BATTLE FOR THE SOUL OF CULTURE
A Review of the Artist Rights Institute's Consultation on Copyright and Artificial Intelligence

Artist Rights Institute
where artists speak

In early 2025, the UK Intellectual Property Office launched a consultation on how the government could ensure that the legal framework for Artificial Intelligence and copyright supports both the creative industries and the AI sector. Among the opinions submitted was one from the Artist Rights Institute (ARI).

The Institute is based in Austin, Texas, and was founded in 2023 by Dr. David Lowery of the University of Georgia and music attorney Christian L. Castle, with the aim of advancing the study and discussion of artist rights. It sponsors the annual Artist Rights Symposium, manages the ArtistRightsWatch.com blog, and is a frequent participant in the public policy debate surrounding artist rights.

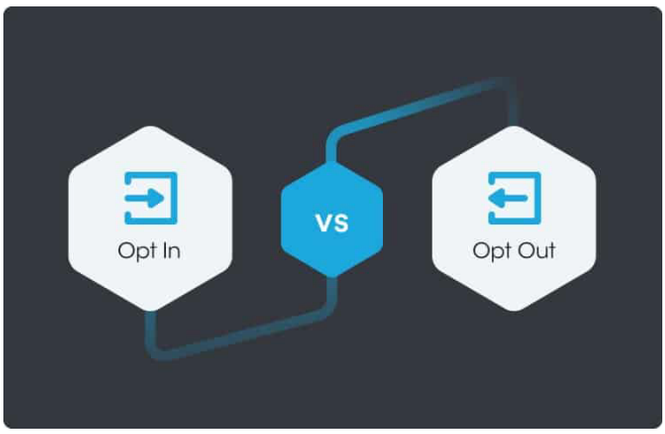
The ARI's consultation (penned by Christian Castle) transcends the scope of a typical, legal-technical submission. It is a meticulously structured indictment that functions as a historical analysis, a legal treatise, and, above all, a stark warning. It stands as a manifesto for creators against what it portrays as a coordinated and well-funded assault - the latest and most dangerous battle in a war that has been raging for decades.

The central thesis of the opinion is that the proposed legislative solution—namely, the establishment of a provision for Text and Data Mining that allows rights holders to declare their non-participation (the so-called "opt-out") - is not merely a bad idea; it is a trap. The Institute presents it as a deceptive tactic designed to legitimize what is described as "the most massive theft of intellectual property in human history." The opinion argues that any such solution would retroactively legalize illicit acts and shift the burden of protection from the perpetrator to the victim, thereby definitively destroying the economic and moral foundation upon which the law of human creativity rests.

This accusation is founded on three interconnected pillars:

- **The Historical Parallel:** It uses the history of internet piracy, the .com bubble, and the Google Books case as irrefutable evidence of a repeating scenario - a playbook that tech giants are once again implementing with AI.
- **Systematic Deconstruction:** It analyzes in detail why the proposed "opt-out" system is legally incompatible with international treaties, technically unfeasible, and ethically reprehensible.
- **Transcending the Legal Framework:** It shifts the debate from a narrow issue of intellectual property to a broader field concerning human rights, economic justice, wealth distribution, and the very structure of our society.

1. History Repeats Itself - The Silicon Valley Playbook



First, let us clarify "Opt-in" and “opt-out”, the new terms that have entered our lives with the proliferation of AI in the creative sector.

An **"opt-out"** system is like an automatic subscription to which someone is enrolled without being asked. For example, imagine a new service that collects photos from social media profiles to train an AI model for painting or facial recognition purposes. Under an "opt-out" (exemption by declaration) system, the service is permitted to use the photos. Owners’ consent is inferred from the fact that they have uploaded them publicly, and their silence is considered consent. If they DO NOT want their photos to be used, THEY must take action. They must find the special form, change certain settings, or send an email requesting to be excluded, along the lines of "I do not make my photos available for the training of your machine."

Conversely, under an **"opt-in"** (participation by declaration) system, the photos cannot be used by default. Silence is considered refusal, and the service must first ask the owners: "We want to use your photos to train our machine. Do you agree?" Only if they consent, can the service use them.

Artists want an "opt-in" system (to be asked for permission to use their works), while technology companies propose an "opt-out" system (the material is free to use, unless the artist explicitly states their objection).

Proponents of AI development argue that, unlike the simple distribution of content online, generative AI is a foundational technology with unprecedented potential to accelerate scientific research, improve medicine, increase productivity, and solve complex social problems. According to them, training these models requires vast, unprecedented amounts of data, making traditional, work-by-work licensing models practically inefficient. Consequently, they argue it is necessary to create a new legal paradigm that recognizes this unique nature, rather than trying to apply rules designed for a previous technological era.

For the ARI, the piracy of the tumultuous ’95-’00 period (we all remember **Napster**) was not an uncontrolled side effect of the new World Wide Web technology. It was the fundamental business model that drove the rapid adoption of broadband. Free, illegal access to music, movies, and software created demand for high-speed internet and attracted millions of users to the new platforms. This unprecedented transfer of value from creators to technological intermediaries, generated the immense wealth of companies like Google. This wealth was then converted into political power, allowing them to shape legislation as they saw fit. According to the ARI, these platforms never saw piracy as a problem but as an opportunity: every click on a pirated piece of content was a data point, an ad impression, a user becoming addicted to their ecosystem.

The opinion focuses on the Google Books project, describing it not as a humanistic effort to save knowledge, but as a coldly calculated data collection operation. The massive, unlicensed digitization of millions of books is revealed, through the testimony of George Dyson,[1] as the first step in creating the large language models (LLMs) that dominate today. It was proof that the "grab first, ask for forgiveness later" strategy works. Google, after infringing on rights on an industrial scale, engaged in years-long legal battles, which it ultimately partly won, setting a dangerous precedent. Google’s victory was not merely legal; it was also rhetorical: it managed to convince many that its actions constituted "fair use" and served a higher good—access to knowledge. This is precisely the rhetoric being used by AI companies today.

As much as reality is often more chaotic, and as much as developments arise from converging interests rather than a single, secret plan, the strategy of these companies is real and entangles academics, NGOs, and government officials. If there is a "playbook," it is divided into clear chapters-steps, which are being followed today:

- **The Grab:** Ignore existing legislation and massively scrape protected content, using innovation as the excuse.
- **The Propaganda:** Fund academic studies, think tanks, and non-profit organizations to create a narrative that presents the infringement as progress and a benefit to humanity.
- **The Legal Battle:** Use accumulated financial power to exhaust opponents in costly legal fights.
- **The Legislative "Fix":** Present the legal battles as proof of a vague and outdated law and demand a "modernization" that is, in fact, a new "safe harbor" that retroactively legitimizes the initial grab. The opinion claims that the consultation on the TDM exception is precisely the fourth step of this plan.

2. The Opt-Out Trap

Supporters of the exception present the opt-out model as a necessary and pragmatic compromise. They argue that a strict prior-permission regime (opt-in) would amount to a de facto ban on the development of large-scale AI models, leading to technological and economic stagnation for Europe compared to the US and China. The opt-out, in their view, strikes a difficult balance: on the one hand, it respects the rights holder's sovereignty by explicitly allowing them to prohibit use, while on the other, it allows innovation to proceed for content whose creators have not objected. They admit that the technical means are not perfect but see them as a starting point for developing better, industry-wide standards in the future. For the ARI, this proposed solution is a dead end and catastrophic.

The legal counter argument is sharp and absolute. An opt-out system, where the creator must do something to prevent the use of their work, constitutes a "formality" in the legal sense. The Berne Convention, the cornerstone of international copyright law, is categorical in Article 5(2): protection is automatic and cannot be subject to any formality (such as registration, notice, etc.). The opt-out reverses the fundamental logic of the law: instead of use requiring permission (permission-based, opt-in), protection requires action (action-based, opt-out). This is not just a technical detail but an overturn of an established legal principle. The proposed solution violates international treaties, rendering it not just bad policy, but also illegal.

Technical means, such as machine-readable codes, cannot solve the problem. The "robots.txt" file is the perfect example of a simplistic, unreliable, and easily bypassed technology. The detailed list of technical weaknesses (malicious crawlers, syntax errors, inability to cover dynamic content, bypassing via cache) is not merely a technical analysis. It proves that the entire idea is based on an illusion of control.

The central point here is existential: the failures of "robots.txt" in the past simply meant that a page appeared in search results. The same failure in the age of AI means that a creator's work is used to train a system that could make them unemployed. The scale of the damage is incomparably greater.

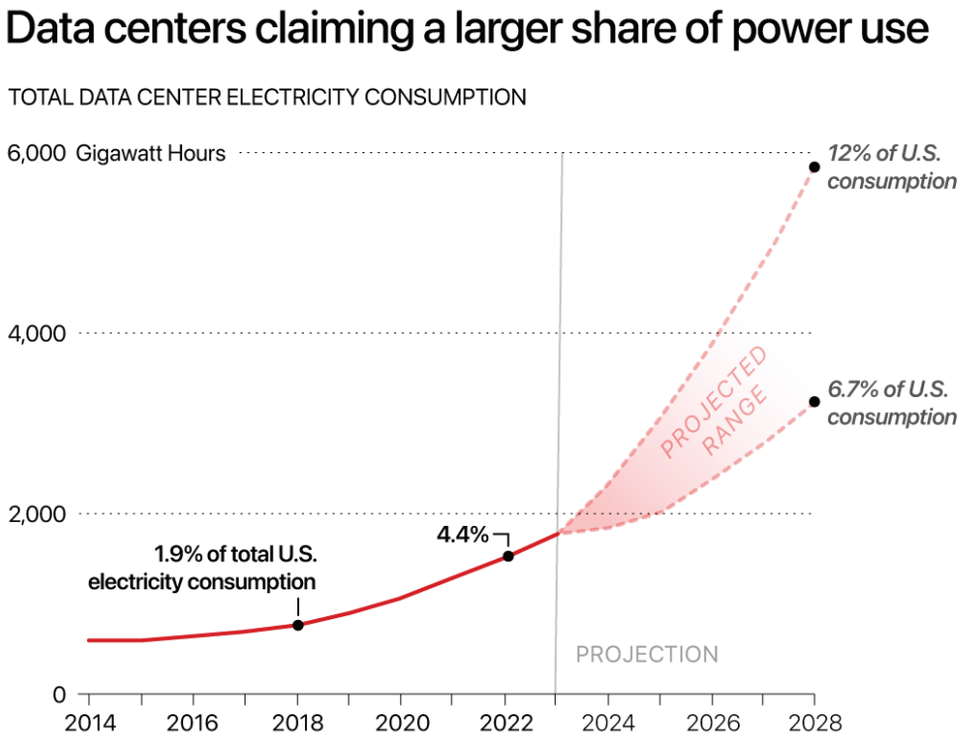
> **"OPT-OUT SCHEMES IN GENERATIVE AI ARE NOT ONLY EGREGIOUSLY UNFAIR TO RIGHTS HOLDERS – THEY SIMPLY DO NOT WORK. THEY GIVE RIGHTS HOLDERS THE ILLUSION OF CONTROL OVER HOW THEIR WORKS ARE USED; NOTHING MORE."**

Finally, the asymmetry of power makes the opt-out system the epitome of injustice. It is designed by the powerful for the powerful. The multi-billion-dollar platforms, the ones who profit from the exploitation, have no obligations. Conversely, the individual artist, writer, photographer, or musician is burdened with the cost, time, and technical complexity of self-protection. This is a scenario where the victim builds their own cage to protect themselves from the predator, while the predator roams free. This fundamental imbalance is not only unfair but also evidence of bad faith.

3. Beyond Legislation

For its proponents, AI is not just another sector but a "productivity multiplier" that will benefit all industries, from manufacturing and agriculture to services and health. The benefits will not be confined to the AI companies themselves but will diffuse throughout the entire economy, creating new markets, new jobs (while others will change form), and improving the global competitiveness of the country that embraces it. Investing in AI infrastructure should not be considered a subsidy but a strategic national investment in the future.

For its part, the Institute directly links AI to speculative bubbles like the .com one. The establishment of AI data centers in Oregon serves as a warning of what will follow on a global scale: local communities and taxpayers will be asked to subsidize the immense infrastructure and energy needs of AI, while profits and control will be concentrated in the hands of a few. The phrase "Socialization of Costs, Privatization of Profits" is not just a slogan but the core of the ARI's economic critique. It argues that the "innovation" of AI, as presented, is nothing but a vehicle for one of the largest wealth transfers in history, from the creative class and taxpayers to the technological oligarchy.



Source: 2024 United States Data Center Energy Usage Report, Lawrence Berkeley National Laboratory

& the West

Furthermore, copyright law is not a dry, commercial regulation. It is the legal expression of a fundamental human right, as enshrined in the Universal Declaration: the right of a creator to the moral and material interests resulting from their intellectual labor. The assault on copyright is an assault on human rights, and it carries a moral weight that transcends technical details and cost-benefit analyses.

Therefore, if civil remedies are useless due to economic inequality, perhaps the criminalization of mass infringement is the ultimate answer. The analogy is simple and powerful: why is the theft of a car prosecuted criminally by the state, while the theft of a person's life's work is left to their financial ability to take legal action? Of course, criminal law requires a high degree of intent (*mens rea*), which is exceptionally difficult to prove in complex corporate structures. However, the ARI's proposal for imprisonment, business activity bans, and punitive damages that make infringement economically unviable is based on a cynical assumption: the only way to change the behavior of these companies is when the fear of punishment exceeds the benefit of the transgression.

4. Technological Innovation and Intellectual Property - Finding the Balance

The Artist Rights Institute's opinion frames the dilemma in the most absolute terms: culture or barbarism, human or machine. Its final position is that the game is already rigged; the infringement has already occurred and continues on an unimaginable scale. Any delay, any discussion of "solutions" that do not address this original sin, simply gives the opponent time to consolidate their position.

The fundamental power imbalances, the historical continuity of exploitation strategies, and the existential threat facing human creativity if left unprotected are undeniable. On the other hand, the vision of AI as an engine of progress and prosperity cannot be dismissed wholesale as mere propaganda. The technology does indeed possess tremendous potential. The challenge for modern legislation is titanic: it is called upon to design a framework that will not choose a winner between "creativity" and "innovation," but will recognize both as fundamental social goods. It must ensure that creators have control and are fairly compensated for their contributions, without, however, hindering the research and development that could benefit society as a whole. The final solution, most likely, will be neither absolute prohibition nor unchecked freedom, but a new, complex social contract for the digital age.

Protesting a proposed change to British copyright law that will allow AI companies to train their AI models using copyrighted creative material, a stellar group of more than 1000 composers, musicians and singers have come together to release a 'silent' album.

References

[1] As George Dyson the tech historian observed in 2005 after a trip to the Googleplex during the Google Books digitization craze: “We are not scanning all those books to be read by people,” explained one of my hosts after my talk. “We are scanning them to be read by an AI.” George Dyson, Turing’s Cathedral (October 23, 2005)