

## **DACS—written evidence (CRF0042)**

### **House of Lords Communications and Digital Select Committee inquiry “A creative future”**

#### **Executive summary**

This time of rapid technological advancement presents both opportunities and challenges for those working in the creative industries. DACS has drawn on the expertise of leading artists, gallerists and change-makers in the visual arts to outline how creative practices are changing, how new and diverse audiences are being reached and what skills artists require to maximise these exciting new opportunities.

This document also sets out the vital importance of a strong, supportive regulatory framework that both protects and enhances intellectual property rights for creators, and seeks to provide trust and consumer confidence in the cryptoasset sphere.

A summary of the recommendation that will be found within this report are as follows:

#### **1. Ensure a strong intellectual property framework in the UK:**

- Implement the Smart Fund as a legislative proposal that delivers equitable remuneration to artists, especially those who create digital works or works utilising emerging technologies.
- Reconsider the text and data mining copyright exception, which will unfairly harm creators seeking to work within the AI space.
- Ensure that Artist’s Resale Right law is safeguarded in UK law, and encourage the roll out of Artist’s Resale Right in other jurisdictions.
- Consider adoption of Article 17 to ensure that creators continue to have trust in and can benefit from the use of online platforms and emerging marketplaces.

#### **2. Improve access to skills and studio spaces:**

- Work with educational institutions and service providers to ensure that a diverse range of creative talent have affordable access to skills courses and skills development.
- Embed non-skills based knowledge opportunities such as IP education and networking opportunities within higher education courses.
- Ensure local authorities can provide meaningful access to studio spaces and work spaces.
- Encourage partnerships between local authorities and independent bodies to gain a better understanding of the needs around studio spaces and how affordable spaces can be achieved.

#### **3. Provide a strong regulatory framework for cryptoassets:**

- Consider regulation within the cryptoasset sphere that promotes trust and consumer confidence for those trading in and dealing with cryptoassets.

- Review the UK's regulatory framework in line with the Law Commissions proposals to create a robust future for creators and consumers in the digital economy.

## **About DACS**

Established by artists for artists, DACS is a not-for-profit visual artists' rights management organisation. Passionate about transforming the financial landscape for visual artists through innovative new products and services, DACS acts as a trusted broker for 180,000 artists worldwide.

Founded in 1984, DACS is a flagship organisation that campaigns for artists' rights, championing their sustained and vital contribution to the creative economy. DACS collects and distributes royalties to visual artists and their estates through Payback, Artist's Resale Right, Copyright Licensing and Artimage. In 2021, we paid £17.2 million in royalties to 79,000 artists and estates.

**1. Which areas of the creative industries face the greatest potential for disruption and change in the next 5–10 years, and what impact could this have?**

- **What changes are expected in the way creative/cultural content is produced;**
- **the way audiences are engaged (for example through digital or immersive experiences);**
- **and the way business models operate?**

The visual arts sector has experienced breakthrough, trend-setting moments in the creative industries over the past two years through mass adoption of emerging technology. Artists' uptake of selling non-fungible tokens (NFTs) on the art market (explored in more detail below) demonstrates that visual artists are quick to dip their toe in the water and learn new skills. Many artists were drawn to the NFT market and adopted new technology due to the fact it disrupts traditional hierarchies and relationships in the art market. The sheer financial success of the NFT market place, worth over \$41 billion by 2021 alone<sup>1</sup>, shows that visual artists can lead the way on where the creative industries as a whole may go within the next decade.

The following section explores the changes to the way artists create their work, engage their audiences and how business models can support them in realising value from their contribution to the UK's creative industries.

**Changes in how creative content is being produced**  
***Non-fungible tokens (NFTs), blockchain, metaverse***

In 2021, non-fungible tokens (NFTs) became a buzzword worldwide after artists such as Beeple and Pak sold NFTs as digital artworks for millions of US dollars. NFTs are, in their simplest form, a token, or a receipt, for a digital asset located somewhere on the internet<sup>2</sup>. When an NFT is traded, the original work (unless a part of the NFT itself) is not sold: it is solely the NFT that changes hands.

NFTs grew in popularity from a 2017 collection of illustrated blockchain assets called CryptoPunks.<sup>3</sup> 10,000 unique characters were created and could be individually owned by a single person on the Ethereum<sup>4</sup> blockchain.

The rise in NFTs as an artistic medium has attracted both well-known artists, already established for non-NFT work, and a new genre of artists whose work is predominantly a digital-based practice. Artists such as Damian Hirst, Mat Colishaw the Andy Warhol Foundation – all well-known before the advent of NFTs – have minted NFTs to explore the nature of the practice and as a way of experimentation, developing skills and reaching new audiences. As an example,

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<sup>1</sup> Bloomberg, 6 January 2022, *NFT Market Surpassed \$40 Billion in 2021, New Estimate Shows* <https://www.bloomberg.com/news/articles/2022-01-06/nft-market-surpassed-40-billion-in-2021-new-estimate-shows>

<sup>2</sup> An NFT consists of a Contract address (a unique character string), a Token ID (a unique character string), a Token Name (a text string), the Original Creator ID (a unique character string) and either the Original Work or far more commonly, a link to the Original Work (a web URL).

<sup>3</sup> <https://www.larvalabs.com/cryptopunks>

<sup>4</sup> <https://ethereum.org/en/> Ethereum is the community-run technology powering the cryptocurrency Ether.

the Andy Warhol Foundation created NFTs out of previously unpublished Warhol works.<sup>5</sup>

Simon Denny, a Berlin-based artist, was one of the first to explore blockchain ideas and principles in his work, using it as a commentary and then a medium. His large-scale, multimedia installations simultaneously explore the utility of technology and the transformative impact it has on human behaviour and power structures.

Denny explains that the emergence of NFTs has created new business models where artists are selling parts of their intellectual property in a tokenised way. He describes the popularity in the NFT market towards selling profile pictures and digital T-shirts, both of which may appear to have little utility, but nod towards a new model of monetisation. This type of tokenisation is a feature of the metaverse<sup>6</sup> – a word that describes a version of the internet that is immersive and facilitated by virtual reality. Denny also believes that tokenisation will continue even if cryptocurrencies fall away, and that this model of financialisation over digital goods can be underpinned by fiat currencies just as easily.

### ***Extended reality (including VR and AR), interactive technology and digital content***

Visual artists and producers of creative and cultural content are using extended reality (XR) technology (such as virtual reality and augmented reality) as a way to bring their audiences closer through interactivity and performance. Artists are using tools such as gaming software, social media applications, video, audiovisual and digital software.

Keiken is an artist collective based between London and Berlin, co-founded by Tanya Cruz, Hana Omori and Isabel Ramos in 2015. They are collaboratively building and imagining a Metaverse to simulate new structures and ways of existing, and to test-drive possible futures. Keiken creates speculative worlds through filmmaking, gaming, installation, extended reality (XR), blockchain and performance. Keiken have given an account of the impact of technology on their work:

“Technology has provided a potential for artistic works to be gamified and interactive for both in-person physical audiences and online audiences. Younger audiences will have grown up immersed in technology, so using varied mediums (of XR, gaming, etc) will be more intuitive to them and a good way to engage them.

Some of the technologies we use to produce creative content have been around for many years, however the difference is an increase in accessibility to be able to use these technologies. For example, a lot of artists born around 1993-4 are of the generation where they will learn to use XR, 3D animation, gaming engines and VR/AR tools themselves to produce their work. Young people and students can use gaming engines such as Unreal or Unity. As the usability and

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<sup>5</sup> <https://www.bonhams.com/auction/27449/lot/11/andy-warhol-1928-1987-9-animated-digital-artworks1985/>

<sup>6</sup> For an explanation on the metaverse, see Wired.com *What is the Metaverse, Exactly?* 25 April 2022: <https://www.wired.com/story/what-is-the-metaverse/>

accessibility of software and engines improve, so will the development of content using these tools.”

### **Artificial Intelligence**

Artificial intelligence (AI) has been around since the 1950s in some form or another, and now exists in day-to-day functions as chatbots or predictive analytics. Since the 1980s onwards, machine learning emerged as a subset of AI. Machine learning is where a computer creates a model based on certain data, and then uses this data to, for example, make predictions or decisions. Machine learning works by feeding data to the AI, which is an algorithm. The data could be structured, such as a database, or unstructured data like images.

‘Edmond de Belamy’<sup>7</sup> is the name of a portrait painting constructed in 2018 by Paris-based arts collective Obvious. The work is unique for being the first artwork created using artificial intelligence auctioned by Christie’s auction house, where it fetched \$432,500 in 2018. The AI that created Edmond de Belamy is an example of a Generative Adversarial Network (GAN), which works by use of a generator and discriminator. The generator will be tasked with creating something: for example, an image of a dog. The discriminator has been trained with real pictures of dogs, and can then provide a judgement. If the image the generator created is not enough like a dog, the discriminator will reject this. The generator will then create another image, and keep doing so, until the discriminator considers it to look sufficiently like a dog.

In the case of the GAN creating Edmond de Belamy, the generator created lots of versions of the portrait. The discriminator was trained with 15,000 portraits by real artists up to the 20th century, some of which will have been protected by copyright.

### **Changes in how audiences are reached**

Audience engagement in the visual arts sector is radically changing. There is a shift towards large scale immersive, multimedia exhibitions that take place in physical locations that look somewhat different to a traditional gallery or museum. There is, simultaneously, a shift towards digital, ticketed or tokenised experiences which could be enjoyed in the audience’s own home. As a result, the typical ‘audience’ for visual artistic works has also drastically changed.

### **Immersive exhibitions**

Technology has allowed artists to create work that challenges the concept of an artistic work as a 2D or 3D item that audiences view and consider in a gallery or museum. Art has become more of an experience and a performance – something durational that requires a certain style of presentation.

An example of a new way of engaging audiences was the recent *Future Shock*<sup>8</sup> exhibition at large-scale exhibition space 180 The Strand. This in-person exhibition showcased the work of artists working in cutting-edge technology and provided a new perspective on what may be considered art. Visitors begin their experience walking into a darkened room where beams of light create a distortion effect that challenges the viewer’s perceptions of the space around

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<sup>7</sup> <https://obvious-art.com/portfolio/edmond-de-belamy/>

<sup>8</sup> <https://www.180thestrاند.com/future-shock>

them. This installation work, *Topologies*, 2022, was devised by London-based artist collective United Visual Artists (UVA)<sup>9</sup> founded in 2003 by British artist Matt Clark. UVA have been commissioned internationally by a variety of institutions to create site-specific work, as well as working with musicians, filmmakers and dancers to stage productions and fashion shows.

New York based gallery PACE opened a new destination for immersive digital art: Superblue,<sup>10</sup> based in Miami. PACE represent a wide range of artists, whereas Superblue instead only represents those with the skills to produce immense digital or immersive experiences for audiences. These include London-based collective Random International,<sup>11</sup> whose work is fuelled by research and scientific discovery. Their work *Rain Room* comprises of a simulated rain environment, where a constant stream of 'rain' is interrupted whenever a person stands below it, with sensors detecting a body present.

From the audience perspective, *Rain Room* or *Future Shock* is an immersive and participatory experience more akin to theatre or a theme park: people will queue for tickets, queue for entry, capture their experience on their phone and share it with friends or on social media. Visitors to *Future Shock* were young and old, families with children who can 'touch the art', play and interact. Younger visitors who have more proximity to the technologies used on display could see and explore the potential for these technological tools. *Future Shock* included a short film from London-based artist Lawrence Lek,<sup>12</sup> which was created entirely within a gaming software called Unreal Engine. Lek's skills and education in architecture and in machine learning underpins not only the topics he explores in his films but also the method by which they are produced (see Lek's CV).<sup>13</sup>

Artists are creating works specifically for interactive displays, where capturing images of the work on a phone is encouraged. These copies, however, are not remunerated back to the artist as there is no mechanism in place in the UK that allows for fair remuneration whenever copyright-protected works are copied and stored. Over 45 countries worldwide have fixed this issue through private copy levy schemes, where manufacturers of devices used to copy creative works pay a small fee, a fraction of the sale of a device, into a fund that is distributed to creators. The Smart Fund is a proposal from DACS and other creative industry stakeholders that draws on the best aspects of private copy levy schemes and sets out a framework for creators in the UK to receive fair and equitable remuneration. The Smart Fund also proposes a portion of all monies collected are reserved for cultural funding that can benefit society as a whole, whether through skills development or cultural access programmes.

### ***NFT and digital exhibitions***

The emergence of NFTs on the market as a way of representing visual art has created a new audience who view, collect and sell these tokens via a primarily digital interface. Investors in cryptocurrency may never have purchased a physical artwork, such as a painting, but flocked to the NFT market as a way of realising value in their investments.

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<sup>9</sup> <https://www.uva.co.uk/about>

<sup>10</sup> <https://www.superblue.com/about/>

<sup>11</sup> <https://www.random-international.com/biography>

<sup>12</sup> <https://lawrencelek.com/>

<sup>13</sup> <https://www.sadiecoles.com/artists/51-lawrence-lek/biography/>

Artist Simon Denny explained that an artist working in the digital and NFT sphere has several different audiences: those who attend physical exhibitions, those who attend online exhibitions, those who are interested in purchasing a token or item from the artist, galleries and collections who purchase art works either for secondary sales or for their collection displays. Denny's portfolio is varied and includes digital works and NFTs fit for online audience engagement but also often large-scale installations for physical exhibitions.

Opensea is the most well-known trading platform for NFTs, which can be used as a place to view NFT artworks. This has led to a rise in curated online spaces to view NFT art, therefore obviating the need for a person to visit physical spaces to enjoy the work. Commentators in this field have noted this can have a disruptive impact on physical galleries and museums who may not be able to retain the attention of parts of their audience who are shifting to digital-only experiences.

NFT artists see their audiences as a networked, international and online-based community. Denny explained that the traditional professional route for an artist has dramatically changed and the forums in which an artist creates their reputation are often digital. Denny described the traditional route for an artist was to go to art school to learn the skills of their craft and to rely on the networks the educational institution provided. The emergence of Twitter and social media applications such as Discord have disrupted the hierarchies in place for artists to promote themselves and create communities.

The rise of NFTs also demonstrates a trend towards better financial rewards for an artist's work. In the USA, where there is no form of Artist's Resale Right law, artists have surged towards NFTs due to the fact that a sale underpinned by a smart contract can provide a financial payment, which is akin to an investment share (and will be described as such herein) on a secondary sale. This demonstrates that the protection of, and monetisation of, IP rights is incredibly attractive in adopting technology. Denny describes how sales of tokens as a type of merchandise is a driving factor for visual artists: "one of the most disruptive aspects of the blockchain is that it has opened up the potential for monetisation through a proliferation of tokens. A 'like' or an equivalent metric can become a form of abstractable currency."

Whilst the promise of monetisation is a draw for many artists, a lack of regulation and erosion of rights could threaten this opportunity. Anecdotal evidence collected via DACS' public programme series on NFTs, called *Tokenomics*, showed a worrying problem that artists had been unable to retrieve these financial rewards in cryptocurrencies due to a range of problems: platforms having no responsibility towards users; interoperability issues between different platforms and cryptocurrencies; a general lack of regulation that created opacity on who the buyer was and their authenticity as a person with means to pay the artist.

### **Changes in business models**

DACS has over 30 years' experience in business models that create equity for visual artists when their works are used. Through licensing the copyright in visual artistic works, artists are able to receive a fair remuneration from the use and exploitation of their work. This is an essential part of the business of being

an artist – many artists use their royalties to support the costs of their own practice, in turn allowing them to create works that are accessible to the public.

Artists are able to licence the use of their works for immersive, digital exhibitions and use by artificial intelligence or machine learning. British artist Stuart Semple created VOMA<sup>14</sup> – the virtual online museum of art – as a way to show curated exhibitions in an online-only environment. Works included in these exhibitions were licensed via DACS through fit-for-purpose licensing agreements that ensured artists had not only remuneration from the use of their work but an element of control over the duration and scope of use.

NFTs have demonstrated the importance that artists place on their IP rights. In the UK, EU and certain jurisdictions, visual artists benefit from a royalty whenever their works are resold on the art market over a certain value. This right, called the Artist's Resale Right, brings visual artists in line with other creators such as musicians who benefit from monetisation of their works on secondary uses. The USA has no Artist's Resale Right law and therefore US artists cannot receive an ongoing stake in their work once it is sold again on the art market. It is usually the secondary sales and further sales where real value is generated. NFTs provided a way for artists in the US to receive financial incentives, akin to an investment share, when their works were resold, by way of payment mechanisms provided in smart contracts executed on the blockchain.

### **Recommendations**

- Government should adopt the Smart Fund as a legislative proposal that delivers equitable remuneration to artists, especially those who create digital works or works utilising emerging technologies.
- Ensure that Artist's Resale Right law is enshrined and upheld within the UK's legislative framework, and encourage the roll out of Artist's Resale Right in other jurisdictions
- Reconsider the text and data mining copyright exception, which will unfairly harm creators seeking to work within the AI space.

## **2. What skills will be required to meet these emerging opportunities and challenges?**

Artists who DACS engaged with as part of this inquiry explained that the skills needed are practical, digital skills in a range of software. Keiken Collective outlined the following skills that are essential in their practice, and for which artists exploring opportunities in the digital space need:

- Virtual production skills
- 3D animation technical and creative
- Coding/ programming
- UX (user experience) design
- Art direction
- Games designer
- Sound design/composers
- 3d scanning/printing
- Motion capture

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<sup>14</sup>

<https://stuartsemple.com/voma-the-worlds-first-virtual-museum-of-art/>



- Video editing
- Adobe photoshop

DACS consulted artist members on the topic of artificial intelligence and how this forms part of their practice. DACS also sought opinion from artists during the *Tokenomics* series that explored NFTs. Some artists whose practices were more 'traditional' and were less familiar with technology were cautious and nervous about the impact technology may have on them and their work. Artists considered artificial intelligence and machine learning could lead to increased infringements of their copyright, and stressed that in a government consultation on introducing a new copyright exception for AI uses that AI uses should be properly licensed, and that artists deserve to be remunerated whether their work is used by AI or traditional media like publishing.

Some artists have expressed an interest in upskilling and learning more about new tools that could help them throughout their practices. Artists identified that AI software such as Snowpixel was a useful tool for experimentation, or helping with research and development in their practice – even if their work may consist of traditional media such as painting or sculpture. Artists are interested in the opportunities that NFTs can give artists in terms of securing investment shares through smart contracts, which demonstrates the importance of a framework that supports intellectual property rights as a way to provide financial rewards to artists for their works.

Simon Denny, who works as both an artist and an educator (a lecturer at Hamburg University of Fine Arts, HFBK)<sup>15</sup> felt that young artists required a more nuanced set of skills around promotion, reputation building and networking within new online, internationally attended spaces. Denny noted that it was important for young artists to have a literacy in the tools that enable them to identify their audiences and work within them. This may include an understanding of IP rights and the protections and opportunities of financialisation that can be found within their practice, allowing artists to become commercially viable. In particular, artists working on large-scale, immersive exhibitions require financial investment from a commissioner, collector or institution to enable them to create their work. It is therefore helpful for young, emerging artists to have a level of commercial or financial literacy to make best use of their skills and meet the interests of their audiences.

### **Recommendations:**

- Work with educational institutions and service providers to ensure that a diverse range of creative talent have affordable access to skills courses and skills development.
- Embed non-skills based knowledge opportunities such as IP education and networking opportunities within higher education courses.

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<sup>15</sup> <https://www.hfbk-hamburg.de/en/namenregister/simon-denny/>

### **3. What actions are needed from the Government and local authorities to ensure there is an appropriate talent pipeline equipped with these skills? a) How can this be sufficiently flexible to take account of the pace of change in the sector?**

Artists have described a lack of access to technology, software and equipment through schools and higher or further educational institutions. In particular, artists described a lack of appropriate training to deliver the skills they required to make their work. A further issue that artists faced was access to spaces such as studios and working spaces, which were both affordable and had necessary equipment to enable them to learn or develop skills. Keiken Collective stated that creative and artist studio spaces in the capital are rapidly becoming less available and less accessible.

An example of a pioneer in the skills sector is arebyte,<sup>16</sup> a gallery run by Nimrod Vardi, which has a focus on showcasing artists who use digital skills and emerging technologies in their work. Alongside the gallery, Vardi also runs a skills programme and studio space programme. arebyte skills programme builds and shares knowledge on creative media technologies with audiences of all ages. Run in partnership with artists and the education and youth sectors, the programme offers activities for amateurs and professionals to develop digital techniques and gain critical understanding of digital art practices. Through creative digital skills workshops, artist development programmes, online resources, university residencies, exhibition tours, work placements, trans-disciplinary symposium and youth art projects, arebyte skills facilitates the circulation of knowledge around media art.

Vardi points to issues around gender and racial diversity within the creative technology industry, and aims to address this through working with Newham and Tower Hamlets local authorities as part of the skills programme. Vardi explains that young people on apprenticeship programmes are learning specific knowledge about the industry but are not gaining the skills basis that would enable them to advance in their career. He points to the fact that many students and young people in apprenticeship schemes do not receive skills development in CGI (computer-generated imagery). CGI skills are utilised throughout the creative industries and are an essential skill that young people can learn in the context of artistic practice.

#### **Recommendation:**

- Ensure local authorities can provide meaningful access to studio spaces and work spaces
- Encourage partnerships between local authorities and independent bodies to gain a better understanding of the needs around studio spaces and how affordable spaces can be achieved.

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<sup>16</sup> <https://www.arebyte.com/whats-on>

#### **4. What actions are needed from industry to support the talent pipeline development? a) What actions are needed from organisations in the creative industries to prepare for and accommodate the requirements of the future workforce?**

Industry plays a crucial role in supporting talent in emerging technology and in the future of creative content. FACT,<sup>17</sup> a gallery in Liverpool, is one of the first galleries that put digital art at the forefront of their public offering. FACT is home to gallery spaces and a learning lab where artists can develop technological skills. Nurturing artistic practice and enabling collaboration between artists, scientists and technologists is core to FACT's mission.

At London's Serpentine gallery, the Arts Technologies<sup>18</sup> programme is part of the gallery's commitment to supporting new artistic experiments and assisting artists in developing work that deploys advanced technologies as their medium. The foundation of the Arts Technologies programme is located in an evolving research and development platform, that supports the development of infrastructures for ongoing artistic exploration and interrogation of advanced and emerging technologies.

Last year, Plymouth unveiled a new Immersive Dome<sup>19</sup> in the Grade II listed building Market Hall in Devonport. The Dome was developed in a partnership between the Real Ideas Organisation, Plymouth City Council and the Institute of Art and Design at the University of Plymouth. The Dome will create a new space for digital artists, immersive and creative applications of technology. The Chief Executive of Real Ideas, Lindsey Hall, has said: "The Market Hall really is a game changer. It puts Plymouth on the map internationally as a place with an emerging tech cluster around immersive, and here in Plymouth offers incredible experiences and opportunities to people living and growing up in Devonport and the wider city".

From London to Liverpool to Plymouth, industry is collaborating with local government to provide spaces to encourage the discovery and application of technology. These spaces serve a crucial role in developing skills and supporting the ambitions of artists who are using technologies in innovative ways. Keiken Collective also explain that technologies that can have a major impact on the creative industries, and society more widely, require a lot of testing and problem-solving. As such, artists can play a pivotal role in using technology in a 'sandbox' environment, encouraging a closer relationship between technology industries and the artists who use technology in their work.

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<sup>17</sup> <https://www.fact.co.uk/about>

<sup>18</sup> <https://www.serpentinegalleries.org/arts-technologies/>

<sup>19</sup> <https://madeinplymouth.co.uk/culture-blog/first-look-inside-plymouths-immersive-dome/>

**5. What role do innovation and research & development play in addressing the future challenges facing the creative industries?  
a) What actions are needed from the Government, funding bodies and sector organisations to support innovation, and research & development?**

Research and innovation are essential to developing both skills and a market place for artistic technological practice. The UK does not adequately fund and promote research and innovation across the creative industries. Specific funds such as NESTA and Innovate UK are not focused on the creative industries but instead use 'blended funding structures' for traditional industry sectors. The expertise at a funding level does not match the scale of the global market in industries such as visual arts, film and gaming.

Artists felt that tax breaks would also be helpful in the development of hardware and software, and commented that investment is required in the whole process of creative practice. Often only one part of the practice would be funded, for example the development of a type of technology but not further investment for the use of that technology within practices. One artist commented that concepts in their practice, such as what a 'digital work' is, or how the artist uses technology is a barrier to receiving the right funding and skills support. The artist felt that funding was often very siloed to support specific activities aimed at the gaming industry (such as learning games engines), but that there was little understanding of how these skills could be needed in different disciplines. There is a clear need for those providing funding and reviewing funding applications to possess the understanding of artistic technological practices.

Funding bodies and local authorities can play an important role in supporting innovation, research and development by providing access to well-equipped studio and collaboration spaces; providing specific and thorough skills programmes that can apply to a diverse range of practitioners and increasing their own expertise and understanding of technology and artistic practice, to better serve the needs of those seeking funding.

**6. How effective are the Government's existing strategies at supporting the creative industries to meet the challenges and opportunities ahead?**

Artists felt that funding and support for technology in the creative industries does not allow a broad enough scope for creativity, and therefore may limit how artists are able to achieve funding. One artist stated that they had not experienced any funding opportunities for artists working within technology in the UK.

Artists also described a lack of skills opportunities within higher education, with only a small number of universities having invested in creating programmes of study that provide technological skills and learning. Artists considered residency programmes as an opportunity to learn skills outside of the usual university and higher educational structures, and considered that more governmental funding into artists residencies with an emphasis on skills will bear fruit.

Universities in the UK have some of the highest tuition fees within the European region, and therefore young artists may be enticed instead to study in other countries and use their talent elsewhere. Some artists thought it was important for the bodies or companies providing digital skills to be independent. Tech companies may have the resource to provide skills programmes to young people; however, artists felt this could keep them within a branded network and be limiting on their experience and expression.

## **7. What lessons can the UK's creative industries learn from other countries, and other sectors?**

Strong and fair regulatory frameworks in the intellectual property and cryptoasset fields have already been demonstrated to deliver successes in other countries.

### **Intellectual Property**

The nexus of intellectual property laws in European countries is providing creators with an ability to financially benefit from their works as they are used within developing and emerging technologies. The UK is at a risk of being left behind as a leader in intellectual property by diluting the rights of creators and thereby preventing them from a) earning a living from their work and b) fully participating in new technologies.

- Private copy levies

The UK's copyright law is not currently delivering the same financial benefits to artists, writers and performers compared with the law in other countries, leaving creative individuals worse off. There is no mechanism in UK copyright law to fairly pay artists when their work is shared and copied on smartphones, laptops and other devices. These mechanisms already exist in 45 other countries around the world, paying out over £930 million to artists, writers, musicians and performers globally in 2018 alone. DACS, together with other creator and performer representatives proposes a scheme called the Smart Fund to provide a fix to this problem.

The Smart Fund would ensure creators and performers are paid for their work whilst also providing a new funding stream for communities. It does this through payments from sales of mobile electronic devices which copy, store and share creative content. Manufacturers pay a small fraction of the value of each device they sell into the Smart Fund, which is then paid out to both creators and local community projects with a focus on digital creativity and skills. In the UK it could raise up to £300 million a year. The Smart Fund is an innovative way to ensure that they receive fair remuneration for their work, whilst aiding technology companies to collaborate with the creative sector to build cultural capital in communities. In short, "tech enabling creativity." This is also an opportunity to end the unfairness suffered by artists whose works are continuously copied and shared digitally without permission or reward.

- Digital Single Market

The Digital Single Market reforms in the European Union have advanced copyright law to be fit for the digital age, giving space for creation, innovation and technological development without cutting creators out of the equation.

Article 17 of the Copyright Directive<sup>20</sup> provides that streaming platforms are liable for the infringement of copyright that takes place by users. Social media platforms have now started entering into licensing agreements in France and Germany to fairly remunerate creators whose works are used on the platforms.

In France, NFTs were considered by the French Superior Council for Literary and Artistic Property, which considered copyright infringement concerns and transparency concerns in respect of NFTs traded on NFT marketplace platforms. The Council recommended that NFT marketplaces fall within the remit of Article 17 of the Copyright Directive. This demonstrates that the update in copyright law can protect the rights of creators even as technology evolves.

UK artists and creators do not benefit from Article 17, although the law was drafted during the UK's membership of the European Union and supported by the UK at the time. Creators are therefore missing not only important licensing revenue from existing online platforms, but also from NFT platforms and future uses of technology.

- **Text and Data Mining**

An example of the concerning erosion of rights is the recently introduced exception to copyright for text and data mining. This exception, introduced by the Intellectual Property Office, has been proposed as a way to encourage the development of artificial intelligence technologies in the UK. However, the reality is that this change will have far-reaching detrimental consequences to UK creative workers. It will undermine not only the UK's 'gold standard' copyright framework but many viable and valuable existing business models and will ultimately result in loss of revenue for rightsholders and reduce incentives for innovation in creativity. It will create a significant gap between the value created for those using and benefitting from AI and the value attributed to right holders on whose work it relies.

DACS recommends that the Department for Business, Energy and Industrial Strategy and the Intellectual Property Office look again at how the policy objectives can be better met without undermining creators' rights and existing business models of our globally competitive sectors.

### **Cryptocurrency regulation**

There are several jurisdictions moving forward with cryptoasset regulation in order to bring consumer confidence to the market and encourage investment through a competent regulatory framework.

The European Union proposed a new regulation in September 2020 called Markets in Crypto Assets Regulation (MiCA), which is intended to bring cryptoassets, cryptoasset issuers and cryptoasset service providers under a regulatory framework.<sup>21</sup>

The intention of the MiCA is to protect consumers with a requirement on cryptoasset service providers to protect consumer wallets and liability should

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<sup>20</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

<sup>21</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/>

they lose investors' assets. NFTs are excluded from the scope of MiCA except if they fall under existing crypto-asset categories. This allows firms to create individual digital assets, however companies behind NFT collections will have to provide a whitepaper explaining their product and how they operate on the blockchain.<sup>22</sup>

The EU is attempting a balance between encouraging innovation and protecting customers and the markets whilst remaining attractive internationally. This could lead to increased consumer confidence, encouraging markets to grow, protect from bad actors, and help long-term growth and profitability. Equivalence with the UK in this regard would provide a path to trade and co-operation. If EU markets are perceived as a safer place for investment and operation, UK financial markets could suffer as a result.

Estonia has been an international pioneer in crypto transactions and investments. The Anti Money Laundering and Terrorism Finance Act introduced in 2017 created robust new regulations for crypto businesses operating in the country and became one of the first jurisdictions in the world to do so.<sup>23</sup> A framework was provided to facilitate entrepreneurship, innovation and global investment. Cryptocurrency exchanges are legal and operate under a well-defined regulatory framework, including strict reporting and 'know your customer' (KYC) rules, and under current legislation cryptocurrency exchanges must obtain two licences.

Singapore is another jurisdiction which has taken the lead in crypto finance and is a hub of activity in Southeast Asia; China's crackdown on cryptocurrencies led to many service providers relocating to Singapore.<sup>24</sup> There Bitcoin is treated as 'goods' and covered under the Goods and Services Tax, the equivalent of VAT.<sup>25</sup> Former Deputy Prime Minister Tharman Shanmugaratnam confirmed in 2018 that cryptocurrencies are subject to the same anti money laundering and combatting the finance of terrorism measures as fiat currencies.<sup>26</sup> The Payment Services Act 2019 brought exchanges and other cryptocurrency businesses under the regulatory authority of the Monetary Authority of Singapore (MAS), imposing a requirement for them to obtain an operating licence.

Since the market meltdown earlier this year and the collapse of stablecoin TerraUSD a new Financial Services and Markets (FSM) Bill was passed on 5 April 2022.<sup>27</sup> This Bill increases penalties for breaches of technology risk management, and will regulate all persons in Singapore conducting digital token services purely internationally. The intention of these additional regulatory measures is to preserve Singapore's reputation as a global financial hub following the advent of digital technologies impacting the financial system. It highlights the seriousness with which these issues have been treated by national

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<sup>22</sup> J. Breslin, D. Sweetman & C. Wegmann, 'Crypto-assets – regulation and common law: where are we now and what is the direction of travel?', *Journal of International Banking Law and Regulation* 2022, 37(6), 231-243

<sup>23</sup> <https://www.lexology.com/library/detail.aspx?g=2a0ccd45-b864-4cea-a963-471fc45e1d20>

<sup>24</sup> <https://timesofindia.indiatimes.com/business/cryptocurrency/blockchain/singapore-emerges-as-the-new-crypto-hub-in-south-east-asia/articleshow/86978528.cms>

<sup>25</sup> [https://www.iras.gov.sg/taxes/goods-services-tax-\(gst\)/specific-business-sectors/e-commerce#title5](https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/specific-business-sectors/e-commerce#title5)

<sup>26</sup> <https://www.ccn.com/singapore-dollar-bitcoin-aml-cft-laws-deputy-pm/>

<sup>27</sup> 'Singapore: Financial Services and Markets Bill 2022 – increased powers granted to MAS to address financial sector-wide risks', F. Mok and K. Tiah, *Journal of International Banking Law and Regulation* 2022, 37(8), N81-N83

leaders in this area and the requirement for international co-operation and alignment.

Lawyer, blockchain expert and art advisor Simon Oldfield,<sup>28</sup> - who has responded to this inquiry separately - explains that the Law Commission's consultation on digital assets is important: "The Law Commission's proposals, combined with the willingness of the English courts to adopt a progressive approach to addressing issues parties encounter with digital assets, indicates that the UK is well placed to create a robust and responsive framework for the future digital economy".

Oldfield notes that the creative industries play a valuable role in the developing uptake of blockchain technology, but that concerns of creators should be taken into account. "Stakeholders within the creative industries will need to be assured that there are mechanisms to mitigate fraud and other harmful activities, and meaningful efforts to address environmental concerns around blockchain technology."

**Recommendations:**

- Implement the Smart Fund as a way to bring the UK in line with other countries that already meaningfully remunerate creators when their works are copied and stored, especially those who work in emerging technologies
- Review the IP framework in the UK and consider adoption of Article 17 to ensure that creators continue to have trust in and can benefit from the use of online platforms and emerging marketplaces.
- Consider regulation within the cryptoasset sphere that promotes trust and consumer confidence for those trading in and dealing with cryptoassets
- Review the UK's regulatory framework in line with the Law Commissions proposals to create a robust future for creators and consumers in the digital economy.

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<sup>28</sup> <https://www.simonoldfield.com/>