



**BRAID Researchers' Response to the call for contributions on artificial intelligence and creativity issued by the UN Special Rapporteur in the field of cultural rights, Alexandra Xanthaki.**

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2. We are an interdisciplinary group of researchers in the Bridging Responsible AI Divides (BRAID) Programme.<sup>1</sup> Views are our own and do not reflect those of our institutions, organisations or individuals partnered with us in our projects, the BRAID programme as a whole, or other BRAID researchers.
3. We welcome the Special Rapporteur's initiative of investigating the implications of AI for creativity from a cultural rights perspective.

**General**

**Q1. What are the main challenges posed by AI to human creativity (understood as encompassing artistic creativity but also all other types of creativity)**

4. AI not only provokes aesthetic reactions, it can structure the very landscape of our needs, desires and possibilities: the fabric of our culture.<sup>2</sup> Creativity is always bounded and relies on the appropriation of constraints.<sup>3</sup> Where AI poses a risk is in bounding creativity in ways that entrench

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<sup>1</sup> BRAID is a UK-wide programme dedicated to integrating Arts and Humanities research more fully into the Responsible AI ecosystem, as well as bridging the divides between academic, industry, policy and regulatory work on responsible AI (<https://braiduk.org/>). BRAID is funded by the Arts and Humanities Research Council (AHRC) (grant number AH/X007146/1).

<sup>2</sup> Airoldi, Massimo. *Machine habitus: Toward a sociology of algorithms*. John Wiley & Sons, 2021.

<sup>3</sup> Vygotsky, Lev Semenovich. "Imagination and creativity in childhood." *Journal of Russian & East European Psychology* 42, no. 1 (2004): 7-97.

social arrangements or favour the views of powerful actors (see, e.g. studies on bias in labelling<sup>4</sup>). AI can cause an aesthetic response that holds the outward impression of creativity while nudging users towards dominant cultural associations, for example, shaping music tastes through the Spotify algorithm towards major artists working within definable genres.<sup>5</sup>

5. Cognitive scientist and philosopher Margaret Boden suggests three features of creativity: “Creativity is the ability to come up with ideas or artefacts that are new, surprising and valuable.”<sup>6</sup> We reflect below on the challenges posed by AI to human creativity on the basis of these three features. By AI we refer to state-of-the-art Generative AI (GenAI) models, like Large Language Models or text-to-image generators.
6. *Novelty*: GenAI models are trained on large datasets to learn a probabilistic representation of the data, which they then use to generate new outputs by sampling from this learned distribution. It is therefore possible to push-back against the argument that these models produce anything that is *novel*, as they regurgitate content that has been previously created by others.<sup>7</sup> The growing use of these models risks leading to content homogenisation, as they remain fundamentally designed to reproduce statistically average patterns from their training data, reinforcing the most common styles.<sup>8</sup> In addition, unconventional or marginalised forms of expression are often underrepresented in the datasets, leading to representation bias in the output.<sup>9</sup>
7. *Surprise*: The rapid development of GenAI technology and the quality of its outcomes undoubtedly provokes a reaction of surprise in the audience. However, the excessive hype surrounding GenAI<sup>10</sup> presents several risks, like the overestimation of its capabilities, the tendency to anthropomorphise AI and misconceptualise what “intelligence” means, the risk of obscuring concerns about the use of proprietary materials in training data, and short-termism in research, allocation of resources, and regulation development. One of the elements that fuels hype in GenAI is their black box nature. More transparency on how the models work and have been trained might help mitigate this risk.<sup>11</sup> Once attention shifts from the product of creativity to the process itself,

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<sup>4</sup> Miceli, Milagros, Martin Schuessler, and Tianling Yang. “Between subjectivity and imposition: Power dynamics in data annotation for computer vision.” *Proceedings of the ACM on Human-Computer Interaction* 4, no. CSCW2 (2020): 1-25; Wang, Ding, Mark Díaz, Alicia Parrish, Lora Aroyo, Chris Homan, Greg Serapio-García, Vinodkumar Prabhakaran, and Alex Taylor. “All that agrees is not gold: evaluating ground truth labels and dialogue content for safety.” *Preprint at Google Research* (2023) <https://research.google/pubs/all-that-agrees-is-not-gold-evaluating-ground-truth-labels-and-dialogue-content-for-safety>

<sup>5</sup> Alroldi, *Machine Habitus*, op. cit. 84-131.

<sup>6</sup> Boden, Margaret. *The creative mind: Myths and mechanisms* (2nd ed.). London: Routledge, 2004. p. 1.

<sup>7</sup> Doshi, A. R., Hauser, O. P. Generative AI enhances individual creativity but reduces the collective diversity of novel content. *Science Advances*, 10, 28, 2024 doi:10.1126/sciadv.adn5290.

<sup>8</sup> O’Donnell, James. “AI is coming for music, too”. *MIT Technology Review*, May/June 2025, pp. 36-41.

<sup>9</sup> Bird, Charlotte, Eddie Ungless, and Atoosa Kasirzadeh. “Typology of risks of generative text-to-image models.” *Proceedings of the 2023 AAAI/ACM Conference on AI, Ethics, and Society* (2023).

<sup>10</sup> Leaver, Tama, and Suzanne Srdarov. “ChatGPT isn’t magic: The hype and hypocrisy of Generative Artificial Intelligence (AI) rhetoric.” *M/c Journal* 26.5 (2023)

<sup>11</sup> Sun, Jiao et al. “Investigating Explainability of Generative AI for Code through Scenario-based Design”. In *Proceedings of the 27th International Conference on Intelligent User Interfaces (IUI '22)*. Association for Computing Machinery, New York, NY, USA, (2022), pp. 212–228. <https://doi.org/10.1145/3490099.3511119>.

and sufficient information is available about how that process unfolds, the sense of surprise associated with the seemingly mystical nature of AI may fade.

8. *Value*: Creators and businesses are under an increasing pressure of using AI at all costs, driven by hype and competitive anxiety. The risk associated with this is the reduction of creative processes to productivity and efficiency metrics. The increased use of GenAI models also leads to environmental costs, as running these models contributes significantly to carbon emissions and increased electricity and water consumption.<sup>12</sup> There is an urgent need to stop and reflect on *why* we want to use AI, on what the *value* of integrating it in our practices is, before pressing the “generate” button.

## **Q2. How do we understand the notion of creativity?**

9. These three features of creativity may further be divided into two socio psychological processes. Neuroscientist VS Ramachandran<sup>13</sup> describes experiments in which seagull chicks are excited by the sight of two particularly spaced dots on their mother’s beak. But they are even more excited when the experimenter presents them with two lines on a stick. Ramachandran suggests that this is the dynamic in something like a Picasso painting: that creative products magnify aspects of our sensitivity to the world. This dimension may be called *aesthetic reaction*. A second dialectically interrelated dimension of creativity involves normative appraisal: this is the sense in which the creative product opens up new possibilities/affordances for ourselves and for others because it is situated in a wider sociocultural fabric. It helps us express, say, or feel something in a new or different way. The creative product/process embodies our norms in ways that make it possible to engage with and reinterpret them from new perspectives. For this reason, Vygotsky argues that creativity and play are the foundation for freedom or agency.<sup>14</sup> This dimension may be called *enaction of norms*. Our norms are the basis of our identities and how we make sense of the world and find it meaningful.
10. The value of creativity can in itself be interpreted in many ways, e.g., value as a marker of usefulness, as communal or institutional recognition, or as relevance and appropriateness to the context. If we switch from considering creativity as an attribute of a *product* to an attribute of a *process*, however, another feature takes center stage: *agency*. A process, and correspondingly a product, cannot be deemed creative, unless it is carried out by an agent with a sufficient level of intentionality.<sup>15</sup> It is to the extent that creativity expresses our socially conditioned intentionality that it affords us freedom.

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<sup>12</sup> Zewe, Adam. “Explained: Generative AI’s environmental impact”, *MIT News*, January 17, 2025.

<sup>13</sup> Ramachandran, Vilayanur, and William Hirstein. “The science of art: A neurological theory of aesthetic experience.” *Journal of Consciousness Studies* 6, no. 6-7 (1999): 15-51.

<sup>14</sup> Maidansky, Andrey. “Lev Vygotsky’s psychology of freedom.” *Russian Studies in Philosophy* 59, no. 4 (2021): 275-289.

<sup>15</sup> Gaut, Berys. “The philosophy of creativity”. *Philosophy Compass*, 5, (2010), 1034-1046. doi: 10.1111/j.1747-9991.2010.00351.x. Moruzzi, Caterina. “Creative Agents: Rethinking Agency and Creativity in Human and Artificial Systems”, *Journal of Aesthetics and Phenomenology*, 9(2), (2023): 245-268, doi: 10.1080/20539320.2022.2150470.

**Q3. Can AI generated products be considered “originals”, and if so, what are the consequences? What is artistic integrity in relation to AI use?**

11. We first need to clarify what we mean by “original”. We will first consider two interpretations in the philosophy and theory of creativity studies: “novel” and “authentic”.
12. *Original = Novel*: it is possible to support the argument that GenAI does not create novel content, but merely replicates existing one.<sup>16</sup> The usual counterargument is that also human creators copy from others.<sup>17</sup> However, the way in which humans copy and AI copies is different in at least two respects. The first is a matter of *scale*: it would be biologically impossible for a human to access the amount of data that AI models have access to. The second results from the way in which AI models work. While AI searches for the statistical average in the dataset, to reproduce what might have more chance of being liked by the average user, human creators search for the outlier, the quirk that makes their creation stand out from others. The awareness of the amount of proprietary data that contribute to training the AI models, often without consent, may raise qualms about the integrity of using AI in one’s own practice. There are, however, cases of creators who still manage to integrate AI in their creative practice, preserving at the same time their artistic integrity. They do so either by training their own models on data that they own or that is ethically sourced, or by using AI as an inspiration tool only.<sup>18</sup>
13. *Original = Authentic*: as with creativity, there are multiple definitions for “authenticity”.<sup>19</sup> If we consider nominal authenticity, i.e. authenticity measured in respect to the origin of an object then similar points to the ones raised for the original = novel case can apply. If we consider other interpretations of the term, like expressive authenticity, i.e., the ability to express the values and beliefs of its creator or society,<sup>20</sup> there are two possible directions the argument can take. On one hand, it can be argued that, thanks to the sheer amount of data that GenAI models are trained on, their outcomes are “authentic” to the average viewpoint of part of the global population (mainly of the Global North). On the other hand, it is more difficult to justify the authenticity of the outcome for the individual creator using the model, given the limited granularity of control, typically restricted to language prompts, that the creator can exert over the process. Here the question of integrity also relates to the question around value: we probably would value less products and experiences which do not reflect the personal identity and narrative of their creators.
14. In *Tradition and the Individual Talent*, T.S. Eliot famously suggests that every new work of art simultaneously changes every work that preceded it: the new work lets us see what came before from a new vantage point. As Terrence Tao says of good mathematics, creative production is in some ways “on to something” in light of how it builds on earlier achievements or encourages new

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<sup>16</sup> O’Donnell, James. “AI is coming for music, too”. *MIT Technology Review*, May/June 2025, pp. 36-41.

<sup>17</sup> Kleon, Austin. *Steal like an artist: 10 things nobody told you about being creative*, 2012. Hachette UK.

<sup>18</sup> Abuzurraq, Ahmed M., and Philippe Pasquier. “Towards Personalizing Generative AI with Small Data for Co-Creation in the Visual Arts”. *IUI workshops* (2024).

<sup>19</sup> Moruzzi, Caterina. “An Ontological Justification for Contextual Authenticity”, *The British Journal of Aesthetics* 59(4) (2019): 413–427.

<sup>20</sup> Dutton, Denis. “Authenticity in Art”. In *The Oxford Handbook of Aesthetics*. Oxford University Press, Oxford, 2005. <https://doi.org/10.1093/oxfordhb/9780199279456.003.0014>.

ones.<sup>21</sup> This means that a creative product is in some way directed towards a world with a tradition and history. While Eliot, writing in the shadow of the Enlightenment, still thought of singular worlds, contemporary theorists are sensitive to the plural non-overlapping traditions that can ground a community's creative practice. In MacIntyre's framing, something could be creative in the practices of a fishing village, a classroom, or a family.<sup>22</sup> Much of the creativity around us is opaque to us because we are not participating in the worlds in which it is enacted. Creativity cannot exist in a vacuum, but only in relation to its role in a living practice. There is no *originality* in absolute terms, but only relative to a particular process or practice. As MacIntyre frames it, the choices we make in a practice ultimately matter to us because they structure our (necessarily partial) relation to our world as mutually dependent vulnerable creatures.<sup>23</sup>

15. Artificial intelligence can be the origin of an aesthetic reaction but its processes do not enact norms. After any brush stroke or filter, a great painter or electronic musician could be asked what they were trying to do. An AI cannot do the same because its choices are not the expression of its precarious relation to its world.<sup>24</sup> In contrast to human art, AI art is not part of the practices the artificial agent draws on to sustain itself and make sense of its world. For this reason, AI tends to entrench norms rather than developing them.
16. It is however important not to conflate the discussions on originality in philosophy and creativity studies with the legal definition of originality in copyright law. If policy makers wish to examine whether there is originality in AI outputs from a copyright perspective, we should refer to its legal definition. For copyright law, novelty is irrelevant.<sup>25</sup> Different countries adopt different originality standards. In the EU and UK, a work is original if it expresses the "author's own intellectual creation."<sup>26</sup> An intellectual creation is an author's own if it reflects the "author's personality", which is the case if the author expressed their creative abilities by making "free and creative choices".<sup>27</sup> In the US, a work is original if it is an "independent creation" that entails a "modicum of creativity".<sup>28</sup>
17. Therefore, if an AI output bears the originality of a human creator, it should be deserving of copyright protection regardless of whether or not it is produced with the aid of a machine.

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<sup>21</sup> <https://arxiv.org/abs/math/0702396>

<sup>22</sup> MacIntyre, Alasdair. "Whose justice? Which rationality?" In *The New Social Theory Reader*, Routledge, 2020, pp. 130-137.

<sup>23</sup> MacIntyre, Alasdair. *Dependent rational animals: Why human beings need the virtues*. Open Court, 1999.

<sup>24</sup> Jaeger, Johannes, Anna Riedl, Alex Djedovic, John Vervaeke, and Denis Walsh. "Naturalizing relevance realization: why agency and cognition are fundamentally not computational." *Frontiers in psychology* 15 (2024): 1362658.

<sup>25</sup> Rahmatian, A. "Originality in UK Copyright Law: The Old 'Skill and Labour' Doctrine Under Pressure". *IIC* 44, (2013), pp. 4–34. <https://doi.org/10.1007/s40319-012-0003-4>.

<sup>26</sup> CJEU Case C-5/08, *Infopaq v. Danske*. Adopting *Infopaq* in the UK, see: Court of Appeal *THJ Systems Ltd v Sheridan* [2023] EWCA Civ 1354.

<sup>27</sup> CJEU Case C-145/10, *Painer v. Standard*.

<sup>28</sup> *Feist v. Rural* 499 U.S. 340 (1991).

## ***Policies and practices***

### ***Q4. Which measures have been taken to protect human creativity from threats posed by AI? What measure(s) would best achieve this aim?***

18. This is a current topic of discussion and controversy, as countries attempt to regulate AI. The UK has recently launched a consultation on copyright and AI. BRAID Researchers' response expressed concerns about the proposed exception to copyright law for "text and data mining" (TDM) for commercial uses with rights reservation (i.e. opt-out), arguing that it prioritised technological advancement without responsibly accounting for the impact on creators, the research and cultural heritage communities, the broader UK economy, and the cultural life of the nation.<sup>29</sup> The response also discussed the issues with the existing TDM exception for non-commercial research, highlighting the importance of an exception for AI-driven research, and the need for further engaging the heritage and research sectors in AI and copyright policy.<sup>30</sup> The response addressed the benefits of greater transparency in AI development, with suggestions for mandatory disclosure of sources of training data for AI models to ensure compliance with copyright laws and ethical standards.<sup>31</sup>
19. As regards copyrightability of AI outputs, recent report by the US Copyright Office "concludes that the outputs of generative AI can be protected by copyright only where a human author has determined sufficient expressive elements."<sup>32</sup>
20. Framing this discussion in a cultural rights framework<sup>33</sup> offer important mechanisms for the recalibration of legislations such as copyright, helping achieve the appropriate balance between the values at stake i.e. protecting core interests of creators and communities, while addressing bias and decolonial concerns, and promoting responsible openness and access to culture.<sup>34</sup>

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<sup>29</sup> See: Sichani, A.-M., Westenberger, P., Bryan-Kinns, N., Bunz, M., Collett, C., Heravi, B., Miltner, K. M., Moruzzi, C., & Townsend, B. A. (2025). BRAID researchers' response to UK Government copyright and AI consultation. Zenodo. <https://doi.org/10.5281/zenodo.14945987>

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

<sup>32</sup> Copyright Office Releases Part 2 of Artificial Intelligence Report: <https://newsroom.loc.gov/news/copyright-office-releases-part-2-of-artificial-intelligence-report/s/f3959c36-d616-498d-b8f9-67641fd18bab>

<sup>33</sup> Article 15 of the United Nations International Covenant on Economic Social and Cultural Rights 1966 (ICESCR), which "recognize the right of everyone: (a) To take part in cultural life" and "(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

<sup>34</sup> See Paula Westenberger's research on article 15 of the UN ICESCR, in light of General Comments 17 and 21: Westenberger, P. "Copyright Protection of Illegal Street and Graffiti Artworks", in Bonadio, E. (ed.) *The Cambridge Handbook of Copyright in Street Art and Graffiti*. Cambridge University Press. 2019, pp. 55 - 70; Westenberger P., "Cultural Palimpsests: Artistic Reuses in Brazil in the Context of Copyright and Human Rights" (PhD thesis, Queen Mary University of London 2017); Westenberger, P. "Digital Culture, Copyright and the Orphan Works Issue: a view from Brazil", in Fortes, P., Boratti, L., Palacios Lleras, A. and Daly, T. (eds.) *Law and Policy in Latin America Transforming Courts, Institutions, and Rights*. Palgrave Macmillan. 2017, pp. 293 - 310.

**Q5. Please provide examples of good practices to promote human creativity through AI.**

21. Amidst the race for massive corporations to make returns for investors, there are many culture creators working closely with technologists on new ideas, approaches and techniques that lead to novel, surprising and expressive cultural objects. Some of these are well-funded and impressively presented, such as Serpentine gallery's approach in the UK.<sup>35</sup> Other practitioners combine traditional practices with AI as part of the craft of cultural production such as the Intelligent Instrument Lab in Iceland.<sup>36</sup> IRCAM released RAVE, a technology that enables artists to create and then explore their own sonic models. DatamindAudio have built a commercial project on top of this technology with an artists marketplace where artists are involved in the creation and curation of their models and fairly remunerated for their contribution.<sup>37</sup> Artist collective *Spawning* has developed PD12M, a publicly available dataset that offers 12.4 million public domain/CC0 image-caption pairs that have been curated to train generative text-to-image models.<sup>38</sup> Huggingface<sup>39</sup> hosts terabytes of openly shared data that enable artists to leverage AI in their practices without access to expensive compute or storage. This community has contributions from commercial interests, independent creatives and adept technologists.
22. Furthermore, properly attributed large models need to be responsibly shared. Efficient models that can run locally without distributed GPU needs are a future imperative. Users would benefit from knowing the carbon costs of using large and complex models hosted centrally. Mid-sized corporations and educational establishments are running local AI models and providing a secure intermediary between larger models. For example, the University of Edinburgh has developed the Edinburgh Language Model (ELM),<sup>40</sup> an interface to ChatGPT accessible to everyone in the institution but where data offered up to the model remains in the UK and is not uploaded to OpenAI's servers.
23. Very large, one-size-fits-all models offer less utility for cultural producers, artists and creators than more finely tuned and bespoke models. In order to produce these more finely tuned systems, artists need to actually create cultural material with which to construct the models in the first place. This should place renewed emphasis on the importance of cultural production in all its forms and in the finding and discovery of 'a voice' with which to make a model from.
24. If we can support artists in the building and development of their practices, assist them in meaningful modes of augmentation of that work then models can be made that continue to behave in ways adjacent to the artist and under the artist's control. However, if we allow AI models to generate more cultural materials without supporting artists, then the practices of composition, performance, writing, painting, drawing, graphic design will fade in society. There will be fewer people composing, creating, painting, writing.

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<sup>35</sup> <https://www.serpentinegalleries.org/arts-technologies/artificial-intelligence/>

<sup>36</sup> <https://iil.is/>

<sup>37</sup> <https://datamindaudio.ai/>

<sup>38</sup> <https://huggingface.co/datasets/Spawning/PD12M>

<sup>39</sup> <https://huggingface.co/>

<sup>40</sup> <https://information-services.ed.ac.uk/computing/comms-and-collab/elm>

25. Additionally, it is important to recognise new roles, job-titles and responsibilities emerging from these new tools. Model Reliability Engineers who test and build models, checking that they work as expected. Data augmentation and pre-training processors will have an influential role in the way bespoke models will behave and model curators may have significant creative roles at institutional levels. Data stewards and machine learning librarians also play a crucial role in supporting creatives in the responsible adoption of AI, offering guidance on ethical data use, documentation practices, and the integration of responsible curated datasets into artistic workflows.
26. Fairly Trained<sup>41</sup> is a non-profit that certifies GenAI companies for training data practices that respect creators' rights. Its core offering, the Licensed Model (L) Certification, is awarded to AI providers that take a consent-based, ethical approach—ensuring their models are not trained on copyrighted content without appropriate licenses. This certification can apply to an entire company, a specific product, or an individual model within a broader system.
27. Another example of best practice around human creativity and AI can be found in the Prompted Peculiar International AI Prize 2025, the T&C's of which include clauses on IP, indigenous rights, moral rights, and personal data.<sup>42</sup> It is important to develop such AI policies and T&C's in the cultural sector so that the great potential of AI-mediated creativity can be reached responsibly.
28. There are a range of artists who are currently using AI in unique and creative ways in their work. These artists not only use various types of AI as tools in their artistic practice, but the artwork that they produce interrogate and critique AI epistemologies, processes, and models, often from the perspective of minoritised or marginalised groups. Berlin-based artists Holly Herndon and Mat Dryhurst have produced a series of artworks that explore “to the intersection of AI, music, and digital sovereignty”,<sup>43</sup> including AI digital twin Holly+<sup>44</sup>, AI model xhairymutantx<sup>45</sup>, and audio installation The Call.<sup>46</sup> British artist Jake Elwes<sup>47</sup> has been using AI since 2016 to highlight and critique its biases. His work, such as the Zizi Project,<sup>48</sup> looks to ‘queer’ algorithmic and machine learning technologies and highlight the value of inclusive creative practices. Amelia Winger-Bearskin is an artist from the Seneca-Cayuga Nation of Oklahoma who uses “new kinds of technologies to tell new kinds of stories”.<sup>49</sup> Using AI as “a creative medium and conceptual framework”, she creates artworks on urgent issues such as climate justice and homelessness that incorporate an indigenous perspective. African American visual artist Dr Nettrice R. Gaskins

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<sup>41</sup> <https://www.fairlytrained.org/>

<sup>42</sup> <https://ballaratfoto.org/prompted-peculiar-international-ai-prize-2025/>

<sup>43</sup> [https://www.instagram.com/holly\\_herndon](https://www.instagram.com/holly_herndon)

<sup>44</sup> <https://holly.plus/>

<sup>45</sup> <https://xhairymutantx.whitney.org/>

<sup>46</sup> <https://www.serpentinegalleries.org/whats-on/holly-herndon-mat-dryhurst-the-call>

<sup>47</sup> [www.jakeelwes.com](http://www.jakeelwes.com)

<sup>48</sup> [https://gazelliarthouse.com/usr/documents/exhibitions/press\\_release\\_url/138/jake-elwes-zizi-queering-the-dataset-july-august-2021-1-.pdf](https://gazelliarthouse.com/usr/documents/exhibitions/press_release_url/138/jake-elwes-zizi-queering-the-dataset-july-august-2021-1-.pdf)

<sup>49</sup> [www.studioamelia.com](http://www.studioamelia.com)

uses algorithms and machine learning to create visual art in a practice that she calls “techno-vernacular creativity”.<sup>50</sup> She is most well known for her AI-generated portraits, which have been featured in the Smithsonian and the Museum of Contemporary African Diasporan Art. Many artists globally use AI to do innovative, thought-provoking creative work, including Lex Fefegha,<sup>51</sup> Eryk Salvaggio,<sup>52</sup> Anna Ridler,<sup>53</sup> and Tim Murray-Browne.<sup>54</sup> These artists demonstrate how, more than a threat to creative practice, AI can be both tool and subject of groundbreaking, challenging art.

29. In the context of Open Culture and the OpenGLAM<sup>55</sup> movement, the open sharing of cultural heritage datasets plays a vital role in supporting scholarly interpretation and artistic and creative reuse. By removing access barriers and clarifying licensing, open data empowers artists, designers, and other creative practitioners to reinterpret, remix, and transform cultural materials into new works. To ensure reuse is responsible in AI contexts, clear documentation must be underpinned by policy and standardised practices. Existing tools and practices like data cards, datasheets,<sup>56</sup> and model cards offer practical templates to ensure ethical and contextual considerations of cultural heritage data in creative and artistic AI-enabled applications.
30. Promoting creativity comes hand in hand with promoting thriving research and heritage environments, and in this respect, it is important to ensure that AI-driven research and heritage management is supported by appropriate legislation, and that the relevant sectors and stakeholders are consulted.<sup>57</sup>
31. While public consultations should be encouraged as examples of best practice, it is important that these are written in a manner that is clear, accessible and inviting to sectors that are often in the margins of policy debates. Current consultations in the UK appear to place more emphasis on industries (AI v. creative industries), while stakeholders such as public sector/heritage organisations are not sufficiently emphasised.<sup>58</sup> It is important to more meaningfully involve, in policy discussions, a wider variety of stakeholders adopting or affected by AI technology. This would allow the understanding of what are the relevant AI technologies at stake (rather than predominantly focussing on GenAI), barriers faced by different sectors (for example, heritage and research, rather than only AI and creative industries), and how to regulate the specific uses by

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<sup>50</sup> [www.nettricegaskins.com](http://www.nettricegaskins.com)

<sup>51</sup> [www.lexfefegha.com](http://www.lexfefegha.com)

<sup>52</sup> [www.cyberneticforests.com](http://www.cyberneticforests.com)

<sup>53</sup> [www.annaridler.com](http://www.annaridler.com)

<sup>54</sup> [www.timmb.com](http://www.timmb.com)

<sup>55</sup> <https://openglam.org/>

<sup>56</sup> Alkemade, H., Claeysens, S., Colavizza, G., Freire, N., Lehmann, J., Neudecker, C., Osti, G. and van Strien, D. “Datasheets for Digital Cultural Heritage Datasets”, *Journal of Open Humanities Data*, 9(1), 2023. <https://doi.org/10.5334/johd.124>.

<sup>57</sup> On current issues with the UK TDM exception for non-commercial research in heritage contexts, see: Westenberger, P. and Farmaki, D. (forthcoming 2025) “Artificial Intelligence for Cultural Heritage Research: the Challenges in UK Copyright Law and Policy”. *European Journal of Cultural Management and Policy*; and Dr Paula Westenberger's Response to UK IPO Public Consultation on Copyright and AI (February 25, 2025): <http://dx.doi.org/10.2139/ssrn.5185031>

<sup>58</sup> For an analysis on this point, see Westenberger and Farmaki (2025) op. cit.

such stakeholders, fully contemplating the needs, challenges, complexity and diversity of the different sectors.

32. We agree with the Network of European Museum Organisations - NEMO recommendations flagging the “unique position of museums and cultural heritage as pillars of trust within society”, and that, as such, it is imperative that they are integrated into a regulatory framework. NEMO also highlighted the need for financial resources “for infrastructure, equipment and highly qualified human resources, enhancing museums’ professional capacities”, the need “to source high-quality, interoperable data and properly described metadata”, and that “copyright issues must be resolved”.<sup>59</sup>
33. It is important to employ a human rights perspective on the copyright issues at stake, contemplating cultural rights, freedom of expression and property rights considerations. Meaningful and effective consultation with a wide range of stakeholders in policy debates is one of the key ways human rights may be addressed. UN General Comment no. 21 considers, as part of the right to take part in cultural life, “the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person’s cultural rights.”<sup>60</sup>
34. A cultural rights framing of AI and creativity should be seen as best practice as it can also contemplate concerns with protecting natural resources, in view of AI’s environmental impact. General Comment 21 states that the dimension of “access” of the right to take part in cultural life includes “to follow a way of life associated with the use of cultural goods and resources such as land, water, [and] biodiversity”.<sup>61</sup>
35. A cultural rights approach would also help decolonise the notions of creativity worth protecting, by moving AI debates beyond copyright concerns. Framing the discussion solely as a copyright issue may leave out the interests of certain communities and indigenous groups that copyright legislation does not contemplate (for example, in light of copyright duration rules). In this respect, FAIR and CARE principles<sup>62</sup> (FAIR: Findable, Accessible, Interoperable and Reusable; CARE: Collective Benefit, Authority to Control, Responsibility and Ethics) may provide important guidance. See also recommendations in “Unlocking the Potential of Digital Collections. A call to action. Towards a National Collection”, including to “Establish digital collections according to FAIR and CARE principles.”<sup>63</sup>

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<sup>59</sup> <https://www.ne-mo.org/news-events/article/call-for-contributions-shape-the-future-of-ai-and-creativity-in-cultural-rights/>.

<sup>60</sup> General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights).

<sup>61</sup> Ibid.

<sup>62</sup> <https://www.gida-global.org/care>.

<sup>63</sup> Bailey, R., Pereda, J., Michaels, C., & Callahan, T., *Unlocking the Potential of Digital Collections. A call to action. Towards a National Collection*. (2024) <https://doi.org/10.5281/zenodo.13838916>.

**Q6. Does, or should, education and artistic education include teaching of AI tools and their usage?**

36. It would be irresponsible for artistic education to exclude AI tools from curricula. AI in various forms offer new technical processes to study, and a new critical lens through which to understand, appreciate and explore cultural production. If we do not teach about AI, society may struggle to ascribe meaning to the wave of new cultural objects likely to emerge in coming years.
37. There are new jobs set to emerge in this space and it is imperative to support education pathways that make these jobs accessible to the future workforce.
38. Education about carbon costs linked to AI cultural production and techniques for home-spinning and managing local AI models could become a key agenda in future curriculum discussions. Meanwhile, the ways in which people study and demonstrate their learnings are being pushed to change in light of new AI tools. It is insensible to continue to set tasks in the education space that can be completed by AI and new and alternative forms of assessment need to be imagined as a priority across all education settings.

**Q7. How do laws protect the rights of artists and other creators regarding content used by AI? What are the rights of authors in AI generated creation? Please provide examples.**

39. Copyright covers a range of cultural materials as protected “works” (e.g. art 2 of Berne Convention) or other related subject matter (e.g. the WIPO Performances and Phonograms Treaty). Artists and creators are protected under copyright laws with both economic and moral rights. Legislations vary according to the country, but generally economic rights include the right to stop unauthorised reproductions, adaptations and communications to the public of one’s works, all of which could be engaged by AI training and use.<sup>64</sup> Moral rights (e.g. art 6 *bis* Berne Convention) include the right to claim authorship (i.e. to be named as author) and to integrity of the work (i.e. to object to modifications or derogatory actions that could be harmful to honour/reputation), and may also be triggered by AI use.
40. AI may infringe copyright if protected materials are “in-copyright” i.e. not yet in the public domain. A work falls in the public domain after the expiry of copyright (general rule: life of the author +50 years, as per minimum standard in art 7(1) of Berne Convention). Countries can have longer copyright durations, e.g. UK and many others adopt a general rule of life +70 years. Rules on duration vary depending on the work/subject matter.
41. AI use may be allowed for “in-copyright” materials if there is a limitation or exception in a particular country’s legislation permitting that activity. Some countries, such as the US, adopt a “fair use” open clause, but it is unclear yet the extent to which it will apply to AI, with important court cases

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<sup>64</sup> For an analysis of how these rights are engaged by AI, see: Westenberger, P. and Farmaki, D. (forthcoming 2025) “Artificial Intelligence for Cultural Heritage Research: the Challenges in UK Copyright Law and Policy”. *European Journal of Cultural Management and Policy*; and Dr Paula Westenberger’s Response to UK IPO Public Consultation on Copyright and AI (February 25, 2025): <http://dx.doi.org/10.2139/ssrn.5185031>

still pending decision. In the first (non-generative) AI fair use decision, a US court rejected fair use in the context of AI training data, as the defendant's use was not transformative and created a tool directly competing with the claimants.<sup>65</sup>

42. Countries that do not have such an open clause will list the specific limitations and exceptions that are permitted in the legislation, such as TDM exceptions, which impact current AI discussions, for example, articles 3 and 4 of the EU Digital Single Market Directive and s 29(A) of the UK Copyright Designs and Patents Act. A recent German decision on the EU TDM exception is the LAION case.<sup>66</sup>
43. Countries have been considering expanding their copyright legislations to further allow AI uses, such as the recent UK Consultation on copyright and AI,<sup>67</sup> to which BRAID Researchers have responded.<sup>68</sup> Amongst the broadest TDM/AI exceptions is the Japanese, allowing TDM “if the exploitation is aimed at neither enjoying nor causing another person to enjoy the work unless such exploitation unreasonably prejudices the interests of the copyright holder.”<sup>69</sup>
44. To create new exceptions, countries should adhere to the three-step test, which confines exceptions to (1) certain special cases (2) that do not conflict with a normal exploitation of the work (3) which do not unreasonably prejudice the legitimate interests of the copyright owner.<sup>70</sup> The Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed on Copyright policy and the right to science and culture notes that “disagreement and uncertainty remains about how to interpret and apply the standard, leaving many countries hesitant to innovate”.<sup>71</sup> A balanced interpretation of the three-step test allows human rights considerations into the copyright debate.<sup>72</sup>
45. It is also important to mention article 15(1)(c) ICESCR, and corresponding General Comment 17, which states that “the scope of protection of the moral and material interests of the author provided for by article 15, paragraph 1 (c), does not necessarily coincide with what is referred to as

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<sup>65</sup> Reed Smith LLP, Court shuts down AI fair use argument in Thomson Reuters Enterprise Centre GMBH v. Ross Intelligence Inc.: <https://www.reedsmith.com/en/perspectives/2025/03/court-ai-fair-use-thomson-reuters-enterprise-gmbh-ross-intelligence#:~:text=The%20court%20granted%20partial%20summary,those%20that%20may%20have%20expired>.

<sup>66</sup> For an analysis, see: Rosati, E. “Is text and data mining synonymous with AI training?”, *Journal of Intellectual Property Law & Practice*, 19(12), 2024, <https://doi.org/10.1093/jiplp/jpae092>, pp. 851–852.

<sup>67</sup> <https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence>

<sup>68</sup> Sichani, A.-M., Westenberger, P., Bryan-Kinns, N., Bunz, M., Collett, C., Heravi, B., Miltner, K. M., Moruzzi, C., & Townsend, B. A., BRAID researchers' response to UK Government copyright and AI consultation. Zenodo, 2025. <https://doi.org/10.5281/zenodo.14945987>.

<sup>69</sup> Dermawan, A. ‘Text and data mining exceptions in the development of generative AI models: What the EU member states could learn from the Japanese “nonenjoyment” purposes?’ *The Journal of World Intellectual Property*, 27, (2024), 44–68. <https://doi.org/10.1111/jwip.12285>.

<sup>70</sup> Art 9(2) of the Berne Convention and art 13 of the TRIPS Agreement.

<sup>71</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/28/57](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/28/57) (para 75).

<sup>72</sup> Christophe Geiger, Reto M Hilty, Jonathan Griffiths and Uma Suthersanen, ‘Declaration: A Balanced Interpretation of the “Three-Step Test” in Copyright Law’ *Journal of Intellectual Property, Information Technology and E-Commerce Law* 119, (2010) 1.

intellectual property rights under national legislation or international agreements” and that “it is intrinsically linked to the other rights recognized in article 15 of the Covenant, i.e. the right to take part in cultural life (art. 15, para. 1 (a))”.

46. As regards the protection of AI outputs by copyright law, we flagged above the recent US Copyright Office Part 2 of Artificial Intelligence Report, concluding that “outputs of generative AI can be protected by copyright only where a human author has determined sufficient expressive elements.”<sup>73</sup> In the UK, for computer-generated works, “the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken” (s. 9(3), UK Copyright Designs and Patents Act). CREATE explains the problems in applying this provision to current GenAI tools, “potentially granting protection to vast amounts of digital artifacts created with minimal human input”, and recommending the UK government to remove s9(3) from the CDPA.<sup>74</sup>

**Q8. What are the practices regarding information on AI generated content? What would be the best practices?**

47. We need a range of rules and approaches to how AI can be used. Blanket rules do not work with the diverse creative cultural ecosystem within which we work. Without freedom to try new things with this technology, artists, researchers and small institutions will not be able or emboldened to use them. However, it is important to further develop attribution practices, and AI models that are used in the generation of commercial work should be treated differently than those used to produce non-commercial and research work. For example, Stable Audio provides attribution documents to accompany their public model, *Stable Audio Open 1*.<sup>75</sup> These list every sound file and author that have been incorporated into the model.
48. It should be considered best practice for organisations to develop AI policies, including transparency clauses as regards labelling AI-created content. Examples of such AI policies in the cultural sector include Art UK’s (“Transparency in AI usage: ... we are committed to clearly communicating when and where AI is used, ensuring stakeholders are fully aware of its scope and limitations”)<sup>76</sup> and the National Library of Scotland (“We will be transparent about where we have employed AI tools, indicating where possible when and how the content and data we produce has been machine generated”).<sup>77</sup>

[END of submission]

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<sup>73</sup> <https://newsroom.loc.gov/news/copyright-office-releases-part-2-of-artificial-intelligence-report/s/f3959c36-d616-498d-b8f9-67641fd18bab>

<sup>74</sup> Kretschmer, M., Meletti, B., Bently, L., Cifrodelli, G., Eben, M., Erickson, K., Iramina, A., Li, Z., McDonagh, L., Perot, E., Porangaba, L., & Thomas, A.). Copyright and AI: Response by the CREATE Centre to the UK Government’s Consultation. CREATE. (2025) <https://doi.org/10.5281/zenodo.14931964>

<sup>75</sup> <https://info.stability.ai/attributions>. Stable Audio Open Dataset 1: <https://huggingface.co/stabilityai/stable-audio-open-1.0>

<sup>76</sup> <https://artuk.org/footer/ai-policy>

<sup>77</sup> <https://data.nls.uk/about/ai-statement/>