

Data (Use and Access) Bill:

Briefing for Report Stage, House of Commons

April 2025

About Equity

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.

Background

- 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.
- 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.
- 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.
- 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.
- We are concerned that this Bill may weaken GDPR protections, as part of the wider government preference for relaxed regulation artificial intelligence. This approach poses a grave threat to the UK's world-leading creative industries, which represent 6% of UK GDP. It also pre-empts the government's own Copyright and AI consultation, which closed on 25 February 2025.
- The government must continue to provide the fullest possible protections to data subjects in the context of this emerging technology. UK GDPR must also be better enforced, considering the likelihood of industrial scale breaches of the rights of data subjects during the training, development and application of generative AI models in the creative industries to date.
- Alongside maintaining these data protections, this Bill presents an opportunity to further guarantee the rights of performers in the face of the rapid

development and implementation of AI technology in the creative industries, by introducing a new system of personality rights on to the statute.

New Clauses to the Bill -

A new regime of personality rights

- 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. Equity believes this Bill is an opportunity to begin to introduce such a regime. **We have proposed an amendment ('Amendment One' below) to achieve this.**
- 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.
- 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.
- The rapid development of generative AI underlines the urgent need for a personality rights regime: the amendments to the Bill tabled by Baroness Kidron demonstrate the current limitations of the copyright regime when it comes to giving content-owners and artists control over how their content and performances are used. While incremental reforms to performers' property rights (and related transparency requirements) may strengthen their position, the most robust option is to create a specific regime of image rights.
- 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

- 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.

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- 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.
- 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.
- 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.
- 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.
- **Equity proposes an amendment ('Amendment Six') below to ratify the Beijing Treaty in full and introduce unwaivable moral rights.**

Amendments to the existing Bill text -

Part 5, Chapter 1: Data Protection

Clause 67: Meaning of research and statistical purposes

- This clause inserts into the substantive provisions of the UK GDPR a definition of scientific research currently only existing in the Recitals. The ICO already indicates that the development of artificial intelligence (AI) may fall within the definition of research.
- Equity is concerned that the amendment this clause makes to Article 4, UK GDPR, provides too wide a basis on which AI companies may exploit performers' data for their commercial gain when the research value is limited and a secondary purpose at best.
- As it stands, if processing can be described as "research-related", that processing is deemed compatible with the original purpose of the data processing – the purpose limitation principle, Art. 5, UK GDPR. In our view, AI companies would most likely rely upon the 'legitimate interests' lawful basis for processing performance data. Given that it is the ICO's view that satisfying the research provisions will likely satisfy also the 'legitimate interests' lawful

basis,¹ the scope of this definition has a significant bearing upon the balance of interests in a legitimate interests assessment.

- Equity supports the amendments made to the Bill to qualify this definition with a 'public interest test', so that any research must be clearly in the public interest and weighed against competing interests, such as the data subject's rights.
- In any case, Equity believes it should be clarified that, even where processing falls within the research definition, this is only one factor in a legitimate interests assessment. Where the research is primarily for commercial purposes, this should not weigh heavily against factors such as the level of intrusion on the data subject and whether less intrusive data collection is possible.
- **Equity has proposed an amendment to Clause 67 ('Amendment Two' in the Appendix) to add this point of clarification.**

Clause 91: Duties of the Commissioner in carrying out functions

- Equity supports the principle of setting down in legislation the key objectives of the ICO under data protection legislation. However, Equity recommends that, in a new section 120A in the Data Protection Act 2018 (DPA), a third limb to this principal objective is added in relation to the investigation of historical breaches of data protection law.
- In the context of AI uses, Equity understands that AI companies have carried out text and data mining, for the purposes of training AI models, on content which contains performance data (amounting to personal data under the UK GDPR where it contains identifiable voice or likeness data). Without a lawful basis for this processing, this means widescale breaches of performers' data protection rights have already taken place.
- Further to this, Equity understands that content-owners are seeking to agree licensing deals with AI companies for the use of that content to train AI models. It is our position that, in many cases, content-owners have reached such agreements without identifying a lawful basis for this further processing of performers' personal data. Further detail on our position in relation to relevant lawful basis can be found in [our letter, of 10 February 2025, to content-owners in the industry](#).
- Given these serious and potentially widespread breaches of data protection rights in the development of AI, Equity recommends that the investigation and remedying of historical breaches of data protection rights be clearly set down in legislation as part of the Commissioner's principal objective.
- **Equity proposes an amendment ('Amendment Three' in the Appendix) to add these considerations to the Information Commissioner's principal objective.**
- **Equity proposes a further amendment ('Amendment Five') to require that the Commissioner's annual report, produced pursuant to new section 161A, DPA 2018, include a review of where regard to the desirability of promoting innovation and competition has influenced its enforcement activities.**

¹ Information Commissioner's Office, '[Principles and grounds for processing](#)'

New section 120B, DPA 2018: Duties in relation to functions under the data protection legislation

- Equity is concerned that the introduction of additional requirements for the Information Commissioner to have regard for the desirability of promoting innovation and competition may lead to lax enforcement of data controllers' obligations under UK GDPR with regard to generative AI foundational models.
- As this briefing has outlined, UK GDPR is an important basis for ensuring transparency around the data that generative AI companies use to train their models. It is a source of protection for many working in the UK creative industries, though one not properly enforced.
- The government should, instead, focus on better enforcement of existing GDPR rules in relation to generative AI companies operating in the creative industries.
- As it stands, clause 120B is weighted heavily in favour of data controllers instead of data subjects, given the emphasis on the promotion of innovation and competition.
- **Equity proposes an amendment ('Amendment Four' in the Appendix) to add to the list the need to safeguard data subjects' rights in respect of generative AI.**

Part 7: Other provision about use of, or access to, data

- Equity supported new clauses inserted into Part 7 of the Bill by amendments tabled by Baroness Kidron, which have since been removed from the Bill in the Commons. However, these clauses have been re-tabled for report stage, largely in their original format, by Victoria Collins MP.
- The amendments make hugely important improvements to transparency in the use of copyrighted works to train AI models. While transparency is a central principle of data protection law, it does not feature in the protection of crucial intellectual property rights.

NC2: Compliance with UK copyright law by operators of web crawlers and general-purpose AI models

- This clause strengthens the scope of protections under the Copyright, Designs and Patents Act 1988 (CDPA) in the case where an AI developer based abroad uses data hosted in the UK to train an AI model. The concern is that foreign-based developers would be able to use data readily available online, breaching intellectual property rights with impunity and undermining domestic protections.
- Under this clause, regardless of where the copyright-relevant act – such as reproduction, which engages performers' rights under the CDPA – takes place, the AI developer must comply with the UK copyright regime if the model is commercialised in the UK.
- Given the highly mobile, digital and transnational nature of AI development, it is important that such measures are put in place so that any strengthening

of intellectual property rights is not circumvented by AI companies moving copyright-relevant acts out of the UK.

*NC3 and NC4: Transparency of crawler identity, purpose, and segmentation;
Transparency of copyrighted works scraped*

- As explained above, Equity understands that AI companies have already conducted significant text and data mining (TDM) of copyrighted works in which artists, including our members, have performers' rights under CDPA 1988 – most importantly, in our view, the right of reproduction under section 182A.
- We also understand that copyright-owners are agreeing licensing deals with AI companies for the use of content to train AI models without consideration for performers' rights in this content under the CDPA 1988.
- However, there is no mechanism in intellectual property law by which performers can find out whether content in which they have rights has been used for AI training purposes and, if so, the identity and owner of the relevant AI model or crawler. Either the AI developer has mined the content in breach of both copyright and performers' rights or the copyright-owner has reached a private commercial arrangement for licensing the content without consideration for the performer's property rights. Both generally take place without the performer's knowledge.
- As such, these clauses make an important move towards introducing greater transparency when copyrighted works have been used in AI training, so that performers may then be in a position to enforce their intellectual property rights.

NC5: Enforcement

- These clauses add important regulatory muscle to the powers of the newly-created Information Commission to enforce the above legal requirements. We support a proactive regulator on this issue, given the difficulties and costs generally associated with performers seeking redress through the courts.
- However, we note that the language throughout refers to "copyright owner" – notably at subclause (2) – rather than more broadly all those who have intellectual property rights. Performers often do not own the copyright in the content in which they feature but, nonetheless, have important property rights conferred by the CDPA 1988. We would recommend broadening this language so that any person with property or non-property rights similarly can bring an action where these clauses are breached.

**For more information, please contact Dugald Johnson (Policy Officer):
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Appendix: Draft Amendments to the Data (Use and Access) Bill

AMENDMENT ONE

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.

AMENDMENT TWO

After Clause 67, 3. (b) insert -

- 6. Nothing in this paragraph shall be construed as providing conclusive determination of whether the legitimate interests lawful basis is satisfied in the case of any particular data processing. That the purpose of data processing falls within this paragraph is one factor in a legitimate interests assessment.

Explanatory note

This amendment seeks to ensure that the scientific research exception introduced by this clause will not provide a basis for the legal processing of personal data by web-crawlers.

AMENDMENT THREE

After Clause 91, (3) (b) at line 6 insert -

(c) to improve the transparency of data processing by businesses

(d) to take enforcement action from time to time to guarantee the rights of data subjects

Explanatory note

The amendment provides that the principal objectives of the Information Commissioner include improving the transparency of data processing by businesses and taking enforcement action to protect data subjects

AMENDMENT FOUR

At Clause 91, (3), after line 18 insert -

(f) the need to safeguard the rights of data subjects under UK GDPR with regard to processing by web-crawlers and artificial intelligence models.

Explanatory note

This amendment ensures that the Information Commissioner considers the impacts of AI upon the rights of data subjects while performing its functions

AMENDMENT FIVE

At Clause 102, (4), after line 32 insert -

(6) The report must include a review of the Commissioner's enforcement of UK GDPR in relation to web-crawling and artificial intelligence models, including all enforcement action taken.

(7) The report must include a review of where the Commissioner's regard to the desirability of promoting innovation and competition has influenced its enforcement activities.

Explanatory note

This amendment requires the Information Commissioner to report on its enforcement in relation to artificial intelligence, and how the new requirement that it have regard for the desirability of innovation and competition introduced by this Bill impacts upon its enforcement activities.

AMENDMENT SIX

New Clause

To move the following clause -

Unwaivable moral rights

- 1) Within six months of the passing of this Act, the Secretary of State must by regulations ratify and implement the Beijing Treaty on Audiovisual Performances, and make further provisions to introduce unwaivable moral rights in relation to the Copyright, Designs and Patents Act 1988
- 2) That under the provisions created pursuant to subsection (1), there is no requirement for moral rights to be asserted

Explanatory note

This amendment requires the Secretary of State to introduce unwaivable moral rights through the UK's adoption of the Beijing Treaty on Audiovisual Performances, and to remove a requirement for these to be asserted from the Copyright, Designs and Patents Act.