



INDEPENDENT MUSIC PUBLISHERS
INTERNATIONAL FORUM

IMPF Submission Canada Consultation on Copyright in the Age of Generative Artificial Intelligence

AI [Canada](#) (November 2023)

IMPF (Independent Music Publishers International Forum) represents 200 of the world's leading independent music publishing companies. We are engaged in international AI related policy discussions, and have submitted to enquiries in the United States, the European Union ("AI Act"), the United Kingdom and Australia. In October 2023, we published [ethical guidelines](#) on generative Artificial Intelligence welcoming technological developments in as far as they improve our business and the capacity to assist the writers we represent. These guidelines are aimed to enhance the relationship between the creative side, in our case writers and music publishers, and tech companies providing AI applications. This should ultimately enable transparent collaboration for the benefit of all stakeholders including users of AI applications. Given the rights we represent our comments concern musical and literary works only.

I. Introduction

We welcome this timely consultation. A legally, politically, and commercially successful AI ecosystem depends upon all relevant parts working in tandem for this common goal. The fundamental starting point for the collaboration is compliance with the law, in this case mainly copyright law but also other rules such as data protection and unfair competition.

Tech companies providing AI applications (run by various, sometimes third-party entities selling datasets, ultimately for commercial purposes) scrape the internet to collect data for machine learning. This involves many rights which require express permission by rightsholders including copyright for the reproductions. In our view such requirement is not superseded by any of the potentially available exceptions (e.g., text and data mining, temporary copying, fair use depending on the jurisdiction). In the absence of binding Canadian court decisions on the application of exceptions, general copyright rules apply and the express permission by the creator and the rightsholder is required. In any case, an exception would only apply to copyright but not to other rights such as [data protection](#) and [unfair competition rules](#).

Additionally, data scraping is often expressly prohibited in the Terms and Conditions of the scraped websites; this constitutes a legally binding express prohibition which needs to be respected.

II. Text and data mining

Three preliminary observations on the application of text and data mining (TDM) exceptions in the machine learning process:

- Copyright laws is not the only consideration relating to activities by artificial intelligence service providers; consequentially, we recommend that Government also seeks information on other applicable legal instruments including data protection and unfair competition rules.
- Even within copyright law, other activities including communication to the public, might require a licence; such activities by definition are not covered under a (text and data) mining exception.
- We generally challenge the notion that musical and literary works are only referred to as data; whilst this might suit the purpose of commercial service providers, music and words are much more important for individual humans and society as a whole than "data".

Clarity around copyright legislation and TDM in Canada is important but it is for judges to interpret the law. We are concerned about the separation of power if the interpretation of existing laws is moved from judges to policymakers.

Text and data mining exceptions should not be used to avoid requesting licences. We urge caution should government decide to amend legislation to cater for the asserted needs of a specific sector to the detriment of another sector.

Licensing constitutes the general manner in which the use of human creative talent is permitted. The music publishing industry has been licensing novel uses in response to technological developments from mechanical musical boxes through radio to music streaming for centuries. However, in order to provide such a license, it needs to be requested in the first place, providing details of the requirements of AI service provider, including the potential uses of the output generated on the basis of our creative works. Evidently, it is the choice of the creator and/ or the rightsholder whether or not to allow specific uses. And under which conditions. Observations on licensing are academic if such licences are not requested in practice.

We note that the consultation asks about the details of potential licenses and the potential level of appropriate remuneration. We are concerned about the potential competition law aspect of this question. In general, licensing conditions depend on the individual creator or rightsholder as well as the musical and literary works in question. Any negotiated licence needs to reflect the actual value of an individual song for the creator and/or rightsholder as well as the individual user.

The requirement for such express permission should not be circumvented by “offshoring” the machine learning process to countries setting themselves up as copyright havens. Government should consider guidance to ensure that tech companies do not manipulate jurisdictional rules to flout domestic copyright requirements. Any such guidance should also consider copyright infringements committed by AI service providers in the past; we note that most available AI applications are based on datasets of creative works which have already been ingested, mostly without permission.

Record keeping is an important element of transparency. AI service providers, including AI developers and mere dataset providers should be obliged to keep records of, or disclose what copyright-protected content was used in the training of AI systems.

Internationally, we note that many governments are looking into national approaches without any clear approach crystallising (in particular given the absence of court decisions). However, we refer government to the many useful ethical guidelines put forward by rights holders’ organisations in various creative sectors such as photo [libraries](#) or the Human Artistry [Campaign](#).

III. Authorship and ownership of works generated by AI

We are concerned about the possibility of the perverse situation should AI service providers copy musical and literary works without remuneration for the creator or the rightsholder, generating competing works protected by copyright, competing with the original music they have unduly copied.

Questions of authorship or ownership in relation to AI require a clear differentiation between AI-assisted and AI-generated works.

- Creators using AI applications as a tool (AI assisted): the authors are generally the initial owners of the copyright in the works they create. This is based on general copyright concepts.
- Purely AI generated works (i.e., without human intervention) are different. Stating the obvious, artificial intelligence applications apply algorithms to existing datasets to make predictions/interferences for new settings. It is very sophisticated but in no way creative, a purely stochastic process. In fact: neither artificial nor intelligent.

Copyright rewards the expression of human creativity and talent, which self-evidently is lacking without human input. A work generated by an artificial intelligence application without any human input, is currently not protected by copyright.

To our knowledge this is the case everywhere in the world. For example, in India, where an AI application has been registered as a co-owner of an AI generated painting (“Suryast”), human contribution was required to establish copyright protection in the first place. It was not possible to register the AI application (Raghav) as sole owner of the AI generated painting; a human creator was required to establish copyright protection. Based on philosophical, historical, and legal justifications of copyright (amongst others as a human right under the Universal Declaration of Human Rights) most jurisdictions do not grant copyright protection for purely AI generated works, amongst many the United States (Copyright Office memorandum concerning the registration of copyright) and the European Union (CJEU jurisprudence focusing on the author’s own intellectual creation expressing their personality).

However, we note the practical challenges in establishing whether a work is created by a human with the assistance of an AI application or generated without any human involvement. A human will invariably be involved at some stage, even if only “prompting” the AI application. The main challenge however is the delineation between AI assisted works and AI generated works.

We suggest that government provide clarity for instance by issuing guidance on the differentiation between AI assisted or AI generated works and their respective copyright situation.

In this context, it is worthwhile referring to the need of adequate labelling of AI generated works as such. This will particularly ensure the protection of consumers to make an informed decision on what product or service they want to acquire. Aside from personal preferences, consumers might reject AI generated works due to their high energy costs and the environmental impact of their production.

IV. Infringement and liability regarding AI

We note the challenges to establish copyright infringement by AI generated output. In the absence of record keeping, it is impossible for rightsholders to determine whether an AI developer has used their works (to our knowledge no technological approach exists yet to obtain such information a posteriori). The commercial attractiveness of AI generated output depends mainly on high quality datasets of creative works. Record keeping of the musical and literary works ingested in the machine learning process is key in this regard as well. It constitutes good business practice to provide information about the constituent parts of a product or service (similar to the requirements on fair trade clothing, where the source of every part of the final product has to be notified to qualify for fair trade certification).

Infringement by the output of AI applications presumably follows “normal” copyright enforcement rules when identifying infringement of previous works or derivative works. We note that a variety of natural or legal persons can be solely or jointly liable including the developer of a generative AI model, the developer of the system incorporating that model, end users of the system but also third parties providing the datasets; and more generally, the person/entity ultimately benefiting from the AI generated output. Government might address the scope of potentially liable persons and entities.

We suggest that measures which business can take to mitigate risks of liability for infringing AI-generated works consists in simply complying with the law, i.e., by obtaining the required permissions. We note the related discussions in the United Kingdom: original plans to introduce a specific exception for text and data mining for any purpose including machine learning were abandoned in early 2023 and replaced by discussions on a code of good practice between all stakeholders. Such a code of practice can only be successful if participants agree on the overriding principle of compliance with existing laws (including but not limited to copyright).

V. Miscellaneous

We note the importance of personality or publicity rights to address the situation where AI is used to imitate a person's likeness, voice, or image. When a distinctive voice of a professional singer is widely known and is deliberately used in order to sell a product, this constitutes misappropriation. It is important to note that the resulting damages can be economic or otherwise (such as damage to their reputation or goodwill or causing distress).



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IMPF (Independent Music Publishers International Forum) is the global trade and advocacy body for independent music publishers worldwide. IMPF helps to stimulate a more favourable business environment in different territories and jurisdictions for artistic, cultural, and commercial diversity for its music publisher members and the songwriters and composers they represent. www.impforum.org