



July 2023

UK Music Policy Position Paper on Artificial Intelligence

Recent advances in AI have been as rapid as they are transformative for all areas of modern society, creating opportunities and challenges like any technological changes.

The music industry, and in particular songwriters and artists, are already taking advantage of artificial intelligence. As a tool: assisting their creative endeavours, in the song writing process, mastering their recorded performance, improving their sound; but also providing insights into fan engagement and identifying new fan bases around the world. Equally at industry level, music publishers and record companies use AI to assist their administration and enforcement operations.

However, amidst all of our enthusiasm for embracing these technological advances, we strongly argue that it is key to protect the sanctity of human creativity while also protecting the personality of human creators. We endorse the forward looking principles of the global Human Artistry Campaign (www.humanartistrycampaign.com) which puts human creativity at the heart of copyright protection. In addition to copyright, human writers and artists are also protected by other legal mechanisms in various jurisdictions such as the protection of the personality of the creator (which is currently unprotected in the UK) or data protection rules.

As the Government considers how to regulate AI, the UK music industry believes policymakers should adopt five key principles:

1. **Creators' choice.** The creator, or their chosen rights holder, should be able to decide if and how they want to use their creative talent. This certainty underpinned by legal rights (copyright) should not be undermined by any exception to copyright or compulsory licensing during the input stage. Users need to respect creator's choice as baseline for any discussions.
2. **Record keeping.** It is important that in the input stage, the tech providers keep an auditable record of the music ingested before the algorithm generates new music. This is the only point in the process when these data points can be documented.
3. **Without human creativity there should be no copyright.**
4. **Labelling.** Music generated by AI should be labelled as such.
5. **Protection of personality rights.** A new personality right should be created to protect the personality/image of songwriters and artists.

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We are looking forward to closer dialogue between the creative and tech sectors to establish a clear legal framework for building safe business models for the future. We welcome UK Government playing a key role in facilitating channels for communication.

1. Creators' choice

The machine learning process (ingestion) involves many activities to enable the algorithm to identify patterns for the generation of music; these activities require the permission of the rights holder (mainly reproductions of existing music). It is critical that the creator of the ingested music can decide whether to permit such copying or not; it should remain their choice protected by the fundamental principles of copyright and contract law. Some musicians have now publicly voiced their views on whether they welcome such uses of their music or not, from Grimes to Nick Cave.

We continue to oppose any exception to copyright for the machine learning process applying to this choice, even with an opt out option. Such an exception would conflict with international obligations and lacks any economic or societal justification.

We welcome that the UK Government has decided not to pursue last year's plans to introduce a wide-ranging (and illegal) exception to copyright for text and data mining, yet concerns remain that damaging, future legislation is not completely off the table.

- *Government should commit to respecting creators' choice and rule out any new exceptions to copyright.*

Licensing the use of original human authored creations is the key activity of the music industry and in the last century we have successfully catered to many technological developments, including radio, television, Internet, gaming and NFTs and currently, with a host of apps and online platforms to emerging Web3 opportunities. Licensing is how most of the music industry monetises their music and thus generates economic value for songwriters and artists as well as rights holders. Licensing underpins the internationally successful commercial activities of our creative talent and business. The UK remains one of only three net exporters of music in the world; not to ignore the immeasurable soft power provided by our music and wider creative industries. Rights holders will be able to negotiate licences (once requested) should the artist or writer choose to permit the use of their music.

- *Government should support general ethical guidelines on the safe, legal and ethical use of AI tools where copyright-protected materials are ingested; this relates to the UK IPO's approach currently discussing a code of practice on AI and Copyright.*

2. Record keeping.

We need far greater transparency and detailed auditable record keeping to safeguard human creativity and connection through music. Keeping a record of all the music (including musical/literary works or sound recordings) ingested by the AI applications is important. At the ingestion stage, the AI provider knows what music has been used. However, at output stage those using the AI application may no longer know what works or sound recordings have been used. Whilst we note the availability of technologies which have some degree of traceability already embedded by design, some systems will not know what trained them, whether the creators' consented, or what biases may have been unwittingly introduced.

Identifiers need to be attached to source works and recordings, which is particularly relevant given the recently adopted UK Industry Agreement on Music Streaming Metadata.

This is also important for potential infringement proceedings. Enforcement in practice relies on the ability to know what has or hasn't been used. Consequentially, if it can be established through record keeping that the AI application has been trained on a specific work it will be easier to evidence the causal connection between the allegedly infringing output and the infringed work. The outcome of the infringement procedure will be based on a factual analysis, similar to the recent Ed Sheeran court cases in the US and the UK.

Requirements for record keeping are increasingly being included in regulatory AI proposals throughout the world from Brussels to Beijing.

- *Government should require those that use music as part of the AI process to maintain records of trained and ingested works which can be accessed by right holders and creators. This could be included in ethical guidelines; notably, record keeping is a part of AI proposals throughout the world.*

3. In our current view, without human creativity there should be no copyright.

AI generates, it never creates. In the words of the Human Artistry Campaign: *“copyright should only protect the unique value of human intellectual creativity. Copyright protection exists to help incentivize and reward human creativity, skill, labour, and judgment -not output solely created and generated by machines. Human creators, whether they use traditional tools or express their creativity using computers, are the foundation of the creative industries.”* At this stage it is difficult to put forward a definite view on the copyright status of AI generated music. In particular given uncertainties on what AI generated music is; in particular compared to instances when AI is only used as a tool by the creator.

- *Government should clarify without human creativity there should be no copyright*

4. Labelling.

Copyright protects a creative contribution which constitutes the author's own intellectual creation reflecting their personality (a definition under the EU framework that still applies in the UK). To protect the consumer it is important to label AI generated products as such. This can be achieved through digital watermarking or other identifiers. We note the uncertainties in the delineation between AI and human contributions also in this context.

It is important to know whether something has been generated by a computer, or if it is a real human creation. This is true not just for music, but for all manner of content, including advertisements, political campaign materials, reports or advice. In a world of ever-increasing fake news and misinformation it is vital that we have the tools to understand where information and outputs have come from and what may be behind it. Without requirements for labelling, AI generated works will sit alongside the human created music with music fans left confused or deceived as to whether they are consuming the real thing. Labelling would therefore help the creator and protect the consumer.

- *Government should ensure AI generated music which is made available commercially is labelled as such to distinguish it from human created works.*

5. Protection of Personality rights.

AI is mimicking human creativity, most recently with AI mimicking the voices of Drake, Abel Tesfaye (also known as the Weeknd) or Eminem. This can easily be abused for misappropriation or false endorsement, inflicting damage to the personality and reputation of an artist or songwriter, comparable to the concern around deep fakes in the visual world. This is not a new problem; sound-a-likes have been around for considerable time and used for misappropriation of a singer's voice or false endorsements of certain products.

Unfortunately, in the UK there is only limited protection for creators in the non-economic moral rights in a work, for example against misappropriation or false endorsement. In particular, the concept of passing off has its limitations. There is a lacuna in the UK in the absence of a specific personality right. We note in this context the weak moral rights regime protecting the personality of the creator in the UK.

- *Government should introduce personality/image rights into the UK legal framework; in addition to strengthening moral rights in practice.*

It is also worthwhile highlighting the impact on data protection rules if AI applications process data, e.g., the recent developments in Italy considering the link between data protection and ChatGPT.