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From:	General Secretariat of the Council
To:	Delegations
Subject:	AOB for the meeting of Education, Youth, Culture and Sport Council of 12 and 13 May 2025: The value of the Culture and creative sectors in the development of AI: safeguarding copyright and related rights and ensuring transparency in the Code of Practice under the AI Act - Information from Italy, Portugal and Spain

The value of the Culture and creative sectors in the development of AI: safeguarding copyright and related rights and ensuring transparency under the AI Act

Information from Portugal, Spain and Italy

The fast and widespread adoption of general purpose artificial intelligence (GPAI) has generated significant opportunities, but also substantial challenges within the European context, particularly in the culture and audiovisual sectors, specifically regarding respect for fundamental rights, especially copyright and related rights.

The entry into force, in August 2025, of specific provisions of the European AI Regulation (Regulation (EU) 2024/1689), namely Chapters III (High-risk AI systems), V (General purpose AI models), VII (Governance), XII (Penalties), and Article 78 (Confidentiality), particularly the Code of Practice for GPAI currently nearing completion, will imply heightened demands on application and oversight by National Competent Authorities.

In this context, considering its transversal relevance for the European cultural and creative sector, we find it essential to address the issue at the ministerial level, highlighting four aspects we deem fundamental:

1. **Strategic impact on the sustainability of European cultural and creative industries:**
The growing use of GPAI models has profoundly influenced cultural and creative industries, both economically and legally, generating new challenges in protecting and managing copyrights. An adequate and timely response to these challenges is essential to ensure Europe's economic viability and cultural diversity, simultaneously safeguarding authors' rights and the rights of related rights holders.
2. **Opportunity for a joint and coordinated intervention:** This is crucial to ensure a concerted and coherent approach among Member States in monitoring the code's application, allowing lessons to be learned and insights to be gained, which, in the future, will help establish robust principles ensuring greater effectiveness in protecting copyrights and creative rights, ensuring that the European Union takes a clear and solid stance towards global operators, and promoting a fair and sustainable competitive environment.
3. **Urgency in ensuring legal certainty and total transparency when using protected data:** Fundamental issues such as prior authorisation by rights holders for the use of their works, including the express possibility of exercising the opt-out right provided for in the DSM Directive (Directive 2019/790), the application of clear and specific contractual models, and absolute transparency regarding data used in GPAI models, are essential to avoid future litigation and legal uncertainty. This transparency requires the mandatory adoption of unique identifiers (such as ISBN or ISRC) in summaries of used data (according to the specifications of the template to be provided by the AI Office, Art.53 (1) – (d) of the AI-Act), thus enabling rights holders to fully exercise their rights while ensuring confidence and providing legitimacy in technological development.

4. **Consistency with fundamental values and the existing European legal framework:**

The ministerial discussion will also enable complete alignment of the developing Code of Practice with existing European legislation, notably the DSM Directive (Directive 2019/790) and the AI Regulation itself. Legislative and value coherence will strengthen legal certainty and respect for fundamental rights, economic and social justice, and equity among all stakeholders in the cultural and creative sector.

Given the technical and legal complexity of the issue, as well as its strategic relevance for the future of European cultural industries, we consider it indispensable to undertake this ministerial-level approach to facilitate an in-depth and transversal discussion, allowing challenges to be anticipated, positions to be clarified, and solid European cooperation regarding the protection of fundamental rights in the context of artificial intelligence to be promoted.

This approach should be closely coordinated with entities responsible for implementing the AI Regulation, notably the AI Board and the AI Office.
