

Generative AI and Crown copyright		THE
		NATIONAL
A brief guide for government departments		ARCHIVES

1. Introduction

The National Archives (TNA) has produced this brief guide about Crown copyright and the use of generative artificial intelligence (AI). It draws attention to the relevant provisions from the [Copyright, Designs and Patents Act 1988](#) (CDPA 1988) and principles set out in the [Generative AI Framework for HM Government](#).

TNA has specific responsibility for [Crown copyright](#) and we are unable to provide further advice about third party copyright in AI models, data sets or tools. It is recommended that you refer to the latest guidance (currently the [Generative AI Framework](#)), understand AI models' terms and conditions and obtain internal legal advice where necessary. AI is subject to rapid development and we cannot guarantee to update this guide in line with all future changes.

2. Copyright ownership of AI outputs

A. What does UK legislation state?

The Copyright, Designs and Patents Act 1988 (CDPA 1988) has not been amended to address rights ownership of AI-generated works, but these existing provisions are relevant:

(i) Copyright ownership and computer-generated works

[Section 9\(3\) of the CDPA 1988](#) states "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."

(ii) Will Crown copyright apply to works created using generative AI tools?

Crown copyright is defined under [section 163 of the Copyright, Designs and Patents Act](#) as "works made by officers or servants of the Crown in the course of their duties." Principle 4 of the [Generative AI framework for HM Government](#) encourages use of generative AI as a tool which requires meaningful human intervention and a review of outputs. The statutory definition of Crown copyright might apply where civil servants have used generative AI to create a new, original work that would qualify for copyright protection, and then reviewed, modified and assured the AI product in line with the Generative AI framework.

B. What do AI providers' terms and conditions say about ownership of outputs?

Where providers' terms state that intellectual property in the outputs will belong to the user, AI outputs created by civil servants will belong to the Crown. Copyright can only be [assigned away from the Crown](#) in exceptional circumstances, and it requires permission from the Keeper of Public Records at The National Archives. If the terms assign copyright to the AI provider, you should seek legal advice on the viability and implications of using the model.

3. Use of third party copyright material

Principle 2 of the [Generative AI framework for HM Government](#) states that generative AI should be used lawfully, ethically and responsibly.

Making copies of any copyright material for the purpose of text and data mining (TDM) is permitted under [S.29A of the CDPA 1988](#) if researchers are conducting computational analysis for non-commercial research and have 'lawful access' to the work. Lawful access could include permission from the rightsowner(s), using licensed content, or selecting material that is out of copyright. S.29A(2) states that unless authorised by the copyright owner, copyright in the work will be infringed if the copy is transferred to any other person or used for a purpose other than computational analysis. This could include publication of the original material in TDM outputs without the rightsholder's permission. Further guidance on TDM has been published by the Intellectual Property Office in [Exceptions to copyright: Research](#).

As the [Generative AI framework](#) indicates, there may be concerns about lawful access if a large language model (LLM) will be used. Organisations will need to consider whether LLMs have been trained on third party copyrighted data. It is advisable to seek internal legal advice about the AI provider's terms of use for the handling of copyright infringement and who will be liable.

4. Re-use of Crown copyright material in large language models

The [Open Government Licence \(OGL\)](#) is the default licence for most Crown copyright material. The OGL enables Crown copyright material to be widely re-used, so providing its terms are not breached, large language models can be trained on OGL-licensed material.

AI providers' terms of use might grant the LLM a licence to re-use the Crown copyright outputs, which is not an issue if material is to be licensed under the OGL. Some departments hold a [Delegation of Authority](#) which permits them to license Crown copyright material under non-OGL terms. If departments are using AI models to create materials that will be licensed under the Delegation, they will need to assess if any terms concerning use of the outputs by the AI provider will impact on their intention to license the Crown copyright material.

Government departments must ensure that the material they publish has an [attribution and licensing statement](#). This will inform re-users of the licensing conditions, especially where organisations hold a Delegation of Authority from the Keeper of Public Records and are licensing Crown copyright materials outside OGL terms. It is essential to attribute any third party copyright materials so that re-users can seek permission to reproduce that content from the rightsholder and avoid unintentional infringement.

5. Commissioning

[Principle 8 of the Generative AI Framework](#) states that Government departments should work with commercial colleagues from the start. If new software is being commissioned from external suppliers, arrangements for the ownership and / or licensing of intellectual property rights must be factored into agreements. For additional guidance, see TNA's [Copyright in works commissioned by the Crown](#) which explains the options for securing copyright ownership or a licensing agreement, and the [Guidelines for AI procurement](#) which summarise the considerations for acquiring AI technologies.