



## **Generative AI fourth call for evidence: engineering individual rights into generative AI models**

The Association of Illustrators (AOI) which has 3000+ members, including freelance individuals, illustrators' agents, and universities, was established in 1973 to advance and protect illustrators' rights and is a non-profit making trade association dedicated to its members' professional interests and the promotion of contemporary illustration.

As the only body to represent illustrators and campaign for their rights in the UK, the AOI has successfully increased the standing of illustration as a profession and improved the commercial and ethical conditions of employment for illustrators. The AOI offers professional and business advice to members, as well as representing the interests of thousands more illustrators across the UK.

We are active members of the Creators Rights Alliance and have drawn on their comments in this response.

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## **2. Do you agree with the analysis presented in the call for evidence document (As linked here: Generative AI fourth call for evidence: Individual rights)?**

The analysis is largely clear but could be strengthened with a few key changes to better support illustrators and other creators.

- A requirement for developers to publish specific details about data sources, including dates (e.g., "data from X platform, January 2001 to March 2023"). This will help creators determine if their work is likely included.
- AI platforms to avoid using Privacy-Enhancing Technologies. Using these could make it harder for creators to identify unauthorised use of their work in AI models.
- The rights to erasure, to rectification, to restriction of processing and to object to processing, should extend to include a method of enforcement to enable the take down of content, and to secure compensation for financial loss or damage in connection to their moral rights.

### **GDPR rules:**

Creators' personal data must be collected and processed in line with GDPR rules, as well as in compliance with all other pre-existing laws, such as intellectual property laws – and this should be the case both at the input and output stages.

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
- Dates from / to
- Transparency of data publishing
- Accountability for breaches in transparency data publishing

### **Permissions:**

Collecting and using creators' personal data can only be done lawfully by agreeing consent in advance. Seeking permission in advance through a licensing system would allow compliance with copyright law and with data protection.

Controllers/developers are already regularly using data without prior permission or agreement. The over-reach potential of 'legitimate interest' is of increasing and urgent concern to many illustrators.

### **In response to the ICO's request for evidence on how objections to processing of personal data are being respected in practice:**

The AOI have tried to opt our official website out of data scraping, on the *haveibeentrained.com* website (which allows creators to input an image and be told if it is part of the Laion 5B dataset of images scraped from online). It offers a 'claim this domain' button, but when theaoi.com was input, the site responded that the domain was unverifiable and rejected the claim without giving any option to verify.

The Association of Illustrators would welcome hearing the ICO position on the updated privacy policy from Meta, which gives Meta sole discretion to decide whether to grant user's request to object to have their information used. Does ICO believe such discretionary decisions would conform with GDPR?

### **3. Where training or fine-tuning data is web scraped or collected in other ways, what measures do you think are effective to inform individuals about how, why and by whom their personal data is being processed? (As described in the call for evidence document: Generative AI fourth call for evidence: Individual rights)**

Software development companies would be outside of copyright law and data protection if they undertook web scraping of personal data, without gaining permission in advance.

If a creator suspects that their work has been used without permission outside of copyright law and data protection:

- Companies should respond to requests for information within 28 days.
- Companies should provide examples of the methods they've used to try to respond to the request for information.
- Companies should be able to show how they take advantage of opportunities to contact individuals to let them know that their data has been used. If there is a clear and obvious method of contact, which the company has ignored, they should have to explain why they did not take this option and face a potential financial penalty.

#### **4. What kind of information do individuals need in relation to their data in the context of generative AI so they can exercise their rights?**

Creators need to know if their work has been used in training data, for example, if an illustrator shared an image online, the illustrator needs to be able to find out if that image has been used as an input, to build an AI machine, to be able to control the output. The best way to manage this is to agree use in advance.

There are routes that would allow AI developers to lawfully access and process data to fulfil their training purposes. We are fortunate in the UK to have a sophisticated, world-leading licensing system which already works well, and ensures the collective management of rights and subsequent remuneration of creators for the exploitation of those rights. These systems are open and transparent, and subject to government regulation. AI developers should work with creators to consider models to extend such systems to machine learning.

Collective licensing would be respectful of copyright legislation and, by extension, rights holders' rights, and would allow the provision of permission, or not, in advance.

*Association of Illustrators  
Somerset House, Strand, London, WC2R 1LA [theaoi.com](http://theaoi.com)*