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Creative PEC Response to the AI and Copyright Consultation

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Executive Summary

The creative industries are a vital part of the UK economy, generating £124.6bn in GVA in 2022. As artificial intelligence impacts the sector, the balance between technological innovation and copyright protection has become a central policy concern. Creative PEC's submission emphasises the need to safeguard copyright protections as a fundamental condition for the growth of the creative industries, while also carefully considering the needs for AI sector growth.

This document highlights the economic and strategic importance of copyright for the creative industries. The Government's preferred option of a text and data mining (TDM) exception, accompanied by an 'opt-out' and transparency measures, raises concerns about enforceability, technical viability, and may undermine creators' and rights holders' ability to commercialise their IP. We highlight that there are other routes to incentivising growth in the AI sector beyond changes to copyright law and suggest several policy considerations to drive more constructive policy making in this area.

Our response urges a cautious approach to copyright reform, advocating for evidence-based policymaking that protects the creative industries while fostering AI development. We recommend that before pursuing any of the options identified, the Government conducts a full economic impact assessment before any changes to UK copyright law are made.

Our response also highlights several evidence gaps that should first be addressed through further research. Moreover, we argue that providing a text and data mining exception with an opt-out is not only currently not technically feasible, but risks undermining the ability of creators and rights holders to commercialise their IP, which is the bedrock of the creative industries value proposition.

About Creative PEC

The Creative Industries Policy and Evidence Centre (Creative PEC) supports the growth of the UK's creative industries through the provision of authoritative research and policy advice. Funded by the Arts and Humanities Research Council, and hosted by Newcastle University with the Royal Society of Arts, Creative PEC works with policymakers and industry to enable a thriving sector that plays a central role in generating growth and innovation. Our research is led by consortium partners at Newcastle University, the University of Sheffield, the University of Sussex, and Work Advance.

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1. The creative industries: copyright and new technology

The creative industries are an important part of the UK's economy, contributing £124.6bn in GVA in 2022 (DCMS, 2024). The are a major export success, with UK creative services demonstrating comparative advantage versus major competitors such as the USA, France and Germany (Fazio et al, 2024). We welcome the consultation's acknowledgement that the creative industries belong at the heart of the government's industrial strategy and their potential to drive growth across the UK, alongside a dedicated AI sector which contributes around £1.2bn (DSIT, 2024).

Technological development is a crucial component of the sector's success. IT, Software and Computer Services remains the largest single subsector of the creative industries, while digital and technological innovation are also fundamental components of subsectors like screen, advertising and music. CreaTech firms—fusing creativity and technological innovation—play an increasingly important role in the creative industries landscape (Easton et al, 2025). UKRI's £75.6mn investment in the CoSTAR R&D Network for Creative Technology has been a major recognition of the role that CreaTech has across screen, videogames and live performance. Creative PEC research has also demonstrated that Createch businesses are investing in artificial intelligence (Siepel et al, 2022) and has made the case for strengthening the synergies between AI and creative subsectors (Davies et al, 2020). AI and other cutting-edge technologies are already an integral part of the creative industries ecosystem.

Where advanced technology is core to innovation in creative industries firms today, copyright is in most creative subsectors central to their business models. Copyright is a legal right that grants the creator of an original work exclusive rights to use and distribute it for a certain period, thereby incentivising creation and circulation (WIPO, 2024). The World Intellectual Property Organisation (WIPO) sometimes treats copyright-based industries and creative industries synonymously (WIPO, 2015), though copyright's importance in reality extends to many other crucial parts of the economy (IPO, 2022; see also the discussion in Erickson, 2018). Using WIPO definitions and methodology, the IPO estimates that the economic output of copyright across the non-financial business economy amounts to £156.8bn in GVA for those firms making above average use of copyright (IPO, 2022). There is also evidence that strong intellectual property (IP) rights (encompassing copyright and other types of IP) are associated with faster economic growth (Gould and Gruben, 1996) and, at least in higher income countries, a net stimulus for innovation (Falvey et al, 2006; Hudson and Minea, 2013).

2. Response to the consultation

The Government's consultation is of special importance given the importance of both the copyright regime and enabling environment for new technologies to the success of the creative industries. The consultation should be a starting point for discussion on this issue and the three objectives outlined in the consultation paper offer a sound foundation for policy deliberation: 1. support for rightsholders, 2. support for the AI sector, and 3. the promotion of greater transparency.

Preserving the long-term future of the UK's creative industries is fundamental to the Government's plans for economic growth. AI technology undoubtedly presents an opportunity to both the creative industries and the wider economy, but the pace of change is unprecedented: the first publicly available generative large language model was OpenAI's GPT-2 in 2019, and the most significant players have only gained a widespread userbase in the past couple of years. As a recent WIPO paper on the subject emphasises, premature policy reform in such a rapidly developing area risks unintended consequences (WIPO, 2024). It is for this reason that Creative PEC's current position is to urge caution before any significant change is made to UK copyright law.

Creative PEC urges the UK Government to undertake a fuller assessment of the economic impact of any changes to the existing copyright regime, before pursuing one of the options identified. Moreover, we argue that providing a text and data mining exception with an opt-out is not only currently not technically feasible, but risks undermining the ability of creators and rights holders to commercialise their IP, which is the bedrock of the creative industries value proposition.

2.1. Copyright as a barrier to AI sector growth

The consultation makes the case that copyright legislation is unclear on the issue of the use of text and data mining (TDM) and that this is discouraging AI firms from setting up and training their models in the UK. However, there is little evidence that copyright is the main—or even a major—reason why dedicated AI companies or start-ups are not basing their operations in the UK. The consultation takes a narrow view of both the diversity of AI technology, which extends beyond generative models, and the role that copyright takes in encouraging or discouraging innovation in the sector. Indeed, there is evidence that software firms also see copyright as a useful instrument to protect their own coding where patents are not a viable option (Enterprise Research Centre, 2023).

Moreover, there are other routes to incentivising the growth of the AI sector in the UK beyond changing copyright law, including improving access to finance and developing a skilled workforce (Silver, 2025). Copyright is also of more central relevance to LLMs and other generative AI models that rely on large amounts of data, as opposed to other approaches to innovation such as reinforcement learning or federated learning. The recent success of DeepSeek has demonstrated how new innovations might occur within the market beyond access to more original data and computing power, through a combination of performance tweaks and synthetic data (at least for its mathematical model). There is increasing evidence that generative models may have reached the point of diminishing returns in terms of the difference that expanding data sets make to their performance.

Having the right evidence is a prerequisite for making good legislative and policy changes in this space, and to ensure that both the creative industries and AI sectors can thrive together. This also means creating the environment where the UK's creative industries can best capitalise on the opportunities afforded by AI. While the EU is identified as an important competitor for the UK to keep in step with, the legislative situation in the EU relating to TDM remains complex and uncertain. Changing UK copyright for the benefit of a dedicated AI industry that, according to government calculations, amounts to around £1.2bn (DSIT, 2024) is risky and it is important that we learn the lessons of other jurisdictions that are still grappling with the aftermath of drafting legislation alongside rapidly changing technology.

We agree, therefore, with the recent Bennett Institute for Public Policy, Minderoo Centre for Technology and Democracy, and ai@cam report that there is an "urgent" need for more research on a whole host of issues on the question of AI and its impact on the creative industries, which the Government has a chance to take a leading role on (Glenster et al, 2025). Creative PEC would recommend the Government consider analysis and research in the following areas to bolster evidence-based decision making:

- **Impact on innovation and economic growth**: a full economic impact assessment on how the government's preferred change in copyright would impact both the creative industries and AI sector in terms of growth, job creation and the UK's global competitiveness. This should compare other mooted options.

- **Evidence on copyright law as a barrier to investment**: evidence-gathering on the impact of existing copyright law on the ability of AI firms to innovate and/or invest in the UK.

- **International comparators**: evidence on how AI investment and start up rates in the UK compare with major competitors in the US, EU and China, especially relating to decisions on investment. This would be especially useful where other jurisdictions have more permissive TDM exceptions, such as Japan. Similar work could also be done on the UK's copyright system as an attractor to inwards investment.

- **Copyright vs other factors**: analysis of the extent to which AI innovation is dependent on access to copyrighted data versus other factors such as access to capital, talent, computing resources or other technical solutions.

2.2. Option 3

The consultation emphasises that rights holders should be able to have faith in any technical system that allows them to reserve their rights (or "opt out") as a part of a TDM exception. It also makes clear that such a technical system does not currently exist and would require close cooperation between the creative industries and technology firms to make a reality. Issues of practical enforcement remain live and have been highlighted elsewhere (Glenster et al, 2025). While there are some existing programmes that currently allow rights holders to search for where their work is used, such as Spawning.ai's "Have I Been Trained", these do not cover all generative AI platforms and require rights holders to manually search for their own work. There has also been discussion that opt outs cease to be useful for

downstream copies of work, even where metadata tagging is used, and that knowledge of existing rights reservation schemes remains very low.

As the consultation itself suggests, standardisation is required in this area before it can become a viable approach. This is not to suggest that the ambition could not be met, but it would need the government to take an interventionist approach in order to develop new (or choose from existing) opt out mechanisms for rights holders and AI firms to use. Such a system would have to be fully developed, tested and piloted before it could be rolled out, drawing together relevant stakeholders, including smaller rights holders alongside larger creative firms. Attempting to retrofit such a system after a wide-ranging legislative change to copyright, or indeed trying to build a system at the same time as drafting and enacting legislation, may lead to uncertainty and a potential loss of faith in the UK as both a protector of intellectual property and as an innovation hub. This system would also have to be developed alongside the implementation of the government's proposed transparency measures, with an attendant level of granularity to allow rights holders to accurately reserve their rights. Replacing the UK's existing copyright system to accommodate developments in AI technology will not necessarily simplify the process for any stakeholders.

The administrative burden on rights holders may be high in any such regime, with larger creative firms being better placed to have the resources to be able to enforce their rights under such a regime compared with microbusinesses and individual creators (Bertolini et al, 2024; Enterprise Research Centre, 2023). In addition to technical challenges, there is also the practical feasibility of raising awareness of the relevant changes among rights and license holders, not mention the difficulties in up-skilling around how to effectively use any "opt out" technology. It is for this reason that the development of an "AI toolkit" for creators—encompassing legal and technical guidance—may be a necessary component of a fair system (Bertolini, 2024). There is also a final question around the legal status of TDM as copyright infringement, with some asserting that it represents a new type of copying and therefore needs a new type of statutory instrument to deal with (Silver, 2025). However, the qualitative nature of data processing under TDM as it relates to *copying* is a legal and philosophical question that is contested (Pasquale and Sun, 2024; Opderbeck, 2023; Sag, 2019).

2.3. Creative industries sentiment

We acknowledge that major voices in the creative industries are strongly opposed to the Government's preferred option (House of Lords Library, 2025). The list of organisations, campaign groups and trade bodies voicing their concerns with the proposal is extensive. By contrast, there is indication that groups like the Start Up Coalition and UK Day One will be advocating for a blanket TDM exception under Option 2.

Our own consultation with industry stakeholders has not found much support for the government's preferred option from within the creative industries and scepticism over the idea that current copyright law is unclear.[1] The few who voiced support framed this in fatalistic terms: that is, they believe (correctly or not) that AI firms have already been using copyrighted material at scale in the development of generative AI models and that so much creative work is digitised on the web already, that there is little point in trying to enforce existing UK copyright law.

[1] Creative PEC's summary of this engagement is to be published in an upcoming piece on our website.

Concerns with the proposal included uncertainty over the degree of control it would give individual creatives over their work and practice, including how they would be renumerated. There was scepticism that opt out or transparency measures would work in practice and, in the event that a technical solution could be found, a feeling that it would be much easier for large creative firms to enforce their rights than it would be for individual rights holders further down the chain (as noted above, and in keeping with official observations about the distribution and imbalance of power between different copyright holders, WIPO, 2024). Concern was also raised about the high level of technical expertise that was required to engage with the consultation in the first place.

3. AI-Assisted Works

The intersection of copyright law and artificial intelligence (AI) is an evolving area of legal and ethical discussion. As AI tools become more sophisticated, questions arise over authorship, ownership, and protection of AI-generated or AI-assisted works. Under UK copyright law, original works, including literary, artistic, musical, and dramatic creations, are typically protected if they are the result of human intellectual effort. While the Copyright, Designs and Patents Act 1988 (CDPA) provides a unique provision for computer-generated works, it does not fully address scenarios where AI autonomously generates creative content or where AI-generated works are, as the consultation characterises, "assisted" by humans. Despite the consultation stating that AI-assisted works "are protected in similar terms in the EU and the US as they are in the UK", it is worth underlining that this does not in fact to be the case.

The UK needs to ensure that it is not left behind in this area as other jurisdictions begin to clarify their own copyright regimes in this area. The US Copyright Office's recent report on AI-generated works, for example, reaffirms that copyright protection in the United States is reserved for works demonstrating human creativity (USCO, 2025). Purely AI-generated outputs, without meaningful human intervention, do not qualify for copyright. However, AI-assisted works may be protected if a human contributes sufficient creative input, such as selecting, arranging, or significantly modifying AI-generated content. Merely providing prompts to an AI system is deemed insufficient for establishing authorship. The report concludes that existing copyright principles can be applied to generative AI technologies without requiring immediate legislative changes. In China, by contrast, a recent case established that sufficient curation of an AI work could be grounds for copyright protection, though the court emphasised that cases would have to be reviewed on an individual basis (Erickson, 2024). It has been argued that EU copyright law also seems to offer enough flexibility for protection of AI-assisted works without any need to change existing law (Hugenholtz and Quintais, 2021).

Creative PEC is planning to investigate the use of AI-generated and AI-assisted content and the creative industries, plugging an important gap in our understanding. The Creative Business Panel, a major longitudinal survey of creative firms in the UK, will include dedicated questions on AI uptake and usage. We are also planning to explore the use of AI-assisted work among the creative workforce, as well as research into how audiences perceive and value AI-generated creative content compared to work with a clear human author. Each of these studies will contribute evidence towards understanding the issue of copyright as it relates to AI-generated works.

4. Conclusions and considerations

The UK's creative industries play a vital role in the economy, underpinned by both technological innovation and a strong copyright framework. While AI presents significant opportunities, its rapid evolution necessitates careful, evidence-based policymaking to avoid unintended consequences. The consultation's objectives—supporting rightsholders, fostering AI sector growth, and promoting transparency—provide good starting point, but any changes to UK copyright law must be rigorously assessed for their economic impact. We encourage the government to foster an environment where both the creative and AI sectors can thrive in tandem, ensuring that innovation is balanced with the protection of intellectual property. To this end, we underline several additional policy considerations as a starting point for moving the conversation forward:

- **Encouraging good licensing practice**: licensing is the standard industry-led model by which rights holders can exercise and exploit their rights. However, Glenster et al (2025) point out several barriers to licensing as a blanket solution, especially where licensing occurs with international AI firms. This may mean that copyright holders retain little control over their terms and conditions, with the potential for legal rights being overwritten via private contracting (ibid). They suggest that licensing agreements should ensure both acknowledgement of the rights of copyright holders and fair compensation.

- **Small-scale licensing:** Exploring new markets that foster the growth of both the creative industries and the AI sector is essential. With large-scale AI image and text generators widely available and hosted in the US, licensing high-quality creative content for smaller, specialized generative AI models presents a promising and underexplored opportunity for growth.

- **Beyond "opt in" and "opt out":** Silver (2025) argues that the ingestion of data and subsequent training of AI models via TDM represents a new type of copying and reproduction, so a new statutory IP right might be necessary to enforce proper compliance. This statutory right would be an addition to (rather than transformation of) existing copyright law and would place the obligation on technology firms to reveal their sources transparently and in a way that is auditable, while also requiring them to seek permission for use. This would only be applicable to instances where TDM is used for commercial, rather than non-commercial or research, purposes.

- **Rights holders vs individual creators:** Greater consideration is needed to assess how copyright clarifications impact original creators and rights holders differently. Silver (2025) proposes that a new AI right could help negotiate returns on intellectual property. This is not an endorsement of any specific approach but rather a call for comprehensive consultation and evidence gathering to address this issue.

To discuss any part of this consultation response further, please contact Dr Nik Gunn at enquiries@pec.ac.uk

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