



10th May 2024

Generative AI third call for evidence: accuracy of training data and model outputs

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 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 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). 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).

Section 1: Your views on the proposed regulatory approach

This section of the survey asks for your views on our proposed regulatory approach.

Answers to the following questions will be helpful to inform our future regulatory approach.

Question2. *Do you agree with the analysis presented in this [document](#) - required*

The background

Data protection accuracy and statistical accuracy

Accuracy is a principle of data protection law. This legal principle requires organisations to ensure that the personal data they process is “accurate and, where necessary, kept up to date”. It also requires organisations to take “every reasonable step ... to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay”.

CRA does not agree with the analysis presented in the document. While accuracy is important the principle is not defined widely enough to protect individual creators from inaccurate and unlawful uses of their work.

It's important to consider exactly what we mean by Personal Data (the definition is outlined above). CRA's 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.

As regards Article 5 (1) (d) of the GDPR, the ICO should consider how to ensure accuracy within personal data including personal data in the form of personal creative output into music, books, writing, films, animations, illustrations, photographs and drawings.

Considerations

- Labelling of data
- Content origin definition
- Transparency of data publishing
- Accountability for breaches in transparency data publishing

Key Chapter Three Terminology

Statistical Accuracy

- “Statistical accuracy” to refer to the accuracy of an AI system itself.

CRA is concerned that the definition of “statistical accuracy” does not clarify if it is referring to “input” data such as material copied from the internet and used to develop AI systems or “output” data such as search results.

It’s vital to clarify if the definition refers to the copyright material that has been used, (often without permission, credit, notification or payment), or the data produced, after having developed the system with the use of existing copyright protected works.

- Statistical accuracy (the summary needs to be a good reflection of the *documents* it is based on)

It’s important to be clear that “statistical accuracy” should not be based solely on “documents”. Statistical accuracy would need to cover a range of file types, to cover all forms of personal data., images, audio files, audio-visual, visual. “Good” is also difficult to define.

Accuracy

- and data protection accuracy (output must contain correct information about the customer).
- ‘accuracy’ to refer to the accuracy principle of data protection law; and
- Personal data does not always have to be accurate
- Personal data does not need to be kept up to date in all circumstances.

The focus should not be on the ‘customer’ it should be on the ‘individual creator’

Input data should contain correct information about the individual (from CRA point of view, the individual creator).

Output data should contain correct information about the individual who created the work inputted to produce the output(from CRA point of view, the individual creator).

Personal data should be accurate.

Personal data of creators' works should be kept up to date and given individual unique identifiers, in order to organise systems of permissions and payments.

Key Definitions in Legislation

Accuracy: Article 5 GDPR

- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

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**”.

This call for evidence focuses on the data protection concept of accuracy, i.e whether personal data about someone is correct and up to date. This interpretation of accuracy differs from other uses of the word, such as the way that accuracy can sometimes be used by AI engineers in statistical modelling to refer to the comparison between the output of an AI system against the correctly labelled test data.

We use the terms:

*‘accuracy’ to refer to the accuracy principle of data protection law; and
‘statistical accuracy’ to refer to the accuracy of an AI system itself.*

Personal data does not always have to be accurate

Personal data does not need to be kept up to date in all circumstances.

Whether the data needs to be accurate depends on the purpose of processing: in some cases, it is appropriate to process information which is out of date (eg historical records) or not factually accurate (eg opinions).

Additionally, as the ICO’s Guidance on AI and Data Protection clearly sets out, 2 the accuracy principle does not mean that the outputs of generative AI models need to be 100% statistically accurate. The level of statistical accuracy which is appropriate depends on the way in which the model will be used, with high statistical accuracy needed for models which

are used to make decisions about people. In this context, e.g., models used to triage customer queries would need to maintain higher accuracy than models used to help develop ideas for video games storylines.

While it is accepted in the computer game storyline scenario as described above that FACTUAL accuracy does not need to be accurate (obviously there needs to be room for nonfiction and opinion) it is still necessary to accurately identify the sources and identity of creators whose creative work was used to build the idea generator. The output - the idea for the video game, depending on permissions for input data, may impact on the original creator's economic and moral rights, if the input copyright was taken without a license.

For creators the appropriate accuracy level does not depend on how the model will be used. Creators are entitled to have their personal data in the form of their work identified in addition to rights granted by copyright and related rights including economic and moral rights.¹

Moral Rights Include:

- The right to attribution
- The right to object to derogatory treatment of a work
- The right to object to false attribution
- The right to privacy of certain photographs and films

Using personal data to generate ideas for games is use of a creator's inalienable personal moral rights.

For these uses in the scenario above statistical accuracy used to develop ideas for video games would require the same level of accuracy as a model used to make decisions about people. An AI model using works without permission and producing outputs, would be making the decision to copy works without permission, and that would have an impact on the individual person who owns the personal data. AI companies are currently (while we wait for legislation) deciding to take and use copyright without permission, with no regard for the impact that might have on the individual. This has an impact on people.

¹ <https://www.gov.uk/guidance/the-rights-granted-by-copyright>

The impact of inaccuracy

Applying data protection accuracy principle in practice prevents false information being disseminated about people and ensures that decisions about people are not made based on wrong information.

For generative AI models, both developers and deployers must consider the impact that training data has on the outputs, but also how the outputs will be used. If inaccurate training data contributes to inaccurate outputs, and the outputs have consequences for individuals, then it is likely that the developer and the deployer are not complying with the accuracy principle.

For example, if users wrongly rely on generative AI models to provide factually accurate information, there can be negative impacts such as reputational damage, financial harm and spread of misinformation.

There would be a high chance that intellectual property creators would experience both financial harm and reputational damage if personal data (including cultural and social identity) were factually inaccurate.

Individuals are not only consumers or the wider public; they are also the individual creators who create the intellectual property that fuels the Creative Industries.

This also has an adverse effect on users who may find themselves unwittingly using copyright protected work or work which they thought was accurate and original when it was in fact the personal data of an original creator.

Another example is voice files of individuals- clearly personal data- wrongly used to create synthetic voices.

Principle (d): Accuracy

What do we need to know about accuracy and statistical accuracy?

How does the accuracy principle apply to biometric data?

Right to rectification

Our analysis

Should the outputs of generative AI models be accurate?

This question can only be answered by first considering what a specific application based on a generative AI model is used for.

Yes, the output of generative AI models should be accurate. There is no need to wait until the use is considered before deciding that the data should be accurate, because data should not be taken without permission.

An individual creators' first concern is not necessarily what the data will be used for, it's that data has been taken without permission, the focus then moves to the question of why.

Once the organisation deploying the model has established the purpose for it, and ensured with the developer that the model is appropriate for that purpose, it can then decide whether the purpose requires accurate outputs. For example:

A model used to help game designers develop story lines does not necessarily need accurate outputs.

Disagree. If a company has taken data to build a model and has taken data without permission to help develop storylines for a game, they need to consider the origin of the stories they've taken and if the creators agree to help them develop their games, otherwise they could be infringing copyright and moral rights.

The model output could provide storyline ideas in which invented facts are associated with real people; but

A model used by an organisation to summarise customer complaints must have accurate outputs in order to achieve its purpose.

There is no clear methodology provided to support a theory of why ICO believe the above statement to be the case.

This purpose requires both statistical accuracy (the summary needs to be a good reflection of the documents it is based on) and data protection accuracy (output must contain correct information about the customer).

Organisations developing and using generative AI models which have a purely creative purpose are unlikely to need to ensure that the outputs are accurate as their first priority. The more a generative AI model is used to make decisions about people, or is relied on by its users as a source of information rather than inspiration, the more that accuracy should be a central principle in the design and testing of the model.

Disagree There is no clear methodology provided to support a theory of why ICO believe the above statement to be the case and the potential for unregulated deep fakes allowed by such a statement is obvious.

Question3. How can organisations deploying generative AI models effectively communicate to their employees, customers or other people the extent to which their outputs are statistically accurate? - required

Organisations need to explain that AI models are inherently biased and may be inaccurate as they are based on statistical averages and thus affected by the material used to develop them. If the models have been developed using copyright work that should be stated and a warning given about the risks of infringement of copyright and moral rights and the unwitting production of deep fake material. Display a % of accuracy on all outputs.

Question4. What technical measures can organisations developing generative AI models use to classify or mark audio, image or videos outputs as being AI-generated, rather than human-generated?

There are certification models being developed. For example Composer Ed Newton-Rex has developed a system of certification with his new company Fairly Trained.²

Instagram recently announced that they want to make changes in favour of Creators³, which tells us that they are confident that they have a content-identification system in place.

Many creators' licensing organisations are ready to work with Big Tech to develop accurate identification models and payment systems.

Question5. What are the benefits and limitations of these methods?

Question6. What technical and organisational measures can organisations use to test the extent to which the output of a generative AI model is statistically accurate? - required

See above. There are certification models being developed. For example, Composer Ed Newton-Rex has developed a system of certification with his new company Fairly Trained.⁴

² <https://www.fairlytrained.org/about>

³ <https://www.instagram.com/mosseri/reel/C6Y0tfRLyfa/>

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Many creators' licensing organisations are ready to work with Big Tech to develop accurate identification models and payment systems.

Instagram recently announced that they want to make changes in favour of Creators⁶, which tells us that they are confident that they have a content-identification system in place.

Question7. What technical and organisational measures can organisations use to improve the statistical accuracy of generative AI models? – required

See above

Question15. Before completing this survey, do you have any final comments you have not made elsewhere?

no

Question16. 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.

contact@creatorsrightsalliance.org

⁵ <https://www.instagram.com/mosseri/reel/C6Y0tfRLyfa/>

⁶ <https://www.instagram.com/mosseri/reel/C6Y0tfRLyfa/>

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