

Response To the United Kingdom Government Consultation on Copyright and Artificial Intelligence: Impact on the Dance Sector

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Introduction

The United Kingdom's Intellectual Property Office (UKIPO) ran a consultation between 17th December 2024 and 25th February 2025 on copyright and artificial intelligence.² They propose to change existing copyright law to balance copyright holders' rights to seek compensation with the needs of AI developers by establishing a clear legal framework for AI training using copyrighted materials. The consultation sought views on four options. Option 0 involves no change to the restrictive rules concerning text and data mining (TDM) in the Copyright, Design and Patent Act 1988, which only allows TDM by a person who has lawful access to the work and for the sole purpose of non-commercial research.³ Option 1 involves requiring licensing in all cases where copyrighted works are used in TDM, an option framed by UKIPO as helpful in giving 'right holders' greater control over their works. However, it would also make it harder for AI developers to train leading models in the UK'.⁴ Option 2 would involve introducing a broad data mining exception which allows TDM on copyrighted works for any purpose including commercial purposes, an option that UKIPO admits does not meet the needs of right holders because it does not require prior permission. UKIPO then proposes its preferred Option 3, which would allow rights holders to reserve their rights in TDM for AI training purposes, underpinned by supporting measures on transparency.⁵

The whole consultation followed a structured survey format, consisting of 47 questions. Our response focused on the dance sector, which raises different issues to other art forms or sectors within the creative industries. These issues are linked both to the ways in which creative works are typically shared and to dance artists'⁶ low levels of engagement historically with copyright frameworks.

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¹ Hetty Blades' contribution to this response is supported by the Arts and Humanities Research Council [grant number [AH/W01002X/1](#)].

² Intellectual Property Office, *Copyright and AI: Consultation* (2024)

<https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence> [Accessed 10 February 2025].

³ CDPA 1988, sec 29A: The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that— (a)the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose, and (b)the copy is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).

⁴ *UKIPO Copyright and AI: Consultation*, 12.

⁵ *Ibid*, 13.

⁶ Here we use the term dance artist, rather than dancers and choreographers, to reflect the way that people often move between these roles.

Dance makes an important contribution to the creative industries. The workforce is made up of predominantly freelance artists⁷ who might develop ‘portfolio’ careers, moving between making work, performing and teaching for example⁸ Dance is often made through collective working⁹ which might involve choreographers, dancers, composers, musicians, designers, film-makers and editors amongst others. Choreographic works are automatically protected by copyright in UK law, as long as they meet the criteria of being original, fixed and capable of being performed.¹⁰ However, copyright is not commonly asserted within the sector, outside of large companies or organisations and there is no rights management organisation for dance.¹¹ This means that there is limited support for dance artists wishing to licence their works.¹² There is also no standardised system for licencing choreographic works.¹³ The increasingly widespread inclusion in AI training datasets of copyrighted or copyrightable dance materials risks compounding this situation and its disadvantaging of dance artists. The ownership of dance is often managed through social norms.¹⁴ While relaxed attitudes towards copying are sometimes expressed by dance artists, these do not always extend to the reuse of dance in commercial contexts.¹⁵ Furthermore, when movement is copied or reused, a key expectation for dancer artists is that they are acknowledged.¹⁶ They should also be able to benefit financially from the re-use of their creative work.

This response outlined what we see as the primary challenges for dance artists, posed by the increasingly widespread inclusion of in principle copyrighted or copyrightable dance materials in generative AI training datasets. AI training datasets are compiled by web scraping — automated collection of publicly available videos from platforms including social media such as TikTok, Instagram, YouTube and Facebook, video-sharing platforms such as Vimeo and Dailymotion as well as dance studio, educational websites and motion capture data. Those short-form dance clips, choreography tutorials, dance performances, competitions, instructional videos and recorded dance lessons may easily scraped for AI training purposes.¹⁷

⁷ I. Aujla and others, *The Role and Impact of Freelancers in the UK Dance Sector* (University of Bedfordshire, 2019), commissioned by One Dance UK. K. Wood, *Freelance Dance Artists’ Working Ecology* (Coventry University, 2023).

⁸ One Dance UK, *A Guide to Careers in Dance* (2023) 11.

⁹ Mathilde Pavis and Karen Wood, “Creative Industries and Copyright: Research into Collaborative Artistic Practices in Dance” (2020) *Artistic Research in Performance through Collaboration* 165-184.

¹⁰ Sarah Whatley and others, “Validation and Virtuosity: Perspectives on Difference and Authorship/Control in Dance” (2015) 6(1) *Choreographic Practices* 59-83.

¹¹ C. Waelde, ‘A Collecting Society for Dance: Has The Time Come?’ in S. Ellis, H. Blades and C. Waelde (Eds.) *A World of Muscle, Bone & Organs: Research and Scholarship in Dance*. (Coventry University, 2018) 294-323.

¹² Ibid.

¹³ Ibid, 304-5.

¹⁴ See Harmony Bench, *Perpetual Motion: Dance, Digital Cultures, and the Common* (University of Minnesota Press 2020); Trevor Boffone, *Renegades: Digital Dance Cultures from Dubsmash to TikTok* (OUP 2021).

¹⁵ The issue of other people making money by copying dance appeared in Interviews 1 and 12 of the data gathered through Moving Online: Ontology and Ownership of Internet Dance (AHRC, grant ref [AH/W01002X/1](#)). During this project the team interviewed 16 artists across 14 interviews (13 via Teams and 1 via email). These artists worked with dance in different ways. At the time of writing the analysis is ongoing.

¹⁶ Issues of acknowledgment, attribution and credit in dance have been discussed by Bench, above n 14 Boffone, above n 14 and Anthea Kraut, *Choreographing Copyright: Race, Gender, and Intellectual Property Rights in American Dance* (OUP, 2015), amongst others. The role of acknowledgment or credit in dance also appeared in interviews 7, 8 and 12 of the data gathered through during Moving Online: Ontology and Ownership of Internet Dance (AHRC, grant ref [AH/W01002X/1](#)).

¹⁷ Common Crawl provides massive, open datasets of web-crawled content. Many AI datasets rely on it to scrape of publicly accessible data and do the AI training. Both GPT-3 and Stable Diffusion use Common Crawl

We also made recommendations about what is needed to ensure that the rights of dance artists are both asserted and protected, and dance artists are supported to adjust to any changes to legislation. This response focused on five areas: the implementation and effectiveness of rights reservation processes; licensing challenges; the need for better collective organisation, supported by government agencies, to develop awareness of copyright and AI among dance industry actors; the role of moral rights in the context of AI; and digital replicas.

Policy option

In this section, we respond to questions 1 and 2.

Question 1. Do you agree that Option 3 is most likely to meet the objectives set out above?

Question 2. Which option do you prefer and why?

While the purpose of this consultation is to seek a solution to achieve the objectives of right control over right holders, world-leading AI development, as well as trust and transparency,¹⁸ provided options should be assessed through all the above three aspects. Here Option 1 and Option 3 are discussed since Option 1 seems preferable for the protection of the rights of dance artists whereas Option 3 is preferable by the UKIPO in the Consultation Proposal. However, without further details of how this would be implemented, we do not believe that Option 3 meets the objectives set out above.

Option 1 is the best way for artists working within the dance sector to be able to control and benefit from their creative works. However, it is not clear how licensing within Option 1 or Option 3 would be managed for dance artists. There is no specific rights management or collecting society exclusively for dance artists.¹⁹ This means that currently there is limited support for dance artists wishing to assert their rights,²⁰ and no clear mechanism for information about copyright and the capacity to withhold or reserve rights being widely disseminated in the dance sector, so artists can protect and potentially profit from their work.

UK dance artists would only rely on other organizations more or less connected to them to protect their rights to some extent as UK does not have specific performing rights organisations for dance artists. For example, although Equity, the UK trade union, could provide support in rights protection of dance artists, its focus is on employment rights, working conditions and providing template contracts and guidance to ensure performers are treated fairly. It is different from other CMOs like Performing Right Society for Music which focuses on licensing musical works and directly collecting royalties.²¹ Therefore, Equity seems not able to well satisfy

data to train their models. If a dance video, tutorial, or choreography description is publicly accessible on platforms like YouTube, a dance studio's blog, or TikTok, it can be included in Common Crawl's datasets. AI companies then filter and utilize this data to train models, often without obtaining direct permission from the creators.

¹⁸ UKIPO *Copyright and AI: Consultation*, 2: These objectives are: 1. Supporting right holders' control of their content and ability to be remunerated for its use; 2. Supporting the development of world-leading AI models in the UK by ensuring wide and lawful access to high-quality data; 3. Promoting greater trust and transparency between the sectors.

¹⁹ Waelde, above n 11.

²⁰ Ibid.

²¹ Ibid, 302 regarding the distinction between Equity's role and a CMO.

expectations of licensing and collecting royalties for dance artists. Authors' Licensing and Collecting Society perhaps would be helpful for choreographers to receive royalties if they document their works in written form such as a detailed scripts or notations or other literary form, putting all the efforts to satisfy a written work for rights claiming purpose. It is also hard to tell how a choreographer could rely on the Design and Artists Copyright Society to claim their rights when certain types of artistic works overlap with dance, e.g. a visual documentation of choreography. In general, these compromised options are not suitable for most choreographic works which still need an appropriate performing rights organisation to represent dance artists' rights and protect their works as dramatic rather than literary works. The lack of representative collective management organizations (CMO) in the dance sector also requires dance artists to have a good knowledge and understanding of how to claim their rights at different societies in different circumstances. In practice, most dance artists who are freelance workers do not have sufficient training in advance about what kind of approaches they could choose or they may even be unaware of these options.

Furthermore, without the implementation of a CMO, Option 1 would be challenging for AI developers. Unlike other creative sectors (e.g. music and literature) with the support of collective management organizations, the dance sector does not have a representative CMO but consists of thousands of individual freelance dance artists. It is impractical for AI developers to seek individual authorisation from all of them to use their work, given that there is no representative organization to contact. This would result in a non-friendly atmosphere for AI developers in the UK because the training of AI models in other jurisdictions without this authorisation requirement would not comply with Option 1 requiring authorization in every case. This obviously also betrays the government's objective of "supporting the development of world-leading AI models".

According to UKIPO's consultation proposal (here after the Proposal),²² the preferred Opinion 3 proposed by UKIPO follows the same principle as article 4 of EU Copyright Digital Single Market (CDSM) in 2019.²³ It is noticeable that while CDSM has been announced, Generative AI has not garnered much attention until now. The EU legislators also did not realise at that time that text and data mining (TDM) would be largely applied for Generative AI training purposes today. In other words, article 4 of CDSM was not originally designed specifically to regulate the use of Generative AI training (even if it is designed in the background of AI development) but rather a general use of TDM such as competitive analysis by extracting insights from competitors' data and mining scientific literature and clinical trial data to understand disease mechanisms. This is why article 3(1) of CDSM initially allows reproductions and extractions related to carrying out TDM of works for the purposes of scientific research rather than expanding the use to generate other works. In fact, there is also

²² UKIPO *Copyright and AI: Consultation*, 14.

²³ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, art 4(1): Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining; art 4(2): Reproductions and extractions made pursuant to paragraph 1 may be retained for as long as is necessary for the purposes of text and data mining; art 4(3): The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online; art 4(4): This Article shall not affect the application of Article 3 of this Directive.

a doubt in academia arguing that Generative AI training is not the same technique as TDM so EU TDM exception should not apply to AI training²⁴ although most scholars agree that it should. Legislators must develop a keen awareness of technological advancements to draft forward-thinking laws. With the rapid pace of technological progress, especially in AI, it's crucial for lawmakers to deeply understand these trends. Without this understanding, laws may introduce uncertainties that heighten conflicts between technology practitioners and creative industry professionals. Consequently, instead of protecting the rights of all stakeholders, such laws could hinder the growth of these industries.

Although Option 3 is presented as achieving the balance of objectives expected by the UK government, there are many uncertainties surrounding this achievement. The Proposal also notes the risk of selecting Option 3, followed by the EU experience. Therefore, it is extremely important to clarify the areas including reservation of rights, lawful access of works, machine-readable approaches, licensing and transparency. Otherwise, Option 3 would be subject to similar doubts to CDSM concerning the gap between the expected objective of balance and the reality in practice.²⁵

Another consideration of Option 3 is that past copyright regulations on exceptions and limitations (before the issue of AI training) follow an implied meaning that the allowed uses outlined in the above section would not be intended to compete with the original works. Obviously, TDM for AI training tends in the opposite direction: commercial exploration intending to compete with right holders including using Generative AI model trained by right holders' works to generate dance materials that obviate the need to employ human dance artists. In this case, it is predictable that right holders would find their ways to make rights reservations from the first instance to prevent their works from being used in TDM for AI training purposes. And because right holders may find it difficult to distinguish between commercial exploitation and research (as it is unclear how these research-based training models would be further used), they may also make reservations for non-commercial research TDM, which would impact the normal research area.

Besides, it normally takes time from the consultation of the law to the implementation of a law. While a law and related policies are incorporated with new technologies, the complications will delay the process and timeline of formulating a new law. Considering many works have been used in TDM for AI training purposes and AI technology development is unpredictably fast, it is hard to say to what extent AI developers still need Option 3 to legally credit their TDM use of copyrighted works on the date of the new law implementation, especially for those large AI developers who have already used training data to generate new data to feed the original dataset. The later the relevant laws, policies and measures are introduced, the more likely it is that a situation contrary to Option 3 will arise: those start-ups and small-medium-sized enterprises face a lack of data to use in TDM due to an unaffordable licensing fee after a standard model of reservation of rights is widespread, whereas large AI developers have minimized their need to use copyrighted works since they have secured sufficient data during the period of legal uncertainty.

Exception with rights reservation

In this section, we respond to questions 3-6 and 8

²⁴ Tim Dornis, "The Training of Generative AI Is Not Text and Data Mining" (2025)47(2) E.I.P.R. 65-78.

²⁵ Maryna Manteghi, "In Search of Balance: Text, Data Mining and Copyright in the Digital Single Market Directive from a Fundamental Rights Perspective" (2023) 48(4) E.L.R. 443-457.

Question 3. Do you support the introduction of an exception along the lines outlined above?

Question 4. If so, what aspects do you consider to be the most important? If not, what other approach do you propose and how would that achieve the intended balance of objectives?

Question 5. What influence, positive or negative, would the introduction of an exception along these lines have on you or your organisation? Please provide quantitative information where possible.

Question 6 What action should a developer take when a reservation has been applied to a copy of a work?

Question 8. Do you agree that rights should be reserved in machine readable formats? Where possible, please indicate what you anticipate the cost of introducing and/or complying with a rights reservation in machine readable format would be.

In general, we do not support the introduction of an exception along the lines outlined in the Proposal based on the following points:

Lawful Access:

The TDM process generally involves three steps: first, accessing content; second, extracting or copying content; and third, mining text or data to extract meaningful information. Option 3 in the Proposal states the TDM exception would ‘apply only where the user has lawful access to the relevant works’.²⁶ This illustrates how the regulation gives a legal option for right holders to control their works in line with their interests at the first step. This is because right holders could allow access to their works, deny such access for certain purposes or require conditional access. This means right holders’ choice determines the scope of “lawful access”. However, although some argue that users having “lawful access” to a work does not mean that users can do TDM freely without any limitations (e.g. a Creative Commons licensed work is not equivalent to a free-TDM-use work),²⁷ others suggest a flexible approach to interpret this notion of “lawful access”, meaning the concept should be interpreted more much broadly, including both ‘access to or use of data authorised by right holders’²⁸ and ‘access to content that is freely available online’.²⁹ The dance sector in the UK comprises a largely freelance workforce.³⁰ Wood outlines how in 2023 72% of the workforce in music, performing and visual arts were self-employed.³¹ In 2019, Aujla et al reported that self-employed dancers and choreographers made up 81% of the workforce.³² Freelance artists often self-produce their work. This type of work is often unpaid.³³ Copyright is not often asserted within the sector.

²⁶ UKIPO Copyright and AI: Consultation, 14.

²⁷ Kalpana Tyagi, “Copyright, Text & Data Mining and The Innovation Dimension of Generative AI” (2024)19(7) <https://academic.oup.com/jiplp/article/19/7/557/7624901> [Accessed 21 February 2025].

²⁸ Manteghi, above n 25.

²⁹ Ibid.

³⁰ Wood, above n 7, Aujla et al, above n 7.

³¹ Wood, above n 7.

³² Ibid.

³³ Aujla et al, above n 7.

Waelde and others³⁴ noted hesitancy within the dance sector about asserting rights. The self-produced nature of much dance content means that many artists are unlikely to be aware of these requirements or have economic support to dedicate time to learning about changes to their rights. Copyright statements or associated licenses are not always used by freelance artists when sharing work online. In this case, what has often happened is that dance materials become freely available online sources for possible AI training since quite a lot of distribution and sharing of works happens on the internet. Therefore, the expectation in Option 3 stating that “lawful access” would “allow right holders to seek remuneration at the point of access”³⁵ is far away from the reality in the dance.

Reservation of rights

Option 3 also states that the exception would apply only where the right holder has not reserved their rights to their works. Although the Proposal noted the uncertainties in what constitutes a valid rights reservation in light of the EU experiences, it does not advise anything beyond the CDSM. The opt-out system in CDSM (similar to the reservation of rights in the Proposal) is arguably ‘an opportunity for creative industries to create new streams of income when their content is being used in commercial TDM and machine learning projects. For instance, publishers, music, film producers, media companies might decide to reserve their rights if they see opportunities to commercialise them’.³⁶ However, such an opportunity needs the right holders to have a large number of copyrighted works to increase their confidence and leverage in negotiations with AI developers who are keen to use their works for training purposes. From this perspective, CMOs, large film corporations and publishers would benefit more significantly than individuals. It is also much more straightforward for AI developers to obtain authorisation from such organisations with minimized cost and efficiency considerations, compared with asking for authorisation individually, accommodating various licensing formats and uncertainties. In the dance sector, there is no CMO but many individual, freelance artists/rights holders. Therefore, it is necessary for the legislators and government to consider detailed guidance about how to set up a standardised and straightforward reservation format together with a mechanism for requesting authorisation from large numbers (or maybe collectives) of individual dance artists. Both the rights reservation and licencing mechanisms would need to be further developed before this exception could work for dance artists.

Secondly, the Proposal provides some advice about reservation of rights, but this is not clear enough, which would result in issues in implementation. The discussion in academia regarding article 4 of CDSM would provide some insight into the uncertainties, including the aforementioned uncertainties in the Proposal. Article 4(3) of CDSM and Recital 8 require rights to be reserved “expressly” by their rightsholders, meaning that they ‘openly and expressly claim that they retain the right to TDM over their protected expressions’.³⁷ The Proposal does not mention whether the right holders must reserve their rights “expressly”, in the same way as CDSM, but advises that “an agreed mechanism” is an approach through which right holders can reserve their rights. Whether rights are reserved “expressly” or via “an agreed mechanism” the process relies on active engagement with copyright law. Therefore, legislation should also consider how the policies in the reservation of rights could also align with the situation of

³⁴ Charlotte Waelde, Sarah Whatley and Mathilde Pavis, “Let’s Dance! But Who Owns It?” (2014)36(4) E.I.P.R. 217-228 (pre-print) 3.

³⁵ UKIPO *Copyright and AI: Consultation*, 15.

³⁶ Rita Matulionyte, “Australian Copyright Law Impedes the Development of Artificial Intelligence: What Are the Options?”(2021)52(4) I.I.C. 417-443.

³⁷ Peter Mezei, “A Saviour or a Dead End? Reservation of Rights in the Age of Generative AI” (2024) 46(7) E.I.P.R. 461-469.

freelance rights holders. Any rights reservation mechanisms would need to be straightforward to include and there would need to be attention paid to how to communicate these changes and the requirement to the freelance workforce. Establishing a CMO would help to combat this issue.

Furthermore, the expression in the Proposal does not make clear whether a valid reservation should be made only before the mining or also allow it to be made following the mining. This is similar to the previous discussion of article 4(3) of CDSM.³⁸ Understandably, authorisation in the copyright context must be made before a work has been used. For general exceptions and limitations, copyright law allows users to use copyrighted works without permission in advance as long as they provide a sufficient acknowledgement and their use is fair, does not compete with the original works, or is for educational purposes and/or public interests. Considering TDM is covered under the section of Exception in this Proposal, as well as expressly requiring a reservation of rights, it means the reservation of rights must be made before mining. Nevertheless, the reality is far from clear. While the freelance workforce is dominant in the dance sector, individual dance artists rely heavily on the platforms distributing their works to provide effective terms that could achieve their expectations in the reservation of rights. Unfortunately, it seems users (dance artists) are not fully in control of their uploaded content (works) once these contents are online. Either they accept the existing terms provided by the platforms which may not facilitate rights reservation, or they refuse to accept them (and accept that they cannot publish their works through the platforms). Meanwhile, to maximize dissemination, individual dance artists may consider publishing their works through multiple platforms. In this case, even if there are a few platforms providing terms which can be treated as equivalent to reservation of rights (if the UK Court provides the same interpretation as that made by the German Court in last September in the case of *LAION e V vs Kneschke*³⁹ discussed in Question 8), it still relies on the individual dance artists to identify whether the terms provided in platforms enable required reservation of rights. This is an unreasonable expectation for individual dance artists. Although YouTube has provided an opt-out system by default, many other platforms seem either to allow use of data for AI training by default unless users adjust their privacy settings or explicitly clarify their stance on using user data for AI training. Even if a few platforms provide opt-out system at this stage, it is worth considering whether it is too late as quite a large amount of contents (works) have already been used for AI training. Besides, TDM often occurs much faster than the expression of a valid reservation. Data mining and AI training utilize automated tools that can scrape, analyse, and process vast amounts of data within seconds or minutes, whereas reserving rights typically involves manual steps. The truth is that platforms provide vague or broad terms of service that allow them to use user-generated content for AI training whereas many users do not understand the terms - or, while they are in the process of understanding the terms, their content may already have been mined. In this case, allowing reservations at the post-mining stage seems a remedy for dance workers whose work has already been used for AI training before this law is implemented.

In the dance sector, rights reservation is unlikely to be widely used and therefore the exception will not serve the interests of rights holders in choreographic works [or dance materials] used to train AI. The result is likely to be that choreographic works be recorded and made available

³⁸ Ibid.

³⁹ 27th September 2024, Case No. 310 O 227/23, from EUIPO <https://www.euipo.europa.eu/sk/law/recent-case-law/germany-hamburg-district-court-310-o-22723-laion-v-robert-kneschke> [Accessed 25 February 2025].

via online platforms and continue to be used as training data without the rights holders being able to benefit from or control their works. However, if a reservation has been made to a copy of a work, the developer should respect the right holders' choice and seek permission from the right holders. However, it seems it is easier for AI developers to find the right holders and obtain permission for use of a bundle of works in those sectors in which either CMOs or large publishers/film producers manage copyrights. It is non-practical and costly for AI developers to seek individual permissions in the dance sector which does not have representative CMOs. Considering that the Proposal does not separate non-commercial research and commercial exploitation, in contrast to the CDSM, the only approach that an AI developer can take is to obtain authorisation before use if a reservation has been made. Otherwise, any use of a copyrighted work with a reservation made should be treated as a copyright infringement. The EU AI Act⁴⁰ seems to provide a reference in principle. Article 53(1)(c) requires an approach which uses "state-of-the-art technologies" to achieve the reservation. This indicates the policymakers shall cooperate with AI developers to use the latest technologies to offer an easy and effective reservation model. It appreciates that some large AI developers have provided voluntary opt-out solutions (to some extent) to address right holders' concern in regard to use of their works in training AI models, but most of the voluntary opt-out systems only apply to the future use of the works rather than for those that have already been used to train existing models.⁴¹

The current situation, however, is the other side of the picture: a copy of a work has been used for AI training without even a reservation being made since either the TDM is faster than the rights reservation process, or the existing platforms where a work is published are not able to provide a mechanism for reservation as required by the Proposal even if right holders expect to reserve. In this case, the law and the policy should provide more guidance on what an AI developer should do in terms of this complication. In this case, there are two approaches could be discussed here:

Approach 1 requires AI developers to remove copyrighted works that have been used in TDM for existing AI-model training model (no matter whether a reservation has been made or not). As discussed above, large AI developers tend to only agree to an opt-out option for future AI training purposes rather than agree to remove the works that have been used in existing AI-model training. It is unlikely that they would compromise. More importantly, it is challenging to remove data from trained models from a technological perspective.⁴² Some existing technology can identify that a copyrighted work has been used for existing AI-model training, for example, the "Have I been Trained" tool developed by Spawning.ai allows creators to check if their works are covered in the datasets⁴³ like LAION-5B that are normally used for training AI training models such as Stable Diffusion. AI developers could agree to remove the data from the existing AI training dataset based on the above technology. But none of the above voluntary opt-out systems guarantees that AI models can "unlearn" data that has already been used in

⁴⁰ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations, art 53(1)(c) 4: ...put in place a policy to comply with Union law on copyright and related rights, and in particular to identify and comply with, including through state-of-the-art technologies, a reservation of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790.

⁴¹ Open AI, Microsoft, Google and MidJourney provide an opt-out mechanism, which right holders can contact them to request that their works not be used in the future training datasets.

⁴² Bjørn Aslak Juliussen and others, "Algorithms That Forget: Machine Unlearning and The Right to Erasure" (2023) 51 Computer Law & Security Review 105885

<https://www.sciencedirect.com/science/article/pii/S026736492300095X> [Accessed 23 February 2025].

⁴³ "Have I been Trained" (Spawning) <https://spawning.ai/have-i-been-trained> [Accessed 23 February 2025].

training⁴⁴ because any AI model will have memorised the trained data, making it difficult to unlearn.⁴⁵ AI models learn patterns and representations from the entire dataset. In this case, copyrighted works are not stored individually (which is different from the traditional ways of using a work in the copyright context). Rather, they are integrated as data points into the model's weights and parameters. Therefore, it is not straightforward and, most likely, impractical to identify these data points and remove their influence from a trained AI model.⁴⁶ In other words, the influence of the data on the model remains. From this perspective, Approach 1 neither targets right holders' expectations to prevent their works from TDM use for AI model training nor presents a practical or cost-effective approach for AI developers.

Approach 2 is for those works that have been used in TDM for AI training purposes and have made a reservation (no matter whether such reservation is made expressly or implied e.g. through a broad interpretation of the terms of a contract provided in the platforms). AI developers should provide a detailed opt-out mechanism on their official website complying with the relevant law and policies, guiding the right holders in how to complete the whole opt-out process if they do not want their works to be used in future TDM for the purposes of AI training. AI developers should also consider offering voluntary licensing agreements or collective licensing agreements to right holders, allowing AI developers to use their works in TDM in exchange for compensation for the use of these works in the existing AI model. However, the action of offering licensing agreements also relies on the transparency of AI developers in disclosing the necessary information about training data so that the relevant right holders can see if their works are included. Another thing that needs to be considered if Approach 2 is adopted is whether the law should allow or avoid double payment for AI developers. Some scholars argue the requirement of "lawful access" and a licence requirement for works with a reservation may result in AI developers needing to pay twice to be able to do TDM: the first payment happens to gain lawful access to works and the second payment in the reading and analysis of data where a licence is required.⁴⁷ The difference here is: when we purchase a book (a copy of a copyrighted work) and read it (free of charge), our action of use is exhausted following this one-off purchase. We are not allowed to further copy this book (no matter the format) for any commercial exploitation. Otherwise, this would be treated as copyright infringement. However, AI developers pay for lawful access to copyrighted works, and the action of reading and analysis of works directly connects with and results in commercial exploitation and competition with these works in the market.

For those works that have been used in TDM for AI training purposes but without rights holders making a reservation yet: this only applies in the situation where right holders expect to reserve their rights to use their works in TDM for AI training but have not done so yet for one or both of the following reasons: (1) they do not know if their works are included (2) or/and they do not know what kind of reservation they should make to constitute a valid reservation. AI developers should at least consider an acknowledgement of works used to train an AI model. Again, this relies on legal regulations' clarity about the transparency of data use. It should also be noted that reservation of rights should be a non-retroactive right which would result in a

⁴⁴ Lucas Bourtole and others, "Machine Unlearning" (42nd IEEE Symposium of Security and Privacy, 2021) <https://arxiv.org/abs/1912.03817> [Accessed 23 February 2025].

⁴⁵ Ibid.

⁴⁶ Ibid. Nicholas Carlini, "Extracting Training Data from Large Language Models" (2021) <https://arxiv.org/abs/2012.07805> [Accessed 23 February 2025].

⁴⁷ Manteghi, above n 25. See also LIBER, "Myths and Misunderstandings about Text and Data Mining in the Copyright Reform" (2017) https://sparceurope.org/wp-content/uploads/2017/12/TDM_mythsmisunderstanding_FINAL.pdf [Accessed 23 February 2025].

large number of creative workers (especially freelance workers) losing their rights to compensation for the use of their works. Therefore, legislators should consider the impact on the creative sector and, more importantly, the causal connection between human creators' works and Generative AI. The parasitic takeover of the market for literary and artistic creations by Generative AI, which has developed the capability to produce such works, implies that the original human author deserves fair compensation for their contributions.⁴⁸ After all, without TDM to analyse human creations, AI-model training is not capable of generating any human-like outputs. Therefore, a light compensation scheme (but not with the same weight as the above license agreements) perhaps should also be considered.

In addition, both the Proposal and CDSM mentioned adopting a machine-readable format as an effective way to reserve rights. Last September, the District Court of Hamburg made a decision in the case *LAION e V vs Kneschke*, which is the first national case relating to text and data mining exceptions. This case could perhaps give some insight into interpreting what “machine-readable format” might mean. In this case, Kneschke, the photographer, sued LAION for copyright infringement because one of his photos is included in LAION-5B training data set. LAION claims to be a non-profit organization (NGO), providing 100% free ‘datasets, tools and models to liberate machine learning research’.⁴⁹ The court determined that this is not a copyright infringement based on the core question: were the reproductions made during the verification of dataset elements covered by the TDM exception to the right of reproduction under EU copyright law? More importantly, the Court gives a broad interpretation of “machine readable”, whereby a broadly formulated reservation made by the website operator hosting the claimant’s photograph⁵⁰ was deemed clear enough to be considered an express opt-out under Article 4(3) of the CDSM Directive; the court also determined an opt-out written in natural language and included in a website’s terms of use was sufficiently clear and explicit. This would be a good reference for the UK legislators and policy makers to consider whether the UK should also adopt a broad interpretation as well.⁵¹

Machine readable formats are important in order to be able to block web crawlers from scraping data where rights are reserved. However, consideration of the implementation of machines readable format is critical. These formats might pose a challenge for many people working in the dance sector. Recordings of choreographic works and dance films are shared across a wide range of platforms, including but not limited to: video sharing sites, social media apps, institutional websites, archives, and television and film platforms. There is currently no standardised way for communicating rights that is used across the sector, therefore the implementation of a machine readable format for rights reserved statements would require extensive behavioural shifts in the sector, relying on a comprehensive and costly initiative to educate rights holders about their changed rights and how to include appropriate statements.

Technical standards

In this section, we respond the questions 9 and 11

⁴⁸ Tyagi, above n 27, 567.

⁴⁹ LAION, <https://laion.ai/> [Accessed 21 February 2025].

⁵⁰ The hosting website’s terms of use stated that users are prohibited from: use automated programs, applets, bots or the like to access the Bigstock.com website or any content thereon for any purpose, including, by way of example only, downloading Content, indexing, scraping or caching any content on the website, from Bernd Justin Jütte, “A First National Interpretation of the EU’s Text-And-Data Mining Exceptions - A Broad Interpretation of Mining And Opt-Outs” (2025) 47(2) E.I.P.R. 117-119.

⁵¹ Ibid.

Question 9. Is there a need for greater standardisation of rights reservation protocols?

Question 11. Should the government have a role in ensuring this and, if so, what should that be?

Standardisation is needed for consistency and ease of use for rights holders. However, a standardised approach needs to be accessible. A highly technological or complex process will not meet the needs of rights users and is therefore likely to be under used. Furthermore, information and processes need to be made clear in accessible formats to ensure that those with access needs are not excluded from the opportunity to reserve their rights.

The government has a key role in ensuring that standardised processes are accessible, both to those with specific access needs, and rights holders whose skill set does not necessarily include detailed understanding of legal frameworks and/or technological processes. The government has a responsibility to ensure that people working within the creative industries can test and feedback on possible approaches to standardisation, in order to ensure that it meets the needs of the sector. The government also has a role in promoting potential changes to ensure that knowledge within the sector is up to date and in funding sector-wide training for rights holders.

Contracts and licensing

In this section, we respond questions 12 and 14.

Question 12. Does current practice relating to the licensing of copyright works for AI training meet the needs of creators and performers?

Question 14. Should measures be introduced to support good licensing practice?

For those involved in dance there are some key issues with current licensing practices. The first is that there is no collecting society for dance.⁵² Without a rights management organisation, the only route to negotiate licenses is through direct engagement between the rights holders and AI companies which is unmanageable given the scale of the data needs of AI companies. Existing licensing agreements tend to differ between contexts,⁵³ and the lack of support poses challenges for freelance artists.⁵⁴ Second, there is not due consideration given to performers'

⁵² Waelde, above n 11.

⁵³ Ibid, 205.

⁵⁴ Ibid, 302

rights in the context of AI.⁵⁵ Existing contractual agreements, including those that waive performers' rights are not adequate to cover the use of choreographed works by AI.⁵⁶

Measures are needed to align practices across the dance sector and ensure they meet the needs and rights of freelance artists. For the licencing of choreographic works to function effectively, there would need to be an organisation established to support this process.⁵⁷ In 2018, Waelde outlined what establishing such an organisation would entail and called for its importance in the face of widespread digitisation.⁵⁸ The challenges of AI further demonstrate the importance of developing stronger licencing practices in dance. Establishing a CMO for dance would require investment to research and develop the relevant frameworks and protocols.

Transparency

In this section, we respond questions 17 to 19 and 23.

Question 17. Do you agree that AI developers should disclose the sources of their training material?

Question 18. If so, what level of granularity is sufficient and necessary for AI firms when providing transparency over the inputs to generative models?

Question 19. What transparency should be required in relation to web crawlers?

Question 23. What are your views on the EU's approach to transparency?

The expectation that dance artists are acknowledged when their work is copied or reused is often noted.⁵⁹ This is the moral right of attribution. Transparency by AI developers about which works they have used, and acknowledgment of the relevant rights holders is key if trust is to be developed between the sectors. One reason dance artists might share work online is to raise their profile in the hope that it might lead to future opportunities.⁶⁰ A lack of acknowledgment therefore has economic impact.⁶¹ Furthermore, acknowledgment is a moral right⁶² and one that must be maintained in the context of AI.

However, it is unclear how to respect the rights of attribution in the context of machine learning. As discussed earlier, a copyrighted work is integrated as specific data points into the model, allowing AI to analyse and learn the patterns and representations from the entire dataset. It is impossible to credit the author on every digital copy produced during the machine learning

⁵⁵ Mathilde Pavis, Submission to the UK IPO: Artificial Intelligence and Performers' Rights (2020) <https://doi.org/10.5281/zenodo.4298855> [Accessed 20 February 2025]; Equity, "Equity's Open Letter to the Industry on AI Training" (*Equity*, 2025) <https://www.equity.org.uk/advice-and-support/know-your-rights/ai-toolkit/equity-s-open-letter-to-the-industry-on-ai-training> [Accessed 20 February 2025].

⁵⁶ Equity.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Bench, above n 14 and Boffone, above n 14.

⁶⁰ Interview 8, Moving Online: Ontology and Ownership of Internet Dance (AHRC, grant ref [AH/W01002X/1](#)).

⁶¹ Boffone, above n 14, 73-74.

⁶² Waelde, above n 11, 297-298.

process. It may be difficult to accurately identify the authors of the works used. Furthermore, collecting, analysing and learning data all belong to a technical internal process, in contrast to the generated outputs made available to the public. How to acknowledge the authors and by what means to achieve sufficient acknowledgement are important issues.

A further issue is how to protect the rights holders' right of integrity in the TDM process. Another important moral right, the right of integrity, refers to the right to object against derogatory treatment of a work, including 'distortion or mutilation of the work or [other treatment that] is otherwise prejudicial to the honour or reputation of the author'.⁶³ While Generative AI may generate outputs that alter or misrepresent the original work or damage their reputation, it potentially infringes the right of integrity. Without sufficient transparency, however, the right holders cannot know whether their works are used for any AI training that they would object to because it damages their reputation.

Choreographic works shared online often have multiple rights holders. Dance making processes are often collaborative, meaning that the dancers may be authors of the work.⁶⁴ Furthermore, dance often involves music, meaning there are the rights of composers and musicians to consider. Dance works shared online will have been recorded, meaning that filmmakers and editors will also have rights in the work. There might also be set, costume and lighting designers, animators and video effects artists involved, amongst others.

For processes to be transparent, web crawlers should be named and explicitly linked to those who own them. It seems this can be feasible from a purely technical aspect as crawlers can already identify themselves via HTTP headers such as Googlebot and Bingbot, and domain ownership can be verified through robots.txt or DNS TXT records. Besides, blockchain or digital signatures could enable tamper-proof crawler authentication. However, in reality, there are many challenges to implementing it. Firstly, stealth or anonymous crawling could easily bypass copyright restrictions and harvest from sensitive sources. Furthermore, there are no universal regulatory standards in the world but only some regional efforts such as data transparency rules in the General Data Protection Regulation. There is also an issue of jurisdictional ambiguity in cross-border scraping behaviours. This requires the government to enact mandatory technical standards and pursue an international collaboration to achieve the transparent goal.

In terms of EU's approach to transparency, the EU AI Act requires developers to 'draw up and make publicly available a sufficiently detailed summary about the content used for training of the general-purpose AI model, according to a template provided by the AI Office'.⁶⁵ The first General-Purpose AI Code of Practice, being forthcoming this August, will detail the EU AI Act rules. Alongside the Code of Practice, the EU AI Office also creates a template for a sufficiently detailed summary of training data on 17th January 2025.⁶⁶ This summary is required to be made public by Generative AI developers in compliance with article 53(1)(d). This Template requires a balance between disclosure and protection of trade secrets, emphasizing detailed transparency and copyright compliance requirements without compromising trade secrets. This Template does not require AI developers to provide a complete list of datasets used for AI training but

⁶³ Copyright, Design and Patent Act 1988, art 80(2)(b).

⁶⁴ Pavis and Wood, above n 9; Waelde, above n 11.

⁶⁵ EU AI Act, art 53(1)(d).

⁶⁶ AI Office, *European AI Office Working Group Meetings: Code of Practice for General Purpose AI Template for Summary of Training Data*, published 17 January 2025. <https://digital-strategy.ec.europa.eu/en/policies/ai-code-practice> [Accessed 24 February 2025].

just requires disclosure of the ‘List of ‘main/large’ datasets (above 5% of the overall data in this category) with unique identification, links + period of collection’,⁶⁷ which may substantially reduce the transparency and accountability of AI developers. Through the published first version of the Template, the AI Office does not consider an approach which details names of the right holders whose works are used in the TDM.

It seems that the EU approach does not require AI developers to name the authors of the works used. This does not go far enough. As noted above, the acknowledgment of rights holders is important in the context of dance. Being acknowledged as the author of a work is also a moral right.⁶⁸ To refer only to the work and/or data set without naming the authors would not ensure transparency or fulfil the obligation to acknowledge authors.

Digital replicas and other issues

In this section, we respond questions 43 and 44.

Question 43. To what extent would the approach(es) outlined in the first part of this consultation, in relation to transparency and text and data mining, provide individuals with sufficient control over the use of their image and voice in AI outputs?

Question 44. Could you share your experience or evidence of AI and digital replicas to date?

Digital replicas pose a particular challenge for dance artists.⁶⁹ New tools are emerging that enable users to animate photographs using movement from another source.⁷⁰ This development paves the way for movement created by one person to be transposed onto another person’s image. Existing conversations about digital replicas seem primarily focused on the issue of likeness in terms of facial and vocal identity. However, the question of how someone’s likeness or personality is captured through movement and the ethical and legal ramifications of replicating movement in a new context is often overlooked.⁷¹ Existing dance scholarship on the area of ‘motion signatures’ in the context of motion capture⁷² might help to unpack the relationship between identity and the capture of movement. This area needs much more consideration in order for appropriate measures to be introduced. There are two key issues for dance artists: 1) the possibility that their movement signature or likeness is replicated in a context that they do not agree to and 2) the use of their dance movements to create avatars for digital replicas and the lack of recognition for this.

⁶⁷ Ibid.

⁶⁸ Waelde, above n 11, 297-298.

⁶⁹ In the response to this question and the following one, we draw on thinking developed in collaboration with Teoma Naccarato.

⁷⁰ These include Revive, https://play.google.com/store/apps/details?id=revive.app&hl=en_GB [Accessed 25 February 2025]; Diffuse, https://play.google.com/store/apps/details?id=com.diffuse.app&hl=en_GB [Accessed 25 February 2025]; Viggie: <https://viggieai.io> [Accessed 25 February 2025].

⁷¹ Re. deepfakes and dance, Kriss Ravetto-Biagioli, “Dancing With and Within the Digital Domain” (2021)27(2) Body & Society 3-31.

⁷² Marc Boucher, “Virtual Dance and Motion-Capture” (2011)9 Contemporary Aesthetics 11.

Besides, there are artists working in interesting and creative ways with digital replicas at the intersection of dance and visual art.⁷³ There is clear potential for creative exploration and this should be supported in the development of regulation. The technology needed to create digital replicas of dance has been developing for some time.⁷⁴ However, the recent development of easily accessible apps opens up the potential for dance movement to be replicated and recontextualised on a large scale. This risks violating the rights of dance artists, whose work is exploited in to train the generative AI which powers such apps.

Conclusion

UKIPO's AI and copyright consultation raised questions of crucial importance to all artists whose creative works may be mined and used as training data for AI models. Such models are usually developed, controlled and commercially exploited by AI companies and, without a robust system that enables appropriate remuneration of creators of works used to train, AI companies rather than artists or the UK's creative industries more broadly stand to benefit from this exploitation. Artists also have moral rights in respect of their creations (rights of attribution and integrity) which risk violation with the introduction of a TDM exception of the kind proposed in Option 3 of the Consultation, given that frameworks for acknowledging authorship and identifying derogatory treatment are underdeveloped in the context of generative AI.

These are concerns for artists generally, including dance artists. There are also considerations specific to dance that inflect these concerns in particular ways, linked to the ways in which dance works are shared and to historically low levels of engagement with copyright frameworks, especially among freelance choreographers and dancers. Dance artists increasingly rely on being able to disseminate their work on the internet, social media and other online platforms, but may lose control over their content once it is uploaded. It is not always clear that/how artists can opt out of platforms' blanket acceptance (and commercialization) of their contents' use for AI training nor that these platforms would facilitate the reservation of rights that the proposed TDM exception allows. Moreover, because dance lacks rights management organisations and collecting societies, there is limited dissemination of information about rights and royalties to dance artists, as well as limited support for those who wish to assert their rights and ensure adequate compensation for use of their work. The proposed TDM exception and accompanying burden on artists to reserve their rights thus risks compounding an existing situation in which the largely freelance dance workforce is at a significant disadvantage in its ability to reap financial and symbolic benefit from its creative work.

⁷³ For example, Jake Elwes' project, *Zizi in Motion: A Deepfake Drag Utopia (Movement by Wet Mess, 2023)* <https://www.jakeelwes.com/project-zizimotion.html> [Accessed 25 February 2025] and Marlon Barrios Solano's work:

https://www.instagram.com/marlonbarriossolano?utm_source=ig_web_button_share_sheet&igsh=ZDNlZDc0MzIxNw== [Accessed 25 February 2025].

⁷⁴ Such as through the Everybody Dance Now project. See Caroline Chan and others, (2019) https://carolineec.github.io/everybody_dance_now/ [Accessed 25 February 2025].

We agree with other responses from across the creative industries that Option 1 is preferable to the other options set out in the Consultation.⁷⁵ However, this alone will not be enough to enable dance artists to benefit from their work by licensing it to AI companies should they so wish. While opt-in are preferable to opt-out mechanisms, attention needs to be paid to developing support for those within the dance sector, in particular for freelance artists, who wish to learn more about and assert their rights.

⁷⁵ For example, A. Glenster and others, “Written Evidence UK Government Consultation on Copyright and Artificial Intelligence” (2024) <https://www.mctd.ac.uk/written-evidence-uk-government-consultation-on-copyright-and-ai/> [Accessed 27 March 2025]; DACS, “Copyright and AI Consultation: DACS’ key recommendations”(2024) <https://www.dacs.org.uk/news-events/copyright-and-ai-consultation-dacs-key-recommendations> [Accessed 1 April 2025].