UK Music Submission

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 the ICO’s detailed consideration of data protection in the context of artificial intelligence (AI). As representatives of the UK music industry, our primary concerns revolve around the impact of AI services and platforms on the personal data and associated datasets of individual writers and artists. Datasets captured and processed vary, but can include extensive and sensitive category data. We have submitted detailed comments to part one of this consultation series to which we refer (our submission can be found here). As part of that response, we noted that without express permission, there is no lawful basis for AI developers to process personal data.

3. AI services and platforms (often operated by various entities, including third-party vendors who sell datasets to enterprises for commercial purposes) scrape the internet to collect data for machine learning, often in direct violation of the Terms of Service of the websites from where such data is scraped.¹ Such scraping involves many rights which require express permission from rightsholders and data subjects. These rights include copyright permissions for the reproductions which occur during the training process, as part of the tokenisation and embedding of data into the model.

4. Before AI can start processing ingested data, it needs to "translate" it into a format it understands. AI applications do not inherently understand words or music; they only comprehend their representation in binary code. The necessary reproductions must be permanent to enable the AI application to understand words or music within their respective contexts. Consequentially, to operate on a lawful basis in the UK, AI

¹ In some cases, the data scraped is not sourced from the internet. Some organisations are extracting data from existing music catalogues they have access to, where rights were not licensed for AI usage but rather for standard consumer music services. This point is illustrated in this NY Times article.
services and platforms require express permission from the individual writers/artists and/or from the rightsholders, to use and ingest the data collected for machine learning.

5. Additionally, data scraping is often expressly prohibited in the Terms and Conditions of the scraped websites. This constitutes a legally binding express contractual prohibition which needs to be respected. We welcome the ICO's confirmation in its response to the first call for evidence that collecting personal data through web-scraping is "invisible processing" where data subjects, are not aware their personal data and lose control over how and what data is being used, consequently how to exercise their rights and that such activity amounts to high risk processing that requires an advance DPIA under ICO guidance. We further welcome the ICO's conclusion that legitimate interest cannot be used as legal basis for processing training data including personal data where it is done in breach of intellectual property laws and or contract law (i.e., breach of the Terms of Service).

6. In addition, it is worth noting that AI services and platforms equally impact the data of their users by unlawfully collecting their personal data. We expect that well-qualified Consumer Associations will also raise this point, as well as further points related to consumer protection, such as compliance with the Consumer Protection from Unfair Trading Regulations 2008.

7. We reiterate the legal background expressed in the first consultation to provide context:

“Purpose limitation requires organisations to have a clear purpose for processing any personal data before they start processing it. If they are not clear about why personal data is processed, it follows they will not be able to be clear with individuals.

This purpose must be legitimate, meaning that:

1. There must a lawful basis for processing it; 1 and
2. The purpose is not in breach of other laws, such as intellectual property or contract laws.

8. The purpose must also be specified and explicit: organisations need to be clear about why they are processing the personal data. Organisations must be clear about this both in their internal documentation and governance structures but also with the people to whom the personal data relates.”

Lawful basis

9. As we argued in our submission to the first ICO consultation on Generative AI and Data Protection, the use of personal data for ingestion by AI services and platforms requires the express permission of the individuals whose data is being ingested. Any
such permission is limited to the original purpose for which the data was initially collected. In particular, permission granted to collect data for training purposes by not-for-profit research organisations does not cover any subsequent use, especially not commercial utilisation by enterprises who have acquired the datasets from the research organisation.

10. In essence, the AI service and platform requires an additional clear and lawful purpose for collecting personal data from individuals. They should not use this data for purposes other than those originally agreed upon by the individual data subjects without obtaining separate permission. Consequently, we agree with the ICO’s conclusion on this point. In the absence of express consent and transparency at each stage of the AI training modelling, developing the AI generative model, and onwards deployment with the number of potential data sharing points in different jurisdictions, it is impossible to see how a data subject, whether creator, rightsholder or private citizen, would have any right of redress. Furthermore, they would otherwise be unable to exercise their rights under data protection law such as rectification, erasure, and the right to be informed. We welcome the updated guidance on ICO’s website confirming the application of these data subject rights to data subjects – both for creators and consumers.

11. Legislating ethical AI should also address the current lack of options for private citizens to seek redress against AI service platforms. The currently discussed Artificial Intelligence (Regulation) Bill proposes ethical core regulatory principles of safety, transparency, fairness, accountability and redress on a statutory basis. which should be considered. This is also important for creators and rights holders in relation to materials such as unauthorised synthetic voice creation and personality.

**Intellectual Property**

12. Moreover, even if the AI service platform collect the data based on a lawful basis (which they lack without express permission; as demonstrated in the first consultation by the ICO), the lawful basis would need to be re-established for any secondary use. We agree with the ICO’s conclusion on this point.

13. Data collected by a not-for-profit research organisation, for which permission has been granted, cannot be used by a subsequent operator, whether commercial or not, without obtaining further permission for the use of training data for a clear purpose from the start of the data processing.

14. We stress the importance of maintaining records of processing and lawful basis, as legally required by UK data protection rules and the undertaking of appropriately detailed DPIA’s prior to undertaking processing by AI developers if they are seeking to rely on legitimate interest principles; c.f. the relevant ICO guidelines.
15. It is difficult to envisage how a compatibility assessment could be successfully carried out by AI application services and platforms without a direct relationship with the individuals whose personal data the generative AI encodes during training. This means without specific permission by the individuals concerned to utilise the personal data collated. It is difficult to conceive measures which limit possible negative consequences to individuals, particularly in the absence of an initial permission to use the data. Any change in the purpose of data usage necessitates separate permission from the initial use, which in turn requires its own permission.

16. We agree with the ICO’s conclusion that:

17. “Developers need to give careful consideration to the purpose limitation requirements of data protection, to ensure that before they start processing… Organisations will be better able to comply with data protection law and maintain public trust if they give careful consideration to the difference between developing the generative AI model, developing the application based on it, and are clear about what types of data are used and how in each case.”
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 a third of the UK’s recorded music market alone. 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 Exports 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, remixer, 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 a collective management organisation representing the rights of more than 165,000 songwriters, composers and music publishers in the UK and around the globe. It collects and distributes royalties to ensure its members are paid whenever their musical compositions and songs are steamed, downloaded, broadcast, performed and played in public. In 2022, PRS for Music collected £964m and paid out £836.2m in royalties.

• **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.