Danish Presidency: Policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI

SAA's contribution to selected questions | October 2025

The Society of Audiovisual Authors (SAA) is the umbrella association of European collective management organisations (CMOs) representing audiovisual authors. Its 33 members in 25 countries manage rights for over 174,000 film, television and multimedia European screenwriters and directors. The SAA supports audiovisual authors and promotes cultural diversity through policies that enable the dissemination of audiovisual authors' works to audiences. CMOs' role is to provide easy, legal access to these works and ensure authors are fairly paid to encourage further creativity for the benefit of society.

We are grateful to the Danish Presidency of the Council for keeping up the discussions around AI and licensing, inquiring on very practical matters that are often glossed over in other occasions and by other EU institutions. We are especially referring to the matters of licensing mechanisms and the prominent role CMOs can have in streamlining remuneration from users to authors, that the questionnaire invites both Member States and stakeholders to react to. We also welcome the choice of including a dedicated space for stakeholders to participate in the conversation. In the following paragraphs, we contribute to a selection of questions that we deem of importance for audiovisual authors and their CMOs (Questions 30 to 38).

Stakeholder questions – IV Licensing in the context of AI

Licensing agreements – state of play

30) Has any national litigation concerning the use of copyright-protected content in the context of AI been initiated in your Member State? If yes, could you please provide further information on the case or cases concerned?

Litigation in relation to use of copyright-protected works in the context of AI has been initiated in three different countries: France, Germany and Hungary. The last one has reached the CJEU.

In France, the litigation has been initiated in March 2025 by the National Publishing Union, the National Union of Authors and Composers and the *Société des gens de lettres* against Meta, in a court in Paris. Meta is accused of having trained its AI without the consent of the rightsholders and by endangering the demand of books due to the capacity of the AI to generate the same kind of works hence directly competing with the protected works.

In Germany, GEMA, the CMO acting in the music sector, has initiated two lawsuits: one against Open AI (November 2024) and the other against Suno AI (January 2025). In both cases, they claim that the AI has been trained without remuneration to authors and that both the song lyrics and the melody of songs that GEMA manages are easily recognisable in the outputs. Additionally, even before this most recent litigation, the case Robert Kneschke v. LAION e.V (Landgericht Hamburg 310 O 227/3) has been decided in first instance on 27 September 2024 by the District Court of Hamburg. Robert

Kneschke, a photographer, brought action against LAION, a dataset used for AI training, as his opt-out exercised according to the German transposition of Art. 4(3) DSM had not been respected. LAION argued that the opt-out had not been expressed in a machine-readable manner, because it was merely in the Terms and Conditions of the photo agency's website hosting Kneschke's photographs. As LAION figures as a non-profit research project, the court decided to grant the exception under Art. 3 DSM (TDM use of protected works for scientific and research purposes), regardless of the commercial use other companies make of the LAION dataset. Only in the dictum did the judges mention that natural language in the Terms and Conditions might fall within the requirements of Art 53(1)(c) AI Act, as natural language should be machine readable to state-of-the-art technology. The plaintiff has filed an appeal, and a decision is expected for 10 December.

In April 2025, the first instance court of Budapest lodged a request for a preliminary ruling to the CJEU (C-250/25), concerning a dispute between an online news publisher and Google. In particular, the plaintiff claims that Google's Gemini has used the plaintiff's works to train the model and displays excerpts of the works in the AI-integrated Google Search and in so doing has infringed exclusive rights including reproduction and communication to the public. The questions are of significant relevance for the application of the TDM exception in the AI context, as they inquire about – among other things – whether the TDM exception can apply to an LLM-based chatbot like Google's.

31) Has your Member State introduced any measures to encourage or support the conclusion of licensing agreements and contribute to the remuneration of right holders? If yes, could you please elaborate on these measures?

Spain and France are to date the countries that have initiated some initiatives to encourage the conclusion of agreements between rightsholders and AI companies to ensure the remuneration of rightsholders, to the best of our knowledge.

In Spain, a legislative proposal was presented in November 2024 wanting to introduce an extended collecting licence (ECL) for AI uses. However, it has been withdrawn due to some opposing views and with the promise that the government would initiate a conversation between parties.

In France there is ongoing work by the CSPLA (*Conseil supérieur de la propriété littéraire et artistique* - Superior Council of Literary and Artistic Property), which is feeding the discussion around the AI and copyright framework via commissioned studies. In June 2025, the Ministry of Culture together with the Ministry of Economy have launched a concertation process with a series of roundtables that is going to last for 6 months, until the end of 2025. These roundtables put together rightsholders and AI companies in order to – among other things – share best practices for the negotiation of agreements, and to find apt remuneration models.

32) Are you aware of any licence agreements concerning the use of works or subject matter protected by copyright and related rights for the training of/use in generative AI models, systems or applications having been concluded in your Member State?

We are not aware of any commercial licensing agreement between audiovisual operators and AI companies in Europe, but some may have been concluded under non-disclosure agreements.

The only licensing agreement we are aware of is one concluded in 2024 by our member SACD in France with Genario AI, which is an AI specialised in assisting with writing scripts for audiovisual works. This agreement guarantees remuneration to audiovisual authors (in the form of a percentage of the revenues of the operator, as in traditional collective management agreements) for the use of their works as part of the Genario artificial intelligence service, but, like other agreements at SACD, it does not commit the moral rights of the authors that each author can freely exercise.

In the text sector, our German member, VG Wort, has given the possibility for its text repertoire to be licensed for AI systems developed and used within companies.

Recent studies by EU institutions, agencies and academia confirm the lack of agreements in place in the audiovisual sector, continuing a trend where authors are still lacking remuneration while AI companies continue to grow their fortunes.

33) Do you know whether such licensing agreements cover solely the use of the content for training the models; and/or the use of content in the deployment of the AI systems or applications and the generation of output?

In the case of the VG Wort licence, it covers the use of the repertoire of the CMO for development, training and application of AI systems internally in an organisation, hence covering both the input and the output, but not the training of AI models. The licence primarily concerns scientific (written) publication.

For Genario, the authorisation covers all acts of reproduction and representation of works in SACD repertoire necessary for the operation of the service to its subscribers. It is specified that this authorisation is without prejudice to that to be obtained by the general-purpose AI models on which the Genario model is based.

34) If any licence agreements have been concluded, have these been granted through individual licensing or collective licensing (including, where applicable, through mechanisms with an extended effect such as extended collective licensing, when available under national law)?

The mentioned licences have been concluded within a collective licensing framework, with two CMOs.

35) (a) If licence agreements have been concluded, have these been exclusive or non-exclusive?

(b) Are the licences granted on individually negotiated terms, or are there publicly available standard offers accessible to all interested users?

The licences are on non-exclusive terms. In the case of VG Wort, they extended their mandates for all interested users. In the case of SACD, the agreement was concluded directly with Genario AI.

36) Besides the AI Act's obligations for providers of general-purpose AI models to put in place a policy to comply with EU copyright law and to make publicly available a summary of the training data, applicable from 2 August 2025, do you see the need for additional measures at national and/or EU level to increase transparency and facilitate the conclusion of licence agreements concerning the use of copyright-protected content in AI training or further uses related to generative AI-systems? If yes, could you please elaborate?

The AI Act implementation package presented in July (Code of practice, Template and Guidelines) is very disappointing. While rightsholders' organisations engaged in the drafting process of the Code of Practice in good faith and provided constructive comments to the three draft versions presented in November 2024, December 2024 and March 2025, the result fails to provide a fair and workable balance enabling rightsholders to exercise and enforce their rights. The AI Act and its implementation package are not providing enough transparency nor are they encouraging the conclusion of agreements between rightsholders and AI companies.

Without transparency it is impossible to know which works have been used in the training of AI. AI companies consider that sharing information on the works used for training is part of trade secrets; with the opt-out permeated in uncertainty, companies are practically being given the green light to train upon any content they find, often even bypassing paywalls and using pirated websites, without any consequences (although a step in the right direction has been taken in the US with the settlement in the *Bartz v Anthropic* case, concerning the book sector). They shield their infringing uses behind the uncertainty of the wording used in Article 4 DSM, especially the condition of machine readability

and lawful accessibility. Albeit those being two key concepts for the correct application of the provision, they are still interpreted by AI companies to their advantage: machine readable for them means that the only way to opt out is to use robots.txt; lawful access has been interpreted to indicate that all the works found online fall under lawful access.

Robots.txt is not a workable standard and is far from being appropriate for rightsholders, since it does not adequately reserve the works and puts all the burden on the rightsholders. The lawful access is also read in a problematic way, since the works found online are part of agreements with the services that host them, thus they are not free to use only because they can be accessed.

To improve transparency, AI companies should disclose the works used, at least with the rightsholders. Technically, the works used are not trade secrets. The report commissioned by the French Ministry of Culture explains that the works used for training are like the ingredients, so they cannot be protected by trade secrets. The recipe, which are the various parameters in the case of AI, are certainly not to be shared. We could draw a parallel with the most famous trade secret in the world: the ingredients of Coca-Cola are known to everyone; however, the recipe to make it is still hidden behind trade secrecy. Moreover, if we wanted to assume that the training data can be a trade secret, it would still be possible to obviate to this limitation via a non-disclosure agreement (NDA) between the parties: NDAs are quite used between CMOs and users already, there is no reason why they cannot be used in this case too.

On a similar line, the report by the Danish expert group on copyright and AI published in September 2025 has recommended that effective transparency is needed to determine the content that has been used (recommendation 1). Specifically, it is recommended that disclosure shall cover: (i) the title or other identification of the work, (ii) the source at URL level, or at least at service name level, (iii) the date and time when the work has been collected, (iv) the way the work was collected in order to ensure there was legal access. The same report mentions the possibility for rightsholders to have direct access to the training data to observe the repertoire used and eventually enter into licensing agreements.

As pertaining to the encouragement of a licensing market, it should be made clear that rightsholders can opt-out with appropriate means which include natural language, and the EU institutions should organise a dialogue between the parties. In fact, even when AI companies are contacted by audiovisual authors' CMOs, they do not reply or reply that they are shielded by the TDM exception. AI companies are not open to any form of dialogue, and the utter lack of licensing in the audiovisual market, as reported lately by an EUIPO study, is mere proof of a situation that the rightsholders have been flagging for months – if not years.

Only by increasing transparency and encouraging a dialogue between the parties can the situation proceed towards a fairer market for audiovisual authors, where authors get the remuneration they deserve for the use AI companies do of their works, via the efficient work of CMOs. Recent studies and experts' reports all agree on this.

Facilitating licence agreements

37) Do you think that additional mechanisms should be explored at EU level in order to facilitate licensing and improve the remuneration of right holders, (If so, please provide a justification, including any potential advantages and limitations of the proposed solutions), for example:

(a) Extended collective licences (if yes, could this be sector-specific)?

(b) Mandatory collective management (if yes, could this be sector-specific)?

(d) A model with a requirement/obligation to conclude licensing agreements with right holders?

Regardless of the modality chosen, it is important to create a mechanism whereby authors receive the remuneration they are owed. It is clear that both transparency and a working remuneration mechanism are at the base of the process to ensure the aim. This is also highlighted in the aforementioned Danish report of the expert group on copyright and AI, which recommends improving the framework to ensure CMOs can operate in the AI context (recommendation 3). CMOs are natural candidates to ensure remuneration reaches authors, even smaller ones: they are used to managing mass use of works and great repertoires; admittedly, this is their *raison d'être*. Managing works used in the AI context is business as usual for CMOs, as AI is another use in the list of uses they already manage.

Therefore, either with ECL, voluntary (when the national market is such that this solution ensures authors' remuneration, e.g., as in France) or mandatory collective management, obligation to conclude a licensing agreement, or a statutory remuneration right, the most important part is that the authors are remunerated, and this can only happen if the legal framework clearly ensures remuneration for authors with the fundamental support of CMOs, in order to avoid that the legal framework becomes a mere theoretically appreciable endeavour with no real-world impact.

(c) An arbitration mechanism – for example a final offer of arbitration model (if yes, could this be sector-specific)?

Arbitration is not very used in the audiovisual sector and would discourage the participation of authors. As reported by European Commission's study on contractual practices, 66% of authors have not used alternative dispute resolution mechanisms, although it is possible for them under Art 19 DSM Directive. In our experience, we have seen that arbitration used in the case of tariff setting negotiations have not led to a conclusive outcome, with the parties going to court to settle the dispute. Therefore, we do not deem it proper to encourage any arbitration procedure at this stage.

(e) An AI-ombudsman who could facilitate dialogue between the parties and ensure the confidentiality of data supplied by companies, or other third-party involvement ensuring confidentiality of data in order to facilitate licences?

Facilitating the dialogue between the parties and sharing data in confidentiality is certainly among our list of objectives in the current discussions around AI. Whether it is an 'AI-ombudsman' or an appointed third-party, the aim should be that of opening the dialogue and concretely converse on the solutions that make sure authors get remunerated for the commercial use of their works AI companies are doing.

(f) A rebuttable presumption of use of copyright protected content in the context of the development or deployment of AI?

This would be an important option that would encourage the dialogue between AI companies and rightsholders and transparency in content used. AI companies would be required to license content unless they can prove that they have not used it: this could increase the agreements between the parties and could also push AI companies to disclose part of their training data in a way that they deem safe for their trade secrets and is useful for rightsholders to know which of their works have been used as precisely as possible.

However, such a presumption of use would have limited impact if the uses continue to be presumably covered by the TDM exception.

(g) Other means?

Any other means that are thought about in the AI and copyright context should ensure that authors are remunerated for the works used by AI companies. The current framework is not giving the results that were promised during the AI Act negotiations, i.e., that with the rights reservation mechanism (opt-out) AI companies would be pushed to conclude licences for the works used in training.

To survive in the current framework, the only chance is to encourage AI companies to license the works, at training and fine-tuning levels. We therefore recommend that the Commission organises a time-limited High-Level Expert Group on AI training and Copyright to facilitate a dialogue between AI companies and rightsholders without any delay – similarly to what has been recommended by Prof Lucchi in his study commissioned by the European Parliament's Committee on Legal Affairs (at page 116) and in the report of the Danish expert group on copyright and AI (recommendation 10). Such a forum should facilitate the emergence of joint solutions for a trustworthy AI by:

- Facilitating a mutual understanding of the respective challenges on both sides
- Highlighting common interests and good practices
- Exploring feasible remuneration models for authors and other rightsholders in the different creative sectors.

An alternative, or in case the High-Level Expert Group does not reach any solution within six months, we recommend restoring the opt-in primacy.

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

An unexplored aspect can be the relationships in place for the acquisition of datasets. There is not enough discussion about the repercussions of using a dataset that has been created within the research purpose, by a commercial entity. The EUIPO study has recently called the phenomenon data laundering and has specified that it can undermine the effectiveness of Art 4 DSM. Indeed, an already weak provision might be weakened further, and not give the chance to opt-out even in the most accepted of technological standards, because the dataset would have been created within the premises of Art 3 DSM (research purposes), which does not let rightsholders opt-out.

Therefore, maybe as a subcategory of transparency-related issues, it is important to look at the relationships between the dataset providers and the AI developers who acquire third-party datasets. Once the dataset is acquired by an AI developer with commercial scope, the dataset enters into the remits of Art 4 DSM and, unless there is an opt-out option provided, the protected works used in the data set need to be erased from the dataset or licensed.

Additionally, Art 4 DSM covers reproduction and extraction, i.e., AI training. However, it does not include actions related to the making available, that is the output part. Too often this aspect is not taken into account. While training should include an opt-out, the output part that is when the AI is being actively used, cannot be covered by the exception. Therefore, regardless of an opt-out or not, AI companies should get authorisation the moment they place their models on the market.