Response to 'A pro-innovation approach to AI regulation' paper

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The Association of Illustrators (AOI) which has 2700+ members, including freelance individuals, illustrators' agents and universities, was established in 1973 to advance and protect illustrators' rights and is a non-profit making trade association dedicated to its members' professional interests and the promotion of contemporary illustration.

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

Illustrators support progress in technology but also recognise the need for protections and safeguards where technology is applied. As creators, they have long embraced the digital through extensive use of programmes such as Adobe Photoshop, Illustrator and Procreate, but do have genuine concerns over the unauthorised use of their images to train AI/Machine learning for text to image platforms, and if their livelihoods will be undermined by AI generated imagery. The default position should be that creators work will not be used for machine learning without their express permission.

For those who wish to permit use of their work for AI training there should be a simple opt-in system put in place which sets out an explicit agreement between rights holders and developers relating to the use their work as the basis of any AI output products through a licencing agreement, enabling limits of use and application.

Thank you for the opportunity to respond to the *A pro-innovation approach to AI regulation* paper.

Consultation questions

1. Do you agree that requiring organisations to make it clear when they are using AI would improve transparency?

Option - Strongly Agree.

2. Are there other measures we could require of organisations to improve AI

Yes, organisations should be required to make it clear when they are using AI. Machine-rendered outputs should also reference the works from which they are derived. Transparently disclosing the use of AI would help mitigate consumer rights related issues we are seeing beginning to emerge. For example, the dissemination of deepfakes and fake news formed from generative AI outputs which can pose a real threat to society. Illustration and photography are embedded elements in the way the world is perceived, and in terms of images, consumers need to be able to trust that they are genuine.

It is worth noting that there should also be a clear definition available of what constitutes solely AI generated work, and also of AI assisted work (made with the intervention of creators), as illustrators will be utilising aspects of AI in their own creative processes.

Reinforcing existing copyright framework: A firm understanding of UK copyright law within AI organisations will be required to ensure there is no infringement of rights.

Organisations must be required to respect the legal rights of creators, performers and other rightsholders. Creators must be able to keep copyright and related intellectual property rights ('IPRs') and to control the creative work they produce. Copyright-protected work is already being unlawfully accessed (scraped) and used without the rightsholders' permission, including billions of images. We need to ensure that creators have agency over and are remunerated for all uses of their work.

We should avoid Text and Data Mining exceptions which would unfairly legitimise this practice. There is already an existing licensing framework that enables works to be accessed, within the law and with fair renumeration. Any legislative proposal must not interfere with these existing and emerging market-based solutions.

We are conscious that Part Three, paragraph 34 of the White Paper states that the proposed regulatory framework does not seek to address the balancing of the rights of content producers and AI developers. We strongly urge for this to decision to be re-examined. Any reasonable framework needs to consider the rights of creators, whose content plays and essential role in AI innovation.

Transparency into data sources: Transparency over use of copyrighted works in training of AI should be clear. Protecting creators and rightsholders works must be considered an important element of transparency, and developers should be required to disclose all the

sources of data used to develop their systems. In terms of illustrations, this would include what images make up their training datasets and how those have been sourced.

Clear transparency relating to the source of information used in any 'learning stages' is also imperative, as is the disclosure of what human checks have taken place during the process to assure its legality.

Protecting individual voices: The text prompts for AI text-to-image platforms can allow the input of words 'in the style of (name)', meaning that the generated images may be produced in the visual style of the named artist. The unique selling point for illustrators is their 'visual voice', their style, and use of their name in prompts could create direct competition of their own works. Artists should be protected from their works being generated in the 'style of' to prevent AI-competing works, and organisations should prevent this prompt wording being used.

Opt-In model: Creative rightsholders must 'opt-in' for their work to be used in AI data sets. This should only be within agreed terms of use and market-based licensing frameworks. It is important that as technology and business develop, protections for rightsholders are strengthened to reflect such developments, and any future developments.

If visual artists/creators wish to opt into a dataset, licencing agreements should exist that clearly set out terms of usage and ensure that creators are remunerated at an appropriate level. With an opt-in model as standard, it will be clearer and more manageable to track the data used in AI training. Resulting in a more transparent process for all parties.

3. Do you agree that current routes to contest or get redress for AI-related harms are adequate?

Option - Strongly disagree.

4. How could current routes to contest or seek redress for AI-related harms be improved, if at all?

The AOI is extremely concerned as to how any voluntary code will deal with enforcement; and how individual rightsholders will be able to enforce rights given that the damages involved for individuals are likely to be low but can add up to millions when aggregated to benefit AI system developers and their users.

If legal redress is the only solution for creators to seek redress for AI related harms, this would be severely limiting due to the costs of enforcement for creators. The imbalance between creators/rights holders and companies with economic power would be inhibiting. There must be simpler and more accessible ways for rightsholders to challenge both micro- or macro-infringements. An improvement would be to limit the costs involved in seeking redress.

It is important that any new regime be opt-in only, and there must be safeguards to ensure that any refusal by rightsholders to grant licences for use by AI systems is respected. The UK's international influence cannot be ignored, and any system should also work internationally for overseas creators and for overseas licensing.

5. Do you agree that, when implemented effectively, the revised cross-sectoral principles will cover the risks posed by AI technologies?

Option - Somewhat disagree.

6. What, if anything, is missing from the revised principles?

In principle, the cross-sectoral principles outlined provide a useful starting point for discussion. However, we see challenges in implementation which will need to be addressed to avoid eroding the UK's copyright regime and causing irreparable harm to the economic value of our creative industries.

IPRs are not addressed throughout the consultation document. Creative work is simply seen as data to be used as the basis for 'learning' by these systems. The need for recognition of and compliance with our copyright laws is fundamental to any workable solution to the issues raised by AI.

There is no mention of a legal obligation to adhere to any of these principles, or what, if any sanctions there might be for not abiding by them. Without proposals as to how any framework might work, how it is going to be monitored, what the process for redress will be, and the sanctions that will be put in place, the principles provide little to comment on. By ignoring IPRs altogether, the Government sends a clear signal that these are not the concern of regulators, implying that there is no reason for compliance.

Creators and rightsholders must be protected and their fundamental rights, moral rights and copyright maintained and strengthened. There should be the clear assurance that there will be no change to the current state of copyright legislation. New AI businesses should not be seen as a legitimate reason for the erosion of creators' rights. Individuals should never be placed in a position where they are forced to engage with business against their wishes; their rights not to license their work must be respected.

Without levelling up the financial incentives and maintaining (and where necessary strengthening) clear legal frameworks, that both incentivise and protect professional human creativity, we are at risk of losing our existing creative individuals and limiting those who can access a career in this sector, and so contribute to our economy.

Livelihoods and human skills need to be given special protections, or authentic and individual voices will be lost. Visual artists add immense value to our understanding of the world and contribute massively to commerce. These professions and their skillsets should not simply be left to cease because technology can produce visual content more cheaply. The devaluation of creative work skills will be felt acutely by those starting out their careers.

These roles provide much needed employment, as well as levels of work experience for many entering and developing a career in the industry.

It is vital that we do not risk the earning potential and employment of the Creative Sector, which contributed £115.9 billion to the UK economy in 2019 and employs over 2.3 million people across the sector (Communications and Digital Committee, 'At risk: our creative future' (17 January 2023) HL Paper 125). By comparison, the AI industry is estimated to contribute only £3.7 billion GVA to the UK economy last year, employing barely 50,000 people (AI Sector Study 2022, DSIT, 2023). If the Government is to grow the creative sector by a further £50 billion by 2030, it needs to encourage and protect human endeavour. It should not give advantages to one sector at the cost of another.

7. Do you agree that introducing a statutory duty on regulators to have due regard to the principles would clarify and strengthen regulators' mandates to implement our principles while retaining a flexible approach to implementation?

A statutory duty on regulators to prevent and address AI-related copyright infringement should be necessary and prioritised. We are conscious that a nuanced approach may be required to fully support innovation across sectors. However, copyright, IP and data protection are areas of law that will be relevant for all sectors and should be used as a robust baseline while sector-specific liability issues may need further guidance from sector-specific regulators for finance, defence, medicine, consumer rights and so on.

A clear and uniform structure for IP compliance and data protection compliance would provide support for all regulators looking to the IPO and the ICO for guidance in these areas, as they look to develop sector specific liability. Such a duty could provide regulators with a clear mandate to act against AI-related copyright infringement and ensure that the necessary measures are in place to prevent and address such infringement. For example, a statutory duty on regulators could include a requirement to develop guidelines and standards for AI development that preserves copyright laws and the needs of copyright holders.

UK regulators could also be required to index and monitor AI development and afforded the power and authority to take enforcement action against AI developers who infringe on copyright.

We acknowledge there are also potential challenges with implementing a statutory duty on regulators especially regarding resource constraints which would make it difficult to effectively monitor and enforce copyright laws in the context of AI development. Nevertheless, providing appropriate governmental safeguards in relation to AI, such as introducing statutory mandates, would certainly help to clarify and strengthen regulators' mandates.

8. Is there an alternative statutory intervention that would be more effective?

We are very concerned as to how a voluntary regulation will deal with enforcement. We are particularly concerned as to how individual rightsholders, such as visual artists, will be able to enforce their rights, given that the damages involved for individual uses are likely to be

low value but add up to millions when aggregated to benefit the user (whether the AI developer or the user of AI systems).

AI developers and users must be reminded of their legal obligation to adhere to current copyright and related rights' protections. This need for legal compliance should be stressed regardless of the solution adopted by government to regulate AI. There should be open disclosure of the datasets and works that have been assimilated by the AI system, how these were sourced, what rights were granted, and how and what recompense was provided for use of such works. A statutory duty for regulators merely to ensure parties have 'due regard' to the principles does not go far enough and does not send a strong enough signal to developers regarding their legal and ethical obligations in both the sourcing of their input data for the learning stage, and in the outputs and end products.

We share the view that any statutory duty should be strengthened with clear guidance set out by each regulator, and that this information must be easily accessible in both explanation and source. Copyright, moral rights and related rights' protection should remain and there should be an obligation to abide by the current regulatory copyright framework across AI development and use. There should be the full implementation of moral rights in UK law, in line with the Berne Convention and international best practice.

9. Do you agree that the functions outlined in section 3.3.1 would benefit our AI regulation framework if delivered centrally?

Monitoring and evaluating the framework as a whole
Option - Somewhat agree.

Assessing and monitoring cross-economy risks arising from the use of AI
Option – Strongly agree.

Scanning for future trends and analysing knowledge gaps to inform our response to emerging AI
Option – Strongly agree.

Supporting AI innovators to get new technologies to market (see section 3.3.4 for more detail)
Option – Somewhat disagree.

Promoting international alignment on AI regulation
Option - Strongly agree.

10. What, if anything, is missing from the central functions?

The fundamental role of copyright and related rights' protections is missing from the central functions.

There must also be an acknowledgement and redress of existing unlawful misuse of artistic creativity which is driving the commercial viability of many of these AI functions. The same

level of support and guidance to develop and nurture these systems should be extended to creators to ensure that they and their businesses are supported and nurtured, and protected from the exploitative practices of the AI industry.

Government must work with creator groups to ensure any metrics used in the regulation of AI are not detrimental to creators and the business environment/markets they work in.

These central functions also fail to recognise the impact of AI on potential commissioning opportunities for creators, and its impact on rates of pay.

11. Do you know of any existing organisations who should deliver one or more of our proposed central functions?

Option – No.

12. Are there additional activities that would help businesses confidently innovate and use AI technologies?

In order to build trust there should be a framework which clearly sets out AI organisations obligations in regard to copyright, moral rights and related rights' protections that creators and other rightsholders have.

Developers should provide assurances to rightsholders and users that sourcing and compiling of the data and works that they are accessing as inputs are sourced ethically, legally and in compliance with all relevant legal regimes, including not only IP regimes but also privacy and data protection regimes, for example.

Any proposed solution to regulate AI must clearly set out and champion compliance with the existing copyright and workplace protections that apply. Better knowledge of the impacts on individuals such as creators - those whose work is being assimilated to produce these systems - both negative and positive. This would enable developers and consumers to make clear ethical choices.

These steps will encourage businesses to continue to invest in our creative economy and will encourage the next generation of creative professionals, especially those from underrepresented groups, to invest their time and talent in these valuable industries and roles.

12.1: If so, should these activities be delivered by government, regulators or a different organisation?

Options selected -
- Government
- Regulators
- Other

There are several market-based solutions for licensing which are currently in place and more are being developed by rightsholders. It is crucial that government intervention does not inadvertently result in undermining what is still a relatively nascent and innovative market for rightsholders.

However, government can and should play a role in creating a legal and regulatory framework that supports innovation in AI development while preserving copyright.

Regulators could take measures, in collaboration with rightsholders and creators, to develop guidelines and standards for AI development that include relevant provisions on copyright law. Regulators could also be empowered to monitor AI development and actively take enforcement action themselves against AI developers who infringe on copyright. Government and regulators hold the responsibility of ensuring accountability of AI development.

There should be a single, simple way of accessing the input datasets and their use in the output. Developers must be compelled to clearly show the lineage of the data and creative works that they have exploited to produce these systems; if it has been legally accessed; and proof, or not, of any licences.

We also encourage government to work directly with industry/rights holders, to develop meaningful best practices and guidelines for AI development that consider copyright laws and the needs of copyright holders.

13. Are there additional activities that would help individuals and consumers confidently use AI technologies?

Individual illustrators using AI as an assistive tool require a clear definition of what constitutes an AI generated vs AI assisted work, and an understanding of how this affects the copyright status of their work. Their clients will also require a clear understanding of this status to be able to confidently use/publish commissioned artwork that may be AI assisted.

Understanding the copyright status of AI generated works will also be important in helping consumer trust, so providing information on the copyright status should be an activity that AI developers take on. Consumers of creative works will want to understand their rights and responsibilities when using AI products, as well explanations of how AI systems operate, how data is originated, collected and used, and how AI-generated results are produced.

The concerns around in-built bias for AI generated imagery should be addressed to ensure diversity. The majority of the billions of images mined for the LAION dataset used by many text to image platforms, for example, is taken from content in the West.

For an opt in model, developers should be required to ensure that their datasets have worldwide representation to avoid biased outputs and increase confidence in the use of AI.

It is important that policy makers and developers ensure that there is acknowledgment of the huge exploitation that AI developers have made, much unlawful, of the work of creators in the development and attractiveness of these AI systems.

AI systems must be seen to be both legal, ethical, responsible, and safe. This includes trust that the AI system does not infringe copyright. AI developers must provide clear and concise information, publicly, about the copyright status of their AI systems and the operation of those systems, including how those systems are trained, and how the AI-rendered results (outputs) can be legally used. This would help consumers and users understand their rights and responsibilities when using AI systems and their results.

We believe government has a central role to play in providing – or funding – intellectual property education and training, not only for consumers but also AI developers, users and other rightsholders. This will help build confidence in the copyright compliance of AI products and ensure that AI users (including rightsholders) can do so confidently and in compliance with existing laws.

There must be a level playing field in relation to the tax regime: currently tax incentives are offered to companies who invest in equipment and technology which creates a clear financial incentive in favour of using technology such as AI systems to the detriment of hiring individual creators. Government needs to reconsider its tax regime to ensure it rewards and is fair to creators: tax incentives for those who employ an individual to work – which in turn provides important income to the UK economy, reducing the burden on state aid and increasing the overall wellbeing of society.

13.1. If so, should these activities be delivered by government, regulators, or a different organisation?

Options selected -
- Government
- Regulators
- Other

These activities should be delivered in a consistent manner by government and regulators while working in partnership with industry and creators.

14. How can we avoid overlapping, duplicative or contradictory guidance on AI issued by different regulators?

Guidance should be driven by the current copyright and IP framework. This already falls within the remit of the IPO. It is important that the IPO, DSIT and DCMS work closely to ensure all guidance is coordinated and consistent, and that it champions the protection of the rights of creative professionals against unlawful exploitation, be they authors, artists, composers, designers, directors, editors, illustrators, journalists, musicians, songwriters, performers, photographers, translators, or visual artists for example.

15. Do you agree with our overall approach to monitoring and evaluation?

Option - Neither agree nor disagree.

We agree with the overarching principles but note that there are some inherent challenges which will need to be addressed. For example, the current approach may not give regulators enough power to pursue issues with AI systems that do not follow the government's stated principles. Exploring the possibility of government certification and licensing requirements that can be revoked if an AI system or product is found to have been developed in a manner inconsistent with these principles may be an avenue worth exploring. Revoking permissions in cases where there are bad actors or non-compliance would also strengthen the regulators' role, otherwise monitoring and evaluation are pointless.

Furthermore, identifying aims and objectives of the framework while ensuring they do not infringe on existing rights will be key. This will involve reviewing relevant legislation, policies, and guidelines, as well as consulting with stakeholders. Given the economic importance of the creative works that are used to train AI platforms and products, rightsholders and creators should be consulted as the performance indicators are defined.

Once the objectives of the framework have been identified and suitable performance indicators have been developed, data should be collected, analysed, and reported on through regular reviews and updates which allow for renewed cross-sectoral input. As AI technologies evolve and new challenges emerge, it will be crucial that we ensure the AI framework remains effective, relevant, and consistent with the UK's copyright regime.

16. *What is the best way to measure the impact of our framework?*

It is difficult to comment without more detail on the specificities of the proposed framework.

Any framework must hold AI developers and users to their obligations to comply with the existing regulatory system and ensure that those protections are not eroded.

17. *Do you agree that our approach strikes the right balance between supporting AI innovation; addressing known, prioritised risks; and future-proofing the AI regulation framework?*

Option - Strongly disagree.

We believe more work needs to be done to ensure that the UK's copyright regime is not inadvertently undermined. Doing so will future-proof the AI regulation framework and would foster more trust and cross-sectoral collaboration.

18. *Do you agree that regulators are best placed to apply the principles and government is best placed to provide oversight and deliver central functions?*

Option - No [please expand].

There is a clear role for regulation. However, for regulation to be effective, the regulator must be suitably resourced and empowered to take on the oversight and enforcement measures which are inherent to the development of ethical AI. Currently there seems to be a conscious bias towards protecting and bolstering the rights of AI organisations to the detriment of those whose copyright-protected work is being illegally used in their data sets. There needs to be a

balancing of these economic interests by regulators, to ensure both sectors can continue to develop.

We do not believe that a thriving 'big tech' industry is incompatible with a market that is favourable to creators also thriving, but only when Government, regulators, and AI developers (amongst others) recognise and value the contributions and rights of creative professionals.

19. As a regulator, what support would you need in order to apply the principles in a proportionate and pro-innovation way?
N/A

20. Do you agree that a pooled team of AI experts would be the most effective way to address capability gaps and help regulators apply the principles?

Option - Strongly disagree.

No. The pool must include non-AI developers such as rightsholders and creators. It is important that there is no bias towards one particular group of stakeholders in this discussion, to ensure we design a fair framework for regulators to employ. Legal experts pooled from each field of relevance to AI regulation must be included, and their respective stakeholders given a voice in this forum, this includes consumer protection groups and creators' representatives (such as unions, trade associations and collectives). Each area of the creative industries should be represented. It is important that all sides and perspectives are included in any discussion relating to principles, regulations or implementation.

21. Which non-regulatory tools for trustworthy AI would most help organisations to embed the AI regulation principles into existing business processes?

It is important to preface in our answer that the AOI has serious concerns over whether a voluntary code is the appropriate solution to regulate AI. 'Non-regulatory tools' will have little impact on organisations business processes. Any agreed code of practice should be mandatory, to ensure it is taken seriously and implemented by all parties. This will result in a safer and more balanced approach to AI innovation.

Non-regulatory tools must also impose obligations of transparency and labelling on AI developers, AI systems and users of these systems.

These tools should be developed in collaboration with legal experts pooled from each field of relevance to AI regulation, this includes from consumer protection groups and creators' representatives.

Any new tools must have cross-sector approval. Creators, their representatives, and other groups affected by the implementation of AI systems must be involved in developing these tools at point of design, and before they are given regulatory or Government approval. Any

tools must ensure compliance with existing legal regimes, and where applicable – bolster the protection of creators' and other rightsholders' rights.

Any tools need to be rigorously tested to ensure they do provide the data and advice required to monitor compliance.

Foundation models and the regulatory framework

F1. What specific challenges will foundation models such as large language models (LLMs) or opensource models pose for regulators trying to determine legal responsibility for AI outcomes?

One of the biggest challenges is the fact that copyright-protected works have already been used unlawfully in the development of AI systems that are already themselves in the marketplace, including the text-to-image platforms. There is evidence that copyright-protected literary works were ingested by AI systems to train Large Language Models; likewise entire catalogues were unlawfully copied from image libraries and images taken from online portfolio sites and individual's online portfolios. There must be publication of all the information already used, and how it was sourced; transparency over the sources is a crucial first step to build public and rightsholder trust. The data in foundation models must have accountability, and for all users to trust in AI outcomes government should be accountable for the foundation models rather than users following claims in data from a commercial entity.

However, this does not consider the fact that once work is ingested by the machine, the AI systems cannot 'unlearn' and therefore, although rightsholders affected may be compensated for the work used illegally, any compensation must also account for the fact that this act cannot be undone, and they may not have intended on exploiting this aspect of their reproduction right. Future systems must account for rightsholders' permission being sought before ingestion, and for the possible removal of their work from the AI system upon termination of the licence.

The owners of these AI systems are themselves responsible for these failures and they should finance any such system of redress.

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