***PRS for Music* Response**
Intellectual Property Office - Artificial intelligence and intellectual property: call for views

About PRS for Music

PRS for Music is a collecting society with over 150,000 songwriter, composer and publisher members from the UK and around the world. As a membership organisation, we work to ensure that creators are paid whenever their musical compositions and songs are streamed, downloaded, broadcast, performed and played in public. In 2019, we distributed £686 million to our members.

With over 100 representation agreements in place globally, *PRS for Music*'s network represents more than 10 million works and 2 million rightsholders to a wide range of businesses from local shops to global online services.

Our members depend on copyright and our ability to license it to sustain themselves and their businesses and invest in the creation of new works.

PRS for Music's response

We welcome the opportunity to respond to the Intellectual Property Office's call for views on Artificial intelligence and intellectual property. Our response focuses on the section *copyright and related rights.*

1.Do you agree with the above description of how AI may use copyright works and databases, when infringement takes place and which exceptions apply? Are there other technical and legal aspects that need to be considered?

We agree with the general approach that draws a distinction between the process of machine learning and the output of AI as an assistive or generative tool. We welcome the acknowledgement of the role played by copyright protected creative works in machine learning and the development of AI tools, and the acknowledgement that such use requires the authorisation of the copyright holder. We also welcome the recognition that the owner of a copyright infringed work has the right to act against the infringer.

We strongly disagree, however, with the notion that AI raises questions about the purpose of copyright: as a fundamental principle, copyright is there to protect the creator, to ensure that they can control the use of their work and be remunerated for it. This applies to the copyright in the code behind the AI, as much as it does to the works ingested by the AI system.

Both the UK and continental European models, as outlined in the paper, are there to protect the creator. In fact, the understanding of a work as an expression of an author's personality may come to have increasing resonance given the capacity of AI to mimic or even impersonate; take for example, Daddy's Car, a track composed by AI in the style of The Beatles or Jay-Z who is engaged in proceedings to prevent the circulation of deep fake videos of him "performing", *inter alia,* Billy Joel and Hamlet.

As a general observation, many AI tools providing a diverse range of functions are already widely available and used. There is a risk the developers and owners of these existing AI tools are already establishing a de facto rights framework via their terms and conditions. For example, many already assert ownership of the works created via their systems and to license, transfer or assign the ownership of the work back to the user via commercial transaction.

2.Is there a need for greater clarity about who is liable when an AI infringes copyright?

Yes. Given that an AI system lacks legal personality, it is necessary to clarify who is liable.

It is clear that there is an act of copyright when a work is copied in the ingestion process, but careful thought needs to be given to the determination of who is responsible for infringement at any given stage of the process(es). It would be prudent to avoid too definitive a delineation of who is liable and instead be led by the activities undertaken.

3.Is there a need to clarify existing exceptions, to create new ones, or to promote licensing, in order to support the use of copyright works by AI systems? Please provide any evidence to justify this.

PRS for Music does not believe that the use of exceptions would be appropriate and that it is already clear existing exceptions do not, nor should they, apply. There is neither need nor justification for the creation of a new exception for the use of music for the purposes of machine learning and AI.

The exception for text and data mining provided for in Section 29A Copyright, Design and Patents Act, 1988 is limited to "*the sole purpose of research for a non-commercial purpose".* The ingestion of a work into an AI system for the purposes of machine learning simply does not sit within this category of use. Section 28A CDPA provides an exception for temporary copying "which is transient or incidental" and "which has no independent economic significance". Depending on how the system operates, the reproduction may not be transient, and the work has independent economic significance, therefore S28A does not apply. Additionally, fair dealing requires that you only copy as much of a work as is necessary for the purpose, and that any copying does not impact upon the rightsholder's legitimate exploitation of their work. Such a use is clearly an impingement on the legitimate exploitation of the work. Finally, any exception in this context would fall foul of the three-step test: it does conflict with normal exploitation and it would unreasonably prejudice the legitimate interests of the creator. AI systems require the input of musical works from which to learn and train, therefore in this context the musical work is a source material with a commercial value.

The most elegant and adaptable solution is to be found in licensing. The promotion and facilitation of licensing best preserves the integrity of copyright and ensures that the creators can control how their works are used. It is also the most effective means of providing legal certainty to the users. Legal certainty will be a vital factor in ensuring the development of these technologies while protecting the other industries upon which they depend.

We contest the notion that the risk of infringing copyright prevents people making full use of AI. The acquisition of a licence is not meaningful barrier to doing business. There is an important distinction to be drawn between cases where there is an evidencable public good in allowing unfettered access to copyright protected materials, and where the acquisition of rights might be deemed simply undesirable by users. *PRS for Music* has always been clear of its willingness to develop licensing solutions that match the evolution of the ways

in which members' works are used and consumed. Indeed, we have a track history of so doing, whether that be through the creation of 'off the shelf' licences such as LOML and LOML+, for smaller online services, or the development of multi-territory online licensing and our hub, ICE. In fact, ICE has already licensed Triller, the AI-powered video-editing app which automatically compiles the users "best" clips into a music video.

However, any licensing regime must be on a voluntary basis. The notion of a compulsory regime undermines the principle of consent that not only underpins copyright but facilitates its commercialisation. There is evidence to indicate that the US compulsory regime has undermined meaningful competition and led to stagnation of rates and a chilling of innovation in the market.

4.Is there a need to provide additional protection for copyright or database owners whose works are used by AI systems? Please provide any evidence to justify this.

The existing copyright framework provides rightsholders with licensable rights for the uses outlined in the paper.

Where rightsholders do need additional support is in the detection of and enforcement against infringement. It will be very difficult, if not impossible, to identify the works used by an AI tool in the creation of an output, therefore early detention and upfront licensing will prove essential.

5. Should content generated by AI be eligible for protection by copyright or related rights?

6. If so, what form should this protection take, who should benefit from it, and how long should it last?

The distinction between human generated works, which may include AI assisted works, and works which are generated solely by a computer, without human intervention (if this is even possible) must be recognised.

The use of AI in the creative process will continue to be a sliding scale, and this is likely to become more complicated as the technology becomes more sophisticated. It is also the case that many of the works produced will be used for the same purpose as those created by traditional human endeavour. Therefore, this is not just a question of protecting those AI works, but it is necessary to safeguard the future equilibrium of the market and to ensure that copyright remains, as it was intended, to support and incentivise an individual's creativity and innovation.

Musical works created by a human creator with the assistance of AI should be able to benefit from the usual copyright protections afforded a musical work at the point of creation. Per the CDPA, S11(1), the first owner of any copyright protected work is the author. Ownership should not be attributed to the AI system or to the developers/owners of the AI system. It should perhaps be assumed that the interest of the developer/owner would be satisfied at the point at which the user buys or licenses the tool to create works.

However, in the case of works generated by AI without a human author, further consideration and understanding is required. As set out previously, the purpose of copyright is to protect the human creator. Indeed, the CDPA, even in making provision for computer-generated works, makes clear that in the absence of a human creator, the author shall be the *person* by whom the arrangements necessary for the creation of the work are undertaken. It is possible that this logic could be applied in the case of an AI generated work, but there is an open question as to whether or not the protection afforded such a work should be of the same genus as that afforded human created works. The IPO's paper notes the that the AI system "does not seek protection of its personal expression nor financial reward" but it is likely that the user who makes the necessary arrangements may seek to protect or benefit from their investment.

7. Do other issues need to be considered in relation to content produced by AI systems?

Identifying an AI assisted work as opposed to an AI generated work is likely to prove increasingly problematic as such works become more abundantly available. Consideration should be given to the implementation of a system of identification to ensure that works can be accurately categorised. The International Standard Name Identifier (ISNI) could provide a solution.

As noted above, there is the matter of early identification of works prior to ingestion as it is likely not possible to identify the source material in the output.

Future generations of AI systems are likely to learn from/be trained on AI assisted or generated works which may create a new suite of issues.

8.Does copyright provide adequate protection for software which implements AI?

PRS for Music has currently no views on this question.

9. Does copyright or copyright licensing create any unreasonable obstacles to the use of AI software?

PRS for Music has long been a proponent of licensing solutions and indeed has been at the vanguard of driving forward the evolution of licensing to meet the needs of the market.

Respect for copyright does not create unreasonable obstacles to the development and use of AI.

Please do not hesitate to contact [redacted] *if you would like any further information.*