Society of Audiovisual Authors

5 takeaways from the SAA Expert Seminar on Artificial Intelligence

30 January 2024

Video recording

1. **Art and creativity are not industrial processes.**
2. **Generative AI was not considered for the text and data mining exception of the Copyright Directive in 2019.**
3. **Transparency is a prerequisite to defend authors' rights.**
4. **Collective management organisations have expertise and experience that AI companies could learn from.**
5. **The AI Act is only the beginning of the copyright debate.**

1. Art and creativity are not industrial processes.

Tom Chatfield, Author and tech philosopher

Generative-AI threatens the ecosystem of creativity on an existential level. Creative industries are networks that generate enormous amounts of value, joy and soft power. However, the ecosystem that sustains authors is being exploited: its resources are being mined and extracted and the creative works are threatened by the automation of content production.

Why we value creativity is not captured by AI processes. We need to be very careful of how products of human creativity are being processed by machine learning. Machine learning is nothing like human learning or understanding, or the creation and sustaining of value.

The creative process is a vital human act of teaching, learning and a way society examines itself. When we educate children, we don't criticize them because their drawings are not as good as photographs. We celebrate the process of learning, self-expressing, and communicating, because it's how we richly inhabit the world and become human. This doesn't mean there's no place for AI, but it means that these questions of why and how we value creativity in all its forms are not captured by a shallow focus on output.

2. Generative AI was not considered for the text and data mining exception of the Copyright Directive in 2019.

Sari Depreeuw, Lawyer, Professor of Law and ABA President (Belgian ALAI group)

How do generative-AI technologies relate to the legal definitions that we know? 10-15 years ago, we were only talking about data analytics and big data. The Directive on Copyright in the Digital Single Market (2019) dates before generative AI exploded. If there is any act of reproduction in the

context of a text and data mining process (TDM), those are exempted. The users do not need the author's consent unless there's an opt out.

Does content fall under the scope of TDM? The purpose of the AI Act is not to regulate copyright nor to protect authors as such. The general definition of AI is that it is a machine-based system with some degree of autonomy and perhaps even some adaptiveness after deployment. Content is explicitly listed as a one of the output recommendations or decisions. So, generative AI falls within the definition. General purpose AI is any type of system that displays some form of generality that can perform a wide range of tasks, and they can be integrated in downstream applications or software. One example is large language models that can generate content, such as text, audio, images and video. The AI Act imposes transparency obligations on providers of general-purpose AI to adopt a policy to identify and respect the opt outs of the TDM exception, and to draft and publish a summary of the training data that has been used.

Rights' reservation is technically very difficult. Let's assume that the TDM exception is applicable to a certain point. You need to communicate the opt out for every occurrence of your work on the internet and for all the AI applications. If this is on the author's shoulders, that's very difficult and very unlikely. There is no central registry of all the works in the world where this opt-out can be communicated.

Axel Voss, MEP, rapporteur for the Legal Affairs Committee on the AI Act and former rapporteur of the 2019 Copyright Directive

We never discussed AI at the time of formulating the TDM exception in the Copyright Directive. We allowed companies to use TDM for their own purposes. Public usage was not in our mind back then.

Paul Laurent, IP Adviser of the Deputy Prime Minister of Belgium

When we negotiated the Articles 3 and 4 of the 2019 DSM Directive, and when we were doing the Belgian transposition in 2022, we did not have AI in mind. The EU Commission will need to study the impact of the exceptions of Articles 3 and 4 and the problem of the opt out.

3. Transparency is a prerequisite to defend authors' rights.

Anke Schierholz, Head of the Legal Department of Bild-Kunst and President of the board of directors of EVA

The disruptive effect of AI on creators is fully visible. Many freelance commissions have already been replaced by AI. Translators, interpreters, illustrators and designers are afraid of not being able to pay their rent by the end of the year. Authors of all repertoires know that the works have been digested from massive machine learning and are being used to replace their creative jobs.

We need the AI Act. This idea that the AI Act would be over-regulative and hinder the development of European startups is the same argument that is always brought up by the international tech industries when new technology is at the horizon. This argument has been proven wrong all the time: The internet did not collapse because user generated content platforms were held liable for the user's content. The position which is defended is the freedom of the free foxes and the free chicken stall. The authors are not the foxes, they are the chickens.

We need transparency to be able to defend the authors' rights and create a safe legal environment for the users. We want to license. In a licence, you can formulate the conditions of the use of works so authors are remunerated. Licensing is the only way to balance diverging interests, and it can be done collectively. We need to regain control over the works by returning to the basic principle of copyright: Those who use works need permission, be it by offer, law or a collective licence. We need

compensation for the use of works that have already been made, and for all future uses. With collective licences we can provide users with legal certainty and authors with fair remuneration.

TDM exception: One of the arguments for why Article 4 is not applicable, is that it is extremely difficult for authors to apply a machine-readable reservation for their rights. Only recently were tools developed to easily formulate a rights reservation for some types of works. And still we don't know whether these will be respected by the firms who are harvesting the Internet. Preventing your works from being shown on the Internet is close to impossible.

Authors need to know whether their works have been digested in the machine learning process. Those who train the machines can give this information, they only find it a nuisance. The information is there, it should be given.

Dan Nechita, Head of Cabinet of Dragoș Tudorache, MEP, co-rapporteur for the AI Act

The EU Parliament's priority working on the AI Act was to set some signposting for the future. In the intersection of AI and human creativity we had 3 priorities:

For AI to develop according to our values. Our values underpin a society, the way that the market works and enables the creative industries to develop. Our values of intellectual property and copyright incorporate the logic of the way we govern our society.

Balancing the technological progress and what makes us human. Helping the creative sectors, not by working on copyright per se, but by giving copyright holders the tools to negotiate this balance and their rights, so that we have both technological progress and don't inadvertently stifle human creativity.

Secure a future where human creativity can flourish, by focusing on transparency. We have solid transparency requirements for the models that are trained on copyrighted works, and these will help copyright holders enforce their rights. If a company wants to place a generative-AI product on the European market, they must respect European copyright rules.

4. Collective management organisations have expertise and experience that AI companies could learn from.

Patrick Raude, Secretary General of SACD and vice-chair of the SAA

Collective management organisations (CMOs) know both how to negotiate a licence and how to distribute rapidly. CMOs have IT knowledge and human resources to distribute the rights they collect. That's our job and we have been doing that for years. In SACD we have contractual licences with streaming companies, YouTube, Meta, etc. Platforms' contracts with CMOs dramatically lower the legal risk related to copyright for these companies.

How are CMOs practically handling AI issues? SACD has adjusted its general contracts with users to include new clauses to protect the works of our authors. These clauses prevent users from licensing the rights of the authors we represent to AI companies. Secondly, for contracts between authors and producers, we promote new contracts where authors keep their ability to allow or not the usage of their works by generative AI. Thirdly, in relation to the TDM exception, we consider that the criteria of the three-step test for exceptions are not met, and that the directive is below the international treaties on copyright. However, we opted-out as a backup, but what we want is an opt-in and to license our works.

Tom Chatfield, Author and tech philosopher

AI and tech companies understand their field but can be very naive about data, copyright and remuneration. They could learn a lot from CMOs. CMOs have very valuable expertise in addressing these issues. It's a myth that AI companies have got all the answers about technology. They would like it to be true that they can make lots of money by not worrying about copyright. But this is wishful thinking. CMOs can come together globally to provide the expertise, the frameworks of immunization and checks, the transparency, the data governance, all that the AI sector lacks.

5. The AI Act is only the beginning of the copyright debate.

Paul Laurent, IP Adviser of the Deputy Prime Minister of Belgium

The AI Act is the start of the discussion on AI and copyright and on top of the priorities for the next EU Commission. It's not the end of the game, and we will have a lot of work to do in copyright to cope with the new challenge. It is not about over-regulation or under regulation. We need good regulation.

Axel Voss, MEP, rapporteur for the Legal Affairs Committee on the AI Act and former rapporteur of the 2019 Copyright Directive

Transparency is what the AI Act brings. We achieved firstly that if AI developers are developing something, they must respect the existing laws, including copyright. We also decided that every AI output should be marked as synthetic. Thirdly, AI developers must deliver a detailed summary about the content used for training the AI models.

Further discussions are needed on copyright. In copyright terms, a summary is not enough, we probably must go further and try to find practical solutions with the AI providers and the creative sector. We should develop solutions on how we can detect a copyright protected work online, who is the right holder and how to remunerate her. We should also harmonize some aspects of copyright law in the EU more than what we have now in place, to be a good partner to the AI world, but we have to be firm in saying: copyright is a fundamental right for everyone who is creating. If you're using the works you have to get a licence or remunerate or both.