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From:	Presidency
To:	Working Party on Intellectual Property (Copyright)
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Subject:	Policy questionnaire on the relationship between generative Artificial Intelligence and copyright and related rights – Revised Presidency summary of the Member States contributions

Delegations will find attached the revised version of the summary of Member States' contributions to the Presidency's policy questionnaire on the relationship between generative Artificial Intelligence and copyright and related rights. This version incorporates the comments provided after the Copyright Working Party meeting on 11 December 2024.

ANNEX

REVISED SUMMARY

of Member States contributions on the policy Questionnaire on the relationship between generative artificial intelligence and copyright and related rights

Prepared by the Hungarian Presidency

The application of generative artificial intelligence (AI) holds significant importance in the context of creative industries. AI presents both opportunities and challenges for creators, who can use these tools in their creative processes while also having to face competition from AI-generated content. While the increasing prevalence of AI-generated content poses substantial challenges to the creative industry, other aspects of this development also require consideration. It is evident today that innovation, research, automation and technological advancement heavily depend on AI developments. Therefore, when introducing initiatives and policies related to AI, the EU must also consider their potential effects on competitiveness and innovation in the international context. A careful and balanced approach is required when assessing the possible need for any steps forward in establishing sectoral initiatives, such as in the area of copyright law.

The Hungarian Presidency, in order to facilitate the EU level discussions in this context, created a policy questionnaire on the relationship between generative artificial intelligence and copyright and related rights. The questionnaire was published and distributed to Member States on 27 June 2024, inviting them to provide their respective views and proposals on seven different topics in this area by 1 November 2024.

The aim of this document is to provide a summary of the twenty written contributions the Presidency received from Member States. Besides the Member States' inputs, the Copyright Infrastructure Task Force (CITF), founded by four EU Member States, also submitted information about its project that is relevant for the topic. In the beginning of this paper the main findings will be presented, followed by a summary of the Member States' contributions. Annex 1 incorporates the list of studies, papers, surveys, mentioned by delegations in their contributions, and CITF's submission is included in Annex 2.

The Hungarian Presidency hopes that this document will be a valuable contribution to future policy-oriented discussions in relation to AI and copyright and could feed into the process of elaborating the Work Programme of the European Commission for the new institutional cycle.

MAIN FINDINGS

Based on the responses to the questionnaire, it became evident that the relationship between AI and copyright is in the centre of attention and several activities are taking place in the Member States in order to analyse the interlinks between AI and copyright. Delegations reported on a high number of **studies, surveys, academic articles, research projects** and other publications in this area. Both horizontal and sector-specific studies conducted by stakeholders were referred to, as well as research carried out by collective management organisations (CMOs). In many Member States various **committees, expert** and **reference groups** were set up in recent years to address the issues related to AI, including the relationship between AI and copyright. So far, those mapping exercises led to **legislative intervention** in two Member States. Most delegations reported that there are currently no relevant **court decisions** or **case law** on this topic.

While most of the Member States' contributions showed that the current **EU legal framework is sufficient** to address arising issues, the majority of Member States raised practical matters where, according to their views, **more clarity and certainty** would be required for a better implementation of the existing EU acquis. The most commonly raised topic in this context was the **applicability of the text and data mining (TDM)** exception and its opt-out mechanism introduced by the 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 (hereinafter: the DSM Directive) for the AI training process. According to a significant number of contributions **there are certain unclarities regarding the applicability of the TDM exception to AI training**. This was reflected by a number of national positions and many stakeholder views. In this context several Member States were of the view that **copyright uses for AI training go beyond the scope of the TDM exception**. The views diverged significantly on the setting up of an EU-wide database in order to provide more legal certainty within the EU regarding the **functioning of the opt-out system**. However, other practical tools, such as common standards, were also raised in this context.

Based on the contributions it was clear that there is no national legislation, case law, guidance, or soft law addressing the copyright protection of AI-generated content in the Member States. It was a general view stemming from the contributions that works may be eligible for copyright protection only if **the human input in their creative process was significant** and all the prerequisites for the copyright protection were fulfilled.

The Member States were in agreement that there is no need to provide any kind of new or additional copyright-related protection, including a new *sui generis* right, to AI-generated content. In the case of AI-assisted works, the general copyright rules should be applicable.

The majority of the Member States were of the view that, before introducing new specific **transparency obligations** linked to AI generated content, the priority should be to **analyse** how the provisions of the AI Act will be implemented in this context. Apart from Member States advocating for a "wait and see" approach, a significant number of Member States already expressed their support for taking **additional steps** in the context of ensuring more transparency, while others, already at this stage, opposed the introduction of further specific transparency obligations. The Member States were almost equally divided on the aspect of whether the possible **labelling/watermarking** obligations should apply uniformly or in a diverse way, taking into account various types of works and other subject matter.

Several Member States expressed that the existing legal framework, including the current opt-out regime of Article 4(3) of the DSM Directive, combined with the AI Act's transparency obligation in respect of training data, should be enough to stimulate the **conclusion of licenses between rightholders and AI companies.** According to their views it was crucial, however, that these provisions are properly implemented and enforced. A significant number of Member States and stakeholders were of the view that the mass scale of AI-related copyright uses and the practical challenges for the rightholders in monitoring them both underline the importance of **collective management** in this area. Many Member States reflected on their stakeholders' views supporting the **individual licensing** approach and a license-based training for generative AI. As for **further measures** which could be taken at EU level to facilitate the conclusion of licenses between rightholders and AI developers, a wide variety of suggestions were provided. There were diverging views on the possible setting up of a **remuneration scheme** for generative AI activities. Views on which **specific sectors or aspects** of the generative AI creating process should be complemented by a remuneration scheme were also quite divergent, but were all focusing on areas where, according to Member States' views, AI impacts the creative sector the most (e.g. audiovisual, music, publishing sectors and journalism). The majority of Member States were of the view that the scheme on training of AI models should respect the **competitiveness** of EU SMEs and startups, who are in a challenging position compared to large technology companies as developers of AI models, so further measures would be necessary in order to provide them with safeguards.

As regards **sector-specific rules** and rules applicable to small and medium-sized enterprises, Member States' positions are diverse.

There was consensus among the Member States that introducing a **specific liability regime** in relation to copyright infringement in the context of generative AI activities is unnecessary at this stage. Several Member States, however, provided their differing opinions and views on how input or output related infringements should be handled with specific provisions. The majority of Member States were of the view that if such a specific liability regime were to be set up, then it should cover both input and output related infringements.

While some Member States provided suggestions on specific provisions regarding the previous topics, the majority of Member States were of the view that introducing a **legislative instrument** on **the copyright-related aspects of AI** in the EU was not necessary at this stage. Before proceeding further, the existing legal framework should be implemented, applied and monitored. Most Member States agreed that there is a need for an **international discussion** on the topic of AI and copyright and that the EU should take an active role in this discussion. The majority of Member States were of the view that the best platform for such international discussions is the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organisation (WIPO). In the context of the SCCR, the majority of Member States also agreed that **international normative legislation** would not be an appropriate step in this area at this stage.

I. STATE OF PLAY

1.1. Have there been any relevant surveys, studies or research conducted on the relationship between generative AI and copyright in your Member State, that you would consider worth sharing?

Based on the responses to the question it can be highlighted that several activities are taking place in the context of the work on analysing the relationship between generative AI and copyright. Member States reported on **a high number studies, surveys, academic articles research projects or other publications** in this area. Some respondents referred horizontal, as well as sector-specific studies conducted by stakeholders or research carried out by CMOs.

Some Member States that referred to various studies, surveys, or reports also included the **main findings** of these documents in their respective contributions. Below are a few interesting examples, with brief conclusions drawn from such projects (each from a different document):

- a survey (not further specified by the Member State contribution) on the authors' views on AI showed that, so far, only 25% of authors who responded have been using, and will continue to use, AI tools in their creative endeavours; 92% of respondents are able to notice and differentiate AI-generated visuals, texts or music; 84% are of the opinion that use of AI tools will contribute towards smaller income, and 16% experienced negative impact on their income; 93% maintain that authors must be able to agree or disagree with use of their works for AI training; 97% are of the opinion that authors must be remunerated for the input and output;

- a research (not further specified by the Member State contribution) carried out on behalf of a CMO representing music creators and their rightholders revealed significant public backing for the respective Member State to take an active role in managing the effects of AI on the music industry, with 95% of adults believing that the State should adopt a proactive stance, while only 10% oppose government involvement;

- a study on the impact of generative AI on the music and creative industries, carried out by CMOs, revealed that 35% of creators surveyed have already used AI in their works, and that 95% of creators and music publishers are demanding greater transparency from companies developing AI tools;[1]

- another study on the impact of generative AI on the activity and income of visual and literary authors shows that 65% of visual and literary authors surveyed are opposed to the use of their works for training generative AIs, even in exchange for payment;[2]

- according to another study on the impact of AI on the film, audiovisual and game industries, copyright issues are the main concern of the audiovisual and film industry professionals.[3]

In addition to the Member States' contributions, the **Copyright Infrastructure Task Force (CITF)** also submitted information[4] about its project, which inter alia focuses on working use cases for a machine-readable "opt-out" mechanism under the DSM Directive and the EU AI Act.

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1 AI and music: Generative Artificial Intelligence in the music sector – GEMA / SACEM joint study - https://www.gema.de/en/news/ai-study

2 L'enquête sur l'impact des IAG sur l'activité et les revenus des artistes-auteurs de l'image et de l'écrit menée par l'observatoire ADAGP-SGDL - https://res.cloudinary.com/voidsarl/image/upload/v1727251924/VDEF_ADAGP_SGDL-enque%CC%82te-web.pdf

3 Quel impact de l'IA sur les filières du cinéma, de l'audiovisuel et du jeu vidéo ? - https://www.cnc.fr/documents/36995/2097582/Cartographie+des+usages+IA_rapport+complet.pdf/96532829-747e-b85e-c74b-af313072cab7?t=1712309387891

4 The entire contribution can be found in Annex 2.

1.2. Is there any relevant case law or court decision in your Member State in this field?

Most Member States reported that there are currently no relevant court decisions or case law on this topic.[5] A **total of three Member States reported on court decisions related** to AI and copyright. The brief essence of these court decisions is as follows:

- in a case where a **logo was created using AI**, the respective Member State's Supreme Court ruled that the mere fact that a work was created by artificial intelligence does not automatically disqualify its eligibility for copyright protection. Each case must be assessed individually to evaluate the extent of human input in the creation process.

- another judicial decision, also dealing with the **copyright eligibility of AI-generated output,** concluded that, due to the fact that the plaintiff did not create the image on his own but by using AI, the image cannot be considered an original result of a creative activity performed by a natural person, and that the image is therefore not eligible for copyright protection.

- a regional court decision dealt with a concern regarding the creation of **a data set** to be used for AI **training**. The court ruled that the defendant's activities fall under the transposed provisions of Article 3 of the DSM Directive and also indicated that the term "machine readability" could be interpreted as meaning "machine understandability" and that opt-out in "natural language" could be sufficient to meet the requirements of Article 4 of the DSM Directive.

[5] One Member State highlighted several **administrative cases**, where the Data Protection Commission investigated the potential unlawful use of people's data for AI training and enforced the EU's privacy framework against certain AI providers. In addition to this another Member State reported about two rulings on **competition issues** raised by generative AI, concerning compliance with commitments relating to practices in the press sector and the competitive functioning of the generative AI sector.

1.3. Have you introduced or are you thinking about introducing any national (legislative or non-legislative) initiatives beyond the national implementation of the DSM Directive and the copyright-relevant provisions of the AI Act to tackle the challenges of generative AI and copyright?

The majority of Member States emphasized that, rather than introducing national regulations, a **harmonized EU approach should be the priority**, as the introduction of varying national regulations would be counterproductive. Several Member States reported that there are no initiatives or plans to introduce legislative or non-legislative instruments concerning the relationship between AI and copyright.

Two Member States reported having concrete plans and drafts of **legislative instruments** for introduction. The **draft law** reported by one of them aims to introduce provisions on better transparency, enabling users to recognize AI-generated content, and would also contain transparency rules related to AI-assisted works. The other Member State reported that it is in the phase of considering the adoption of a **Royal Decree** regulating the granting of extended collective licenses (ECL) for the massive exploitation of copyrighted works and performances for the development of general-purpose AI models. In addition to these two initiatives, one Member State mentioned that, although a proposal had been made, it was withdrawn due to negative feedback.

Many Member States reported on the **establishment of various committees, expert and reference groups** set up in recent years to address issues related to AI, including the relationship between AI and copyright.

II. TRAINING OF AI MODELS

2.1. Even though the EU legal framework provides legal certainty as regards the rules applicable to the training of AI, are there still, in your views, questions or doubts related to the use of copyright protected content in the training of AI models?

While referring to the TDM exception under Article 4 of the DSM Directive as well as the AI Act's transparency and copyright-related obligations on providers of general purpose AI models (Article 53(1)(c) and (d)), the majority of the Member States raised practical matters, where, according to their views, **more clarity and certainty** would be required for the better implementation of the existing EU acquis in this context. Some Member States were of the view that the legislation in effect is relatively new and that time is needed for its proper implementation, but also that the rulings of the Court of Justice of the European Union (CJEU) will provide important interpretations. A handful of Member States indicated that they are still consulting on this question internally.

The most commonly raised topic in this context was the applicability of the **text and data mining (TDM) exception** and its **opt-out mechanism** introduced by the DSM Directive for the AI training process. This was reflected by a number of national positions and many stakeholder views.

According to a significant number of contributions the **applicability of the TDM exception to AI training is unclear** to a certain extent. This was reflected by a number of national positions and many stakeholder views. In this context several Member States were of the view that **copyright uses for AI training go beyond the scope of the TDM exception**. It was also highlighted in a few Member State positions and a number of referred stakeholder views that Article 4 of the DSM Directive only covers an exception or limitation to the right of making "**reproduction and extraction**", it does not extend to systems that are later made public or commercialized. In addition to these stances, a few Member States and a number of reflected stakeholder views also added that the TDM exception – if applied in a broad sense, covering all types of AI training – would not respect the **three step test** principle.

There were also some contributions noting that the legal framework regarding copyright and training of AI models provides **sufficient legal certainty** and that Articles 3 and 4 of the DSM Directive apply to such training.

Several Member States expressed their concerns about the **practical use of the opt-out** and **the interpretation of the term** "**machine readable"**. According to their view, it is not clear how the opt-out system works in practice – which machine readable opt-out form should be used, how to exercise the opt-out rights on works that have been already made available to the public on the Internet. One Member State expressed the concern of their creatives about the potential administrative burden as a consequence of the exercise of the opt-out. A Member State reported about a regional court decision that interpreted the meaning of "machine-readability" as "machine understandability". The question of who shall exercise the opt-out was also raised.

Several Member States raised issues about the notion of "**lawful access**" as one of the conditions of the application of the TDM exception. Concerns were pointed out about the broad interpretation, according to which mere online availability might qualify as lawful access.

A Member State also added that, according to experience, the **opt-out mechanism** of the TDM exception is insufficient to trigger a licensing incentive, while others raised the aspect that currently there is an inability to effectively remove content from models that have been trained. It was also emphasized that the inputs used to train AI should not be stored in their original form or further distributed.

Many Member States highlighted the issue of the **information deficit** concerning the use of datasets and were of the view that rightholders do not have relevant control tools to verify whether the reservation of rights for TDM is being respected. A Member State referred to the obligation contained in Article 53(1)(d) of the AI Act to draw up a sufficiently detailed summary of the content used for training as a means to bring more transparency. One Member State emphasized that, while the EU was the first to regulate this field, the **majority of the training happened outside of the EU** and so the approval or awareness of the rightsholders about these actions is questionable. Another Member State and a stakeholder also indicated its doubt about how EU solutions would work for the AI systems trained outside the EU. In this regard, a Member State mentioned recital 106 of the AI Act, which established that the Act's provisions also apply to AI providers placing their models in the EU market regardless of where the training of the models took place.

2.2. Do you think that practical means such as the introduction of certain standards or the development of an EU-wide database, etc., could be introduced in order to provide more legal certainty within the EU regarding the functioning of the opt out system? If yes, what practical tools would you envisage in this field?

The vast majority of the Member States were of the view that the introduction of **practical tools** to overcome the difficulties of implementing a practical and efficient opt-out would be beneficial. According to many, the provisions of the **AI Act** and the **Code of Practice** to be developed by the AI Office will provide more transparency in this area.

Many Member States were generally supportive of introducing **common standards** for exercising the opt-out. When it comes to supporting standards, various complementary views were submitted. A national position and a stakeholder's view pointed out, that such a specific European standard for the opt-out process should be simple, effective, it should not create financial burden, and it should take into account the specificities of different sectors, while the interoperability between different standards should also be ensured. One other position also reflected a preference for building upon **current standards** rather than introducing new technical requirements that might disrupt the established practices. According to a Member State, standardized metadata tagging protocols could help, and an additional alternative suggested by some Member States' stakeholders was to use the already existing robot.txt format in this context and also other location-based (ai.txt) and unit-based (c2pa) approaches. The mix of these approaches was also mentioned.

A couple of Member States brought attention to the work of the **Copyright Infrastructure Task Force (CITF)**. The CITF is working on a use case for a machine readable opt-out using the European Blockchain Service Infrastructure.

Diverse opinions were put forward on the **potential setting up** of an **EU-wide database** facilitating opt-outs. A handful of Member States (or their stakeholders) saw merit in the establishment of an EU-wide database in order to develop legal certainty and transparency. However, it was also mentioned by one of the supporters that such a database should be voluntarily and not exclusively applied. On the other hand, a number of Member States expressed their concerns about the setting up of such an EU-wide database.

They were of the view that it would be impractical, burdensome from an administrative perspective, would not enhance legal certainty, would be challenging the principle of no formalities and it would be unrealistic to keep it updated, given the huge numbers of works produced in Europe. While opposing the setting up of such a database, a Member State suggested a possible creation of a public domain EU repository. The idea of a public registry of unit-based opt-outs was provided.

Another possible practical solution mentioned in a Member State's response was the creation of an **online information resource**, listing data sources, protocols and standards, that would allow authors and rightholders to express a machine-readable rights reservation in accordance with Article 4 (3) of the DSM Directive. The resource would be freely available, and its functionality would be publicly documented.

Another Member States' response included the opinion that, in order to provide more legal certainty, it would be better to consider introducing **extended or mandatory collective licensing mechanisms**. In relation to CMOs, one Member State suggested that CMOs should also be authorised to carry out opt-outs on behalf of the rightsholders they represent.

2.3. Do you have in place or plan to introduce any measures in order to ensure the diversity of the training data set used in the context of generative AI?

The vast majority of the Member States indicated that there is **nothing in place, nor there is any plan** for introducing such measures.

One Member State, however, indicated its **openness towards such initiatives** as part of a broader digital transformation and AI strategy, and stressed that cooperation with EU institutions and internal organizations will be key in the future of this area. A pair of Member States brought up the **ALT EDIC project** under the European Commission' European Digital Decade Programme. The main purpose of the project is to ensure the survival of small European languages in the AI space, as well as the diversity of languages and diversity of culture in data training. With its 16 members and observers, the project seeks to improve European competitiveness, increase the availability of European language data and uphold Europe's linguistic diversity and cultural richness. Another Member State communicated that there has been a **development of a language model** in their country to guarantee the diversity of the data and texts used in the context of generative AI. A Member State reported that its government established an **expert group** that presented in February 2024 their recommendations on what kind of framework should be in place for big tech's development and use of artificial intelligence. Another Member State was of the view that mechanisms of **extended collective licensing** or **mandatory collective management of rights** would allow the AI companies to use diverse training data legally and to provide remuneration to authors who would be able to continue creating new works.

III. THE PROTECTION OF OUTPUTS

3.1. Are you aware of any national legislation, landmark case law, guidance or soft law from your Member State that concerns the issue of protecting content created using AI?

No national legislation, case law, guidance, or soft law addressing the copyright protection of AI-generated content was been reported by the Member States (apart from the already referred case law presented under Question 1.2.).

There was a clear understanding stemming from the contributions that only a natural person should be considered as an author and therefore **purely AI-generated works cannot be protected** by copyright, in accordance with the Berne Convention.

Numerous Member States also mentioned that, while there is no need to protect AI-generated content, **AI-assisted works can obtain copyright protection** if they meet the general requirements of copyright protection. The differentiation between these categories is therefore crucial, according to many contributions. Several Member States were of the view that human involvement and creativity in the creation process should continue to be a decisive factor which should be determined on a **case-by-case basis.**

One Member State mentioned its legal framework according to which legal protection is granted to a "work that is computer-generated", however, it highlighted that some stakeholders have called for greater legal certainty to ensure that these protections are robust enough to deal with generative AI.

In addition to this, a Member State stressed that it would be beneficial to promote human-made works, also by making them readily distinguishable from AI-generated content. This could be achieved by starting large-scale use of open identifiers that can be machine-read and retrieved from AI-generated content. In the view of this Member State, this would be a valuable recommendation for the new Commission to advance, since the use of blockchain was already included in the Commission recommendation of March 2024 to combat counterfeiting and enhance enforcement.

One Member State also gave a brief report on how AI generated content impacts its national voluntary copyright registration process. Another Member State provided insight into how their CMOs have adapted their agreements with rightholders in order to prevent the registration of AI-generated content not protected by copyright.

3.2. In your view, what aspects might be considered when assessing the eligibility for copyright or related right protection of a subject matter created by AI tools?

A significant number of national positions and many stakeholder views were suggesting that this question can be **adequately addressed by the existing** copyright principles in the EU. The European Commission's final report on *Trends and Developments in Artificial Intelligence – Challenges to the Intellectual Property Rights Framework* was also highlighted as a basis for this position.[6]

It was a general view stemming from the contributions that works may be eligible for copyright protection only if the **human input in their creative process was significant** and all the prerequisites for the copyright protection were fulfilled. One Member State also added to this that the level of originality could be assessed with the assistance of new technologies. A Member State added that, when discussing "AI-generated outputs," it is essential to distinguish between: **AI-assisted works**, where human review (e.g., text editing) and editorial responsibility for the publication applies, and **content generated by an AI system** with minimal or no human intervention (e.g., limited to AI prompting), where the AI system itself determines and generates the final result (i.e., content that is purely AI-generated). Another contribution pointed out that there is already protection for the software, therefore there is no need to introduce new provisions and double protection should be avoided.

[6] https://op.europa.eu/en/publication-detail/-/publication/394345a1-2ecf-11eb-b27b-01aa75ed71a1/language-en

3.3. In your opinion, is the rationale behind incentivising human creativity by providing exclusive rights in the form of intellectual property protection less relevant in the case of the creation of AI-assisted works?

The majority of the Member States provided "**no**" as their answer. According to their view, ensuring the highest standards of protection for copyright-related content is crucial, as it incentivizes creators to produce high-quality works. Strong protection guarantees that creators receive proper remuneration, and the use of works in AI systems cannot be considered a mere "secondary use". It is also important to ensure that creators have exclusive rights to their original works and performances, regardless of the technology they may use as an assistive tool.

While "no" was the dominant answer among Member States, one Member State position and also a stakeholder view supported the approach that **incentivization is likely to be less relevant** in the creation of AI works. It was argued that the rationale behind IP protection with exclusive rights is to promote human creativity and invention, which cannot apply to productions of AI, since AI is capable of producing mass content resembling copyright-protected works with very little assistance of humans.

3.4. According to your view, would it be adequate to introduce new copyright rules on AI-generated and/or AI-assisted works, such as creating a sui generis right, or other specific related rights in this context? If yes, what features might such protection entail?

The majority of Member States were in agreement that there is **no need to provide any kind of new or additional copyright-related protection** to AI-generated content, including a new *sui generis* right. In the case of AI-assisted works, general copyright rules should be applicable. Stakeholders had diversing views on this topic, including a few, which were in favour of introducing such a new *sui generis* protection.

One Member State, however, was of the view that this question should be assessed in detail and very carefully, since it can be very difficult to review the share of human input and creativity in AI-created works. A few Member States were of the view that, if AI-created works were to be protected, considering a **shorter term of protection** for them would be appropriate. This opinion was also highlighted by a stakeholder. One Member State emphasized that, before introducing a new *sui generis* protection, other already existing legal instruments, such as protection against anti-competitive practices should be analysed. Another contribution outlined the need for monitoring developments in other jurisdictions, for example in Ukraine where there is a *sui generis* protection regime for AI-generated outputs similar to non-original databases.[7]

[7] See Law No. 2811-IX on Copyright and Related Rights, Ukraine, WIPO Lex.

IV. TRANSPARENCY

4.1. Taking into account the labelling and watermarking provisions of the AI Act, do you consider that specific additional obligations should be considered for deployers (users such as creators using generative AI) to label other types of generative AI content and what would be the justification for this?

The majority of the Member States were of the view that, before introducing new specific transparency obligations linked to AI generated content, the priority should be to analyse how the provisions of the **AI Act** will be implemented in this context. Even though the **Code of Practice** for GPAI developers and deployers by the AI Office and the role of the **sufficiently detailed summary** are not directly linked to the labelling obligations, the importance of them was also underlined by many Member States. In addition to this, it was also raised that a **wider application of Article 50(4) of the AI Act** regarding labelling might be reasonable, since the outcome of a generating process can be affected by many factors, and labelling this content would alert users to potential shortcomings, such as biases or hallucinations. Regarding the scope of Article 50 of the AI Act, it was raised as a concern that Article 3(4) of the AI Act excludes non-professional users from the definition of deployers.

Apart from Member States advocating for a 'wait and see' approach, several Member States already expressed their support for a wide application of the transparency obligations and/or for considering specific additional transparency obligations in this context. Some of them already suggested **additional steps forward** in this area.

Two clear positions emerged regarding this approach. One group of Member States advocated for only labelling purely AI-generated content, while the other group emphasized the necessity of also **differentiating** between AI-generated and AI-assisted content. A Member State referred to its new Media Law initiative according to which all AI-generated media content (articles, videos, etc.) will have to be clearly labelled as such.

There were also some Member States who already at this stage **opposed the introduction of further specific transparency obligations**. A common understanding between them was that it would be practically impossible to implement and enforce such rules due to different reasons.

A Member State referred to a stakeholder view on the possibility of self-regulation in this area, with the reasoning that it allows greater flexibility and better adaptability.

4.2. When considering such possible obligation, do you think it is necessary to differentiate between various types of works and other subject matter (e.g., audio, visual, audiovisual or textual content) from a watermarking/labelling perspective? Are there specific areas where such labelling (e.g., in the case of performances) would be more justified from a copyright perspective?

A significant number of Member States and also a number of referred stakeholders views emphasized that **labelling must be adapted** to the type of work or medium. Contributions referred to different approaches in this field, taking as a basis of differentiation such aspects as the type of works, the involvement of human oversight and responsibility for making the given AI content, the sector affected, or the technical difficulties linked to the marking of certain types of content. In addition to this approach, many Member States asserted that **the differentiation between works** does not seem necessary at this stage, mainly due to technical difficulties. However, a further look into each sectors' specifics could be envisaged. Both groups agreed that the implementation and application of the effects of the labelling requirements set out in the **AI Act should be monitored** before introducing additional obligations.

V. REMUNERATION

5.1. In your view, what measures could be taken at EU level to facilitate the conclusion of licenses between rightholders and AI developers?

Several Member States expressed that the existing legal framework, including the **current opt-out regime** of Article 4(3) of the DSM Directive, combined with the AI Act's **transparency obligation** in respect of training data, should be **sufficient** to stimulate the conclusion of licenses between rightholders and AI companies. It is crucial that these provisions are properly implemented and respected. According to their view, the **AI Office** should support this goal by working on a clear template for summarizing the information AI companies are required to provide. A significant number of Member States were of the view that the mass scale of AI-related copyright uses and the practical challenges of the rightholders in monitoring them both underline the importance of **collective management** in this area. According to this, a few Member States emphasized that CMOs should play a significant role in the process of collecting remuneration for the use of works and other subject matter for AI purposes. A pair of Member States further suggested the inclusion of **extended collective licensing** schemes. One Member State even advocated for **mandatory collective management** in this area, while another called for caution in this regard. Some Member States were in favour of a **combined model** of individual licensing and collective management. A Member State mentioned that two if its CMOs already offer licenses for the training of generative AI for AI models.

With regard to licensing, many Member States reflected on their stakeholders' views supporting the **individual licensing approach** and a license-based training for generative AI.

As for further measures which could be taken at EU level to facilitate the conclusion of licenses between rightholders and AI developers, a number of Member States mentioned the importance of **providing guidance** for the benefit of all stakeholders, such as for AI developers, CMOs and rightholders. The guidance would focus on how to clear the rights/uses involved in AI processes (e.g. create a licensing template), how to cooperate among each other, and how the AI developers could report or provide necessary information about uses. Different Member States also raised the importance of **conducting discussions** on authorization schemes, the introduction of standards, smart contracts, standardized formats or types of licenses and the promotion of licensing mechanisms.

A couple of Member States supported the setting up of an **arbitration mechanism** at the EU level as a possible facilitator model in order to ensure *bona fide* cooperation with CMOs or rightholders, based on the systems applicable in Australia and Canada. A Member State proposed a model consistent with or even identical to the model introduced by **Article 17 of the DSM Directive**. According to its views, only the prerequisite of prior authorization and proof of **"best efforts"** are elements capable of giving effect to the opt-out, and such a scheme would allow for *bona fide* negotiations prior to the conclusion of licensing agreements. In addition to this, important issues concerning **civil procedural aspects**, in particular with regard to the burden of proof, were also mentioned by this and another Member State. A Member State also referred to a stakeholder view which proposed the setting up of a **penalty system** targeting those who fail to obtain proper licenses. According to a Member State, the introduction of an AI-specific, **technology-neutral neighbouring right** would ensure legal certainty. This right could cover any AI-related use of protected content (including for training, input, or other purposes), ensuring that such use cannot occur without prior authorization or a license from the rightholder.

5.2 Do you consider that there is a justified reason to introduce any kind of a specific remuneration regime in the context of generative AI activities?

According to a significant number of Member States, **a remuneration scheme should be guaranteed** for generative AI activities. Views differed on whether such remuneration should be collected under mandatory collective management of rights or under an extended collective licensing scheme. A Member State emphasized that the remuneration should be guaranteed for generative AI activities/uses that are going **beyond the scope of the TDM exception**. A Member State replied that, according to the Article 18 of the DSM Directive, authors may **claim additional remuneration** from their contractual counterparts, but this will not be enough to alleviate the concerns of many authors. Receiving some remuneration (in whatever legal form) will do little to address the concerns. Another Member State's authority would welcome a **common licencing solution** for the whole EU market. This Member State remarked that the DSM Directive does not prevent the Member States from providing for compensation of rightholders when the TDM exception is being used by private companies for commercial purposes.

A number of Member States and also a number of stakeholders were **against the setting up of remuneration schemes** at this stage. They were of the view that the existing legal national and EU norms and the current opt-out regime provide sufficient guarantees to protect the pecuniary interests of the rightholders and that remuneration schemes, which consist of a limitation of the right holders' exclusive rights, should not be introduced without a proper assessment and evidence of the existence of a market failure. According to a Member State, the existing national and EU norms and market procedures seem to demonstrate that, at this moment, it could even be counter-productive to set up a remuneration regime. One Member State added that, considering the provisions of the Article 4 of the DSM Directive, it is difficult to see how any specific remuneration scheme could be introduced.

Due to the **differing nature** of stakeholders views on this matter, a couple of Member States did not take a stand on this matter.

5.3. In your view, are there any specific sectors or aspects of the generative AI creating process where the setting up of such a remuneration scheme would be more appropriate?

A number of Member States and a stakeholder, who **supported** the setting up of remuneration schemes were of the view that, at this stage, music and audiovisual sectors (including performers and producers) seem to be more affected by generative AI, so therefore the setting up of a remuneration scheme would be more appropriate in these areas. According to a Member State, the establishment of a remuneration scheme would also be more appropriate in those **sectors where AI has a greater impact** on the labour market (such as, for example, in the field of educational materials, textbooks, newspapers, press articles, music and illustration) and in those sectors whose works are used to a high degree in AI training. One supportive Member State indicated that the EU licensing and remuneration model should apply equally to all AI sectors that use copyrighted works and that national measures could be introduced in the future for specific sectors that are inherent in some cultures or languages but not all, or locally affected more than others.

Some of those Member States that were in general **not supportive** of the setting up of a remuneration scheme nevertheless provided views that for such a case a scheme would still be set up. One suggested that, if this scenario was to be followed, the scheme should cover **all potential content uses** throughout the AI content generation process. Another Member State from this group suggested that the scheme should apply in particular to AI systems used to create content subsequently communicated to the general public. Finally, one delegation was of the view that, if a remuneration scheme were to be deemed justified, it might make sense to explore possibilities of such a scheme being linked to the output of generative AI.

5.4. Do you consider that specific measures would be needed in this context to ensure that small EU AI providers have access to quality data for training their models?

A large number of Member States were of the view that the scheme on training of AI models should respect the competitiveness of EU SMEs and startups, who are in a challenging position compared to large technology companies as developers of AI models, so **further measures would be necessary**. One Member State suggested that there must be coordination and control over the data included in the datasets. Moreover, these datasets must be interoperable, centralised and supervised by an EU supervisory authority, and any opt-outs must be exercised within them. Others supporting such measures proposed either **standard access rules** provided to SMEs or following an approach according to which the **size could be taken into account** in the context of contractual negotiations or calculation of remuneration, to prevent the conclusion of exclusive or "prohibitively priced" agreements depriving small AI suppliers in the EU of access to quality data for training their models.

Apart from the approach above, a handful of Member States were of the view that **no specific measures are needed** to ensure that small EU AI providers have access to **quality data for training** their models. When elaborating on this approach, three Member States suggested that copyright applies to everyone in the same way, and that there is no reason to create exemptions or two-tier regimes based on the size of the users. A Member State also referred to a similar stakeholder view on this question. Another Member State was of the view that smaller providers can already use freely available resources such as LAION or Common Crawl for training purposes. According to another view licensing terms are already adjusted based on the size and revenue of the licensee, meaning that smaller EU AI providers pay less for lawful access to professional content. As a result, the current rights clearance conditions for smaller AI providers seem to be already suitable and fair. A Member State expressed hope that EU AI providers will benefit from the results of the ALT EDIC project.

A handful of Member States indicated that the possibility of introducing specific measures for SMEs and start-ups should be **further explored and discussed**.

5.5. Are there any other aspects of this issue that are not addressed in the above paragraph and which you would consider appropriate to mention in this context?

The majority of Member States **did not suggest any further aspects** to consider in this context. As for the individual contributions, one Member State was of the view that transparency and compliance of non-EU generative AI services (models, platforms) with any new AI rules still remains questionable. Another contribution proposed addressing additional aspects, including the protection of newly published press content, by restricting its use for generative AI training for a defined period (e.g., 48 hours) after publication. Another topic raised by this contribution was ensuring the international applicability of EU copyright protections, requiring compliance from AI providers operating in the EU market regardless of server location, aligning with the AI Act (recital 106). One Member State mentioned that copyright is not the primary issue for ethical and effective AI training, citing countries like Japan, Singapore, and Israel, whose copyright laws facilitate data access, reducing bias in AI outputs. Two reflected stakeholder views underlined the importance of an appropriate level of **protection for moral rights** in the context of AI. Finally, a Member State referred to a view put forward by rightholder representatives, which proposed the introduction of a paying "domaine public payant" for outputs generated exclusively by AI, which could provide a funding mechanism and additional remuneration to limit the risk of distorting competition with works.

VI. LIABILITY FOR COPYRIGHT INFRINGEMENTS

6.1. In your view, is there a justified reason to introduce any kind of specific liability regime in relation to copyright infringement in the context of generative AI activities or are the existing general rules on infringement of copyright and related rights sufficient?

There was consensus among the Member States that introducing a specific liability regime in relation to copyright infringement in the context of generative AI activities is unnecessary at this stage. The importance of proper **enforcement of the existing rules** and the use of existing liability regimes were emphasized. One Member State noted that the provisions of Directive 2004/48/EC are the natural legal framework for dealing with issues relating to the enforcement of copyright and related rights. Some Member States suggested that the negotiations of the **AI Liability Directive proposal** could provide an appropriate framework to discuss liability questions related to copyright infringement, such as accountability measures and stricter, more feasible transparency standards. Furthermore, a Member State and a stakeholder were of the view that it would be advantageous to **review the terms of use** that AI companies are currently operating with.

On the aspects of a **possible future specific liability regime,** some Member States already provided views. Among these suggestions the possible application of a similar mechanism to **Article 17 of the DSM Directive** was mentioned, setting up a *mutatis mutandis* framework regarding the liability of AI providers resulting in a limited liability system for end-users. Many indicated that rightholders are struggling with evidentiary difficulties associated with the use of their works because of the lack of information on the training data and content that AI tools are trained on. As a solution for this problem, some Member States proposed the establishment of a **presumption of use** and the **shifting of the burden of proof** onto the providers of AI tools in demonstrating that a specific work was not used during their TDM activities.

In addition to this, considerations on possibly introducing **shared, joint, contributory or secondary liability** applying to infringements during the AI processes and also **safe harbour rules** for end users were mentioned by a few Member States. Some Member States suggested, however, that a cautious approach should be the most appropriate regarding these specific suggestions. A few Member States also called attention to the rising of **cloning models** and the need to look into the aspect of the **deepfakes** and the unauthorized use of an individual's voice, image, name, and likeness in AI processes.

6.2. If yes, in your view, does this regime need to be introduced regarding the input or the output related infringements?

The majority of Member States suggested that, if specific liability rules were to be introduced, then these should **cover both input and output related infringements.** A Member State also proposed that AI companies should assume direct liability for the outputs which encompass entire or identifiable portions of original works, given that users lack the ability to assess and determine whether protected content is present in the output. This was complemented by specific additional views from a Member State, who suggested the introduction of an umbrella licensing system, which could potentially be managed by CMOs, as a solution to the liability questions raised on the input side. It was also raised by a few Member States and a few stakeholders that the liability regime could be similar to the one enshrined in Article 17 of the DSM Directive.

VII. POLICY AND INTERNATIONAL CONTEXT

7.1. Do you consider that, based on the discussions regarding the above topics, introducing further copyright-specific legislation on the aspects of the relationship between AI and copyright law on the EU level would be appropriate or needed?

While some Member States provided suggestions on specific provisions regarding the previous topics, the majority of Member States were of the view that introducing a **legislative instrument** on **the copyright-related aspects of AI** in the EU was not necessary at this stage. Several Member States agreed, however, already at this stage, that in the future new AI and copyright related legislation **would be appropriate on the EU level,** as a harmonised legal framework is necessary. It was also pointed out that overregulation could stifle innovation and limit the benefits that AI can potentially offer. A Member State and a few stakeholders pointed out that revising the provisions of Article 3 and 4 of the DSM Directive might be useful, since at the time of the negotiations on the DSM Directive it was not foreseen that generative AI would develop to the current extent in such a short period of time. One Member State also suggested that the EU should look at ways to protect the end-user from liability for infringing copyright inadvertently when using generative AI tools; and this could involve a legislative amendment.

7.2. In your view, would there be merit in international policy approaches in this field? If yes, in what context and what areas? What role should the EU take in this context

Member States almost universally agreed that there is a need for a discussion on the topic of AI and copyright on the international level, and that the **EU should participate in and contribute** to this discussion actively. One Member State, however, emphasized that, before engaging at international level, we should first try to have a harmonised European framework. One Member State agreed to this kind of involvement only if there is a guarantee of the currently applied European legal approach outcome in such international policies.

The majority of Member States were of the view that the best platform for international level discussions is **the WIPO SCCR**. Some also referred to the WIPO Conversations on IP and Frontier Technologies as a useful forum for exchanging views and information on AI-related empirical studies and policy approaches. By identifying problems and issues, the international discussion could be structured in this area. As a line to follow, one Member State was of the view that the EU should encourage the international community towards a balanced approach to AI – on the one hand to accept the fast developments of AI models and tools, and on the other hand, to keep the human centric-approach in order to still reward human creativity, which should also be respected by AI developers.

Within the SCCR context the majority of the Member States also agreed that **international normative legislation** would not be an appropriate step at this stage. A few Member States also expressed their concerns about introducing AI as a new topic at the WIPO SCCR agenda without addressing the outstanding issues, which could result in a significant loss of resources and effort. Consequently, a conclusion arose that the EU should encourage or support solutions to the long-standing topics to make space for new conversations.

ANNEX 1 to the ANNEX

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Copyright Infrastructure Task Force

Building on the work of the past five years[8], in November 2023, a Copyright Infrastructure Task Force, "CITF" was formed out of four "founding" Member States Estonia, Finland, Latvia and Lithuania[9]. Currently the CITF covers participants from EU and EFTA Member States (Belgium, Czechia, France, Germany, Hungary, Italy, Spain and Greece and later two EFTA countries Norway and Iceland). The task force meets once a month online under the leadership of Finland. Under the Hungarian Presidency, the CITF was acknowledged in the Presidency program as a relevant tool for Member States to co-operate in developing the Copyright Infrastructure. On 19 September 2024, the CITF met in-person in Brussels to discuss current state of play with the copyright unit of the Commission (DG CNCT) and ways to impact the future work plan of the new Commission. The CITF pursues to act as a forum to promote interoperability and trustworthiness of copyright data, *i.e.* the open rights data framework (ORDF). The Commission has been observing and supporting the process since 2022. Philippe Rixhon (Valunode Oü) has participated as technical expert and consultant in the work.

The Commission's copyright unit recommended at the end of 2023 that the CITF starts working on practical solutions to develop the Copyright infrastructure, such as use cases[10]. The Commission suggested to develop a use case on a machine readable "opt-out" based on Article 4 (Exception or limitation for text and data mining) of the DSM Directive. This use case would be very important considering the obligations for providers of General Purpose Artificial Intelligence (GPAI) models provided for under Article 53 of the EU AI Act ((EU) 2024/1689).

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8 DSM directive 2019/790, the Council's document 15016/19 on the Copyright Infrastructure summarizing the progress made during the Finnish Presidency in 2019, and the IP Action Plan 2020, the recommendations of the 2022 Study on Copyright and New technologies to build an Open Rights data framework (ORDF).

9 The Member States had worked since 2022 under guidance of the Commission's multi-country-project unit to form a European Digital Infrastructure Consortium on Copyright infrastructure development (CI EDIC) on EU level. The Commission's copyright unit acted as observer of the process.

10 The recommendation was based on the assessment that instead of a new legal body, there was a need for more focused and concrete outcomes of the copyright infrastructure in short term.

Furthermore, the Commission suggested that the use case would be conducted in close co-operation with Europeum EDIC[11] tasked with deploying the European Blockchain Service Infrastructure (EBSI) in the EU.

By early summer 2024 the document ”Defining the AI & Copyright Use Case” was developed by the CITF and posted on the openly accessible Copyright Infrastructure portal[12]. This document presented also some example use cases to pilot the opt-out mechanism in certain creative sectors. In November 2024, the Finnish Ministry of Education and Culture granted funding to coordinate the work of public institutions in Estonia, Latvia and Finland to plan the details of the use case. This so-called “First Project” project runs until June 2025.

Alongside the aforementioned use cases, the Copyright Infrastructure Task Force continues its work defining a strong basis for the Copyright Infrastructure on EU level, and validating the results following the use cases mentioned above at the Council working party meetings for copyright, in cooperation with the incoming Presidencies.

Several bilateral meetings have been held during 2023-2024 with different industry and stakeholder representatives about the work of the CITF with the aim to ensure coherence and support. The CITF has also invited representatives of the Trusted Media Data Space (TEMS)[13] and EARE (European Alliance for Research Excellence). The CITF has also liaised with the ALT EDIC (Alliance for language technologies)[14] which was established in February 2024 in Paris.

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12 The Copyright Infrastructure portal, founded in 2020, supports awareness and coordination on national, EU and global level industry-specific initiatives to promote the proper functioning of the copyright system in particular to form an open rights data framework (ORDF) for new technologies.

13 Trusted Media Data Space (TEMS) aiming for a Common EU Data Space for Media and EARE (European Alliance for Research Excellence) to ensure synergies in data sharing, capacities and interoperability in the common European Digital Single Market.

14 ALT EDIC, seeks with its 16 members and observers to improve European competitiveness, increase the availability of European language data and uphold Europe’s linguistic diversity and cultural richness. The availability of language data is relevant from copyright perspective as it involves content protected by copyright.

Noting the fast technological development and broad range of different initiatives related to GenAI, Data economy and frontier technologies at EU level alone, the CITF could provide the necessary information sharing and coordination services to Member States. A well-functioning copyright infrastructure depend on coordinated efforts, and alignment of the objectives of various copyright infrastructure sensitive initiatives from the new Commission, the newly established EU AI Office[15], the Council, the EU Parliament and the EUIPO.

It is crucial that the various initiatives of the highly active creative industries, which may be overlapping, are coordinated and coherently led in view of a well-functioning copyright system that is open, efficient, trustworthy and fit for the AI age. The CITF aims to ensure a level playing field for all actors in the copyright system to be involved in this development.

The EUIPO has already some important copyright-related mandates and experience in building data repositories linked with copyright data. Noting the new strategic plan SP 2030 by the Executive Director João Negrão adopted in November 2024 to consolidate and expand activities notably to AI and copyright, the CITF could fit very well in those strategic orientations of the EUIPO.

It is important that the need for a "home" for the Copyright Infrastructure at EU level is properly considered for the next 5 years and beyond. As recommended by the study on Copyright and New Technologies, this work entails besides the use cases also, among others, raising copyright awareness, training metadata professionals, raising trust in rights management information towards open data, data governance, and data spaces.

Hence, a more efficient coordination on copyright at EU level is a laudable objective in view notably of the fragmented copyright policy competences in different Member States. Only a few IP offices have tasks supporting common practises related to copyright infrastructure. Tasked by the European Commission Recommendation on online piracy[16] a Dedicated Network of Administrative authorities competent on piracy has started its work. Member States should keep discussing with the Commission and the EUIPO about the CITF and other prospects of synergies on EU level.

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[15] More on the EU AI Office: https://op.europa.eu/en/publication-detail/-/publication/cc293085-a4da-11ec-83e1-01aa75ed71a1/language-en

[16] Recommendation on combating online piracy of sports and other live events; https://digital-strategy.ec.europa.eu/en/library/recommendation-combating-online-piracy-sports-and-other-live-events

The CITF continues its monthly meetings and has already made initial plans to ensure that a dedicated exchange on the future of the CITF takes place at the Council working party on Copyright early 2025 during the incoming Polish Presidency.