



Geneva, 25 February 2025

Response to AI and Copyright Consultation

This submission is made on behalf of the international publishing industry represented by the International Publishers Association, the Association of American Publishers, the Association of Canadian Publishers, the Associazione Italiana Editori (the Italian Book Publishers Association), the Australian Publishers Association, Börsenverein des Deutschen Buchhandels (the German Publishers and Booksellers Association), the Federation of European Publishers, the Kenya Publishers Association, the Publishers Association of New Zealand, the Sindicato Nacional dos Editores de Livros (the Brazilian Book Publishers Association), STM (the International Association of Scientific, Technical & Medical Publishers), the Syndicat National de l'Edition (the French Book Publishers Association).

We fully support and endorse the submission made by the Publishers Association, representing the UK's world-leading publishing industry.

In this vein, the present submission aims at adding our concerns about the compatibility of a possible new exception, presented as the Government's preferred policy option, with the international treaties to which the United Kingdom is a contracting party, and to recall the essential role of the principles and safeguards set out in those treaties to ensure the integrity of copyright protection. We respectfully submit that the proposed new exception should be withdrawn from further consideration.

The importance of maintaining the integrity of the copyright system to sustain the United Kingdom's leading publishing industry

We would like to start by recalling that the international copyright framework is and always has been the foundation of the publishing industry. The integrity of copyright protection is a key condition for publishers' investments. Enforceable exclusive rights are fundamental to incentivize authors, publishers, and other copyright owners to create, invest in, and make available to the public original and valuable works of human authorship. Through these works, publishers drive inspiration, entertainment, education, and significantly contribute to both local and global economies.

Highly profitable generative AI companies depend on creative works of authorship to fuel and train their tools and products. Some of these companies claim that they do not have to seek permission or pay for the works they are so freely usurping for their advantage, but this is false. Works of authorship—which include scores of works of fiction and nonfiction such as award-winning novels, renowned children's books, ground-breaking scholarship, biographies, scientific publications, political memoirs, and more—are not free for the taking.

Rather, these works are economically incentivized and legally protected by both national copyright laws and international treaties and have been for centuries. This legal protection is neither debatable nor dispensable and there is no good public policy reason to weaken it for the convenience and objectives of technology companies, some of which are the most dominant corporations the world has ever known.

It has become commonplace for some generative AI companies to highlight their innovation and investments as a reason for governments to give them broad copyright exceptions or regulatory loopholes when it comes to existing copyright requirements. But these companies owe their considerable success to the prior innovations and investments of others—the intellectual and creative investments of authors and the financial investments of publishers.

Publishers have always embraced technology and technology partners. They are early adopters of many AI tools and believe fundamentally that human expression and technological innovation are symbiotic. However, the legal framework is clear and remains fit for purpose. Collecting, handling, storing, and copying works of authorship to train AI models implicates the exclusive rights of authors and publishers, which cannot be ignored. Generative AI companies must license works of authorship that they do not own—and seek to use for their gain—in the manner directed by the rightsholder.

The first response to access is licensing. Licensing is simple in the digital age, and there is no excuse to ignore it. Direct and voluntary collective licensing models are ubiquitous, flexible, efficient, and continue to evolve. Technology companies can respect copyright and avoid liability. There is no need to except them from the well-established rules of copyright. There is no public interest that justifies prioritizing the profit of technology businesses by removing publishers' right to exercise and benefit from their intellectual property.

The time-tested principles of the international copyright treaties must continue to drive copyright related policy developments, including on AI. This framework sustains copyright owners' ability to license and enforce their exclusive rights, including in the context of AI, while establishing that AI developers must seek licenses to use copyrighted works. Along these lines, publishers advocate that policy reviews should abstain from introducing legislative changes that could encroach on present and future market developments based on contractual freedom, including by setting out exceptions to copyright protection for data mining and AI uses, and should instead foster transparency, accountability, and ethical development of AI systems in full respect of copyright and human creation.

Despite dogmatic beliefs that overbroad exceptions & limitations are required for AI development, responsible AI developers are seeking direct licenses from publishers to ensure the accuracy and integrity of content used to train and operate AI based systems. Responsible AI companies value the quality of training data, conscious of the dangers of indiscriminate scraping (garbage in-garbage out) and of the potential of non-curated training data undermining the value of their end products. These AI developers have been seeking licenses for different uses, from training (to help improve relevance and performance of AI systems, for example) to related services such as developing accurate automated citation referencing, with improved speed and accuracy. Promising direct licensing markets are developing and will continue to develop within the existing legal framework, which is vital for the UK's publishing industry to continue to lead on quality content production.

Rights reservation mechanisms are not an immediate remedy

While in principle requirements to assuage the damages caused by exceptions & limitations are important, it is necessary to demonstrate whether those requirements are effective and can be implemented and enforced in an appropriate manner. As submitted and evidenced by the UK Publishers Association, the Government would still have to overcome a series of demonstrated practical, technical and legal challenges

in order for rights reservation mechanisms to be workable. In the European Union, publishers already have to commit significant efforts to opt-out from the TDM exception for commercial purposes to prevent AI companies from exploiting their works for free, gaining unfair competitive advantages. Those opt-out processes are still being developed and assessed years after the exception entered into force, evidencing that opt-out is not an immediate remedy.

In addition, the complete opacity of data mining processes, databases and its many applications, notably on generative and other AI systems, prevents these mechanisms from being verifiable, therefore compromising not only effectiveness but also accountability and enforceability.

Even if transparency obligations are established, rights reservation mechanisms are still ineffective to control and prevent the use of infringing databases made of pirated content, as well as to prevent copyrighted works that are not legally made available online or in digital format by the copyright owner from being usurped by bad actors and made available without permission in illegal databases. A new exception will likely blur the lines, possibly creating new defenses for blatant copyright infringement.

Although an exception with rights reservation mechanisms would in theory allow copyright owners to opt-out and retain their exclusive rights if they have the capacity to comply with burdensome technical processes, those copyright owners will be at a disadvantage to license from the start: if AI developers can access large volumes of copyrighted works through an exception, it is unlikely that copyright owners who opt-out can achieve terms & conditions that would normally result from a commercial licensing negotiation based on exclusive rights, absent an exception curtailing the market. Moreover, opt-outs might prove ineffective if, time consuming as they are, users of the exception claim that data mining occurred prior to an opt out, invoking the exception and rendering the rights reservation mechanism useless. Even if a copyright owner opts out in time to preserve its rights and licenses are sought, the exception might still be argued by users as a market standard to avoid paying fair commercial fees. This would be detrimental to authors and publishers alike, undermining the industry's capacity to recoup investments and eliminating the necessary incentives for publishers to continue investing in publishing local authors and human created quality content.

The principle of formality free copyright protection

A rights reservation mechanism imposes an obligation upon copyright owners to exercise the exclusive rights that are at the core of copyright protection, flipping their expectations in existing and emerging licensing markets. In fact, with such an obligation imposed upon them as a condition, if authors and publishers want to be able to authorize or prohibit the use of their works, they are required to undergo burdensome administrative processes to opt-out as the only way to secure their rights – even if questions remain regarding the effectiveness of such solutions and, more importantly, about users' respecting such mechanisms (and the means to verify it).

It is still unclear whether and how opt-out processes could be implemented and respected in an effective and seamless way. Nevertheless, requiring a notice of rights reservations for copyright owners to retain their exclusive rights is akin to a formality. We respectfully recall the Berne Convention's principle that the enjoyment and the exercise of exclusive rights shall not be subject to any formality, as set out in its article 5.2.

Compatibility with the three-step test as set out in the WTO TRIPS Agreement and in the Berne Convention

By eliminating copyright owners' ability to license their exclusive rights directly and on their own terms, exceptions to copyright protection impair the contractual freedom inherent to the exclusive rights that

underpin the national and international copyright frameworks. Therefore, legal provisions establishing new exceptions must be compliant with the three-step test, as set out in article 13 of the WTO TRIPS Agreement: *“Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder”*. Similarly, article 9.2 of the Berne Convention establishes that *“It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”*

However, we respectfully submit that a new data mining exception with a rights reservation mechanism, the effectiveness of which as a balancing mechanism remains to be demonstrated, could arguably not be compatible with the three-step test set out in international treaties.

First: an exception or limitation to copyright protection can only apply in certain special cases. However, this will not be the case given that most if not all industries already rely on or integrate data mining processes, including in AI systems, in their businesses. In fact, eliminating copyright protection in such overbroad circumstances would only give unfair competitive advantages to technology companies that did not invest in producing, editing, curating, peer-reviewing, promoting, and distributing the high-quality content that generative AI models are being trained on, and yet will be able to reap the benefits of authors' and publishers' creative work and investments.

Second: The three-step test only allows uses to be exempted from copyright owners' direct permission and subject to exceptions & limitations when that *“does not conflict with a normal exploitation of the work”*. However, a new data mining exception will not only conflict but will in fact eliminate copyright owners' ability to exercise their contractual freedom as the rule, preventing them from licensing the use of their works under their own terms in a broad range of systems and processes that will underpin most if not all future industries. This will have major implications. It's not only the immediate loss of revenue, but also the long-term consequences of publishers not being able to keep the continued investment in human creation that commercial licensing revenues currently sustain, which are vital for the continued production of quality content. In addition, a new exception providing legal coverage to the development of AI systems and others relying on data mining can function as an enabler of large-scale quantities of machine generated content, competing with original copyrighted works created by humans in an unfair manner. In practical terms, a permission to circumvent copyright owners' direct licenses through a new exception would wipe out existing and emerging licensing markets, preventing copyright owners from exploiting their works in any context that involves AI and further enable the free and unlicensed production of competing content. In that sense, this exception not only conflicts with, but in fact eliminates a significant share of the normal exploitation of copyrighted works through licensing, further affecting the future production of human created literary works.

Third: The final step determines that an exception to copyright protection is only allowed if it *“does not unreasonably prejudice the legitimate interests of the author”*. As explained above, by wiping out any existing or emerging licensing markets in the AI context, a new exception would unreasonably prejudice the legitimate interests of copyright owners, by excluding them from participating in licensing markets for the profit of AI businesses built over copyright owners' content. Copyright owners will see their works used by AI developers that will re-use those works to train their systems and create new competing content, including by using the original work without attribution and/or by creating unauthorized derivative works. The unlicensed content produced will further flood and cannibalize the primary market for human-made literary works. The effects of a new exception would not balance interests. Instead, a new exception could further deepen imbalances rather than level the playing field between technology behemoths and copyright owners.

The three-step test set out in the Berne Convention and in the WTO TRIPS Agreement must continue to guide legislators in establishing exceptions & limitations, including in the context of AI. Given the above, we respectfully submit that the new proposed exception will affect the integrity of copyright protection as set out in the WIPO Copyright Treaties and in the WTO TRIPS agreement.

A solid evidence-based decision process is key to ensure that policy decisions do not undermine the UK's leading publishing industry

The consultation paper mentions reasons to adopt a new exception on an empirical basis, which in our view can be better achieved through licensing. A fair impact assessment is crucial to secure a balanced copyright ecosystem and must take into account the effects of the proposed new exception on the UK's leading publishing industry. In addition to this consultation, we respectfully submit that the proposed new exception must be subject to economic impact analysis regarding current and nascent market developments, to ensure it addresses a market failure, serves, and is suited to achieve a legitimate purpose, is objectively justified and proportionate, and does not create competitive disadvantages for copyright owners. A fair impact assessment must include the impacts on the publishing industry whose works are being exploited not only to train generative AI systems but also to produce competing unverified content. The UK's copyright law must continue to ensure that exceptions & limitations to copyright protection cannot be used to establish competing structures or systems, either commercial or not, or as a basis for tech players or any other businesses to operate as exploiters of copyrighted content which they have not invested in. If this is not safeguarded, the proposed new exception will inevitably undermine the legal offer of books and literary works by human authors and publishers and will create unfair competitive advantages for AI developers and other businesses in detriment of publishers' intellectual property rights.

In addition to the effects on content production and distribution, the proposed new exception will eliminate the incentives for publishers to develop licenses as well as their own AI applications. This unintended consequence challenges the consultation paper's assumption that a new exception will promote wider economic growth. In fact, publishers play a fundamental role in increasing and consolidating relevant AI offerings around the world, as most generative AI applications rely heavily on English-language content to be trained and perform. Limiting publishers' ability to license will erode incentives for publishers to invest in content development and to work with AI developers to further create new and reliable data sources. Given the need for more high quality data for AI training efforts across the world, sacrificing the incentives for publishers to keep producing works that can constitute new reliable data sources does not seem to align with responsible development of AI and in fact counters efforts to establish a solid knowledge economy to which publishers and copyright owners are so central.

Against this background, the quality of content used to train machines emerges as a critical issue, not only in AI related policy debates, but also as an element for the improvement and future development of these systems. Licensed quality content plays a role in promoting safe and ethical development of AI systems, a priority in international policy discussions, which cannot be achieved through the adoption of a new exception that will loosen data quality standards even more.

Basic copyright principles also align with broader ethical considerations for society. New regulations should have a different focus, to facilitate transparency for the public, reduce misinformation, and most importantly, ensure that the world will continue to have authors, publishers, and a thriving creative community. Transparency as to which works have been used to train AI models is critical: it protects the public from harm and ensures that authors will not be stripped of attribution for their works.

Copyright is essential to reading, learning, and independent thought, and to the survival of the global publishing industry. Yet these issues are ultimately about the public interest itself. Because democracies

depend on authors and publishers, we call the Government of the United Kingdom to stand up for copyright and resist the calls to give technology companies more power over the public.

We thank you for your time and consideration in this matter and remain available for any further information you may require.

The International Publishers Association (IPA) is the world's largest federation of national, regional and specialist book publishers' associations. Established in 1896, our membership comprises 105 organizations from 84 countries around the world. The IPA is based in Geneva and is an accredited observer at the World Intellectual Property Organization as well as an accredited non-governmental organization enjoying consultative relations with the United Nations.

The Association of American Publishers (AAP) represents the leading book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. As essential participants in local markets and the global economy, our members invest in and inspire the exchange of ideas, transforming the world we live in one word at a time.

The Association of Canadian Publishers is the voice of Canadian independent book publishers. Its diverse membership consists of approximately 115 Canadian-owned and controlled book publishers from across the country.

Founded in 1869, Associazione Italiana Editori (AIE) is the oldest Italian trade association. For more than 150 years, it has represented and protected Italian publishers of books, scientific journals and digital content at both the national and international level. It constitutes an up-to-date observatory on the panorama of reading, the publishing market, cultural and educational consumption - from school to university - essential to the country's growth. Publishers represented by AIE make up over 90% of the Italian book market.

The Australian Publishers Association (APA) represents more than 200 Australian publishers producing more than 90% of Australia's \$2 billion annual book industry turnover. Overall, around 20,000 new Australian books, of all kinds, are published each year. Many tens of thousands more international titles are released in Australian editions or imported into the Australian marketplace. The Australian book industry maintains the availability of more than 1.2m book and serial titles to serve the needs of Australian readers—including families, students, educators, researchers, and industry.

Börsenverein des Deutschen Buchhandels (the German Publishers and Booksellers Association) represents the interests of Germany's book industry in the political and public spheres. It was founded in Leipzig in 1825 and currently has roughly 4,000 members, which include booksellers, publishers, wholesalers and other media companies. As both a trade association and a cultural organisation, the Börsenverein works to promote books and reading whilst also fostering fair copyright laws and the preservation of Germany's policy of fixed book prices. It also seeks to promote cultural diversity and uphold the right to freedom of expression.

The Federation of European Publishers (FEP) represents 31 national publishers' associations in Europe. Their members are publishers of books, learned journals and educational content, in all formats.

The Kenya Publishers Association is the umbrella body for book publishers in Kenya. This Association encourages the widest possible spread of printed and digital books throughout Kenya and beyond. Apart from promoting and protecting by all lawful means the interests of the publishing industry in Kenya, the Association also seeks to protect its members by dealing collectively with problems which can best be so dealt with.

The Publishers Association of New Zealand (PANZ) actively represents publishers' interests to industry and government. The PANZ advocacy team works to inform the relevant government departments and industry bodies of key issues facing book publishers and how we can work effectively together. Strong support from the publishing industry is vital to this work. Association members are a diverse mix of general, literary and educational publishers, ranging from small independent niche publishers to large multinationals.

Sindicato Nacional dos Editores de Livros (SNEL) is the representative of publishers in Brazil for over 80 years and plays a crucial role in promoting reading and books, defending the sector, and fostering artistic and intellectual production.

At STM (The International Association of Scientific, Technical & Medical Publishers) we support our members in their mission to advance trusted research worldwide. Our more than 140 members collectively publish 66% of all journal articles and tens of thousands of monographs and reference works. As academic and professional publishers, learned societies, university presses, start-ups and established players, we work together to serve society by developing standards and technology to ensure research is of high quality, trustworthy and easy to access. We promote the contribution that publishers make to

innovation, openness and the sharing of knowledge and embrace change to support the growth and sustainability of the research ecosystem. As a common good, we provide data and analysis for all involved in the global activity of research.

Syndicat National de l'Edition (SNE) is France's trade association of book publishers. It represents approximately 763 member companies whose combined business endeavors account for the bulk of French publishing and whose total turnover amounted to 2.9 billion € in 2023 (4,4 billion € expressed at the retail selling price). It represents the French publishing profession and aims at: advocating publishers' interests, supporting creativity by defending freedom to publish and promoting the respect of intellectual property rights, as well as promoting and defending the fixed book price. It is a member of the Federation of European Publishers (FEP) and the International Publishers Association (IPA).