

Impact of AI on intellectual property

Westminster Hall debate, tabled by Mr James Frith MP

14.30 - 16.00, 23rd April 2025

About

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

There is no ambiguity in UK copyright and IP law in regard to artificial intelligence

- For over a century, new technologies have been adopted for use in the creative industries. Collective bargaining has facilitated the transition from theatre to cinema, through television and streaming services for example, while ensuring that the creators who generate the value of the industry are protected and rewarded appropriately.
- The introduction of artificial intelligence (AI) in the creative industries is a part of this continuum of technological advance. The claim that UK copyright law is 'unclear' or 'disputed' in relation to the development and application of generative AI (GAI) models in the creative industries is false. Ingestion of copyrighted content into GAI models, without consent of the copyright-holder or those holding performers' rights, is a breach of intellectual property rights.
- Those seeking to use copyright-protected material for model training can simply license that material with rightsholders through long-established and comprehensive collective bargaining frameworks. This would ensure legal compliance on the part of generative AI companies, and that those creators who contribute to the development of this technology, via training GAI models, are rewarded for their contribution.

Creators contribute significant value to GAI in the creative industries

- The vast majority of generative AI models in the creative industries have been trained on creative works. In some cases, the entire life's works of a performer or creative has been used in the training of AI models without any transparency, consent or remuneration. This is industrial-scale illegal infringement of Equity members' intellectual property.

- The UK government has a legal and ethical responsibility to ensure that the creation and use of AI tools are built on legally compliant data. GAI companies must seek licences for the performance data that they use to train foundational models, using the existing, established licensing frameworks. Unethical models built on dirty data cannot become the norm. Enforcement and strengthening of the legal framework will allow the industry to move forward with ethical AI frameworks, delivered via collective bargaining.
- It is striking that despite contributing a critical factor to the value of generative AI models in the creative industries, generative AI companies have not offered creators any share of the corporate value that they are fundamental to the creation of.

The government must further consider the impact of GDPR on any processing of performance data without data subjects' consent

- In the government's recent Copyright and AI consultation, GDPR is only mentioned in relation to digital replicas. This is important, but it fails to recognise the regulatory role that GDPR plays in any and all processing of personal data for the purposes of the training of GAI models.
- As the Information Commissioner's Office has confirmed, under UK GDPR regulations, performance data is personal data where it contains any information capable of identifying the performer, such as their voice or likeness. These rules apply where personal data is collected and processed. In these circumstances, data controllers must identify a lawful basis for processing the data (from an exhaustive list in the UK GDPR) and data subjects hold significant rights, such as to object to processing and request erasure.
- Generative AI companies have a narrow lawful basis upon which to undertake 'web crawling' in the development and application of AI models. According to the ICO, *"legitimate interests remain the sole available lawful basis for training generative AI models using web-scraped personal data based on current practices"* and even this will be interpreted narrowly.
- Equity believes that as well as industrial scale infringement of copyright and IP protections, there have also been widespread and significant breaches of data protection laws, wherever GAI companies are processing performance data containing the voice or likeness of identifiable performers in the training of their models.

- Equity is appalled by the ongoing lack of enforcement of UK law in this regard. GAI companies are making a mockery of UK law, and successive governments do not appear to be taking appropriate action to enforce it.

The government must urgently pursue these next steps:

1. Drop plans to introduce their preferred Text and Data Mining (TDM) Exception with rights reservation proposals

- This TDM exception is a significant threat to the creative industries where industrial-scale illegal infringement of Equity members' intellectual property is already occurring during the development of GAI models. It reverses decades of protections for creative content, throwing it open to exploitation, placing vast legal and administrative burdens on creators, and potentially destroying the value of rightsholders' assets. It represents a significant attack on property rights in the UK.
- As Ed Newton-Rex [has described](#), there is no effective way to deliver an opt-out mechanism for rightsholders. Both location-based and unit-based mechanisms are deeply flawed. Neither will rightsholders themselves have the awareness or capacity to enact such a right, were it to be introduced. There are already significant challenges for enforcement of the existing copyright and intellectual property regime upon an AI industry which is highly opaque and currently refuses to adequately acknowledge or protect existing rightsholders. We therefore do not regard the proposal for an 'opt-out' as practicable.
- The Soulier decision of 16 November 2016 (Case C-301/15) at the European Union Court of Justice ruled that a text and data mining exception with opt-out may breach the Berne Convention, by requiring authors to fulfill a formality to protect their rights. This judgement therefore directly challenges the legality of an opt-out mechanism under a text and data mining exception. Though this judgement applies to the EU, where the same model has been introduced, the UK is also a signatory to the Berne Convention.
- Instead, the UK government must require operators of internet crawlers and general-purpose AI models to comply with UK copyright law, even if the training takes place in another jurisdiction. Operators of internet crawlers and general-purpose AI models must be transparent about the identity and purpose of their crawlers, and to be transparent about the copyrighted works they have scraped. Without these obligations, is it impossible to enforce copyright law. Baroness Kidron's recent amendments to the

Data (Use and Access) Bill would have been an effective first steps towards achieving this.

- The success of the UK creative industries rests on decades of protected copyright and intellectual property development. A breach of this framework via a TDM exception could impact inward investment and is highly likely to undermine the growth-potential of our industries, which are now recognised in the government's Industrial Strategy 2035 White Paper.

2. Update the performers' rights framework

- Equity believes that the current copyright and IP framework does provide significant protections to creators against exploitation of their works by GAI companies without consent, transparency or remuneration.
- But given the significant ongoing breaches of this legal framework, and enforcement failures, Equity believes that further protections should be put in place, including;
 - Explicit protections against unauthorised synthetisation of works in the Copyright, Design and Patents Act, 1988
 - The introduction of unwaivable moral rights through adoption of the Beijing Treaty, 2012
 - The introduction of a new system of personality rights, possibly through the Data (Use and Access) Bill. Equity has developed draft amendments to achieve this, included in the appendix below.

3. Apply and enforce the existing UK GDPR regulations

- As described above, wherever GAI companies are processing performance data containing an identifiable performer's voice or likeness, they are likely in breach of UK data protection law.
- The ICO has published helpful guidance on the interaction of the law and this technology, in particular their guidance on '*The lawful basis for web scraping to train generative AI models*'. Despite this, a lack of enforcement of the law is allowing widespread and serious breaches in UK GDPR rules to occur during development and implementation of GAI in creative industry contexts. We are calling on government and the ICO to work together to improve enforcement and ensure that data controller obligations are being met throughout the GAI industry.

4. Introduce an AI Safety Act to tackle harmful content

- The government has introduced additional protections for internet users through the Online Safety Act, which places new duties on social media platforms to guarantee a safe environment for users, especially children.
- There is significant scope for the government to consider placing similar duties on GAI companies, to ensure that the customers of this technology cannot generate certain types of content, such as content that is illegal, for the purpose of exploiting, harming, or attempting to exploit or harm minors, for making a statement about religion or politics, or in any way that is obscene, defamatory, threatening, fraudulent, bullying, or discriminatory.
- In 2021, Equity member Dan Dewhirst took up a contract with a company called Synthesia and found that his AI avatar was being used to peddle fake news and propaganda in a highly volatile Venezuelan social media campaign. The lack of regulation and unwillingness of the engager to amend contract clauses left him vulnerable. More about Dan's story can be found [on the Equity website](#).
- A set of new duties on the part of GAI developers and users would help to combat misinformation and manipulation of images. This could also provide broader positive guarantees towards a safe and fair democratic process and protecting the image and personality of those in the public domain, including politicians.

Appendix

Draft Equity amendment to the Data (Use and Access) Bill to introduce a system of personality rights

New Clause

Under Part 7, after clause 134, line 26, insert –

Personality rights

135. Establishment of property rights in personality

- 1) The Secretary of State must by regulations make provision (including any such provision as might be made by an Act of Parliament) to protect the data of natural or legal persons by establishing property rights in personality, in accordance with the following conditions.
- 2) The provisions created pursuant to subsection (1) must provide that
 - a. a form of property subsists in a personality (hereinafter “personality rights”);
 - b. a personality is defined as the name, voice, likeness, appearance, feature, face, expressions, gestures, mannerisms and any other distinctive characteristic or personal attribute (together “personal attributes”) of a natural or legal person;
 - c. a natural or legal person has exclusive rights in the reproduction, use and exploitation of that personality, thereby making them a proprietor of “personality rights”;
 - d. such personality rights intend to provide meaningful statutory protection to the proprietor’s proprietary, economic, and moral interests in the personal attributes and preserve their fundamental freedoms of expression, privacy and human dignity.
 - e. a natural or legal person may register their personal attributes in accordance with section 136;
 - f. there are limitations in scope and duration on the transfer of these rights, which cannot be assigned or waived in perpetuity by contracts;
 - g. personality rights apply at least up to seventy years after the death of their proprietor;
 - h. the proprietor of a personality right has a right of action against any party who infringes this right by exploiting their personal attributes without the proprietor’s consent, and that such action grants access to meaningful remedies including but not limited to damages and injunctions.
 - i. online platforms and information society services are required to: act expeditiously to remove or disable access to content infringing the proprietor’s personality rights upon obtaining knowledge or awareness of such unlawful activity or information; or be held liable for infringement of personality rights.
 - j. an exception applies to personality rights where personal attributes have been reproduced in the public interest.
- 3) The Secretary of State must lay before Parliament a draft of the provisions to be made pursuant to this section within ten months of the day on which this Act is passed.

136. Establishment of a regime for the registration of personality with the Intellectual Property Office

- 1) The Secretary of State must by regulations make provision (including any such provision as might be made by an Act of Parliament) to establish a statutory regime for the registration of personality rights, in accordance with section 135, to be administered by the Intellectual Property Office. This regime shall include:
 - a. Criteria for registration of a personality right in accordance with section 135;
 - b. Granting of powers to the Intellectual Property Office to determine applications for the registration of a personality right;
 - c. Grounds upon which an application may be refused;
 - d. A scheme for the raising of and determination of disputes about a personality right;
 - e. Granting of powers to the Intellectual Property Office to take enforcement action against infringements of personality rights.
- 2) The Secretary of State must lay before Parliament a draft of the provisions to be made pursuant to this section within ten months of the day on which this Act is passed.

Explanatory note

This new clause requires the Secretary of State to introduce personality property rights into UK law, and to establish a system for their registration.

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