

EU Consultation on Generative AI: [REDACTED] Submission

1 Introduction and executive summary

- 1.1 [REDACTED] appreciates the opportunity to respond to the EU Consultation on Generative AI (the “**Consultation**”), to provide background on its experiences with AI to date and to share its perceptions of the perceived opportunities and risks of generative AI systems as they relate to competition and consumer protection in the music industry. [REDACTED]
- 1.2 [REDACTED] would like to take this opportunity to urge the European Commission (“**EC**”) to continue the good work of this review and pay close attention to the nascent sector of generative AI systems. Recent examples of other digital markets show that an *ex ante* approach to regulation may well be necessary to protect stakeholders. [REDACTED]
- 1.3 Below, we have set out our responses to the specific questions proposed in the Consultation which are most relevant to the operations of our business and in relation to which we feel well-placed to contribute.

2 [REDACTED] responses to questions from the EU Consultation on generative AI

- 2.1 *Which competition issues will likely emerge for the provision, distribution, or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.*

2.1.1 The sector in which [REDACTED] operate is one which is ripe for the employment of generative AI. As evidenced by the shifts from vinyl records to CDs, to digital downloads and then to music streaming platforms, the music industry continuously embraces the opportunities offered by new technologies to improve consumer experience and enhance artists’ creative processes. [REDACTED] AI has already become an important part of the music industry and the dependence of artists on AI tools is only likely to increase over time. Currently, there are many positive applications of AI for musicians and artists: artists may use AI in innovative ways, including as inspiration for music and lyrics, production sounds for new tracks or imagery for album art or a music video:

- (i) For example, Neil Tennant of the Pet Shop Boys has described how generative AI supported his recent song writing. He references an incomplete song that he started writing in 2003. Although he ran out of ideas for the verses at the time, he said that lyrics suggested by AI allowed him to fill in some of the missing verses and decide on additional adjustments.
- (ii) The K-Pop artist Midnatt recently released a new song simultaneously in 6 different languages: AI voice synthesis technology was used to improve the artist’s pronunciation in each language.
- (iii) AI can also be used to create wholly new experiences for fans of music that were not possible before the development of such technology, such as the ABBA Voyage “live” experience in London.

2.1.2 [REDACTED] anticipates that artists will increasingly find utility in AI tools for a variety of different purposes. However, [REDACTED] is already aware of negative consequences and outcomes related to AI use in the music industry. Examples are

set out below. As a consequence, [REDACTED] would like to emphasise the need for generative AI systems to be properly regulated, so that the benefits of AI can be enjoyed whilst the dangers the technology poses to our industry can be avoided or mitigated. Below, we have set out both music industry-specific ramifications of generative AI systems and broader structural issues which we anticipate will negatively impact many downstream sectors in which generative AI is used.

2.1.3 There is a real prospect of negative competition consequences and outcomes related to AI use in the music market: The following are a few examples:

- (i) [REDACTED]
 - (a) [REDACTED]
 - (b) [REDACTED]
 - (c) [REDACTED]
- (ii) **Poor consumer experience:** An influx of low quality AI-generated songs also risks damaging the consumer experience. Whilst the question of ‘quality’ may be subjective, [REDACTED] notes that virtually all of these AI-generated tracks are not melodic and have poor production value. Without a proper tagging or water-marking system in place, consumers may be confused or misled about whether they are listening to genuine or AI-generated content. The material influx of lower quality content on music streaming platforms will invariably create additional “noise” and make it more difficult for listeners to navigate streaming services to discover songs they want to hear from legitimate artists. [REDACTED]
- (iii) **Deepfakes and soundalikes:** Generative AI systems also allow for the creation of “deepfakes” or soundlike recordings that mimic the voice and sound of recognizable recording artists. These can cause commercial and reputational harm to artists and songwriters and can confuse or mislead the public as to the level of involvement of the artist, including whether the artist supports the AI and whether the artist is being paid for consumption of the AI content. [REDACTED] believes that this is *prima facie* bad for competition. These deepfakes unfairly compete with a recording artist’s commercial music products, in addition to depriving rightsholders of income they should be entitled to. [REDACTED]
 - (a) [REDACTED]
 - (b) [REDACTED]
- (iv) **Damage to innovation and creativity:** Record labels, artists and songwriters are also considering ways in which they can use AI to enhance inspiration, creativity and innovation. A major difference in the approach is that human artists are not endeavouring on any level to supplant and replace other human artists and they are using AI tools in a way which respects the rights of other artists and creators. They are typically looking to foster a vibrant and diverse creative music ecosystem while encouraging the continuing development of technology. However, [REDACTED] would also like to highlight the damage to innovation that is likely to result from over-supply of AI-generated recordings. Such recordings have their base in AI

models that are trained on pre-existing data sets (generally catalogues of recorded music and/or music videos created by companies such as [REDACTED]). Because of how these models work, there is unlikely to be the same degree or intensity of creative innovation in AI-generated music that is possible with human involvement. The music industry is vibrant precisely because artists produce novel creations reflecting current human experience. The last century has seen major changes in the body of recorded music that has both resulted in, and reflected, new trends and shifts in consumer taste. If human innovation in music is drowned out by the sheer volume of formulaic, generic and backward-looking recordings, then consumers may not benefit from the next [REDACTED], or the next [REDACTED]. The impact on creativity and innovation over time will be to the ultimate detriment of consumers. [REDACTED] also anticipates that this trend will likely be exacerbated by reduced investment from the business sector, given the likely diminishing returns if AI-generated music continues to eat away at the share of revenue available for human created content. In addition to these music industry specific issues, [REDACTED] would like to comment on broader, structural competition issues it considers are likely to arise or, in some cases, are already present in the generative AI systems development market.

2.1.4 [REDACTED]

2.1.5 **Access to data:** [REDACTED] Access to high quality training data should be a force for competition in the generative AI systems development market. There needs to be a robust and enforceable copyright regime in place, to ensure that there is fair competition for high quality training data. We address this issue, which is especially pressing for music and other creative industries, in more detail in section 2.3 below.

2.2 *What are the main barriers to entry and expansion for the provision, distribution or integration of generative AI systems and/or components, including AI models? Please indicate to which components they relate.*

2.2.1 **There are three main inputs:** In its review of the AI foundation models market, the UK Competition and Markets Authority (“**CMA**”) identified access to: (i) data (for training purposes); (ii) computational resources (e.g. data centres, cloud computing service providers, engineers, software developers); and (iii) funding, as essential inputs into developing an AI foundation model.¹ [REDACTED] agrees that these three factors are necessary inputs for the provision and development of an AI system. A lack of access to any one of these fundamental inputs would be a barrier to entry into the generative AI system development market. It is difficult for a new entrant to successfully enter and compete in the market without each of these three inputs. The following paragraphs provide additional detail on how access to these inputs acts as a barrier to entry. But as a preliminary point [REDACTED] notes that all three inputs require almost unheard of levels of financial resources. In [REDACTED] view the fact that a limited number of companies will have the ability to e.g. spend tens of billions of euros and hire thousands of very uniquely qualified engineers to build the necessary skills for a successful generative AI product, is likely to ensure that the generative AI market develops in a highly concentrated manner.

¹[Full Non-Confidential Report PDFA.pdf \(publishing.service.gov.uk\)](#)

2.2.2 High quality training data: Access to high quality training data is a barrier to entry. Data can be accessed via web-scraping, but quality is not assured when scraping a variety of websites, which can lead to poor quality product outputs. Web-scraping practices can also in many cases violate IP and copyright laws, as well as platform terms and conditions of use. [REDACTED] Legally compliant (i.e. copyright protections properly enforced) access to high quality training data could be a driver of competition in the AI models market. [REDACTED] Quality training data, including metadata, allows AI systems to draw very fine distinctions that can have very meaningful significance.

2.2.3 Funding: The funding required to develop and maintain the running of generative AI systems is significant for any company. The existing and ultimate sources of this funding will likely be an important consideration for merger control reviews going forward in order to avoid the establishment of problematic network effects across technology markets. In the music industry, for example, AI was initially deployed by the DSPs to create playlists informed by machine learning. More recently, DSPs have begun to make available tools to their customers that support content creation for social media platforms.² [REDACTED]

2.3 *What is the role of data and what are its relevant characteristics for the provision of generative AI systems and/or components, including AI models?*

2.3.1 Data is fundamental to the success of a generative AI system: Data is a fundamental input to the development of an AI system, as the system needs to be trained on vast amounts of human-created content. The better quality the content and data (including rich metadata) fed into the AI system, the better the output and consumer product.

2.3.2 Copyright law is not being respected: High quality content is highly sought after as input data for AI systems. There should be a competitive market to license music and other IP for use in training, as one of the key inputs for AI development. [REDACTED] Existing copyright legislation is not being properly enforced to protect rightsholders, which also has knock-on effects for competition. Notably, over the longer term, AI developers will require sustainable access to high quality cultural content. Without effective enforcement of copyright legislation, the unlicensed use of creative content to produce AI-generated outputs (that compete with human-created content) is likely to produce negative outcomes by: (i) reducing the incentive for humans to engage in creating content; and (ii) reducing the ability of creative businesses to invest in talent. In the medium to long term, this will in turn reduce the availability of high-quality inputs for AI systems, limiting the quality and relevance of their outputs while also constraining innovation in the industry more broadly. On the other hand, effective licensing creates a level playing field for all players by allowing the industries at each level of the food chain to thrive. Rightsholders naturally want healthy and broad competition for their content, effective licensing helps to encourage this competition and resist concentration on all relevant markets.

2.3.3 Additional guidance on opt-out regime: Rightsholders should be properly credited and compensated for the use of their material. Otherwise, generative AI systems will harm artists (and other creatives) and cannibalise creative industries with content

² <https://www.tiktok.com/business/en-US/blog/tiktok-creative-assistant-smart-ai-tool>

which could not exist without the initial training inputs from those creatives. Guidance from the EC would be welcome to ensure copyright owners can assert their opt-out right effectively, if they wish. Presently, it is unclear how to opt out of training effectively, given multiple competing proprietary standards launched by different AI developers regarding the tagging of AI content.

2.3.4 Ethical data practices: It is possible for AI developers to train models ethically (i.e. respecting copyright law) with data sets which are properly licenced, rather than scraped from the web. [REDACTED]. Furthermore, it is possible for developers to amend data sets and retrain models if they have previously been trained on copyrighted content obtained without a licence. [REDACTED] notes that AI developers are willing to invest billions in securing computational resources and talent to develop generative AI systems, but many appear to expect that they can appropriate their other fundamental input, content for training, without payment. This distorts competition between AI developers. It also negatively impacts other related markets for creative content.

2.4 *How will generative AI systems and/or components, including AI models likely be monetised, and which components will likely capture most of this monetization?*

2.4.1 Relatively easy to monetise in downstream markets / wealth of potential applications: [REDACTED] anticipates generative AI systems being relatively easy to monetise, given the wealth of opportunities to deploy AI technology in downstream markets resulting in new consumer products which can be monetised via advertising, subscription and transactional methods. In certain industries like the music industry, the use of AI may become so commonplace, for example DSPs promoting tailored playlists created via machine learning, that consumers may come to expect AI to be part of the service. Such AI technology may become a ‘must-have’ aspect of consumer facing digital services.

2.4.2 Artists now using AI: AI is of increasing relevance to artists [REDACTED] – presenting both risks and opportunities. Many artists now use AI tools for inspiration or to supplement their creations. [REDACTED]

2.4.3 Some creatives would rather work with ethical AI companies: We envisage that many in the music industry will want to signal support for IP rights and will not want to support AI products that trained without authorisation on copyrighted works. Certainly, in the creative industries, many stakeholders prefer not to work with AI companies that refuse to properly credit and compensate rightsholders for their data, when using it to train generative AI systems.³ If more ‘responsible’ AI companies emerge as strong market participants, we envisage more companies being keen to embrace using AI in their businesses, and compensating AI developers for the use of the technology.

2.5 *Do you expect the emergence of generative AI systems and/or components, including AI models to trigger the need to adapt EU legal antitrust concepts? Do you expect the emergence of generative AI systems to trigger the need to adapt EU antitrust investigation tools and practices?*

³ By way of example, the former VP of audio at AI firm ‘Stability AI’ left in protest at training practices and has established a certification programme for ethical AI training (‘Fairly Trained’) – see <https://www.musicbusinessworldwide.com/why-just-resigned-from-my-job-generative-ai/> and <https://www.fairlytrained.org/>.

2.5.1 [REDACTED] has chosen to respond to these two questions together so it can provide a comprehensive overview of its view on future regulation of generative AI systems.

2.5.2 **The EU Artificial Intelligence Act:**

- (i) The AI Act aims to set up a regulatory framework for AI systems and prohibits certain high risk AI practices. [REDACTED] understands that this regulation is intended to act as a risk management check on high-risk AI systems. For example, it intends to prohibit real-time remote biometric identification by AI systems. Whilst [REDACTED] recognises that this is important legislation – as there are many high-risk applications of AI in many sectors of the economy – the AI Act does not on its face attempt to counter all of the risks posed by the development of generative AI systems, including competition risks.
- (ii) Efforts are made in the proposed text of the AI Act to address concerns around the use of copyrighted data for generative AI training purposes. The proposed text imposes transparency obligations on all providers of general-purpose AI models. It requires companies to “draw up and make publicly available a sufficiently detailed summary of the content used for training the general-purpose AI model”.⁴ Further clarity is needed on what a “sufficiently detailed summary” will constitute in practice. The summaries need to be “sufficiently detailed” to enable rightsholders to know whether their works have been used to train an AI model or generative AI system, so that they can then take appropriate action, in the form of licensing or enforcement.
- (iii) The Act also requires providers of AI systems to watermark synthetic content and label AI-generated deepfakes, although questions remain as to how these requirements will be implemented.

2.5.3 **Digital Markets Act:**

- (i) There are some limitations to the DMA as a tool to regulate AI-related markets, given, as [REDACTED] understands, the provisions of the DMA were not drafted with regulating AI models or the use of AI-generated content in mind. Firstly, the DMA only applies to ‘gatekeepers’ of an exhaustive list of ‘core platform services’ which serve as an ‘important gateway for business users to reach end users.’⁵ This does not include AI foundation models, large language models or other systems through which AI-generated content can be created. As changing the list of core platform services in the DMA requires a legislative act by the European Council and Parliament, it could be difficult to adjust the list to bring AI directly in scope. Moreover, the DMA only applies to companies providing a core platform service who satisfy either the quantitative thresholds or qualitative criteria set out in Article 3(2) or 3(8) of the DMA respectively. While this will likely capture certain major players in the field of AI, it may not apply to the AI development companies that are

⁴ [REDACTED] notes that there is currently no consolidated text of the AI Act with authoritative article numbers. This quote is taken from proposed drafting for the act.

⁵ Article 3 DMA

being funded by those companies (or AI development companies more generally).

- (ii) Equally, by virtue of the rules and requirements the DMA imposes on companies designated as gatekeepers, it may help to shape the way in which gatekeepers use AI within their businesses, thereby helping to regulate AI (albeit tangentially). The rules imposed around data usage could restrict the collection and use of data for AI training purposes by gatekeepers.⁶ It could also encourage the sharing of some data sets by gatekeepers, which could be used by other companies to optimise their competing generative AI systems.⁷ The DMA also requires gatekeepers to provide business users with continuous and real-time access to data regarding end user engagement with their products and services on the core platform service.⁸ This could enable business users who are also rightsholders to have greater visibility over how end users are engaging with their content and how this data might be used to train an algorithm or AI model, e.g. to promote similar content towards end users or create similar AI-generated content.
- (iii) As the AI development market is nascent and quickly evolving, new anticompetitive conditions may arise, which were not in contemplation at the time of drafting the obligations set out in Articles 5-7 of the DMA. It may be that the EC will need to conduct market investigations (pursuant to Article 19 of the DMA) to update the obligations for gatekeepers to capture the unfair and anticompetitive effects arising out of AI related activities specifically. **[REDACTED]** notes that it is helpful that the EC has made legislative provision for the expansion of the obligations laid down in Articles 5 and 6 of the DMA, recognising that digital markets are rapidly evolving.

2.5.4 Investigation of funding arrangements: **[REDACTED]** is pleased that the EC is taking notice of major investments in AI start-up companies. If the EC is able to investigate these arrangements within the bounds of the tools currently available in its arsenal – e.g. the EUMR – it may prove an effective test to demonstrate whether existing tools and practices are sufficient, or it may identify deficiencies that need to be addressed to enable the EC to robustly investigate new acquisition and funding structures.

2.5.5 There is a need to work closely with copyright regulators: While not a competition issue per se, strong and enforceable copyright protections are fundamental to ensure that the market for generative AI system development functions properly and competitively. Without proper legal support in relation to copyright and access to training material, new AI development companies will not successfully compete against companies that already have access to large amounts

⁶ Article 6(2) DMA prohibits gatekeepers from using in competition with business users, non-public business user data generated in the context of their use of the gatekeeper's relevant core platform service. If relevant to the core platform service, this could include for the making of AI-based inferences.

⁷ Article 6(11) DMA requires gatekeepers to provide to any third-party undertaking providing online search engines, at its request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines.

⁸ Article 6(10) DMA requires gatekeepers to provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users.

of data, computing power and are big enough to take the IP risk of not respecting copyright rules without a lot of downside. Smaller companies are under greater pressure to compete on fair, legal terms. [REDACTED]

2.5.6 There is a need for urgency: Anti-competitive harm is crystallising now. Swift action is needed to establish appropriately responsive regulatory frameworks (especially around copyright protections). [REDACTED]

2.5.7 Global approach: Whilst the nuances of existing legislation (be it copyright, privacy, competition or AI-related) differ by jurisdiction, we would advocate for cooperation and an aligned approach across competition regulators in key jurisdictions (which are also large markets for music streaming) namely the EC, Federal Trade Commission and CMA. The market for the development and use of generative AI systems is global. Therefore, in order to be effective, regulation needs to be coordinated, consistent and broadly applicable. We would recommend that the EC consider international cooperation as the EC develops its thinking in this area.