1. UK Music is the collective voice of the UK’s world-leading music industry. UK Music represents all sectors of the music industry – bringing them together to collaborate, campaign and champion music. A full list of UK Music members can be found in Annex A.

2. We welcome this consultation into the relationship between generative AI and data protection. In addition to consumer protection, intellectual property and contract law, data protection represents a key area in which generative AI impacts creators, music businesses, and music consumers.

3. Many generative AI applications are trained on music and ancillary material such as images, which may include special category data, without regard to the rights of others and without the consent of the original music makers or rights holder. The music industry has not been approached by AI developers for permission to license copyright, nor for consent to the processing of personal data.

4. Moreover, websites and platforms which have been scraped for music and related data as training material often expressly prohibit such scraping in their terms and conditions. The fact that music may be publicly accessible online for a specified licensed use does not mean it is “publicly available” for scraping.

5. The ICO is ideally placed to assess the activities of generative AI platforms developers in relation to handling their data. This corresponds with the Government’s strategy expressed in the AI White Paper suggesting substantial roles for specific regulators. In the case of the music industry, the ICO is well-placed for upholding data protection standards; and the Competition and Market Authority (CMA) for ensuring compliance with consumer protection regulations. These two regulators are crucial for the UK music industry and are directly responsible for protecting the creative industries.

6. The ICO focuses on the ingestion process in which personal data is processed. They should also work together with the CMA focusing on consumer protection (including by labelling AI-generated goods and services as such) as the two key regulators in
relation to data use in the music sector. Based on recent publications by the CMA and insights gained from this consultation, we are assured that the two bodies together can adequately supervise the application of generative AI within the music sector (and potentially the wider creative sector).

7. We agree with the ICO’s description of the ingestion stage in which personal data is being processed: “As part of complying with the lawfulness principle of data protection, developers need to ensure their processing:

(a) Is not in breach of any laws; and
(b) Has a valid lawful basis under UK GDPR.”

8. These requirements apply cumulatively. If developers providing AI applications fulfil one of the two requirements their activities are unlawful; in this instance they fulfil both.

(a) Breach of copyright and contract law

9. Without express consent artificial intelligence providers already fail this initial step of compliance with the lawfulness principle under the data protection framework.

10. Artificial intelligence platforms provide AI applications (run by various, sometimes third-party entities selling datasets, ultimately for commercial purposes). They also scrape the internet to collect music and related data for machine learning. This involves many rights requiring express permission by rightsholders, including copyright for the reproductions taking place to enable the machine learning. Such a requirement is not covered by any of the available exceptions (e.g., non-commercial text and data mining, temporary copying in the United Kingdom). General copyright rules apply and express permission by creators and rightsholders is required.

11. Any prospective exception in future would apply to copyright but not to other rights, such as data protection rights of the data subject and contractual provisions. Data scraping is often expressly prohibited in the Terms and Conditions of the scraped websites. This constitutes a legally binding express prohibition which needs to be respected.

(b) No apparent lawful basis under UK GDPR

12. Additionally, in the absence of consent, developers do not comply with the three tests required to establish “legitimate interests” as a legal basis for processing under UK GDPR rules. These tests are the purpose test, necessity test, and balancing test.

Purpose Test: Is There a Valid Interest?
13. While unlawful data scraping is in the commercial interest of the developer, it is not in the interest of the data subject: the creator or rightsholder, protected by UK GDPR. At the point at which the data is scraped and processed, the AI developer may have no clear or specific purpose for such processing beyond a generic or vague business interest. We therefore agree with the ICO of the critical importance of any such AI developer relying on Legitimate Interest as a basis for processing in undertaking a clear and documented purpose test prior to processing. There is no overriding societal interest either, if any at all.

14. Moreover, society needs to be protected from untoward use of personal data. This is of particular concern in relation to deepfakes which can threaten further human rights and indeed national security; or within the music industry if AI applications mimic sound and style of a musician or composer compositional style deceiving the consumer.

Necessity Test: Is Web Scraping Necessary Given the Purpose

15. Uncontrolled web scraping of music and ancillary material such as images without permission is not necessary. Developers, like any other user, can ask for permission to use personal data. It is the right of the data subject to permit or prohibit the processing and transfer of their personal data, in the absence of an alternative legal basis for processing.

Balancing Test: Do Individuals’ Rights Override the Interests of The Generative AI Developer?

16. Given that the AI developer fails already the purpose and necessity tests, the balancing test is irrelevant. It is noteworthy, nevertheless, that it is the purpose of data protection to protect the rights of individual data subjects against abuse of their personality, intellectual property, and contractual freedom which is possible via generative AI.

17. Individual data subjects face downstream as well as upstream risks as identified in the consultation paper. It is difficult to imagine an AI developer’s commercial interests in generating AI material ever justifying the infringement of individuals' rights or their reasonable expectations regarding personal data provided for specific purposes like streaming on a digital platform. This could lead to the wholesale appropriation of their digital personality, creativity and identity.

18. The ICO currently focuses on the ingestion process in which personal data is processed. They should work together with the CMA to focus on consumer protection (by labelling AI generated goods and services as such) as the two key regulators covering the music sector. Based on recent publications by the CMA and insights gained from this consultation, we are assured that the application of
generative AI within the music sector (and potentially the wider creative sector) is adequately supervised. We look forward to providing further input on the other topics ICO has raised such as how data subjects can enforce their rights, including right of rectification and erasure.
Annex A

UK Music’s membership comprises:

• **AIM - Association of Independent Music** – The trade body for the independent music sector and community which make up more than a quarter of the UK’s recorded music market. Representing 1000+ independent record labels and associated businesses, AIM’s members range from globally recognised brands to the next generation of British music entrepreneurs.

• **BPI - The British Phonographic Industry** - The representative voice of the UK’s recorded music sector. Their membership consists of approximately 500 music companies, ranging from hundreds of SME independent labels to the major global record companies Universal, Sony and Warner. They also organise the BRIT Awards, the Mercury Prize and administer the Music Export Growth Scheme (MEGS).

• **FAC – The Featured Artists Coalition** - UK trade body representing the specific rights and interests of music artists. A not-for-profit organisation, they represent a diverse, global membership of creators at all stages of their careers and provide a strong, collective voice for artists.

• **The Ivors Academy** - An independent association representing professional songwriters and composers. As champions of music creators for over 70 years, the organisation works to support, protect and celebrate music creators including its internationally respected Ivors Awards.

• **MMF – Music Managers Forum** - Representing over 1000 UK managers of artists, songwriters and producers across the music industry with global businesses.

• **MPG - Music Producers Guild** - Representing and promoting the interests of all those involved in the production of recorded music – including music studios, producers, engineers, mixers, remixers, programmers and mastering engineers.

• **MPA - Music Publishers Association** - The representative voice of the UK’s music publishing sector. Membership includes over 95% of the country’s major and independent music publishers and close to 4,000 catalogues across all genres of music.

• **Musicians’ Union** - Representing over 32,000 musicians from all genres, both featured and non-featured.
• **PPL** Licenses recorded music in the UK when it is played in public or broadcast and ensures that revenue flows back to our members. These include independent and major record companies, together with performers ranging from emerging musicians to globally renowned artists. In 2021 we collected £252.8 million while also distributing money to 147,000 performers and recording rightsholders.

• **PRS for Music** is responsible for the collective licensing of rights in the musical works of 150,000 composers, songwriters and publishers and an international repertoire of 28 million songs.

• **UK Music** also has an informal association with **LIVE (Live music Industry Venues & Entertainment)**, the voice of the UK’s live music and entertainment business. LIVE members are a federation of 13 live music industry associations representing 3,150 businesses, over 4,000 artists and 2,000 backstage workers.