



Generative AI and copyright perspective EU policy developments

AI and Copyright - Hellenic Copyright Organization – Law
School NKUA conference

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1. Copyright-general aspects in Generative AI

- Generative AI is a machine learning technology able to **generate new original content** (e.g., text, images, music and videos) based on patterns and correlations learnt from the **data** used for their training.
- Ongoing discussions on copyright policy in the context of the development of generative AI
- In particular, two copyright angles:
 - Copyright-protected content as input to train generative AI
 - Applicability of copyright to the output generated by AI

1. 1. Copyright-protected content as input to train Generative AI

- Under copyright law, right holders have the **exclusive right** to authorise or prohibit the reproduction of their works, unless exceptions apply.
- Clear copyright rules on the use of copyrighted works as training data: text and data mining (TDM) exceptions in Articles 3 and 4 of the DSM Directive. These exceptions are applicable to both copyright and database sui-generis rights:
 - ✓ **Article 3:** allows TDM on lawfully accessible works for scientific research purposes, when carried out by research organisations and Cultural Heritage Institutions
 - ✓ **Article 4:** any purpose, allowing TDM including for commercial purposes. Possibility for right holders to opt out

TDM exceptions in the Copyright Directive

Article 3 – TDM for research

- Uses allowed: reproduction and extraction of works
- Beneficiaries: research organisations and cultural heritage institutions
- Purpose: scientific research
- Conditions:
 - ✓ **lawful access**
 - ✓ **prohibition of contractual override (article 7)**

Article 4 – broad TDM exception

- Uses allowed: reproduction and extraction of works
- Beneficiaries: no restrictions, including commercial AI developers
- Any other purpose
- Conditions:
 - ✓ **lawful access**
 - ✓ **possibility for right holders to opt out**

**Specifically relevant in the context of generative AI
Balance between protection of right holders and
innovation**

TDM opt-out

- Only right holders can reserve their rights **in an appropriate manner**
- What is « appropriate manner »:
 - For content publicly available online: **opt-out via machine-readable means only**
 - Other situations: other means such as contractual agreements or unilateral declaration
- Opt-out can be used by right holders to prevent TDM on their works or to **incentivise licensing** (concluding licensing agreements with AI developers for the use of protected content)

1. 2. Applicability of copyright to the output generated by AI

- Ongoing discussions whether and to what extent copyright applies to the output generated by the AI.
- The current copyright law system is human-centric - protection presupposes the creative choices of a human author (**originality**)
 - The CJEU established a general, autonomous concept of EU law of the work as “author’s own intellectual creation reflecting his personality” (*Infopaq C-5/08* and *Painer C-145/10*)
- However, the possibility remains that the creative contribution of the author’s choices may be such as to attract protection.
 - Cases where the output is created by an author “with the aid” of AI technologies

2. AI Act copyright transparency provisions

- On March 13, 2024, the EP voted to adopt the AIA; on April 16, EP published a corrigendum. You can read the corrigendum [here](#)
- AIA includes two important requirements for providers of general-purpose AI models;
 - a) To put in place a policy to respect Union copyright law in particular to identify and respect the reservation of rights under the TDM exception (Article 53 (1) (c), Recital 105 and 106)
 - b) To draw up and make publicly available a sufficiently detailed summary about the content used for training, according to a template provided by the AI Office (Article 53 (1) (d), Recital 107)
- The aim: to support the enforcement of EU copyright rules in the context of the development of generative AI

2. Policy to respect Union copyright requirement

Recital 106 - extraterritorial effect

*Any provider placing a general-purpose AI model on the Union market should comply with this obligation, **regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place.***

2. Sufficiently detailed summary requirement

Recital 107 provides some more clarity on the legislator's intention. Sufficiently detailed summary should:

- ✓ *be generally comprehensive in its scope instead of technically detailed*
- ✓ *take into due account the need to protect trade secrets and confidential business information*
- ✓ *facilitate parties with legitimate interests, including copyright holders, to exercise and enforce their rights*
- ✓ the template to be provided by the AI Office should *allow the provider to provide the required summary in narrative form*

2. AI Act: Template, Code of Practice and Guidelines

Instruments to support the transparency obligation

- a) monitoring of the copyright-related transparency rules by [the AI Office](#)
- b) the AI Office will draw up a template for the sufficiently detailed summary
- c) the AI Office will also provide a detailed guidance on the implementation of the obligation to draw up and make publicly available a sufficiently detailed summary
- d) the AI providers will develop, together with national authorities, Codes of Practice to define common rules for the implementation of the obligations in the Act

Next steps

- Ongoing work to ensure the successful application of the TDM exceptions, including the opt-out: industry initiatives to develop tools and protocols to support the application of the opt-out;
 - Engagement with rightholders and industry players to gather information on the rights reservation
 - Data gathering of the implementation of the DSM Directive, in particular regarding Article 3 and 4.
- the Council adoption of the AI Act (possibly May) and its publication in the official journal (possibly June)
- implementation of the AI Act requirements on the transparency of the content used to train generative AI models.

Thank you



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