



Creators' Rights Alliance

Draft Response to Generative AI second call for evidence: Purpose limitation
in the generative AI lifecycle

Friday 12th April 2024

Introduction

The Creators' Rights Alliance (CRA) is a coalition that exists to promote, protect and further the interests of creators through policy, advocacy and campaigning work. We speak on behalf of 23 major creator led groups, trade associations, and unions, between them representing over 500,000 creator members, working as creators in the UK's creative industries – from authors, artists, photographers and illustrators to translators, performers, musicians and journalists – on policy issues as diverse as fairer contract terms and working conditions to copyright and intellectual property.

Creators' Rights Alliance members bring knowledge, insights and perspectives from several UK, European and International forums; including the British Copyright Council; the European Federation of Journalists Authors' Rights Expert Group; The International Authors Forum and the European Illustrators Forum.

In 2023, the CRA was invited to join the Creative Industries Council (CIC), a forum between the creative industries and government. The Council's focus is addressing the challenges and opportunities facing the UK's creative industries to help drive forward progress on key

areas of growth for the sector, including access to finance, skills, export markets, innovation and intellectual property (IP).

2. Do you agree with the analysis presented in this document ?

A specified, explicit and legitimate purpose

It's important to consider what exactly we mean by Personal Data.

Personal data is defined in the UK GDPR as:

*“personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, **cultural or social identity of that natural person**”.*

Creators’ Rights Alliance are interested in the definition of personal data, as our members represent individuals whose cultural and social expression forms their personal identity, which in turn provides them with a source of earned rights and income.

The ICO purpose limitation investigative outcomes should consider how to ensure that there is a wide understanding by AI Companies of what Personal data is. CRA are unsure if developers understand that music, books, films, animations, drawings form cultural identity data.

Personal data and deepfakes

Damage to individual cultural and social identity should be considered from an economic and social point of view. Could it ever be considered a legitimate purpose for a developer to imitate a high-profile creator for their own gain?

We have already seen cases of poor use of AI models that have directly and negatively impacted individuals, such as:

Actor: Stephen Fry had his voice cloned to read a documentary without his prior knowledge¹.

¹[Stephen Fry shocked by cloning. The Guardian](#)

Actor: Emma Watson had her voice used to read offensive messages².

Copyright

Controllers/developers are already regularly using data without prior permission or agreement³. Companies are taking and using data for AI development without permission, and this is a major issue for UK creators.

A creator's reasonable expectations do not extend to companies taking and using data without permission, a prior agreement should always be in place, covering terms of use including rights, territories, timeframes and compensation.

The ICO background document outlines that the 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.*

1

The CRA position is that 1 would only be lawful if there was an agreement in advance.

2

The CRA position is that developers would be in breach of IP and contracts laws, if they used data without securing permission in advance.

Different stages, different purposes

The creative sector runs entirely on use, for how long, in which territory, for which purpose, for agreed levels of compensation.

Economic Impact

The CRA understands that AI will cover all sectors, though we ask that decision makers contemplate the impact of a one rule fits all approach. The Creative Industries could never agree to provide cultural and social data for free. Income generation from the UK copyright

² [Extra safeguards coming after AI generator used to make celebrity voices read offensive messages](#)

³ See paragraph 230, [House of Lords - Large language models and generative AI - Communications and Digital Committee \(parliament.uk\)](#)

system powers the Creative Industries. The Creative Industries sector contributed £109bn to the UK economy in 2021, equivalent to 5.6% of the UK economy that year⁴.

Moral Rights

The Creative Industries value moral rights, creators decide how their work is used and what for. It is not considered a legitimate purpose, or legal⁵, to take personal, social and cultural data without permission for this reason.

Why is purpose limitation important?

For example, a developer may collect training data and also train a generative AI model on that data. After model training, the developer may decide to develop an application with which to deploy the model to serve some business objective. It is essential that the organisation doing the model development and deployment understands and documents those two purposes separately.

The CRA finds this a dangerous approach because there are no transparency laws in place. Creators have no way of knowing if developers are using their work or not.

European creators and rightsholders recently signed and published a joint statement⁶ on the EU AI Act. The group have called for the EU to continue to support the development of responsible and sustainable AI by ensuring that the rules are put into practice, and that creators are involved in drafting the template for the sufficient level of information that General Purpose AI model providers must make available.

Analysis

CRA agree with the IPO analysis that purposes of generative AI model development and application development should be considered separate purposes and that for each, a purpose limitation needs to be established.

Initial purpose - Processing data to develop generative AI models: Unless permission from rightsholders has been sought, we believe that the lawfulness principle will not be met, but also that any use will not itself be legitimate either since the purpose will be in breach, *inter alia*, of intellectual property laws.

Re-using training data: As with the above, we do not believe the limitation purpose will be legitimate since it has been well documented that most well-known systems have been

⁴ [DCMS GVA Sector Estimates](#)

⁵ <https://www.legislation.gov.uk/ukpga/1988/48/part/II/chapter/IV>

⁶ <https://www.cisac.org/Newsroom/articles/eu-ai-act-joint-statement-european-creators-and-rightsholders-0>

trained on copyright-protected works without permission, and new but more powerful versions of these systems (e.g. ChatGPT 5) are likely to reuse the same training dataset. Again, without permission, the lawfulness principle will not be met, and the limitation purpose will once again not be satisfied.

Subsequent purpose: fine-tuning data to adapt the model by a third-party: Any new processing will require third parties to re-establish a purpose limitation to comply with GDPR rules; this will require the third-party organisation to ensure the processing is legitimate, specified and explicit, meaning that permission will be needed from rightsholders whose work are used.

Secondary liability: It should also be noted that in accordance with the CDPA 1988, any third-party organisations utilising – or re-utilising – the datasets must also comply with the CDPA 1988 or risk liability for secondary infringement. The same applies where users of AI programmes developed in contravention with the CDPA 1988.

12. Before completing this survey, do you have any final comments you have not made elsewhere?

Contestability and redress:

- Creators must have access to affordable and effective methods to enforce claims especially in terms of compelling takedown of content created without permission and securing compensation for loss and damage.

Safety, security and robustness:

- There should be a clear definition of what constitutes solely AI generated work, and work made with the intervention of creators.
- All distinct characteristics of individual performers and artists should be protected. Human endeavour and originality must be preserved. Artists should be protected from their works being copied in the ‘style of’ to prevent AI-competing works. Simulating or mimicking the voice and style of a performance or work blatantly ignores the investment in time, skills and money required to achieve a valued personal ‘brand’.
- Traceability and labelling needs to be introduced to provide assurances to both human creators and the wider public to distinguish between real works and synthetically generated content.

Transparency and explainability

- No Text and Data Mining exceptions should exist whereby creators' own work is used or 'scraped' by platforms for use in datasets by AI programmes especially, but not limited to, generative AI programmes without their prior express permission; and licensing agreements should exist that clearly set out terms of usage and ensure that creators are remunerated at an appropriate level.
- Developers must be compelled to disclose all the sources of the 'information' used to develop their systems.

Fairness:

- Creators should be protected and recognised for the copyright and moral rights that exist in their work. Copyright is given to works of human originality and skill and labour. AI generated works with no human input should not attract copyright protection.
- There should be no erosion of copyright protections for individuals, businesses and those using AI tools to help create their own original work.
- Livelihoods and human skills need to be given special protections, or will be lost forever, left in the cold 'hands' of computer algorithms. Translators, musicians, journalists, illustrators, photographers, and other visual artists provide unmeasurably important work that both the public and businesses enjoy and use. These skills and roles cannot simply be left to cease to be, or for those who can afford to do them, because technology can produce it more cheaply.
- The limit to creative work skills will be felt acutely by those starting out their careers. There must also be protections for those creator roles and work that are seen by some as having little commercial value and therefore easily replaceable. These roles provide much needed employment, as well as levels of work experience for many entering and developing a career in the industry.
- There must be a level playing field and access to tax incentives and breaks for those who employ an individual to work, which itself provides much important income to the UK economy, reducing the burden on state aid and increasing the overall wellbeing of society. Tax incentives are offered to companies who invest in equipment and technology; we ask that these same advantages are provided to those who employ and commission human creativity.

Accountability and governance:

- Creators, trade associations, unions as well as creator representative groups such as the CRA must be involved with any policy and industry-wide decision-making processes.

- Without proper oversight around data sourcing and inherent AI bias creative freelance workers are also more adversely affected by AI systems being part of the wider decision-making process. As a single example, AI used as a processing tool in the awarding of benefits will not be nuanced to the needs and working practices of creative workers and so will unfairly make flawed decisions based on wider inappropriate data and conditions.

13. We may wish to contact you for further information on your responses. If you are happy to be contacted, please provide an email address below.

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Submitted on behalf of members of the **Creators' Rights Alliance**

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