

## **Equity submission – UN call for contributions on artificial intelligence and creativity**

**May 2025**

## About

1. Equity is the largest creative industries trade union with 50,000 members united in the fight for fair terms and conditions across the performing arts and entertainment. Our members are actors, singers, dancers, designers, directors, models, stage managers, stunt performers, circus performers, puppeteers, comedians, voice artists, supporting artists and variety performers. They work on stage, on TV and film sets, on the catwalk, in film studios, in recording studios, in night clubs and in circus tents.
2. Equity membership includes access to our Distribution Services, which have been operating since late 2017, distributing over £100 million in royalties and contractual secondary payments to tens of thousands of performers. All payments administered by the distributions team are derived from our collectively bargained agreements with broadcasters, film studios, TV production, and theatrical recording companies.
3. Collective agreements operate across many sectors of the UK entertainment industry. For example, we have agreements with the BBC, ITV, SKY and the Producers Alliance for Cinema and Television (PACT). 95% of British TV drama is made on a union agreement and most films in the UK are produced under our Cinema Films agreement. We also have agreements with the major streaming platforms, such as Netflix, Disney+, and Apple+. These huge global companies recognise that it is in their best interest to work with Equity.

1.	<b>What are the main challenges posed by AI to human creativity (understood as encompassing artistic creativity but also all other types of creativity)</b>
2.	<b>How to we understand the notion of creativity?</b>

1. AI poses significant challenges to human creativity, through the unlawful exploitation of UK creators' rights-protected works and the denial of their rights, including to remuneration. GAI models built on the unlawful exploitation of creators' works are being deployed to displace jobs in the performing arts and entertainment industries, to drive down working conditions, and to reduce the expression, autonomy and dignity of human artists. In a recent survey of creative workers, 73% believe that AI [is changing the quality of work in the creative industries](#).
2. Governments have a legal and ethical responsibility to ensure that the creation and use of AI tools are built on legally compliant data. Generative AI (GAI) companies must license the performance data that they are using 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.

3. Sadly, the UK Government plans to introduce an (opt-out) Text and Data Mining (TDM) Exception which would require creators to opt-out of GAI companies being able to train models on their works. Equity is of the opinion that this plan poses a significant threat to creators' rights by providing a legal loophole for data mining systems to copy protected works for the purposes of extracting and analysing the data that they contain. It would allow GAI companies to use copyright protected works in the development of foundational AI models, without license or remuneration. This industrial scale unlawful infringement of Equity members' intellectual property is already occurring during the development of GAI models, and the introduction of the TDM exception would legitimise this infringement, throwing open centuries of creative content to exploitation.
4. Creative professionals are already finding themselves losing work to artificial intelligence. In a [recent survey](#) covering the impacts of generative AI, 4 in 5 performing arts professionals (82%) reported diminished job security. In the same survey, 61% of respondents highlighting that their earnings have declined.
5. For Equity's members, AI created works also pose a particular threat to their professional reputation. Equity members have been engaged directly by production companies for the purpose of training AI models and/or generating digital replicas of their image, voice, or likeness. "Clean" AI models trained on properly licensed performance data are welcome and stand in stark contrast to most foundational AI models used today that have been illegally trained on content crawled from online sources.
6. However, typically, these contracts do not have favourable terms for the performer with AI engagers often seeking to purchase the performers' data on a buyout basis, giving them absolute control of the data. The one-off payments offered to performers who engage in generative AI work often do not reflect the fact that their image, voice or likeness may be used forever and on thousands of different projects. Crucially, a 'buy once, use endlessly' model for digital replicas leave performers exposed to conflict in their contractual arrangements. This is because a performer could not guarantee exclusivity to one commercial client for a live performance (which is very common e.g. for advertising engagements) if a "performance" by their digital double could be sold by an AI platform to a rival client, without the performer's knowledge or permission.
7. For example, one member found their likeness used to spread harmful content. 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](#).

8. Equity is calling on the UK Government to strengthen performers' rights, introduce personality rights and unwaivable moral rights, enforce existing UK Copyright and data protection laws. The UK government must also introduce duties on GAI companies, similar to those tabled through the Online Safety Act, to ensure that users of GAI 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.

3.	<b>Can AI generated products be considered “originals”, and if so, what are the consequences? What is artistic integrity in relation to AI use?</b>
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9. Creative workers provide the essential value of AI, which is built on their creative output. There is no artificial intelligence without the human labour of creative work. GAI model outputs in the creative industries are synthesised from historic and current rights-protected creative works, exploited unlawfully at an industrial scale. AI generated products cannot be 'original', they are always a collation of other artistic works by human beings.
10. Equity is not in favour of a regime which offers protections to computer-generated works. We are committed to the human-centered application of AI within the arts and entertainment – through a framework which recognises and protects human creativity as the sole source of value within our industries. We believe that the UK government should remove copyright protection for computer-generated works without a human author. Doing so would help to ensure continued investment in human creativity in the arts and entertainment.
11. Many computer-generated works are created by a simple text prompt, using AI models that are trained on other people's work, and which compete with those people. People prompting a model should not be afforded copyright protection. On the other hand, there is a good argument that the creators of the training data should own a share of the copyright in any output. This should be supported by government and negotiated via the appropriate trade unions.
12. The provision says the author is the person “by whom the arrangements necessary for the creation of the work are undertaken”. The creators who provide the training data - upon

whom models that create computer-generated works function - are the most critical people in the process. Creative workers provide the essential value of AI, all of which is built on their creative output. There is no artificial intelligence without the human labour of creative work. Computer-generated works of this nature should therefore not be given copyright protection.

13. Equity is of the view that all content that includes AI-generation should be labelled. Equity is not in favour of a model which offers copyright protection to computer-generated works. We are committed to the human-centred application of AI within the arts and entertainment through a framework which recognises and protects human creativity as the sole source of value within our industries. We believe that copyright protection should be removed for computer-generated works without a human author. Doing so would help to ensure continued investment in human creativity in the arts and entertainment.

<b>4.</b>	<b>Which measures have been taken to protect human creativity from threats posed by AI? What measure(s) would be best to achieve this aim?</b>
<b>5.</b>	<b>Please provide examples of good practices to promote human creativity through AI</b>

14. Please also see our answer to question 7 for details on how UK law can be currently used and strengthened to protect human creativity through protecting creators' rights from threats posed by AI.

15. Protecting human creativity in the face of AI means ensuring that human creators are valued and their rights are protected. Equity wants to ensure that all GAI models have been trained on 'clean' – ethically sourced and legally compliant – data. This can already be achieved in two ways.

16. First is by direct licensing with individual creative workers using collectively bargained terms negotiated by trade unions. In this context, workers consent individually to remuneration rates tailored to individual uses, under transparent terms. This does not require legislative intervention. Equity is currently seeking to establish such collectively bargained frameworks that govern the use of AI models within different recorded media sectors, building on the existing agreements we have across film and TV. We are also in discussion with companies who engage our members for the express purpose of creating content to train foundational AI models with appropriate remuneration and permissions expressly granted for these uses.

17. Second is through collective licensing by creative sector trade unions on behalf of creative workers. Collective licenses could be established on a tripartite basis. For example, between GAI companies, copyright owners who wish to grant access (or authorise prior access) to media content, and creators' trade unions. Equity already holds several collective licenses with engagers within recorded media for on demand services such as BBC iPlayer, ITVX, All 4, Channel 5, Sky and BBC Sounds and has negotiated similarly through technological advances in the creative industries since 1930.
18. Creative workers must be compensated in any future licensing arrangements with AI companies. Consent must be obtained directly from workers or via unions on a collective basis before any use of it for AI purposes. These remuneration schemes should be voluntary, with creative workers free to join or abstain. Remuneration schemes will need to cover:
  1. past data mining, technology development and use of their work, which took place without appropriate consent or permissions and;
  2. future use of their work in this way
19. The UK government plans to introduce the TDM exception requiring that creators opt-out of their work being processed by GAI companies. Equity agrees with analysis by [Ed Newton Rex](#), who argues that 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.
20. 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.
21. 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 required to 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.

22. Legislative changes could help to address exploitative performer contracts. Chapter III of the EU Directive on Copyright in the Digital Single Market bolstered the ability of individual creatives and their representative organisations in the UK to achieve fair returns for the use of creative content in new media services. These measures include

- Transparency obligations, requiring parties to whom authors and performers have licensed or transferred their rights to provide information on the use of their works including revenues generated;
- A contract adjustment mechanism to allow authors and performer to claim additional remuneration when the revenues received are disproportionately low

23. Similar obligations for UK creatives would make a significant difference for performers who are engaging directly with AI companies for the purpose of AI training and AI-generated outputs.

<b>6.</b>	<b>Does, or should, education and artistic education include teaching of AI tools and their usage?</b>
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24. We are concerned that artistic subjects have been marginalised by UK government education reforms which have prioritised a narrow focus on STEM subjects. In particular, the introduction of the EBacc measure has seen a significant narrowing of access to creative subjects, with GCSE entries to creative subject having [decreased by 42% since its introduction](#). The arts are a vital part of the human experience, enriching the individual who produces them, as well as audiences. AI tools can only be introduced to artistic education in the context of strong support for the arts within national curriculums, and with a clear focus on how AI can enhance human creativity, not replace it.

<b>7.</b>	<b>How do laws protect the rights of artists and other creators regarding content used by AI? What are the rights of authors in AI generated creation? Please provide examples.</b>
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25. Performers' rights are recognised under Part II of the CDPA both as forms of "property" and "non-property" rights. A key performers' property right includes the "right of reproduction", being the right for performers to control who is able to record and make reproductions of their performances.

26. The UK government has made clear that the right of reproduction under the CDPA covers all technology, including AI. It is widely acknowledged that both the processes of (1) compiling machine learning AI datasets through TDM; and (2) subsequent AI training using those datasets, involve the making of 'copies' and/or 'reproductions' of works within the meaning of the CDPA. These processes therefore require the express consent of relevant copyright owners and performers (unless such rights have been effectively obtained under contract or a copyright exception applies).
27. Performers' rights can be transferred to third parties (either via assignments or licences) or otherwise 'waived' by performers under mutually agreed contracts. Until now, most contracts have required performers to give transfers or waivers of their performance rights either:
- in a very broad and generic context, without specific detail in the underlying contract on the intended forms of exploitation of those rights and resulting works; or
  - in the context of specific commercial purposes contemplated or disclosed to the performer at the time, such as for the making of a film, TV programme, videogame, commercial or radio show (with payment structures to reflect such usage rights).
28. In either case, such contracts were not drafted to envisage the exploitation of performers' rights for AI training purposes and no provision has been made for this use case in the underlying contract, since this form of exploitation was simply not in contemplation of the parties at the time of drafting, negotiating or agreeing the contractual terms.
29. Therefore, it is Equity's position that any contract (including those currently construed under Equity collective agreements) in which creative workers have consented to transfers or waivers of performance rights (either broadly or in the context of specific commercial purposes) should not be interpreted as a legal basis for exploiting such performance rights in the context of new technologies that were not contemplated at the time of the contract, such as for commercial TDM, AI training or digital imitation purposes, unless the contract explicitly references those activities as an authorised form of exploitation

## **UK GDPR**

30. Alongside copyright protections, the UK GDPR remains a critical legal basis for the protection of Equity members' works from exploitation by generative AI companies without transparency, consent or remuneration.



31. The Information Commissioner's Office (ICO) is clear that, where performance data contains identifiable data of individual performers (such as their voice or likeness), it amounts to personal data and is subject to data protection law.
32. Generative AI companies have a narrow legal 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.
33. Where performance data is processed for the purposes of the development and application of foundational generative AI models, those companies must meet their obligations as data controllers and respect the full rights of data subjects, in our case performers, under Articles 12-23, UK GDPR.

## **Personality rights**

34. There is currently no unified regime of personality rights (otherwise known as image rights) in the UK. These are property rights which a performer has in their likeness, voice, movement, 'brand' or other aspects of their personality.
35. At present, performers must piece together something approaching image rights from other legal regimes not specifically protecting aspects of personality. For example, performers' rights under the CPDA give them control in relation to certain types of exploitation of works in which they feature, such as where a performance is reproduced or distributed. Artists might also look to the common law tort of 'passing off' as a potential route to protect their image.
36. However, none of these routes offers a general right through which an artist can control and commercialise their image. A dedicated personality rights regime would enable performers to safeguard a meaningful income stream and defend their artistic integrity, career choices, brand, and reputation. More broadly for society, personality rights are an important tool for protecting privacy and allowing an individual to object to the use of their image without consent.
37. Most EU jurisdictions and many US states have image rights regimes, with France and Germany having particularly strong protections. Through the Image Rights (Bailiwick of Guernsey) Ordinance 2012, Guernsey has created a statutory regime under which image rights can be registered, following which an artist can protect, license and assign aspects of their personality. Equity recommends that inspiration be drawn from the Guernsey

model to establish a similar scheme in the UK, although we recommend that registration be an optional additional safeguard and not a requirement.

## Moral Rights

38. Performers are granted moral rights under the Copyright, Designs and Patents Act 1988. Moral rights protect the performer's reputation in the way their work may be used.
39. In the UK, moral rights consist of (a) the right of attribution, and (b) the right of integrity. The right of attribution entitles the performer to be properly credited for their work. It prevents false attribution and ensures the recognition of a performer's contribution. The right of attribution aligns with the practice of giving 'credits' to a performer for their performance, where appropriate and feasible. The right of integrity safeguards the performance from being altered, misrepresented or distorted in a way that could harm the performer's reputation. This right allows the performer to object to severe modifications and distortions of their performance by others.
40. Due to the unequal bargaining power, it is common practice for engagers to require performers to waive moral rights in contracts. However, this is rarely necessary and almost never beneficial for the engager or the performer. It is largely based on the misconception that moral rights prevent standard modifications to the performance or that they limit commercialisation.
41. Respect for moral rights is a crucial safeguard for a performer's reputation and an important tool in controlling how performance data is used in generative AI. Performers can rely on moral rights to combat instances where generative AI has been used to create illicit clones or 'deepfakes' of their performances.
42. The UK has committed to ratifying the Beijing Treaty on Audiovisual Performances (2012). However, the government has indicated it intends not to adopt the recommendation that moral rights be unwaivable.

8.	<b>What are the practices regarding information on AI generated content? What would be the best practices?</b>
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43. All governments must urgently require more transparency by AI companies in relation to the data that they are using in the training of foundational and fine-tuning models This must be achieved by introducing legislative measures to force GAI companies to

demonstrate that they are using clean, licensed source data. It also requires better enforcement of existing copyright and IP protections.

## **Contact**

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