

Regulatory AI – Update – UK and EU

As artificial intelligence ("AI") and its regulation continues to dominate the IP headlines, we thought it would be beneficial to create a table of what has been going on in the UK and Europe and the current state of play (but also note that some of the below UK policy and proposals could take a different turn depending on the outcome of the General Election on 4 July 2024):

	Position	Update (as at 11 June 2024)
UK	Approach	<p>Favours a non-legislative, sector-led approach to regulating AI, set out by the Department for Science, Innovation and Technology (DSIT) in the 29 March 2023 AI white paper (see our blog here on the white paper: Hot off the press! UK Government releases much-anticipated White Paper on Artificial Intelligence).</p> <p>This is a different approach to the EU (see below) with the UK preferring lighter touch sector-specific rules, using existing regulatory powers/structures, based on non-statutory principles-based frameworks.</p>
	AI White Paper and Response	<p>The 29 March 2023 White Paper (entitled AI regulation: a pro-innovation approach), indicated that it wouldn't legislate initially and set out 5 umbrella principles: (i) safety, security and robustness; (ii) appropriate transparency and explainability; (iii) fairness; (iv) accountability and governance; and (v) contestability & redress.</p> <p>The White Paper asked its existing regulators (e.g. FCA, ICO, CMA) to set out guidance on how the principles will apply to their sector).</p> <p>On 6 February 2024, the government published its response to the consultation on the AI White Paper.</p> <p>As expected, it set out that the UK is on course for more agile AI regulation (for now), backing regulators with the skills and tools they need to address the risks and opportunities of AI.</p> <p>The response confirmed there would be no legislation (for now) to allow regulators to respond rapidly to emerging risks, while giving developers room to innovate and grow in the UK.</p> <p>Amongst other things the response announced:</p> <ol style="list-style-type: none"> 1. Various AI investment initiatives 2. Key regulators were to publish their approach to managing the technology by 30 April 2024. (See discussion below).

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		<ol style="list-style-type: none"> 3. DSIT would form a steering committee, with government and regulator representatives by Spring 2024 4. The copyright voluntary code of conduct (see above) would not be proceeding. 5. Possible (future targeted) binding requirements (i.e. legislation) for advanced general-purpose AI. General-purpose AI is defined in the response as a theoretical form of advanced AI that would have capabilities that compare to or exceed humans across most economically valuable work. The report indicated that legislation may ultimately be needed across all jurisdictions to ensure that the most advanced general-purpose AI is safe to use and that developers are held accountable. It suggested that legislation could be targeted at the small number of entities which are developing general-purpose AI systems. 6. An AI regulation roadmap, setting out the government's next steps in 2024, including: <ul style="list-style-type: none"> • Working with industry stakeholders and regulators to develop AI regulatory policy and tackle AI risks, including consultations on AI model security and how AI could damage trust in information • Collaborating across government and with regulators to undertake a gap analysis in existing regulatory powers and remits • Developing the central function • Providing guidance and support for AI adoption across industries and for workers

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		<ul style="list-style-type: none"> Supporting international collaboration on AI governance, including co-hosting the second AI Safety Summit in South Korea in May 2024
<p>Voluntary Code of Practice for copyright and AI</p>	<p>In June 2023, the UKIPO announced that work had commenced to develop a code of practice for copyright and AI.</p> <p>The code was being developed by the UKIPO in consultation with various arts and news organisations (e.g., BBC, the British Library and the FT) and AI companies (e.g. Microsoft, Stability AI, DeepMind), as a response to a finding in Sir Patrick Vallance's 15 March 2023 pro-innovation for digital technologies report that more work was needed to balance the rights of copyright holders with the text and data mining (TDM) needs of AI developers. The code was intended to set out rules on the training of AI models using copyright material.</p>	<p>On 6 February 2024, the UK government confirmed in its response to the AI white paper that it would not be able to agree an effective voluntary code:</p> <p><i>"Unfortunately, it is now clear that the working group will not be able to agree an effective voluntary code."</i></p> <p>This deadlock highlights the difficulty the government has, trying to protect the creative industry, whilst at the same time allowing growth and innovation for AI.</p> <p>The government said it would set out further proposals on a way forward and is currently engaging with AI and rightsholder sectors.</p>

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Connected Tech Report and Response	<p>On 30 August 2023, the government published its second report on connected technologies entitled 'Connected tech: AI and creative technology'.</p> <p>The report highlighted concerns from across the creative industries about allowing the developers of AI to mine private intellectual property for profit without sharing with the original creators.</p>	<p>On 11 January 2024 the House of Commons Culture Media and Sport (CMS) Committee published the government's response to its second report on connected technologies.</p> <p>The government's response confirmed it is no longer proceeding with its original proposal for a broad copyright exception for text and data mining - which we already knew but it is good to have it properly confirmed.</p>
AI Interim Report	<p>On 31 August 2023, the House of Commons Science, Innovation and Technology Committee (SIT Committee) published the Governance of AI: Interim Report. The report set out 12 governance challenges that must be addressed to secure public safety and confidence in AI. It also makes recommendations regarding UK AI governance.</p> <p>The report outlined the IP and copyright challenges faced by some AI models and tools.</p>	<p>On 16 November 2023, the government responded to the interim report, stating that it did not intend to introduce new legislation immediately. It said that it would provide a wider update on its domestic regulatory approach to AI through its response to the AI White Paper (see below).</p> <p>On 28 May 2024, the House of Commons SIT Committee published another report on the governance of AI, updating the 12 challenges of AI governance from its interim report.</p> <p>The report confirmed that there is not yet an emerging international standard on AI regulation, despite international initiatives on AI safety, and that different approaches are being adopted globally e.g. the UK with its principles-based sector-led approach, the US through its Executive Order issuing greater direction to federal bodies/Government departments and the EU with its EU AI Act and a horizontal risk-based approach.</p>

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		<p>Also of note is the reference to concerns about the ‘scraping’ of copyright content from online sources without permission in order to train AI models - <i>"Intellectual Property and Copyright Challenge – The Government should broker a fair, sustainable solution based around a licensing framework governing the use of copyrighted material to train AI models"</i>.</p>
<p>AI Safety Institute</p>	<p>On 2 November 2023 the world's first AI Institute was launched in the UK. It is designed to be a new global hub which will help spur international collaboration on AI's safe development - with leading AI companies and nations including the US, Singapore and Google DeepMind agreeing to partner with the institute.</p> <p>The Institute will carefully test new types of frontier AI before and after they are released to address the potentially harmful capabilities of AI models.</p> <p>On 1 and 2 November 2023, the UK government held a summit on AI Safety at Bletchley Park – the first of its kind.</p>	<p>On 24 May 2024, the AI Safety Institute released a new testing platform to strengthen AI safety evaluations.</p> <p>A mini-summit was held in Seoul, South Korea on 21-22 May 2024. Over the two days, the governments of the UK and of the Republic of Korea made various announcements regarding AI safety (Frontier AI Safety Commitments).</p> <p>New commitments to develop AI safely were agreed between 16 AI tech companies (including Amazon, Google, Meta, Microsoft, OpenAI, and Samsung) around the world.</p> <p>A future 'AI Action Summit' is planned in France in early 2025.</p>

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<p>AI Regulation Bill 2023-24 (Private Members' Bill)</p>	<p>A Private Members' Bill (starting in the House of Lords) entitled 'Artificial Intelligence (Regulation) Bill', which provided for 'the regulation of artificial intelligence; and for connected purposes', was introduced to the UK Parliament by Lord Holmes of Richmond (a member of the House of Lords) on 22 November 2023. (See our blog here)</p> <p>Holmes said the proposed bill addressed a vacuum caused by the lack of formal regulation in the UK, leaving businesses with no choice but to align with the EU AI Act.</p> <p>The government did not support the bill and continued to favour a non-statutory approach so as to build the understanding needed to inform any future legislation.</p>	<p>The bill went through its third reading in the House of Lords with a sitting on 10 May 2024. The bill was then passed and sent to the House of Commons.</p> <p>THIS BILL HAS NOW BEEN <u>DROPPED</u> following the Prime Minister's announcement on 22 May 2024 of a General Election to be held on 4 July 2024.</p> <p>NB. Lord Holmes has stated in an interview that he aims to bring it back to the table once the new government is in place.</p>
<p>Communications and Digital Committee Report</p>	<p>The House of Lords Digital and Communications Committee published a report on large language models (LLMs) and generative AI on 2 February 2024. It outlined 10 priority</p>	<p>The report said that the Government's approach to AI and LLMs has become too focused on a narrow view of AI safety. "<i>The UK must rebalance towards boosting opportunities while tackling near-term security and societal risks. It will otherwise fail to keep pace with</i></p>

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	actions including the protection of copyright.	<p><i>competitors, lose international influence and become strategically dependent on overseas tech firms for a critical technology."</i></p> <p>It urged the government not to "sit on its hands" while LLM developers exploit the work of rightsholders. It also rebuked tech firms for using data without permission or compensation and warned the government to end the copyright dispute "definitively" including through legislation if necessary.</p> <p>Whilst some of the report was harsh, it is encouraging to see a focus on the protection of copyright.</p>
Report on Creator Remuneration	<p>On 10 April 2024 the CMS Committee in the House of Commons published a report on creator remuneration, discussing the obstacles to receiving fair remuneration for creative work, including the challenges posed by AI.</p> <p>The committee expressed concern that the status quo favours AI developers, who are using creator's IP without licence and without any practice recourse.</p>	<p>The report recommended that the UK government:</p> <ol style="list-style-type: none"> 1. Create mechanisms to regulate the use of copyright works by AI developers - so that creator's consent is required and fair compensation received for such use; and 2. Set objectives for engagement with AI and rightsholders sectors, providing a deadline for when it will step in with legislation in the event of a deadlock.
The Ofcom, ICO, FCA, CMA etc	In the Government's response to the AI white paper, it requested that key regulators publish their	To meet the government's 30 April deadline, regulators have been publishing their outline guidance on their strategic approach to AI.

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	<p>approach to managing AI by 30 April 2024.</p>	<p>All regulators have confirmed that they support the government's approach to voluntary AI regulation and demonstrate how their AI strategy aligns with the governments.</p>
<p>EU</p>	<p>Approach</p> <p>Similar to Canada and China, the EU has adopted a new risk-based and horizontal approach to AI regulation (i.e. it applies to all sectors / industries, contrasting with the UK which favours a sector-by-sector approach to regulation). AI uses are categorised into four levels of risk, with specific requirements for general-purpose AI models.</p>	
	<p>AI Act</p> <p>In May 2023, the European Parliament voted for the EU AI Act and the draft was approved on 23 June 2023.</p> <p>On 9 December 2023 – the European Commission, the European Parliament and the Council announced provisional agreement on the European Commission's proposal for a Regulation laying down harmonised rules on AI (AI Act).</p> <p>The AI Act entered into force in 2024, with the provisional agreement providing for a two-year transition period for most provisions, to give businesses time to prepare and to allow the EU to develop the harmonised</p>	<p>The AI Act was formally adopted by the Council of Ministers on 21 May 2024. It will enter into force in phases between now and mid-2026.</p> <p>This is the most significant piece of legislation coming out of 2023 and into 2024 (see our blog here - BREAKING NEWS! EU Artificial Intelligence Act clears the last hurdle).</p> <p>The AI Act will not form part of UK law post-Brexit but it will cover any AI output available within the EU - so will cover UK businesses providing or deploying AI services in the EU.</p> <p>Of specific note is:</p> <ol style="list-style-type: none"> 1. Transparency requirements - providers will need to start preparing for these in 2024, even if they do not come into effect straight away. It is uncertain precisely what these will entail but providers of GenAI systems will need to disclose summaries of copyright works used in their systems and these disclosures will be based on a standard template published by the AI Office. It will be interesting to see how this requirement will be fulfilled in practice (given the huge datasets involved). This might serve as a useful model for other jurisdictions. The question remains

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		<p>standards that will play a key role in the AI Act's operation.</p> <p>To support the AI Act, the EU has also proposed a liability regime to govern claims for damage caused by AI systems.</p> <p>The Act divides the AI systems by risk. So those AI systems that present the highest level of risk are subject to the most onerous obligations.</p>	<p>whether these sorts of disclosures will open the floodgates to new infringement claims. Time will tell...</p> <p>2. The ramifications of this Act - UK businesses might end up following suit so as to not alienate themselves from the EU market. The EU AI Act might also end up becoming a default International Standard (much like the GDPR has become), even if the UK would prefer a lighter touch approach.</p>
	AI Office	<p>On 29 May 2024, the European Commission announced the establishment of the AI Office, operating within the Commission, to support the implementation and management of the EU AI Act – press release.</p> <p>The office will ensure the coherent implementation of the AI Act, support AI governance bodies in member states and directly enforce rules on general-purpose AI models (GPAI).</p>	<p>The AI Office will hold its inaugural meeting by the end of June 2024 – its key tasks will be to prepare guidelines on the definition of an AI system and on prohibited practices as these provisions come into force in 6 months after entry into force of the AI Act. It will also draft codes of practice for GPAIs.</p>

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	International Guiding Principles		On 30 October 2023, a set of International Guiding Principles on AI were laid down to " <i>to promote safe, secure, and trustworthy AI worldwide</i> " and to " <i>provide guidance for organizations developing and using the most advanced AI systems.</i> " The principles apply "to all AI actors, when and as applicable to cover the design, development, deployment and use of advanced AI systems."