

# Response ID ANON-2HEH-VSUY-X

Submitted to Consultation on Copyright and Artificial Intelligence  
Submitted on 2025-02-24 13:04:37

## Basic Information

1 What is your name?

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2 What is your email address?

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3 What is your organisation?

Organisation:  
The British Press Photographers' Association

## Copyright and Artificial Intelligence

4 Do you agree that option 3 - a data mining exception which allows right holders to reserve their rights, supported by transparency measures - is most likely to meet the objectives set out above?

No

Please give us your views:

Taking your first objective, "Supporting right holders' control of their content and ability to be remunerated for its use."

Existing copyright law already supports this objective. The consultation refers to a "lack of clarity about the current regime". Existing copyright law is quite clear and has an abundance of supporting case law. There is no ambiguity whatsoever. No change is required apart from reinforcing it to make sure that those seeking to use copyright material to build their AI businesses cannot seek an exception under any circumstance. The consultation says "The copyright framework provides right holders with economic and moral rights which mean they can control how their works are used. This means that copying works to train AI models requires a licence from the relevant right holders unless an exception applies." Exactly so. That could not be clearer. That is how copyright works. There is no exception today permitting the current industrial scale theft by AI companies for their commercial purposes, nor should there be in future. Licences should continue to be sought and, if granted, paid for in the normal way.

A data mining exception with opt outs is utterly wrong both in principle and in international law. This exception would fatally undermine the fundamentals of copyright law. As has been stated elsewhere, shopkeepers should not have to opt out of shoplifting. No balance can be struck between property owners and thieves. AI training is straightforward commercial use, which, like every other commercial use, requires permission and, if granted, payment. There is no comparison to be drawn here with the existing fair dealing exceptions. This proposed exception would remove protection for works in their entirety for commercial AI purposes. That is not fair dealing, it is theft - which is why data mining use must remain opt in.

This exception would also be in clear violation of the UK's international treaty obligations, in the shape of the "three-step test" set out in the TRIPS agreement. The "reserving rights" procedure is incompatible with Article 5(2) of the Berne Convention, which holds that: "The enjoyment and the exercise of these rights shall not be subject to any formality."

Moreover the proposed opt out reservation scheme cannot work in practice. It cannot work at all. It cannot meet this first objective, supporting right holders' control of their content and ability to be remunerated for its use. It would be impossible to implement and would destroy rights holders' control for the following reasons.

1) We photographers already have hundreds of thousands, millions of our works, photographs, already online. It is quite impossible by whatever opt out reservation scheme is devised to retrospectively reserve rights in all these works. They would continue to be scraped for decades to come overriding the rights and wishes of their creators. For this reason alone the proposed data mining exception should be immediately rejected, there should be no question of it going ahead.

2) Any future reservation scheme would inevitably be deeply and unacceptably flawed. In the case of photographs it would depend on machine readable photographic metadata. The International Press and Telecommunications Council (IPTC) has recently introduced a metadata field, not yet available in most software, permitting the reservation of data mining rights, but its use will depend not only on photographers using it, but on all others with access respecting its use. Put simply, metadata can be stripped as easily as the picture itself can be scraped. It can also be altered to indicate the reverse of what was intended. It is not tamper-proof. It cannot be locked. It is routinely and automatically removed by computer systems and internet platforms.

3) There is no effective legal defence against metadata tampering or stripping. The Copyright Designs and Patents Act 1988 prevents the removal or alteration of electronic rights management information, but requires proof of intent. The defence of innocent infringement renders this section of little if any practical value. Even were it to be effective, resorting to law for each and every photograph with metadata altered or removed would place an

impossible and unjustifiable burden on individual right holders.

4) It is highly unlikely that the government will either make such removal or alteration an absolute liability with stiff penalties, or exclude photographs with metadata absent from the scope of the proposed exception.

5) It takes no account of the way news works. So many of our pictures leave our hands immediately - transmitted instantly from the camera - before we have the opportunity to put any rights reservation, or any other licensing restrictions, into photographic metadata.

5 Which option do you prefer and why?

Option 1: Strengthen copyright requiring licensing in all cases

Please give us your views.:

Given breach of copyright for AI purposes on an industrial scale strengthening copyright law, with punitive sanctions for infringement, is now essential. Licensing is necessary in all cases, no change required, this is how copyright law works. The proposed opt out procedure cannot possibly work and should not be introduced.

Our proposed approach: Exception with rights reservation

6 Do you support the introduction of an exception along the lines outlined in section C of the consultation?

No

Please give us further comments.:

The proposed new exception should be opposed outright for reasons already laid out in answer to question 4, above, and repeated again below .

However as press photographers for us the most important objections are ethical. The consultation says, "The copyright framework provides right holders with economic and moral rights which mean they can control how their works are used". The proposed exception directly threatens our moral rights, our ability to control how our works are used. We are the eyes of the public. They see through our eyes what they cannot see through theirs. They trust us to bear witness to the truth. We cannot betray their trust. This we would do if we in any way allow our authentic press photographs to be used to create photorealistic fake news. It is not just our reputations at a stake here, but the fundamentals of participating in a democratic society. For these reasons we are opposed to any exception to copyright law permitting such abuse.

We have already stated above under question 4, existing copyright law already supports "right holders' control of their content and ability to be remunerated for its use." The consultation refers to a "lack of clarity about the current regime". But existing copyright law is quite clear. It does not require changing. It requires enforcing. You say "The copyright framework provides right holders with economic and moral rights which mean they can control how their works are used. This means that copying works to train AI models requires a licence from the relevant right holders unless an exception applies." Exactly so. Could not be clearer. That is how copyright works. There is no exception today permitting the current industrial scale theft by AI companies for their commercial purposes, nor should there be in future. Licences should continue to be sought and, if granted, paid for in the normal way.

A data mining exception with opt outs is utterly wrong both in principle and in international law. This exception would fatally undermine the fundamentals of copyright law. As has been stated elsewhere, shopkeepers should not have to opt out of shoplifting. No balance can be struck between property owners and thieves. AI training is straightforward commercial use, which, like every other commercial use, requires permission and if granted payment. There is no comparison to be drawn here with the existing fair dealing exceptions. This proposal would remove protection for works in their entirety for commercial AI purposes. That is not fair dealing. It is theft. Which is why data mining use must remain opt in.

This exception would also be in clear violation of the UK's international treaty obligations, in the shape of the "three-step test" set out in the TRIPS agreement ( our existing fair dealing exceptions are all TRIPS compatible ). And the "reserving rights" procedure is incompatible with Article 5(2) of the Berne Convention, which holds that: "The enjoyment and the exercise of these rights shall not be subject to any formality."

Moreover the proposed opt out reservation scheme cannot work in practice. It cannot work at all. It cannot meet this first objective, supporting right holders' control of their content and ability to be remunerated for its use. It would be impossible to implement and would destroy right holders' control for the following reasons.

1) We photographers already have hundreds of thousands, millions of our works, photographs, already online. It is quite impossible by whatever opt out reservation scheme is devised to retrospectively reserve rights in all these works. They would continue to be scraped for decades to come overriding the rights and wishes of their creators. For this reason alone the proposed data mining exception should be immediately rejected.

2) Any future reservation scheme would inevitably be deeply and unacceptably flawed. In the case of photographs it would depend on machine readable photographic metadata. The International Press and Telecommunications Council (IPTC) has recently introduced a metadata field, not yet available in most software, permitting the reservation of data mining rights, but its use will depend not only on photographers using it, but on all others with access respecting its use. Put simply, metadata can be stripped as easily as the picture itself can be scraped. It can also be altered to indicate the reverse of what was intended. It is not tamper proof. It cannot be locked. It is routinely and automatically removed by computer systems and internet platforms.

3) There is no effective legal defence against metadata tampering or stripping. The Copyright Designs and Patents Act 1988 prevents the removal or alteration of electronic rights management information, but requires proof of intent. The defence of innocent infringement renders this section of little if any practical value. Even were it to be effective, resorting to law for each and every photograph with metadata altered or removed would place an

impossible and unjustifiable burden on individual right holders.

4) It is highly unlikely that the government will either make such removal or alteration an absolute liability with stiff penalties, or exclude photographs with metadata absent from the scope of the proposed exception.

5) It takes no account of the way news works. So many of our pictures leave our hands immediately - transmitted instantly from the camera - before we have the opportunity to put any rights reservation, or any other licensing restrictions, into photographic metadata.

The only way through this morass, and to both respect and protect our rights, is for creators to have the right to opt in if they so choose. Our pictures should not be available for AI purposes without our prior permission. We should not be placed in the position of having to go to court, for which we in any case do not have the means, to restore the rights taken from us. Furthermore we are not attracted by the offer of financial compensation for unethical abuse through Generative AI.

7 If so, what aspects do you consider to be the most important?

Please give us your views.:

The BPPA does not support the introduction of any such exception

8 If not, what other approach do you propose and how would that achieve the intended balance of objectives?

Please give us further comments.:

As we have previously stated, we recommend Opt In, which is in effect the position today. The consultation states "As part of our national mission to grow the economy, the government is committed to supporting the growth of the creative industries and AI sectors while recognising the value of human-centred creativity". This balance is best achieved by respecting the intellectual property rights of creators, and purchasing licences for the same in the normal way. The approach we propose, in other words, is the one we already have today, as provided for in the Copyright Designs and Patents Act 1988. No action is required.

9 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.

Please give us your views.:

The influence of this proposed reservation would be negative because it simply would not work, and would therefore legitimise the continued AI theft on the extraordinary scale we have already witnessed.

It would be impractical for a number of reasons, including the following, already stated in answer to questions 4 and 6, and repeated below. The BPPA has over 400 members, each of whom will have tens or hundreds of thousands of photographs already online and there is no way of excepting these from the proposed exception. They are still there available for AI abuse today and for years to come. For the future, our members take thousands of photographs each and every day. While software exists, and will become more widely available, permitting a reservation to the proposed exception to be inserted into photographic metadata, it is in the nature of news work that so many of our pictures would leave our hands immediately before we have the opportunity to put this into effect. They would then, according to the proposed exception, undoubtedly be considered free to use, and abuse, by all. Moreover such metadata is routinely altered and stripped, and while that is contrary to the law, we have no way of policing or preventing it. If still retained, we would then be dependent on others having both the will and the means to read and abide by reservations to the proposed exception. The onus should not be on us to make AI companies obey the law.

Furthermore, the influence would be negative not only for the obvious economic reasons, but also because of the damage to our reputations as individuals and as representatives of The BPPA. As we say above in answer to question 6, "We are the eyes of the public. They see through our eyes what they cannot see through theirs. They trust us to bear witness to the truth. We cannot betray their trust. This we would do if we in any way allow our authentic press photographs to be used to create photorealistic fake news. It is not just our reputations at a stake here, but the fundamentals of participating in a democratic society."

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

Please give us your views.:

If a reservation is applied, do not breach copyright. If it appears that the work might be licensable, seek a licence in the normal way.

11 What should be the legal consequences if a reservation is ignored?

Please give us your views.:

The infringer should face action for breach of copyright. Given the unnecessary, or more likely impossible, financial burden placed on our individual members of going to court over each and every inevitable infringement, there should face absolute responsibility and fines should be punitive.

12 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.

Please give us your views.:

Under current national and international law our rights are reserved now, that is what ownership of copyright means. We oppose the proposed exception, both in principle but also because it is simply not possible for machine readable rights to be first inserted and then protected in the case of each and every work for the reasons stated below. If it were to become law rights should indeed be reserved in machine-readable formats. The cost for photographers would be the cost of the software we already use for inserting rights information into metadata for managing the licensing of our work. Similar software is available at a modest cost to all clients wishing to use our work.

Machine readable reservations cannot be a precondition for rights being effectively reserved. Not all creators will be able to do this. We photographers can, through IPTC ( International Press and Telecommunications Council ) metadata, however countless thousands of our photographs are already online and there is no way of retrospectively attaching the necessary reservation for excepting these from the proposed exception. The online theft of these, illegal today, would under the proposed exception be legalised, which is utterly unacceptable. There are further reasons why the proposed exception cannot work in practice. It is in the nature of news work that so many of our pictures leave our hands immediately before we have the opportunity to enter the necessary metadata. Where entered, metadata is routinely altered or stripped, and while that is contrary to the law, we have no way of policing or preventing it. It cannot be locked or made tamper proof. If still intact we would then be dependent on others having both the will and the means to read and abide by reservations. The cost of searching for infringements and going to court to see our reservations respected in each and every case of breaching our rights would be prohibitive and totally unacceptable. The onus must not be on us to make AI developers obey the law.

## Technical Standards

13 Is there a need for greater standardisation of rights reservation protocols?

Please give us your views:

Yes.

At the very least, for reservation in the case of photography, the standards set globally by the International Press and Telecommunications Council must be accepted and respected. This would be of great use whether the future procedure remains Opt In, as it is today, or Opt Out.

14 How can compliance with standards be encouraged?

Please give us your views.:

Heavy fines for failing to respect rights reserved through IPTC metadata. Heavier fines for stripping metadata, which many organisations, and especially social media, do automatically. Amending contract law to prevent it being used to pressure rights holders to agree to the stripping of metadata.

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

Please give us your views.:

Yes.

As above - heavy fines for failing to respect rights reserved through IPTC metadata. Heavier fines for stripping metadata, which many organisations, and especially social media, do automatically. Amending contract law to prevent it being used to pressure rights holders to agree to the stripping of metadata, and waiving of moral rights. Crucially, amending 296ZG of the Copyright Designs and Patents Act 1988, which prevents the removal or alteration of electronic rights management information, but only when done 'knowingly'. The defence of innocent infringement renders this section of little if any practical value. This should be replaced by absolute responsibility.

## Contracts and licensing

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

Please give us your views:

Normal current practice requires licences to be sought, and if granted paid for before any use is made of copyright material

AI training, as it is currently practised, largely bypasses the seeking and paying for of licenses. This fundamentally fails to meet the needs of creators and performers.

Copyright licensing is more honoured in the breach than in the observance. Punitive fines will be required to reverse this, that is to say to ensure that the law as it stands is enforced. Moreover the current practice of agencies contractually insisting that their contributors submit to AI licensing should be outlawed in order to protect the rights of creators.

17 Where possible, please indicate the revenue/cost that you or your organisation receives/pays per year for this licensing under current practice.

Please provide further evidence.:

Whilst it is impossible to calculate an exact figure given that the majority are individual content creators and small businesses we can safely say that under current practice AI developers avoid licensing, instead stealing many millions of photographs without permission so that the vast majority of photographers have not received a penny.

18 Should measures be introduced to support licensing good practice?

Please give us your views:

Yes.

The existing legislation preventing the alteration and stripping of IPTC metadata should now be enforced with absolute responsibility placed on anyone failing to respect rights reservations in IPTC metadata backed up by punitive damages being awarded against them. Measures should be introduced to prevent photographers being forced under duress to agree to AI licensing by the addition of unfair clauses in contracts..

19 Should the government have a role in encouraging collective licensing and/or data aggregation services?

Yes

20 If so, what role should it play?

Please provide further comments:

The government should ensure that collective licensing for AI purposes should be strictly separated from other collective licensing.

The government should introduce requirements for AI companies to be transparent about the training data they use, without which not only collective licensing, but any licensing, cannot function.

21 Are you aware of any individuals or bodies with specific licensing needs that should be taken into account?

Please give us your views.:

No.

The law as it stands adequately provides for all intellectual property owners and would be licensees to reach agreement on terms, or not, as the case may be.

## Transparency

22 Do you agree that AI developers should disclose the sources of their training material?

Please give us your views.:

Yes.

Without full disclosure rights holders cannot even begin to enter into appropriate licensing arrangements.

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

Please provide further comments:

Just as our rights stipulated in our photographic metadata are automatically machine readable, the input of our pictures could likewise be machine recordable, and automatically archived for future inspection. For photography the data to be recorded must include the author, copyright holder, file name/photo ID. Every image used in generating the AI model must be recorded whether or not there is any machine readable metadata attached.

24 What transparency should be required in relation to web crawlers?

Please give us your views.:

Just as web crawlers can automatically ingest data, their operations can be automatically recorded for future inspection. Web crawling for search engine indexing should be clearly separated from picture scraping.

25 What is a proportionate approach to ensuring appropriate transparency?

Please give us your views.:

The metadata in all photographs ingested should be retained automatically. All such photographs should be archived for future inspection automatically. Photographs with no metadata should be recorded as such and made available for future inspection.

26 Where possible, please indicate what you anticipate the costs of introducing transparency measures on AI developers would be.

Please indicate the anticipated costs of transparency measures.:

We could not put a figure on this, but if the cost of automatically ingesting pictures can be met, then so can the cost of automatically recording and archiving. Any business model that works on using others' copyright material should have to take this into account before they start their work

27 How can compliance with transparency requirements be encouraged, and does this require regulatory underpinning?

Please give us your views.:

Regulatory and legally enforceable underpinning would be essential to ensure that AI developers take the necessary steps, which in so many cases they have so far avoided.

28 What are your views on the EU's approach to transparency?

Please give us your views.:

We are not in a position to evaluate the EU approach.

### Wider clarification of copyright law

29 What steps can the government take to encourage AI developers to train their models in the UK and in accordance with UK law to ensure that the rights of right holders are respected?

Please give us your views:

The law as it stands must be enforced. AI developers must, like everybody else, seek licenses to use legally protected copyright works.

30 To what extent does the copyright status of AI models trained outside the UK require clarification to ensure fairness for AI developers and right holders?

Please give us your views:

The copyright status of models trained outside the UK requires exactly the same clarification as the copyright status of models trained inside the UK, which is sadly lacking today. That would provide a fair playing field for both developers and creators. AI models entering the UK market must comply with UK rules and regulations.

31 Does the temporary copies exception require clarification in relation to AI training?

Please give us your views:

No.

The temporary copies exception cannot apply to copies of intellectual property directly ingested into AI machines. They are not temporary.

32 If so, how could this be done in a way that does not undermine the intended purpose of this exception?

Please provide further comments:

The question does not arise as the copies in question are not temporary.

### Encouraging research and innovation

33 Does the existing data mining exception for non-commercial research remain fit for purpose?

Please give us your views:

Yes.

Foolproof mechanisms need to be developed and included in legislation that ensure that non-commercial research does not end up in commercial hands and put to commercial uses at any point.

34 Should copyright rules relating to AI consider factors such as the purpose of an AI model, or the size of an AI firm?

Please give us your views:

No.

Our intellectual property rights must not vary according to the purpose of an AI model, or the size of an AI firm. Only the applicable licences, not copyright rules, vary according to requirements and size of would-be licensees.

### AI Outputs

CGW Policy Option 0: No legal change, maintain the current provisions

35 Are you in favour of maintaining current protection for computer-generated works? If yes, please explain whether and how you currently rely on this provision.

No

Please give us your views:

There should be no copyright protection for computer-generated works with no identifiable human author. Works created by entering text prompts into Generative AI are generated by computer but are not works of original human authorship and are beyond the scope of copyright.

36 Do you have views on how the provision should be interpreted?

Please give us your views:

The current author of Computer Generated Work is the person "by whom the arrangements necessary for the creation of the work are undertaken". In the case of Generative AI working through text prompts the necessary arrangements result from the creation of the Generative AI model/machine, so there is no single individual responsible for the necessary arrangements and therefore, for all intents and purposes, no copyright in such Generative AI works exists.

### CGW Policy Option 1: Reform the current protection to clarify its scope

37 Would CGW legislation benefit from greater legal clarity, for example to clarify the originality requirement? If so, how should it be clarified?

Yes

Please give us your views:

An author creating a photograph uses light to record what is perceived and how it is perceived by the human eye. The resulting work is an original human creation, and therefore capable of copyright protection. The law should exclude images created by machines responding to text prompts rather than human perception. They are not the original creations of a human author and should, therefore, be excluded from copyright protection.

38 Should other changes be made to the scope of CGW protection?

Please give us your views:

They are not the original creations of a human author and should, therefore, be excluded from copyright protection

39 Would reforming the CGW provision have an impact on you or your organisation? If so, how? Please provide quantitative information where possible.

Minor positive impact

Please give us your views:

Removing whatever protection could currently be said to apply to GAI creations would to some extent remove a commercial incentive to produce the photorealistic but utterly fake pictures which threaten public trust in what we press photographers do, and would to that extent be beneficial.

### CGW Policy Option 2: Remove specific protection for CGWs

40 Are you in favour of removing copyright protection for computer-generated works without a human author?

Yes

Please give us your views:

There should be no copyright protection for computer generated works without a human author - or any other works without a human author.

41 What would be the economic impact of doing this? Please provide quantitative information where possible.

Please provide further comments:

It would substantially remove any commercial incentive to produce fake photorealistic works in competition with authentic photographs, which would be economically beneficial to photographers in addition to being highly desirable on ethical grounds.

42 Would the removal of the current CGW provision affect you or your organisation? Please provide quantitative information where possible

Significant positive effect

Please give us your views:

It is impossible to quantify the credibility of press photography in financial terms, but the removal of the current CGW provision could only be beneficial.

## Infringement and liability relating to AI-generated content

43 Does the current approach to liability in AI-generated outputs allow effective enforcement of copyright?

No

Please give us your views:

Unless tech companies are required to disclose the source of data copied, it will be impossible to enforce copyright law.

44 What steps should AI providers take to avoid copyright infringing outputs?

Please give us your views:

To avoid copyright infringing outputs AI providers should seek a licence for data inputs, as required by copyright law.

## AI Output labelling

45 Do you agree that generative AI outputs should be labelled as AI generated? If so, what is a proportionate approach, and is regulation required?

Yes

Please give us your views:

AI images should have appropriate metadata attached as they are generated. On publication they should carry a 'health warning' either in the form of an appropriate internationally recognised symbol or prominently displayed wording. Regulation is essential as tech companies are not doing this voluntarily.

46 How can government support development of emerging tools and standards, reflecting the technical challenges associated with labelling tools?

Please give us your views:

By making the labelling of AI generated works mandatory, and in the case of photography by further developing the tools and standards pioneered by the Content Authenticity Initiative.

47 What are your views on the EU's approach to AI output labelling?

Please give us your views:

This is a work in progress, the results have yet to be assessed.

## Digital replicas and other issues

48 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?

Please give us your views:

Individuals should be protected against appearing identifiable in photorealistic and deepfake GAI outputs. To this limited extent an individual's image should be legally protected.

49 Could you share your experience or evidence of AI and digital replicas to date?

Please give us your views:

Photorealistic fake news pictures undermine public trust in what we press photographers do.

## Other emerging issues

50 Is the legal framework that applies to AI products that interact with copyright works at the point of inference clear? If it is not, what could the government do to make it clearer?

Yes

Please give us your views:

The existing legal framework is quite clear and unambiguous. Unless one of the existing fair dealing exceptions applies, all copying of copyright material, including by way of AI, requires the prior permission rights holders.



51 What are the implications of the use of synthetic data to train AI models and how could this develop over time, and how should the government respond?

Please give us your views:

The use of synthetic data to train AI models can only compound the unreliability and inauthenticity of AI outputs.

52 What other developments are driving emerging questions for the UK's copyright framework, and how should the government respond to them?

Please give us your views:

Our copyright and moral rights are increasingly more honoured in the breach than in the observance, and not only by AI thieves. The government should respond with more effective sanctions for copyright infringement, and by removing the current limitations to our moral rights.