

Responses to Polish questionnaire

Selected questions

I.3. Do CMOs in your Member State license works of the rights holders they represent for the purpose of training AI models? If so, do they encounter any specific challenges, e.g. related to the expression or identification of the TDM rights reservation? In your view, what measures could assist CMOs in licensing large collections of content for the purpose of training AI models?

The CMOs member of the Society of Audiovisual Authors (SAA) have generally expressed interest in licensing the use of the works of the authors they represent for the purpose of training AI models, but they face many challenges in this respect:

- + In a number of countries, the audiovisual authors' CMOs' activities are based on a licence delivered by the national authorities to manage specific rights and fields of exploitation, that would need to be adapted.
- + In countries where such an authorisation is not necessary for a CMO to develop a new licensing activity, CMOs may need to adapt the mandate of their author members as the training of AI models is a new field of exploitation. CMOs may have to amend their representation agreement in line with their bylaws.
- + Where CMOs have such an authorisation or mandate, they have usually expressed a reservation of rights according to Art 4 DSM and contacted AI companies to initiate the negotiation of possible licences. **However, all this has so far been in vain as AI model developers are not interested in entering into licensing negotiations.**

This is due to the current application of the TDM exception, which has handed to AI developers and providers the strong hand in deciding whether or not to conclude a licence – even when they use works that have been subject to a rights reservation. Indeed, there is no current way of making sure that the works can be removed from an AI model that has already completed its training and is already on the market.

So far, the AI Act has not encouraged the conclusion of licensing agreements that would ensure remuneration for authors, not even of those who have opted out. There is no current understanding of how the opt out can be expressed in a way that is recognised by all, and AI providers do not want to recognise rights reservations that are expressed in natural language, even though AI technology would be able to do so (according to the [judgement by the Hamburg Regional Court](#) of 27 September 2024).

To ensure that CMOs can peacefully license the repertoire they represent, first and foremost it should be clarified that it is possible to express the rights reservation in natural language. Second, CMOs should be enabled to identify the works that have been used. To this day, AI developers still hide the datasets behind the excuse of trade secrets, when in reality this trade secrecy would not apply (as suggested by a [report by the French Ministry of Culture](#)), nor it would be a problem if it were. CMOs are well-equipped and experienced in dealing with confidential information and do so in every contractual relation as part of their business model.

Furthermore, considering that AI providers must abide by copyright law in order to operate in the EU market, they should check compliance with it before starting their operations. They should ensure that the data they are using does not contain protected works or opted out works. If they still intend to use that training data, they should seek a licensing agreement before they offer the final product on the market. Ideally, they should do so even before they include the work in the training data, since

there is no current understanding nor certainty that the work can be 'untrained' from the AI once it has been trained on it.

The AI Act is not sufficient to develop a licensing market in which CMOs would play a role. Action is urgently needed at national and/or European level to foster such a collective licensing market that would deliver remuneration to the authors. This urgent action is acknowledged by the [summary](#) of Member States contributions to the policy questionnaire on the relationship between generative artificial intelligence and copyright prepared by the Hungarian Presidency, which states that "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".

I.5. Do you think that the scale of repertoires represented by CMOs might impact their bargaining power with AI-service providers? Should the approach to negotiating licensing agreements differ across sectors in the context of AI?

Handing the management of rights to CMOs has proven to be beneficial for authors and even the whole audiovisual industry (as shown in [this SAA/CISAC study](#)), and has been suggested multiple times by academics and the European Parliament (see for instance [Xalabarder](#) and [Hugenholtz](#), and the [EP study on buy-outs of 2023](#)). This is due to the fact that authors by themselves would be too weak and the rights compliance too difficult, not only for the authors themselves, but also for the companies that want to use the copyright-protected works.

In relation to AI, CMOs are even more needed to face AI companies, especially the ones who are backed by Big Tech and have strong economic power. Even when representing a large repertoire, CMOs are very small compared to them. If anything, the collective action of CMOs would merely bring back part of the balance for authors and facilitate the transactions for AI providers.

It should be further noted that CMOs have the benefit of representing a single point of contact for a great number of works, which are vital for a sound development of AI. Indeed, copyright-protected works represent that high-quality data that has been often praised to be fundamental to offer a high-performing AI, in contrast to synthetic data that would instead diminish the quality of the AI and favour issues such as hallucinations.

I.6. What actions are or should be taken by CMOs to protect rights holders from the unauthorized use of their works by AI services? What are the best practices and most common challenges in your Member State with regards to this issue?

In the current state of affairs, wherein one must accept the existence of the TDM exception, the most urgent action to be taken is to clarify that the reservation of rights can also be expressed in natural language, since AI technology is capable of recognising it (see Q1.3). If this is not done, the unauthorised use of protected works is merely going to continue until human authorship is gone or reduced in value, with disastrous consequences to European (and worldwide) cultural and creative sectors.

Even better, however, it should be recognised that the TDM exception cannot be applied to all AI uses. When the TDM exception was enacted, there was no discussion about AI, nor this technology was part of the impact assessment that preceded the entry into force of the DSM Directive. There is therefore high legal uncertainty on the scope of the TDM exception, that should be clarified as recommended by the European Copyright Society in its recent [opinion on Copyright and Generative AI](#) (January 2025).

Continuing the dialogue with authors and their representative organisations, as the Spanish government is doing in the context of AI and copyright, would be a good practice to emulate in other Member States. In late November 2024, the Spanish government had conducted a [consultation](#) on the possible introduction of an extended collective licensing scheme for AI training. Due to the

responses, the government has recently decided to take down the proposal and [continuing the discussions differently](#). This is a good example of engagement, that gives the chance to gather the opinions of stakeholders and understand the best solution for them.

I.7. Do CMOs in your Member State observe any impact on their revenue from the widespread generation of content by AI? What measures are they taking in response?

The impact of generative AI on audiovisual authors' revenues has been measured by a [study commissioned by CISAC](#). The study, which focuses both on the music and audiovisual sectors, has shown that the use of generative AI is going to increase the revenues of the AI industry while reducing those of both sectors subject of the study. More specifically for the audiovisual authors, **CISAC has estimated a 21% revenue loss from now to 2028**, while the market for AI-generated content will increase from EUR 3 billion to EUR 64 billion in the same time span.

The numbers shown in the study are already worrisome and depict a reality where the value of works is only decreasing, while the earnings of the AI industry is only increasing. This tendency is merely a numerical representation of what the CMOs and their umbrella organisations – such as the SAA – have been warning about ever since the enlargement of the scope of the TDM exception to AI purposes. The only response to this situation would be licensing agreements that would deliver remuneration to the authors whose works are used to train AI models.

I.8. Apart from the abovementioned issues, do CMOs in your Member State face any other challenges or concerns related to AI technologies?

While not caused by AI technologies per se, the advent of new global uses of protected works like AI uses highlight the fragmentation of the European audiovisual market for audiovisual authors. Film and TV writers and directors are at the heart of the creative process in the audiovisual sector. However, their legal and economic situation differs widely from one country to another. Thanks to the EU harmonised collective management of the retransmission right in the 1990s, audiovisual authors have received increased revenues for the retransmission of their works. Unfortunately, this is not the case for all types of exploitations, which means authors are denied fair remuneration based on the success of their works. The scope of the collectively managed rights varies per country, which results in different levels of revenues. Because legislation and markets are still fragmented, audiovisual authors do not receive royalties on all media in all European countries.

Thanks to the EU Parliament, a principle of appropriate and proportionate remuneration was added to the 2019 Directive on Copyright in the Digital Single Market (Article 18). As a result of the transposition of the directive, several countries improved the legal protection of audiovisual authors. However, **many countries have simply copied-pasted Article 18 without introducing any remuneration mechanism**. As a result, the market remained fragmented, and authors' entitlement to remuneration continued varying widely from country to country, particularly for streaming. Due to the heterogeneity of the legal systems in place and lack of statutory rights to remuneration, CMOs cannot always provide reciprocal agreements that would bridge the gaps.

An unwaivable and inalienable right to remuneration that is collectively managed is the way to go for audiovisual authors: it guarantees remuneration to authors when their works are exploited, without harming the producers' role. The remuneration is paid by the distribution operators according to the exploitation of the works on their services, based on an agreement negotiated with the authors' CMOs that represent the audiovisual authors in the country. The burden of payment falls not on the producers but on the services that exploit the works.

II.6. In your opinion, are new technologies reshaping the operational model or giving rise to new business models of CMOs? For instance, how is the role of CMOs evolving in relation to music or audiovisual streaming platforms, multi-territorial music licensing hubs, online intermediaries, or any other category of online platform?

The role of European CMOs is definitely becoming more difficult in the current market characterised by the domination of global audiovisual streaming platforms, which might not be familiar with collective rights management in their home market, in particular in the audiovisual sector. In this context, the statutory remuneration right model with mandatory collective management is absolutely legitimate and adequate to ensure remuneration to audiovisual authors for streaming exploitation, as implemented in Belgium, Estonia, France, Italy, Poland, Slovenia, Spain and Switzerland (as well as in Latin American countries).

CMOs are called to safeguard EU law and principles against global actors that more often than not, do not share the same values and instead want to capitalise on protected works without properly remunerating authors. Therefore, it is increasingly important to ensure CMOs stand on solid legal basis to push more decisively the principles set in EU law, including the right to appropriate and proportionate remuneration found in Art 18 DSM Directive.

While CMOs have always been a central point in the seamless distribution of revenues to authors, now more than ever their work is important to uphold the pillars of Union copyright law. Without remuneration guaranteed by CMOs, audiovisual authors often receive lumpsum payments from producers for the transfer of their rights, with no perspective of additional remuneration based on the exploitation of their works. Most audiovisual authors are obliged to conclude agreements with counterparts who have more bargaining power to impose their conditions, taking advantage of the precarious state of authors, who may even abandon their creative endeavours due to the low income generated by their creative efforts.

With CMOs, authors' rights and EU principles find their application, since it is the very mission of collective management organisations to redistribute revenues to authors and spread the importance of remuneration rights. Their collective power is more apt to stand in front of global platforms, compared to that of the single author.

II.7. On January 17, 2024, the European Parliament adopted a resolution on cultural diversity and the conditions for authors in the European music streaming market. The document highlights the need for a fairer models of streaming revenue allocation for authors and performers. What role should CMOs play in supporting authors and performers to obtain fair remuneration in this process?

Although the mentioned [EP resolution](#) was written with the perspective of the music market, which has certain specificities that differ from those of the audiovisual market, the remark about the necessity of collectively managed authors' rights can be shared. Indeed, it is important to emphasize that the EP resolution not only recognises the necessity for fairer remuneration but also intercepts CMOs as a central converging point between users and authors.

CMOs can and should be the central single point wherein authors can see the revenues from their works coming easily, without worrying about strenuously making sure that every user is paying the remuneration due. On the other side, users are also advantaged since they can contact CMOs for a vast repertoire of works and negotiate adapted tariffs for their specific uses – instead of distributing the revenues authors by authors with the risk of legal proceedings against them around the corner.

In the audiovisual sector, this can rarely be achieved on a voluntary basis. Audiovisual authors need their entitlement to remuneration to be written in the law with a clear remuneration mechanism that commands users to pay the remuneration through CMOs according to their uses of the CMOs' repertoires.

II.8. Is there a discussion in your Member State about the introduction of new remuneration models in response to emerging technologies, in accordance with the Article 18 of the DSM Directive (such as additional and non-transferable remuneration for online streaming)?

While Member States have all transposed the remuneration principles of Art 18, only a part of them has done so by properly setting a remuneration mechanism that ensures appropriate and proportionate remuneration to authors for all modes of exploitation of their works, in particular streaming. It is quite disheartening that some of those countries who have created a credible architecture to ensure authors' remuneration, are now subject to a challenge. This is the case of Belgium and the current preliminary ruling pending at the CJEU ([C-663/24](#)), initiated by Google, Meta, Spotify and others.

Art 18 DSM Directive sets a general principle of appropriate and proportionate remuneration. In transposing this principle, Member States should apply it to uses related to the digital environment, including streaming platforms and uses related to Art 17 DSM. This was clearly the objective of the article, if one looks for instance at the [EP report on the harmonisation of copyright and related rights](#). According to the report, Directive 2001/29 (InfoSoc Directive) had failed to ensure fair remuneration to authors. For this reason, it was deemed necessary to openly urge Member States to adopt measures as encouraged in what became Art 18 DSM.

For some Member States, this principle was not anew and this article for some served as a reminder that all uses, including all digital ones, shall be remunerated. This is the case of Poland, who extended its existing unwaivable remuneration rights to digital uses. It is also the case of Belgium which, even before the DSM Directive, already had enshrined the same principles found in Art 18 but for retransmission and direct injection.

The choice of the Belgian legislator is now being challenged by global platforms, who have succeeded in taking their claims from the Belgian Constitutional Court to the CJEU. SACD, la Scam and deAuteurs, all members of the SAA, are trying to defend the rightful choice of the Belgian legislator, to the benefit of all other countries who have enacted similar legislation before and after the DSM Directive.

To extend this discussion to AI, one can easily see that AI development is once again undermining the application of the principle of appropriate and proportionate remuneration, since authors are not getting any return for the mass uses of their works by AI companies. A whole industrial sector is being built on the basis of an exception to copyright, clearly favouring AI companies that would already have the means to pay for the use of protected works. Now more than ever Member States should be wary of the attempts at destabilizing years of EU law harmonisation and should actively participate in protecting copyright law at all levels. We therefore concur with the European Copyright Society's opinion on copyright and generative AI that states: **"The fair remuneration of authors and performers for all acts of exploitation of their works and performances occurring in the life cycle of Generative AI models and systems** (including when an opt-out from the application of Art. 4 CDSM Directive has been exercised and when their works or performances are included in a dataset that has been licensed to an AI provider) **needs to be reaffirmed as a fundamental principle of the EU acquis.** The Commission should look at the best ways to ensure such a remuneration, including remuneration rights or other compensation mechanisms, in concert with Member States."