5RIGHTS FOUNDATION

Copyright and AI: Protecting children's intellectual property

5Rights Foundation
Consultation Response
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Introduction

As early digital pioneers, children are already using AI technologies in all aspects of their lives – from socialising with friends[1] and playing at home to learning at school.[2] This early uptake, their natural curiosity and their still developing cognitive function means that they are much more vulnerable to risks of harm we know these technologies can pose.[3][4] Despite this, children are nowhere in the conversations that the Government, industry or society is having about AI, or the Government's plans to see these systems adopted wholesale into the economy and public services.[5]

While we welcome his consultation, the issue of intellectual property (IP) and AI is only one part of the wider consideration that must be given to how these technologies will impact us all. The Government must set out a broader strategy and bring forward regulation to ensure that children are kept safe, their rights are respected, and they can enjoy and embrace all the opportunities AI technologies can bring to their lives.

Response

We welcome this consultation. During this period of rapid growth and development of AI technologies, it is essential that the Government sets the parameters for how IP applies to AI models which rely on the mass-scraping of user works for their datasets. We also welcome the Government's broad objective within the consultation to ensure greater transparency and user control over AI systems, which is crucial for building public trust.

However, the Government's proposed approach, which will allow AI companies to scrape works for its models where users have not expressly reserved their rights, will not offer children robust protection from companies seeking to use their work for commercial purposes. This runs contrary to children's right to be protected from economic

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[1] Ofcom (2024) *Online Nation: 2024 Report*, pp. 32-38

[2] National Literacy Trust (2024) *Children, young people and teachers' use of generative AI to support literacy in 2024*

[3] Kurian, N. (2023) *'No, Alexa, no!': designing child-safe AI and protecting children from the risks of the 'empathy gap' in large language models.* Learning, Media and Technology, 1-14. DOI: https://doi.org/10.1080/17439884.2024.2367052

[4] NSPCC (2025) *Viewing Generative AI and children's safety in the round*

[5] 5Rights Foundation (2025) *UK's AI Opportunities Action Plan overlooks risks and potential for children*

exploitation as called for in the UN Convention on the Rights of the Child,[6] which the UK ratified in 1991. It also infringes on children's right to privacy[7] and their freedom of expression.[8]

Without a meaningful and appropriate way for children to express their permission for the use of their IP and consent for data processing, children will not have meaningful agency over the ways their works are used.

This is particularly important in the context of the increasing use of AI in schools, which this consultation briefly addresses. At present, the Government plans to create a 'content store' for AI and education technology (EdTech) developers trained on children's assessments[9][10] do not address how these proposals interact and meet children's rights and needs. Given what we know about the existing practices of the EdTech industry to over-collect, overuse and profit from the misuse of children's data,[11] the Government must not allow for a 'free for all' of children's IP without any intervention for children, their parents or their teachers.

The Government must rethink its proposals to ensure that children's IP is robustly safeguarded, particularly in schools where there is an expectation they will be safe from harm and commercial exploitation. In our increasingly digitised world, this is now the only period and place in a child's life where they have a reasonable expectation to not be exploited in this way.

1. **Do you agree that option 3 is most likely to meet the objectives set out above?**
2. **Which option do you prefer and why?**

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

We disagree that option 3, a data mining exception with rights reservation, will meet the needs of children or respect their rights and agency. Option 1, which would strengthen copyright licensing in all cases, offers a more appropriate model for protecting children's IP – requiring AI companies to only train their models on copyrighted works they have a license to.

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[6] United Nations (1989) Convention on the Rights of the Child, Article 32

[7] Ibid, Article 16

[8] Ibid, Article 13

[9] Department for Education (2024) *Teachers to get more trustworthy AI tech, helping them mark homework and save time*

[10] Department for Education (2025) *AI teacher tools set to break down barriers to opportunity*

[11] West, M. (2023) *An Ed-Tech Tragedy? Educational technologies and school closures in the time of COVID-19*, UNESCO

Children's unique vulnerabilities when using digital services and products

The UN Convention on the Rights of the Child[12] and its General Comment No. 25 on children's rights in relation to the digital environment,[13] of which the UK is signatory, establishes that children have the right to be protected from risks of harm and exploitation,[14] the right to privacy[15] and respect for their evolving capacities.[16]

Children are uniquely vulnerable to risks posed by AI technologies owing to their still developing cognitive and reasoning function.[17] This means that they require additional protections to keep them safe as they mature and develop their understanding of the world and critical thinking skills. Children also develop uniquely and at different rates, meaning that certain children will require specific protections at different stages of their development.[18]

In the digital world, children face risks stemming from content, contact, conduct and contracts (commercialisation), as well as cross-cutting risks that overlap with two or more of these areas.[19]

With regard to copyright, contract (or commercial) risk is relevant, in particular with the rise in the commercialisation of children's data and the unintentional, involuntary or unknowing impact of the contracts they enter into with digital service providers. The ability of AI systems to use children's IP where express permission has not been sought speaks to this risk, as these proposals would, similarly, allow for the mass-commercialisation of their work without their knowledge.

Despite this, the Government is clear in the consultation that the data mining exception in its approach would apply "for any purpose, including commercial purposes."[20] The use of children's IP and data for this intention is not appropriate and does not align with the UK's obligation to have regard to international children's rights frameworks.

Almost every digital interaction is an exchange, underpinned by an invisible transaction in which the currency is data.[21] For children, access to real-world currency (e.g. cash) is

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[12] Convention on the Rights of the Child

[13] United Nations Committee on the Rights of the Child (2021) General Comment No. 25 on children's rights in relation to the digital environment

[14] Convention on the Rights of the Child, Articles 8, 33, 34, 35 and 36

[15] Ibid, Article 16

[16] Ibid, Article 5

[17] 5Rights Foundation (2023) *Digital Childhood: Addressing childhood development milestones in the digital environment*

[18] General Comment No. 25 on children's rights in relation to the digital environment, Principle IV

[19] Livingstone, S. & Stoilova, M. (2021) *The 4Cs: Classifying Online Risk to Children*. (CO:RE Short Report Series on Key Topics). Hamburg: Leibniz-Institut für Medienforschung, Hans-Bredow-Institut. DOI: https://doi.org/10.21241/ssoar.71817

[20] Department for Science, Innovation and Technology (2025) *Copyright and AI: Consultation*, 74(a)

[21] Atabey, A., Pothong, K. & Livingstone, S. (2023) *When are commercial practices exploitative? Ensuring child rights prevail in a digital world*, Digital Futures Commission, 5Rights Foundation and London School of Economics and Political Science

often limited, meaning that the agency and control they have over their data is crucial to exercising their rights in the digital world.

Commercial (or economic) exploitation occurs when children's data is used unfairly, in a way that children do not expect or are unaware of. This includes, for example, where children's data is used to develop new products or to market and advertise directly to them.[22] This would also apply where children's IP has been used in an AI model without their knowledge in a way that is unfair to them – for example where their own original writing, creative works or opinions are replicated and/or distorted in an output performed by generative AI (GenAI) system.

Permission for the use of children's intellectual property

In the consultation, the justification for the Government's wide-ranging exception rests upon the fact that rights-holders would be able to reserve their rights "through an agreed mechanism."[23] The consultation document does provide potential mechanisms to allow for rights-holders to express their rights, but it is difficult to discern how this will apply to children in a way which supports their understanding.

It is imperative that children, as rights-holders, are able to give – or not give – their permission for their copyrighted works before it is used as training data. Permission sought must be meaningful delivered in an age-appropriate way, with explanations provided of what will happen with their IP and how it will be used. This would align with similar principles set out in the UK's data protection framework, specifically the Age Appropriate Design Code,[24] which requires that tech companies who process children's data explain their published terms – including terms of service, privacy policies and community guidelines – in age-appropriate ways for children.[25]

5Rights *Tick to Agree* research[26] establishes ways in which digital services can set out their published terms in an age-appropriate and accessible way. These principles can also be adapted for use in a mechanism to express permission for the use of their IP in AI systems. This includes:

- Using simple language to aid children's comprehension of complex terminology and concepts;
- Providing multiple formats for children in different age groups (e.g. visuals, use of gamifications and alternative text);
- Making important information prominent and easy to find; and

[22] Ibid

[23] *Copyright and AI: Consultation*, 74(c)

[24] Information Commissioner's Office (2021) *UK Age Appropriate Design Code*

[25] *UK Age Appropriate Design Code*, Standard 6 (Policies and community standards)

[26] 5Rights Foundation (2021) *Tick to Agree: Age appropriate presentation of published terms*

- Ensuring meaningful consent so that children's consent is obtained and sought, not assumed.

Emphasis should be placed in particular on ensuring meaningful consent. Without this, any mechanism to seek children's permission is worth very little. The Government should provide greater clarity as to how it will seek permission from children and ensure this process incorporates age-appropriate principles.

At the very least, we would expect the Government to carry out a child's rights impact assessment (CRIA) on this decision, publishing the full findings and mitigations required to protect children.

Use of IP in education and school settings

In this consultation, the Government recognises that issues relating to children's IP also extends to other sectors – notably education.[27] Indeed, schools are places that children should be safeguarded from risk to allow them to play and socialise in an environment that supports their growth while upholding their rights.

Since the COVID-19 pandemic, schools have widely adopted the use of EdTech products for a variety of uses – from administrative tools to learning environments used for delivering lessons or holding quizzes. However, the rapid implementation of these technologies has broadly brushed aside many of the risks on these services – notably to children's data. Many EdTech products are intended to maximise children's use of them for profit or research.[28] For example, research by Human Rights Watch[29] found evidence that EdTech services sent or granted access to children's data to advertising technology (AdTech).

As AI is embedded within these products and the wider education system, similar risks to children's IP arise.

In August 2024, the Government announced the creation of a 'content store' for developers of GenAI and EdTech products trained on UK schools data. This includes "curriculum guidance, lesson plans and anonymised pupil assessments" which the Government says "will then be used by AI companies to train their tools to generate accurate, high quality content."[30] However, it is not clear from this press release how the Government will seek permission to use children's IP or consent for their data.

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[27] *Copyright and AI: Consultation*, 99-102

[28] Digital Futures Commission (2022) *Education Data Reality: The challenges for schools in managing children's education data*

[29] Human Rights Watch (2022) *"How Dare They Peep into My Private Life?" Children's Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*

[30] *Teachers to get more trustworthy AI tech, helping them mark homework and save time*

Press releases from the Government[31] and Faculty AI,[32] who has been contracted to help develop the content store, suggests anonymisation will play a role in protecting children's data. However, even if these assessments are anonymised, children are still potentially identifiable through the work they produce – for example by a child's handwriting[33] or a written exercise that reflects their personal life or circumstance.

Anonymisation does not preclude IP or copyright issues; authored works also have a set of moral rights that are associated with them.[34]

Further, although the Department for Education (DfE) secures copyright licenses for schools,[35] it is the expectation that schools will respect children's IP.[36] However, with regards to the content store, requiring schools to manage an extensive catalogue of IP would not be right. The scope of copyright law is much broader than data protection, active for 70 years after the rights-holder has died. This has the potential to create a greater burden for schools that are already stretched for resource and would run contrary to the Government's mission to have teachers spend less time on "burdensome admin."[37] AI companies must not be allowed to push copyright management onto schools in the same way EdTech companies have absolved themselves of data protection duties by describing themselves as data processors, even where they are controllers (or joint controllers) of children's data.[38]

The Government's approach to AI and copyright within the context of the content store may prove to be a missed opportunity for driving investment into the UK's education sector, which may also have adverse financial consequences for schools. If an AI model is trained on a student's work or data which is then used in an EdTech product that is sold back to the school, it could create the perverse situation where schools buy back their own students' IP This offers no material benefit or investment to the school, with the only beneficiary the AI company. This directly contrasts children's and parents' views, who say schools should be the beneficiaries of profits made by AI systems that use children's data.[39]

Finally, there must be greater transparency as to how existing copyright practices work within the education sector. For example, regarding children's assessments, more clarity

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[31] Ibid

[32] Faculty AI (2024) *Faculty AI and expert education organisations leading programme to put safe, impactful AI in the classroom*

[33] Case C-434/16 (2017) in Ireland, *Nowak v Data Protection Commissioner*, ruled that "a handwritten examination script capable of being ascribed to an examination candidate, including any corrections made by examiners that it may contain, constitutes personal data

[34] Intellectual Property Office (2015) *Guidance: The rights granted by copyright*

[35] Department for Education (2024) *Guidance: Copyright licenses for state schools in England*

[36] Tes Magazine (2020) *Who owns a child's work? Not the teacher or the school*

[37] Department for Education (2025) *Education Secretary outlines plans to modernise education sector*

[38] Digital Futures Commission (2023) *A Blueprint for Education Data: Realising children's best interests in digitised education*, 5Rights Foundation, London School of Economics and Political Science

[39] Responsible Technology Adoption Unit & Department for Education (2024) *Research on public attitudes towards the use of AI n education*, pp. 37-38

is needed to understand how each body (schools, exam boards and the Government) already obtain permissions for the use of children's intellectual property – for example to reproduce children's exam answers provided in sample papers.

Children's and parents' views on the use of IP in school settings

Engagement with stakeholders to understand the impact changes to IP will have is important and we welcome that the Government has committed to taking into account the views of children, their parents, carers and teachers.[40]

The Government's own research[41] indicates that children and parents have concerns about the use of AI in schools. In particular, many parents were concerned about how children's data would be used and sought reassurances that data generated by AI systems from children's interactions would not be used for non-educational purposes.

The research also reveals that parents and children have little trust in tech companies for them to be granted control over AI for the use of their children's work and data.[42] Participants assumed that tech companies, without adequate oversight, would sell on their data with little concern for children's privacy and wellbeing.[43] The Government's data mining exception does little to alleviate these concerns.

Regarding IP, the research illustrates that children and parents are concerned about the use of coursework, artwork, mock exams and exam answers in AI systems. Although many parents expressed concerns about the use of AI in systems for plagiarism, some were unconvinced with AI's ability to assess subjects that require nuanced thinking, such as PHSE, or creative subjects, like Art and English. More clarity on copyright is needed to also build children's and parents' understanding of the rules – one parent noted that current copyright rules are not very clear.[44]

As part of the research, children themselves shared that they were uncomfortable with their IP being used in schools. In particular, one student noted it was:

> **"Not okay to share [homework] – because your schoolwork is your intellectual property, it's you and you did that. If the AI takes that then you can't copyright it."[45]**
>
> Post-GCSE pupil, Birmingham

The Government must respect children's desire to have their IP protected and provide effective routes for them to clearly declare their permission for their work to be used

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[40] *Copyright and AI: Consultation*, 101

[41] *Research on public attitudes towards the use of AI n education*

[42] Ibid, p. 32

[43] Ibid

[44] Ibid, p. 26

[45] Ibid, p. 25

before it is used to train an AI system. In the development of wider policies to allow for the greater use of AI in schools, the Government must continually consult children, consider their views, and reflect their wishes in policy outputs to ensure they are well represented.

Recommendations

To ensure that children's intellectual property is protected and that their rights are upheld, the Government must:

- Bring forward a broader strategy for the protection of children from the risks posed by AI by introducing robust legislation and regulations that allows children to use these systems safely, confidently and independently;
- Consider the impact of children's intellectual property separately from the intellectual property of adults, recognising that children have a right to be protected from commercial misuse – particularly in a school environment;
- Undertake a thorough child's rights impact assessment to understand how the policy will align with the UK's international children's rights obligations; and
- Ensure that any mechanism used to seek children's consent is age-appropriate and developed alongside children, their parents and teachers – taking into account their views and opinions.

About 5Rights Foundation

5Rights develops new policy, creates innovative frameworks, develops technical standards, publishes research, challenges received narratives and ensures that children's rights and needs are recognised and prioritised in the digital world. While 5Rights works exclusively on behalf of and with children and young people under 18, our solutions and strategies are relevant to many other communities.

Our focus is on implementable change and our work is cited and used widely around the world. We work with governments, inter-governmental institutions, professional associations, academics, businesses, and children, so that digital products and services can impact positively on the lived experiences of young people.

5Rights is a registered charity. Charity number: 1178581.