of the vast dataset impossible). Getty Images is pursuing a separate claim for copyright infringement in the US, however, few content creators have the resources for litigation on a similar scale.
Effective enforcement is crucial if copyright owners right to peaceful enjoyment of property is to be effectively protected.

[2] see, e.g. https://news.sky.com/story/ai-art-generators-face-backlash-from-artists-but-could-they-unlock-creative-potential-12857072

In *Safarov v. Azerbaijan*, the ECtHR stressed that the State has a positive obligation to protect the right to property. While States enjoy a margin of appreciation to determine how substantive copyright law reflects domestic social and economic policies, the legal system must provide adequate remedies to address violations of property rights.

Considering evidential difficulties stemming from the unregulated growth of the AI technology, it is our belief that the following measures should be considered as part of regulation of AI:

a) Companies developing AI models which are intended for commercial use or are to be made publicly available must have a duty of record keeping and transparency so that rightsholders may interrogate their records to establish if their works are used. This would be consistent with the control over property afforded under the CDPA. Transparency could facilitate individual and collective licensing of content for the benefit of both copyright owners and new technologies.

b) Enforcement of copyright infringement against AI platforms must be simpler. Human rights will be more effectively protected if training data could be interrogated by way of a pre-action disclosure a measure available under the Civil Procedure Rules but, at present, requiring a separate court application; this could be enshrined as part of the pre-action protocol in infringement cases involving data training. Similar solutions are being proposed in the US (see the US Transparency and Responsibility for Artificial Intelligence Networks Bill).

c) Closer cooperation by the courts is required in allowing parties to combine claims which would otherwise need to be started in multiple jurisdictions. A regulation similar to the arrangements under the Brussels I bis Regulation would help manage multi-jurisdictional infringements.

3. To what extent is the Government's policy approach to deploying AI, expressed in its "AI Opportunities Action Plan", sufficiently robust in respect of safeguarding human rights?

Insufficient consideration has been given to safeguarding human rights in the "AI opportunities action plan" or in the Government's consultation on AI and copyright launched in December 2024.

The current policy approach (including the proposal to introduce a copyright exception benefiting tech companies who could avoid remunerating rightsholders for the use of their works) undermines human rights in as far as it reduces copyright, and constitutes a breach of the UK's international obligations under TRIPS.

Possible changes to legal and regulatory framework

4. What would be needed in any future UK legislation to protect human rights?

Enforcement of existing UK law and the international conventions. We refer to our replies to question 2 above.

To what extent should the same human rights standards apply to private actors as public bodies when they use AI?

There is no justification for a different standard to be applied in terms of respect for the right to property. AI models are predominantly developed by commercial entities and are made available for both commercial and non-commercial uses. The recent memorandum of understanding signed

by the government and Open AI[3]) demonstrates degradation of the private/public divide. If the public benefit must be considered, this can be achieved by different licensing models and pricing.

To what extent might different kinds of AI technology require different regulatory approaches?

Regulation should be technology neutral and require compliance with laws by all technology sources to the same degree.

5. Who should be held accountable for breaches of human rights resulting from uses of AI, and on what basis?

It is those who infringe copyright law under the existing legal provisions who should be able to be held responsible to the infringement, recognising the link to the human rights of the owners whose rights are infringed.

Where in the process of developing, deploying and using AI technologies should liability arise?

Given the fragmentation of the AI development ecosystem, all entities carrying out infringing restricted copyright acts during development and deployment should bear liability subject to licensing terms and conditions expressly with right holders in chains of production and application or otherwise authorised by copyright holders. Penalties should be meaningful and reflect the value derived from misuse of property, akin to turnover-based fines imposed by the ICO for data breaches.

What additional measures, if any, are needed to ensure that individuals have sufficient redress where they have suffered harm because of the use of AI?

See suggestions under question 2.

6. How might regulation match the pace of AI technology development, such as the emergence of agentic AI, to ensure that human rights are preserved as technology continues to develop?

The current approach to regulating technology is reactive, and should shift to a principle-based approach, and should prioritise the creation of human-centric technology to align with human rights.

7. How could regulation take account of the international nature of AI? How could it address the potential consequences for human rights in the UK of the malign use of AI by regimes in other countries?

Setting standards and working with other member states will be key to the long-term recognition of copyright ownership and its link to human rights providing global creative and cultural benefits in the future.

8. How much difference will the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law make to the protection of human rights in the UK?

We welcome UK support for the framework and the recognition that Members should provide effective procedural guarantees, where an AI system significantly impacts upon the enjoyment of human rights and fundamental freedoms.

[3] Memorandum of Understanding between UK and OpenAI on AI opportunities - GOV.UK

This, along with the fundamental principles of transparency, oversight, accountability and responsibility, links importantly to establishing precedents for the use of AI systems by public authorities, and application of AI systems in the wider economy, including private actors acting on behalf of public authorities.

9. What lessons can be drawn from regulation of the impact of AI on human rights in other jurisdictions, such as the European Union?

Further assessment of the practical impact of transposition of the EU AI Act and the impact of the results of the current wide-ranging litigation linked to infringements of copyright works within the training, development and application of AI models of all kinds will be important in the future work of the Committee.