

# **THE MULTI-LAYERED REGULATION OF RIGHTS RESERVATION (OPT-OUT) UNDER EU COPYRIGHT LAW AND THE AI ACT –**

## ***FOR THE BENEFIT OF WHOM?***

*Dr. Péter Mezei, PhD, Professor of Law*

*University of Szeged, Faculty of Law and Political Sciences (Hungary)*

*Adjunct Professor (dosentti), University of Turku (Finland)*

*Chief researcher, Vytautas Magnus University (Lithuania)*

*Professor invité, Université Jean Moulin Lyon III (France)*

*Member of the European Copyright Society*

*Member of the Hungarian Copyright Expert Board*

[mezei.peter@szte.hu](mailto:mezei.peter@szte.hu)

**COPYRIGHT IN THE SPOTLIGHT:  
30 YEARS HELLENIC COPYRIGHT ORGANIZATION  
Athens  
7 March 2025**

# A NEVER ENDING STORY...

## A Saviour or A Dead End? Reservation of Rights in The Age Of Generative AI

Péter Mezei

*University of Szeged*

☞ Artificial intelligence; Copyright; Data mining; Digital content; EU law

EIPR (2024) 461-469.

The commercial TDM exception is a **complex equation**: missing regulation on

- the timing,
- the location,
- the scope and
- the declarer of rights reservation
- and on the overlaps with other norms.

**Lots have happened** since early 2024! E.g. AI Act; Code of Practice; case law (Kneschke v. LAION + HowardsHome).

# A NEVER ENDING STORY...

Three focal points:

→ does the training of GenAI (GPAI models) fit into CDSM §4 & AI Act §53 et seq?

→ What did we learn from the draft Code of Practice (v2.0)?

→ What did we learn from existing case law?

[Download This Paper](#) [Open PDF in Browser](#) [★ Add Paper to My Library](#)

[Revise my Submission](#)

## The Multi-layered Regulation of Rights Reservation (Opt-out) Under EU Copyright Law and the AI Act -For the Benefit of Whom? (v2.0)

17 Pages • Posted: 7 Feb 2025 • Last revised: 25 Feb 2025

[Péter Mezei](#)  
University of Szeged, Institute of Comparative Law and Legal Theory; Vytautas Magnus University - Faculty of Law

Date Written: February 25, 2025

### Abstract

The rapid development of generative artificial intelligence (GenAI), the trendiest type of artificial intelligence (AI) these days, prompts legislation around the Globe to (re)consider the need for and the details of regulatory solutions to manage the copyright consequences of this phenomenon. The European Union (EU) – like in other fields of law – is in the forefront of regulation. On the one hand, the EU’s Copyright in the Digital Single Market Directive introduced a specific text- and data-mining (TDM) exception for the benefit of research organisations and cultural heritage institutions (Article 3), as well as any user (Article 4). The latter exception might be directly relevant for GenAI model developers and providers, including its provisions on the reservation of rights. Under this, rightsholders might ‘opt out’ their works and other protected subject matter from TDM. The CDSM Directive did, however, not conclusively clarify how, when, in what exact form and by whom such reservation might be exercised. In any case, these rules, so far, imagined a collaboration via the flagging of reserved contents by rightsholders and, consequently, the respect of such opt-outs by GenAI providers. On the other hand, the AI Act, published in the Official Journal in July 2024, will affect the functioning of such rights reservation mechanisms by introducing an obligation to put in place a policy document on how GenAI developers comply with rights reservation rules [Article 53(1)(c)] and to draw and make publicly available a sufficiently detailed summary on the data used for training purposes [Article 53(1)(d)]. Furthermore, the newly established AI Office will step in with its administrative role and duties to oversee the compliance with the AI Act. Consequently, the formerly clear private law setting has now been supplemented with some administrative, public law features. Currently, however, the efficacy of the EU’s multi-layered legislation is far from being certain. The present chapter aims to review how these layers of norms will ultimately be put into practice and co-exist in the European Union.

[Available via SSRN](#). Forthcoming in Westkamp/Shemtov (Edward Elgar 2025).

# TRAINING GENAI FITS INTO §4 CDSM / §53 AI ACT

## Contra (originalist understanding):

Importantly, the AI Act recognizes the relevance of TDM to AI training, but in no way does it indicate that TDM is synonymous with AI training or that everything in-between TDM and AI training is covered by Articles 3 or 4 of the DSM Directive.

Eleonora Rosati: Infringing AI: Liability for AI-Generated Outputs under International, EU, and UK Copyright Law, *European Journal of Risk Regulation* (2024) 7-8.

See more: Schack (2024); Dornis (2025).

# TRAINING GENAI FITS INTO §4 CDSM / §53 AI ACT

## Arguments in favour:

- CDSM was ***designed purposefully broad*** / covers a technology horizontally, not a narrow, specific one;
- ***TDM = reproduction*** (Art. 2 InfoSoc Directive) or extraction (Art. 6(2)(b) and 9(b) Database Directive) per CDSM (more on that: Szkalej/Senftleben 2024);
- Regulatory pasticcio: ***recital 105 & Article 53*** AI Act on TDM & GPAI models.

## **BUT:**

- **ex post uses are not exempted** under §4 CDSM and §53 AI Act (see more on that: Dornis 2024, ECS 2025).

# AI ACT §53(1)(C)

## **Putting in place a policy document...**

→ draw up, publish, keep up-to-date, effectuate.

## **Identify and comply with rights reservations...**

→ meaningful policy per *effet utile*;

→ Article 53(4) – three alternatives: Code of Practice; harmonized standard; individual demonstration.



**Copyright and Generative AI:  
Opinion of the European Copyright Society**

**January 2025**

# CODE OF PRACTICE (SECOND DRAFT, DECEMBER 2024)

*11 measures + 16 key performance indicators, including...*

→ make reasonable efforts to assess whether third-party datasets complied with copyright law (measure 2.3);

→ to commit („reasonable and proportionate efforts”) ensuring lawful access to the training data (measure 2.4);

→ not to crawl pirate websites (measure 2.5);

→ to identify forms of appropriate expressions of rights reservations other than **robots.txt** + „rights reservation at source or work level” (measure 2.7); or

→ to prevent **overfitting** (measure 2.9).

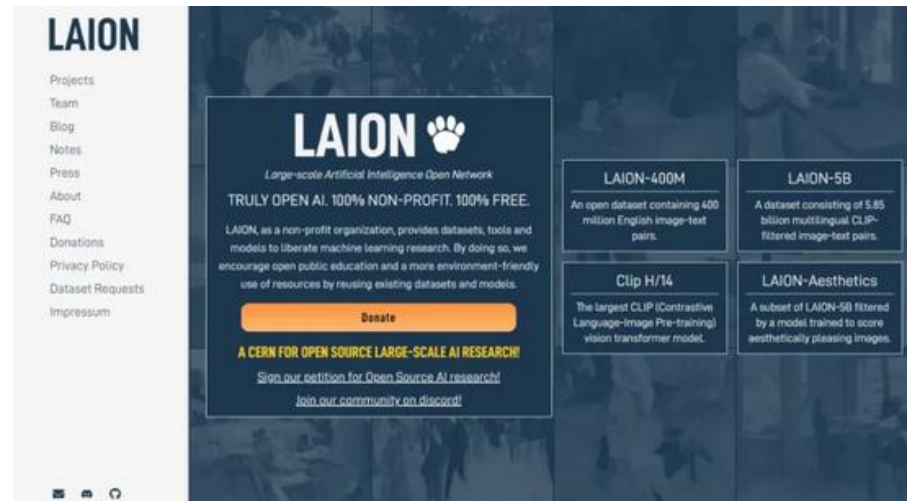
# AI ACT §53(1)(D)

**„Draw up and make publicly available a *sufficiently detailed summary* about the *content* used for training the *GPAI model*”**

- identical meaning for draw up, publish, meaningful etc. + *effet utile*
- summary = comprehensive, but not complete;
- content, not data;
- sufficiently detailed → will be covered by the AI Office's template;
- compare to the *Californian GenAI: Training Data Transparency Act* → „high-level summary”, including data on the sources or owners of used datasets; description how the datasets further the intended purposes of the GenAI system or service; the number and description of data points; whether the dataset includes protected subject matter (or public domain?)



# CASE LAW



LG Hamburg, Urt. v. 27.9.2024 (310 O 227/23) - LAION ([in dictum](#)): reservation was expressed by an *authorized person*; *not to be specifically or consciously addressed to certain users*; reservation was *clearly formulated*; human readable = *machine comprehensible*.

The case is limited to special questions – *lacking clarifications* on the location and timing of the reservation + reliance on „human languages” *endangers minor languages* (and prefers English at the same time).

# CASE LAW



DPG Media et al. v. HowardsHome, Rechtbank Amsterdam, C/13/737170 / HA ZA 23-690, ECLI:NL:RBAMS:2024:6563 (October 30, 2024)

→ plaintiff's reservation of rights were *not machine-readable*, as

- robots.txt protocol excluded only specific AI bots, and not defendant's scraping technology;
- puts extra burden on rightsholders = is that in line with CDSM's intended purpose?
- Divergence between the LAION and HowardsHome judgements regarding the meaning of machine-readable.

# (NOT A REAL) CONCLUSION...

- The rights reservation dilemma is far from being fixed – only elements of the complex equation are clarified (to a certain degree) → *no chance for a one-size-fits-all solution* (per Keller)?
- Lack of clarity for *transparent deployment of reservations* → EC's tender to study the feasibility of a central registry?
- Existing (growing) body of *licensing practices* – lack of clarity of their substance + Spanish proposal for an ECL system.
- *Machine unlearning/disgorgement* as a sanction? Concerns regarding that...
- Is the *regulatory approach* really the solution? Compare to the Paris AI Summit (Macron, von der Leyen ~ pro-innovation talks).

**THANKS FOR YOUR ATTENTION!**

