Authors and Performers Call for Safeguards Around Generative AI in the European AI Act

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Initiative
Urheberrecht

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Our Call for Safeguards Around Generative AI

Dear Members of the European Parliament,
of the European Commission, and of the Council of the European Union,

WE ARE authors, performers and copyright holders from industries such as photography, journalism, music, film + TV, books and texts, illustration, fine arts, etc. We are represented by over 40 associations and trade unions that joined the Authors' Rights Initiative. There are several million creatives like us in Europe; we all live from our creative activities in culture, the creative industries and media. Our work is the starting point for material and ideal value creation which we consider as an indispensable pilar of the European value and economic community.

WE WARN, together with partners from the book industry, the music industry, film industry, broadcasting and press, for which we are active: pillars of our society are under threat! AI-generated products intervene directly in social life; the immanent disinformation and manipulative potential of generative AI systems poses profound challenges to every individual and society as a whole. We share the concern, increasingly expressed even by AI experts, about a loss of control over such systems and the calls for legal restrains. It comes as a great surprise to us when some in politics nevertheless state "no need for action".

The envisaged European *AI Act*, which is entering the Trialogue these days, not only disregards our (copy-)rights, it is on its way to allow generative AI systems under minimum requirements that do not even do justice to the misuse of such systems and their social and economic implications that can already be observed today.

The output of AI systems depends on the input they are trained with; this includes texts, images, videos and other material from authors, performers and other copyright holders: Our entire digital repertoire serves training purposes, often without consent, without remuneration and not always for legitimate uses. The unauthorised usage of protected training material, its non-transparent processing, and the foreseeable substitution of the sources by the output of generative AI raise fundamental questions of accountability, liability and remuneration, which need to be addressed before irreversible harm occurs.

Our position paper analyses these developments and proposes practical and constructive solutions. As the last weeks have shown, any meaningful AI regulation requires specific guardrails for generative AI. Citizens and society must be at the centre of any policy decision.

WE DEMAND:

Regulation of generative Artificial Intelligence –
to limit foreseeable damage for European society, economy and culture.

Regulation NOW –
because the window of opportunity for effective regulation of market entry is about to close soon.

Kind regards

Your Creators and Performers

A. Executive Summary

We, the undersigned 43 guilds and unions, representing thousands of authors, performers and creative copyright holders from various industries are calling for effective regulatory measures to address the serious harm that can be caused if generative AI in placed on European markets at scale. While welcoming the latest proposals to include specific provisions on general-purpose AI, we do not think that they are anywhere near enough to protect the digital ecosystem and society at large.

In Chapter B. we submit a joint statement outlining the high risks that generative AI poses to society and why such risks call for particular legal safeguards in the AI Act. We find these observations confirmed by the first-hand experience of our members in their respective industries, as outlined in Chapter C.

Based on our analysis, we call upon all parties of the Trilogue - Parliament, Commission and Council - to consider adding the following amendments to the AI Act:

- **Generative AI must be regulated** across the entire product cycle, with particular focus on providers of foundation models (large language models and other large foundation models).
- **The placing of such foundation models on European markets should be conditioned** on providers demonstrating that they fulfil the following minimum requirements:
  - **full transparency** about the training material used;
  - **sufficient resilience of the training material** in terms of veracity, accuracy, objectivity and diversity, in particular documentation that an adequate share of the training material
    - originates from European sources;
    - originates from professional sources, as compared to user-generated or illegal content;
  - **evidence of a legal basis for the collection and use of the training material**, both for personal data (under the GDPR) and non-personal data (under European Copyright Law); including on the adoption, implementation, and adherence to an effective and workable system for granular machine-readable communication of usage rights;
  - **liability for all content generated** and disseminated by the AI, in particular for infringement of personal rights and copyrights, misinformation or discrimination;
  - **no algorithmic or other promotion of AI-generated content** over human-generated content or defamation of the latter, and reasonable measures to prevent users' overreliance on AI content;
  - **structural separation of generation from dissemination of AI output**: providers of foundation model shall not simultaneously operate central platform services for the distribution of digital content as defined in the Digital Markets Act, in particular no search engines or social media;
  - **a minimum of continental compute infrastructure:** the minimum share of the inference of generative AI systems should run on computing infrastructure located in Europe, with the share of domestic data processing increasing over time.

Adjusting the AI Act to today's realities is the first indispensable step. As a second step we would call for a re-balancing of the interests in copyright law. In particular, it should be clarified that the text and data mining exceptions laid down in Articles 3 and 4 of the DSM Directive (EU 2019/790) never allowed generative AI systems to substitute its sources without any compensation.

B.   Joint statement on generative AI

I.   The unforeseen rise of generative AI

We applaud the European Commission for its foresight in proposing the AI Act as the world's first attempt to address the risks of AI back in April 2021.

We note, however, that "AI" looked different back then. The Commission's proposal did not deal with "general-purpose AI", "generative AI" or "foundation models" as these systems were not yet on the agenda. The entire world was taken aback when *DALL-E 2* and *ChatGPT* were rolled out in 2022 and has ever since been watching in awe the unprecedented speed and scale of their dissemination. Foundation models for generative AI have rung in the 4th industrial revolution and will disrupt many industries like no other form of AI or ML (machine learning). As AI-generated synthetic media becomes increasingly prevalent, the societal implications are getting to the fore.

Nobody could have foreseen the enormous impact of generative AI, so we do not fault the draft AI Act for not putting specific guardrails around this nascent area. For the same reason, we bear no grudge "*that the issue of the protection of IPRs in the context of the development of AI and related technologies ha[d] not been addressed by the Commission, despite the key importance of these rights*"[1]. Like many other issues the need to protect human creativity only became apparent over the last months.

However, **by now we have gotten a first taste of what systems for generative AI are capable of**, positively and negatively. To be future-proof and meaningful, the AI Act needs to take such lessons seriously and address the risks that have come to light. **Generative AI needs to be at the centre of any meaningful AI market regulation, and citizens and society must be at the core of every decision**.

II. The general safety concerns regarding generative AI

When launching *GPT-4* on 27th March 2023, *OpenAI* provided a technical report outlining no less than twelve "specific risks" associated with their system; risks that could not be fixed, but may even increase:

> "*Hallucinations; Harmful content; Harms of representation, allocation, and quality of service; Disinformation and influence operations; Proliferation of conventional and unconventional weapons; Privacy; Cybersecurity; Potential for risky emergent behaviors; Interactions with other systems; Economic impacts; Acceleration; Overreliance*"[2].

The term "*hallucinations*" is a euphemism for falsehoods. Regarding end users' "*overreliance*" on the false information disseminated by GPT-4's "*hallucinations*", *OpenAI* revealed that

> "*despite* **GPT-4***'s capabilities, it* **maintains a tendency to make up facts, to double-down on incorrect information, and to perform tasks incorrectly***. Further, it often exhibits these tendencies in ways that are more convincing and believable than earlier GPT models (e.g., due to authoritative tone or to being presented in the context of highly detailed information that is accurate), increasing the risk of overreliance. Overreliance occurs when users excessively trust and depend on the model, potentially leading to unnoticed mistakes and inadequate oversight. […] As users become more comfortable with the system, dependency on the model may hinder the development of new skills or even lead to the loss of important skills.* **Overreliance is a failure mode that likely increases with**

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1   *European Parliament*, resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies, (2020/2015(INI)), P9_TA(2020)0277, available at https://www.europarl.europa.eu/doceo/document/TA-9-2020-0277_EN.html.

2   *OpenAI (2023)*, 27 March 2023 (Version v3), GPT-4 Technical Report, pp. 44 et sub., available at https://arxiv.org/pdf/2303.08774.pdf; see also OpenAI, 27 March 2023 (Version v3), GPT-4 System Card, available at https://cdn.openai.com/papers/gpt-4-system-card.pdf.

model capability and reach. As mistakes become harder for the average human user to detect and general trust in the model grows, users are less likely to challenge or verify the model's responses."[3].

This issue is amplified by the fact that, according to *OpenAI*, its large module *"can generate plausibly realistic and targeted content, including news articles, tweets, dialogue, and emails"* that is *"misleading"*, *"harassing, demeaning, and hateful"* and *"could be misused to exploit individuals"*.[4]

As a remedy *OpenAI* (merely) recommends

> *"that developers using our tools provide end users with detailed documentation on their systems' capabilities and limitations, as well as guidance on how to get the best performance from the system. To prevent dependency, we urge developers to be cautious in how they refer to the model/system, and to generally avoid misleading claims or implications - including that it is human - and to consider the potential impact of changes to the model's style, tone, or perceived personality on users."*[5].

After putting a product on the market, knowing that it is publishing false information, it appears that *OpenAI* **intends to shift any responsibility to downstream developers** (companies or individuals that adjust GPT-4 for various use cases) well aware that they will be incapable of fixing the issue and have no incentive to follow any recommendations to warn and protect their paying customers.

It is fair to assume that *OpenAI*'s own report only reveals the tip of an ever-growing iceberg of safety concerns relating to generative AI. In March 2023 alone, *ChatGPT* was caught making up entire news articles that a well-known publisher had apparently published[6]; falsely told voters that their mayor had been jailed for bribery[7] and named a real person as the accused in an invented sexual harassment scandal.[8] **The list of concerns identified by experts is long**.[9] At the heart of it are *AI fakes*, content that looks authentic but is false. According to the *FTC (Federal Trade Commission)*,

> *"Evidence already exists that fraudsters can use these tools to generate realistic but fake content quickly and cheaply, disseminating it to large groups or targeting certain communities or specific individuals. They can use chatbots to generate spear-phishing emails, fake websites, fake posts, fake profiles, and fake consumer reviews, or to help create malware, ransomware, and prompt injection attacks. They can use deepfakes and voice clones to facilitate imposter scams, extortion, and financial fraud. And that's very much a non-exhaustive list. [..] [T]hese new AI tools carry with them a host of other serious concerns, such as potential harms to children, teens, and other populations at risk when interacting with or subject to these tools. Commission staff is tracking those concerns closely as companies continue to rush these products to market and as human-computer interactions keep taking new and possibly dangerous turns."*[10].

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3   *OpenAI (2023)*, (n. 2), pp. 59 – 60 (highlighting by the authors).
4   *OpenAI (2023)*, (n. 2), pp. 47, 50.
5   *OpenAI (2023)*, (n. 2), p. 60.
6   *Moron*, 6 April 2023, ChatGPT is making up fake Guardian articles. Here's how we're responding, available at https://www.theguardian.com/commentisfree/2023/apr/06/ai-chatgpt-guardian-technology-risks-fake-article.
7   *Sands*, 6 April 2023, ChatGPT falsely told voters their mayor was jailed for bribery. He may sue., available at https://www.washingtonpost.com/technology/2023/04/06/chatgpt-australia-mayor-lawsuit-lies/.
8   *Verma/Oremus*, 5 April 2023, ChatGPT invented a sexual harassment scandal and named a real law prof as the accused, available at https://www.washingtonpost.com/technology/2023/04/05/chatgpt-lies/.
9   See *Heikkilä*, 3 April 2023, Three ways AI chatbots are a security disaster, available at https://www.technologyreview.com/2023/04/03/1070893/three-ways-ai-chatbots-are-a-security-disaster/; Statement of the Digital Humanism Initiative on ChatGPT, March 2023, ChatGPT – a catalyst for what kind of future?, available at https://dighum.ec.tuwien.ac.at/statement-of-the-digital-humanism-initiative-on-chatgpt/.
10 *Atleson* (Federal Trade Commission), 20 March 2023, Chatbots, deepfakes, and voice clones: AI deception for sale, available at https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale.

That "*AI chatbots are a security disaster*"[11] is apparent. Even *Europol* felt the need to issue a clear warning that *ChatGPT* can already be used for a significant number of serious crimes.[12]

The providers are aware of these problems and acknowledge that there are currently no fixes.[13] Instead of working on solutions[14], the providers appear more focused on disseminating their dangerous systems as quickly as possible. *OpenAI*'s recent "ChatGPT plugins" model, for instance, allows any company in the world to quickly integrate *ChatGPT* via an API. In turn *ChatGPT* now has "access to up-to-date information, run computations, or use third-party services" at global scale, in real-time.[15] Such real-time access to internet data, however, amplifies the threats posed by the system.

Experts found that **the risks associated with generative AI grow with the size of the models**.[16] This suggests that things do not get better but worse as there are very strong economic incentives to build ever larger foundation models. According to Microsoft founder *Bill Gates*, there is a race to offer a one-stop-shop "personal agent", an AI platform that will directly provide all digital information and services to its users, thereby replacing the need for consumers to access any other digital offering.[17]

Already today, the foundation models powering generative AI are largely in the hands of a few non-European corporate giants operating search engines or social media, namely Google, Microsoft, Meta, Amazon and Baidu.[18] Since such foundation models are subject to strong economics of scale and scope, genuine competition in this market is unlikely.[19]

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11 *Heikkilä* (n. 9); see also Prof *Florian Tramè*: *"this is going to be pretty much a disaster from a security and privacy perspective"*, cited in the same article.

12 *Europol*, 27 March 2023, ChatGPT. The impact of Large Language Models on Law Enforcement, available at https://www.europol.europa.eu/cms/sites/default/files/documents/Tech%20Watch%20Flash%20-%20The%20Impact%20of%20Large%20Language%20Models%20on%20Law%20Enforcement.pdf: *"ChatGPT is already able to facilitate a significant number of criminal activities, ranging from helping criminals to stay anonymous to specific crimes including terrorism and child sexual exploitations. [D]ark Large Language Models trained to facilitate harmful output may become a key criminal business model of the future. This poses a new challenge for law enforcement, whereby it will become easier than ever for malicious actors to perpetrate criminal activities with no necessary prior knowledge."* (p. 13).

13 See *Bubeck et. al.* (Microsoft Research), 27 March 2023 (Version v3), Sparks of Artificial General Intelligence: Early experiments with GPT-4, available at https://arxiv.org/pdf/2303.12712.pdf; *Heikkilä*, (n. 9): *"Microsoft admits that the problem is real, and is keeping track of how potential attackers can abuse the tools"*.

14 *Ibid*, quoting Prof *Arvind Narayanan* saying: *"AI companies should be doing much more to research the problem pre-emptively. I'm surprised that they're taking a whack-a-mole approach to security vulnerabilities in chatbots"*.

15 *OpenAI*, 23 March 2023, Announcements, ChatGPT plugins, available at https://openai.com/blog/chatgpt-plugins.

16 See study of *Yann LeCun* (Chief AI Scientist at Meta), Do large language models need sensory grounding for meaning and understanding?, 24 March 2023, available at https://event-cdn.baai.ac.cn/file/file-browser/HWXcpb3pdBDXihE46hnxfcreFDJfEMkK.pdf, slide 8 et. Sub: *"Auto-Regressive LLMs are doomed. They cannot be made factual, non-toxic, etc. They are not controllable. Probability e that any produced token takes us outside of the set of correct answers. Probability that answer of length n is correct: P(correct) = (1-e)n. This diverges exponentially. It is not fixable."*; *El-Mahdi El-Mhamdi* (ex-Google) et. al. (EPFL-Study), 30 September 2022 (Version v1), SoK: On the Impossible Security of Very Large Foundation Models, available at https://arxiv.org/pdf/2209.15259.pdf: *"even with a robust design, foundation models trained on data crawled from the web are likely to learn more from disinformation campaigns than from quality content, and may then be turned into disinformation propagators by malicious actors"*.

17 See *Gates*, 22 February 2023, AI technology like ChatGPT will 'reshuffle' the big tech markets, available at https://www.youtube.com/watch?v=GI-HcqOVNNo: *"Eventually we'll create a personal agent that understands all your communication and understands what you're reading that can help you and give advice to you. In a sense, the personal agent will replace going directly to Amazon or going directly to Siri or going to Outlook. [..] Once you get this personal agent, that collapses those separate markets into a 'Hey, I only want one personal agent, and of course it can help me shop and plan and write documents and work across my devices in this rich way'. A decade from now, we won't think of those businesses as quite separate, because the AI will know you so well that when you're buying gifts or planning trips, it won't care if Amazon has the best price or if someone else has a better price. You won't even need to think about it."*.

18 Collectively they operate eight of the (only) eleven private large foundation models that have been set up since the breakthrough of GPT-3 in year 2020: five are owned by Google/DeepMind and one by Meta, Microsoft and Baidu respectively. Since 2017, 86% of the published foundation models have been developed by private commercial organizations - only 13% in the academic sector. 73 % of foundation models have been developed in the US, 15% in China. The few models from Europe tend to be smaller, less extensively trained, and mainly adjust the GPT architecture to national markets. None of the best-known models representing breakthroughs came from Europe. See *LEAM:AI*, Large AI Models for Germany -Feasibility Study 2023, p. 56, available at https://leam.ai/feasibility-study-leam-2023. Some argue that the German company Aleph Alpha was a competitive local large language model. However, the company was funded with € 23 million and has 50 employees. OpenAI received in total US $ 29 billion in funding and hired over 1.000 contractors. Google's DeepMind alone employs 1.000 AI engineers.

19 See *Höppner/Streatfeild*, 3 March 2023, ChatGPT, Bard & Co.: an introduction to AI for competition and regulatory lawyers, 9 Hausfeld Competition Bulletin (1/2023), Article 1, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4371681;

The control of the largest foundation models for generative AI in the hands of digital gatekeepers that, by definition, operate "central platform services" in the meaning of the Digital Markets Act, amplifies nearly all societal concerns. That is because if a company operating a central gateway between end users and business users (such as a dominant online intermediation service, a search engine, social network or voice assistant) also controls a generative AI-model, it has a strong economic incentive and the technical ability (i) to set up personal profiles, (ii) to generate its 'own' AI content, (iii) to target such content to individual profiles and (iv) to promote such targeted AI content over any other (human) content on its platform, even if it the AI output is inferior in quality or extremely bias.[20]

Creating and disseminating "own" AI media content will be much cheaper and more attractive than referring end users to human works and performances produced by third parties for which a license may have to be obtained and a royalty paid. If one then adds the incentive of such companies into the mix, to train its opaque algorithms to create content that presents the company in a favourable light and to rank such content higher than any (human) criticism, the threat to democratic systems is apparent. It came at no surprise therefore, that several Civil Rights NGO's have warned against generative AI in the hands of Big Tech. Commenting on ChatGPT, the Digital Humanism Initiative, for instance, warns that "*the public sphere for open deliberations and participation is at risk of being taken over and flooded by content that is deliberately designed for misinformation, utter nonsense or undermining the sense of democratic, collective belonging*".[21]

III. We want to be neither facilitators nor victims of the harm caused by generative AI

The current and foreseeable future excesses of generative AI do not just harm citizens. They also harm us as authors and sources of creativity, art, education, knowledge, empathy, the backbone of our democratic societies and cultural identity. This impact is direct and existential.

All AI foundation models can only exist by using large-scale computational resources to train novel deep-learning architecture with vast amounts of data. Data and data processing are a fundamental portion of these systems. And all of the relevant training material was produced by humans, by artists, authors and performers that we represent. While not all scraped material is protected by any copyright, nearly all copyright protected works accessible online were scraped to train such models.

This means in turn that **the more works we create, and the more respective recordings we make available online, the more we feed and facilitate generative AI systems that can be misused** to produce very harmful output. Yet, we do not want to be associated with and foster a system that produces toxic content and manipulates the vulnerable.

Neither do we wish to promote systems that reduce the overall trust of consumers in any type of media because they can no longer distinguish between genuine human creation and AI fakes. Art and creative work have always been means to express views and opinions. If people may no longer trust or value any image, video, text, or performance as those become indistinguishable AI commodities, an important means to express liberty suffers and reliable reflections of reality on which opinions can be formed fall away.

Least of all, we do not want to feed generative AI systems that are designed or used to replace us and human creativity along with it. It is thanks to our material, our works that the outputs of generative AI systems, the poems, news articles, music, voices, images or other output, achieve a certain quality that

Myers, 17 April 2023, Competition authorities need to move fast and break up AI, Financial Times, https://www.ft.com/content/638b5be7-fab7-4fe6-a0cf-7dabefcdd722

20 See General Court of the European Union, Judgement of 10 November 2021, Case T-612/17 - *Google and Alphabet v Commission (Google Shopping)*.

21 Statement of the Digital Humanism Initiative on ChatGPT (n. 9).

they may directly compete with the (human-created) works the systems were trained with. The AI models have learned to generate outputs that resembles human works.[22] As a result such systems may now be used to substitute human-generated works with AI-generated output at large scale. This is unacceptable regardless of the trustworthiness and quality of such content. No one should be expected or obliged to promote competition against himself.

It is important to stress that all of this has happened without the knowledge, authorisation, acknowledgment or compensation of the authors and creators that we represent. The tech companies used their vast computing resources to scrape and use our works and recordings, without asking, just because they technically could. To make matters worse, as the European Parliament has rightly found,

"AI technologies may render the traceability of IPR and their application to AI-generated output difficult, thus preventing human creators whose original work is used to power such technologies from being fairly remunerated."[23]

IV. The EU's misguided text-and-data mining exemption

The unprecedented mass exploitation of human creativity for generative AI may not be excused with a reference to the exception for text and data mining introduced by EU lawmakers (against all warnings by our members) in Articles 3 and 4 of the Directive **(EU) 2019/790 on copyright and related rights in the Digital Single Market**.

According to Recital 17, when enacted in 2019, the EU lawmaker assumed that "*in view of the nature and scope of the exception, which is limited to entities carrying out scientific research, any potential harm to rightholders through this exception would be minimal*". Even the impact of any mining by private companies was expected as being so minimal that Member States were held to "*not provide for compensation for rightholders as regards uses under the text and data mining exceptions introduced by this Directive*". In 2019, the capabilities of generative AI were even less foreseeable than in 2021, when the AI Act was proposed. It is apparent that the purpose of the text-and-data mining exception cannot have been to enable today's automatic mass extraction of copyright protected works to train large foundation models to generate content, let alone *AI fakes*.

Pursuant to Article 4 para. 3 of the DSM-Directive, authors, performing artists and copyright holders may preclude private companies from relying on the exception of **text-and-data mining** by "expressly reserving" such right "in an appropriate manner, such as machine-readable means in the case of content made publicly available online". However, for several reasons, from the outset, such option **could not create an appropriate balance**. Firstly, even today nobody knows how such reservation is supposed to be validly expressed.[24] Secondly, many do not "read" any such declarations and scrape regardless. And thirdly, since rights-holders cannot reserve their rights vis-á-vis "research organisations and cultural heritage institutions", private firms can turn to such organisations and obtain all data from them. *OpenAI*'s GPT, for instance, was trained with data from Common Crawl – "a non-profit organization dedicated to providing a copy of the internet to internet researchers, companies and individuals at no costs for the purpose of research and analysis".[25] Similarly, Stability AI, the provider of the foundation model Stable Diffusion, has been cooperating with the University of Munich, a "research organisation". In other words, in practice, the option to "reserve" commercial text-and-data mining was pointless as anyone wishing to

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22 *Elgammal, A. et al.,* 21 June 2017 (Version v1), CAN: Creative Adversarial Networks Generating 'Art' by Learning About Styles and Deviating from Style Norms, available at https://arxiv.org/pdf/1706.07068.pdf.

23 *European Parliament* (n. 1), at D.

24 See, for instance, information of the *German Ministry of Justice* to a public request, 26 January 2023: *"The specific technical design of a machine-readable objection [..] is left to practice. Neither the explanatory memorandum to Section 44b UrhG nor the underlying Directive 2019/790 of the European Parliament and of the Council on copyright and related rights in the Digital Single Market (DSM Directive) contain specific technical examples in this regard."* https://fragdenstaat.de/anfrage/technische-umsetzung-von-urheberrecht-data-mining/#nachricht-767159.

25 Common Crawl, FAQ, available at https://commoncrawl.org/big-picture/frequently-asked-questions/.

scrape a website could just turn to a research organisation which was not bound by any such "reservation".

Some have argued that use of copyright protected material to train generative AI should be permissible because such training would be equivalent to the (lawful) use of works to get "inspired". However, the comparison is limp. **The great art and music schools of the world do not train their students on stolen works**. Moreover, for humans it takes years of intensive learning, observation of past creations and practicing to master their craft. At the end of such "training", there is a human creative that can make contributions to cultural diversity with individual works that merit copyright protection. This in turn justifies allowing humans to be "inspired" by existing works. In contrast, AI foundation models use computing infrastructure and algorithms to create output that is similar to the training material, in record time. Despite the "training" such systems do not understand what they are doing. Their "training" does not create a creative (human) who contributes to cultural diversity meriting copyright protection. Plus, in contrast to a human creator that uses a work to get inspired, generative AI does not just get inspired by the works it is trained with but takes them apart and puts the digital pieces back again, to reflect the users' prompt, just in a form that the source cannot be traced.

While generative AI is based on predictions, the highest proportionalities, people's artistic and journalistic work stand out for their unpredictability: contextualisation, social and cultural location and highly individual attribution of meaning. Authors and performers add something new and unheard, unseen, unpredicted and untold to life and culture. In other words: machines don't give you goosebumps. But if they substitute human works, there may not be many human creators left that do.

V. Authors and performers deserve a seat at the AI regulation table

Without the art and culture, information and beauty crafted and published by human creatives in the past, there would be no generative AI today. Yet, there is a high risk that today's generative AI models may reduce any incentives for human creativity. As the new wave of generative AI systems devalue creativity, artists, authors, performers and publicists may no longer be able to pursue a professional creative activity. If tech firms use AI to create output at no costs and disseminate such output across their systems, rather than human-generated material, these systems may even threaten the very incentive for human creativity in the future.

In its position paper on AI and intellectual property, the European Parliament's rightly "*emphasise[d] that creating an environment conducive to creativity and innovation by encouraging the use of AI technologies by creators must not come at the expense of the interests of human creators, nor the Union's ethical principles.*"[26] Indeed, **AI systems should *enable* human creation, not *disable* it by exploiting human content to replace and then demote it**. It should be a matter of course that "*tech companies have a responsibility [..] to make sure their products are safe before making them public.*"[27] This also applies to generative AI that should only be placed on European markets once there are sufficient safeguards in place to prevent a mass exploitation and substitution of the works of originators and copyright holders.

VI. Policy recommendations

Against this background, we welcome that the latest discussions foresee including some necessary provisions on generative AI in the AI Act. An AI Act that does not deal specifically with the fastest growing and most concerning AI technology around would not deserve its title.

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26 *European Parliament* (n. 1).
27 *President Biden*, 4 April 2023, Remarks by President Biden in Meeting with the President's Council of Advisors on Science and Technology, available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/04/remarks-by-president-biden-in-meeting-with-the-presidents-council-of-advisors-on-science-and-technology/.

In particular, it is laudable that according to **Article 28b** in the version of 16th March 2023, "*general purpose AI systems shall be able to perform consistently with the objective of this Regulation of ensuring safety and respect of existing law on fundamental rights and Union values*". A "fundamental right" that has not been sufficiently appreciated thus far, is that of "intellectual property" (Article 17 para. 2 EU Charter of Human Rights, Article 6 para. 1 TEU). According to Article 3 para. 3 TEU, a central "Union value" is a "rich cultural diversity" and "Europe's cultural heritage". European copyright is a central means to safeguard these rights and values. Accordingly, **it should be clarified that "respect of existing law on fundamental rights and Union values" includes respect for existing copyright laws**. To demonstrate such respect, the provider of a generative AI-system should be obliged to demonstrate (i) how the training data was collected, (ii) how the provider examined if a source of such data had expressly reserved text-and-data mining pursuant to Article 4 para. 3 DSM-Directive, (iii) that it did not use any of such reserved data and (iv) did not obtain such data from third parties, including research organisations and (v) compensated all rights-holders whose protected works were used without consent.

The obligation to apply "appropriate data governance measures" (Article 28b(1)(aa)) should be expanded to include **measures to ensure that any collection and use of training data is based on legitimate grounds**. The Italian data protection authority found that there was "*an absence of any legal basis*" justifying the collection and storage of personal data used to train GPT-4.[28] In addition to demonstrating such basis under privacy laws, the provider of a foundation model should also present on which legal basis it obtained any non-personal data, in particular if they relate to copyright protected material. The provider should outline which training material it has used, is going to use and how it will weigh it algorithmically. However, considering the debate around text and data mining, merely being transparent about any use of copyrighted material will not solve the issue of illegitimate value extraction. If a provider cannot demonstrate a legitimate ground for the use of protected material, it should only be entitled to place its service on the market once it has obtained consent from the affected rightsholders. To allow for a more sophisticated granting of such usage rights in the future, the provider could be obliged to deploy a rights-expression mechanism that enables publishers to communicate granularly which of their published works and databases may be used for which purposes.

We welcome that Article 28b(1)(d) envisages imposing additional obligations on **AI models that generate content which** would falsely appear to a person to be human generated and authentic, such as "news articles, opinion articles, novels, scrips, and scientific articles". Such additional requirements are in line with the overall approach of the regulation to look at the "intended use" rather than the technology as such. If a provider intends to offer a generative AI system to provide any output that **can influence the opinion-forming process of users**, it must be subject to additional obligations to ensure the veracity and accuracy of such content and the to prevent that the system spreads misinformation. We see no reason, however, to limit such obligations to the provider of "text content". Having analyzed GPT-4's abilities, engineers at Microsoft found that "*care must be taken to review output for correctness for uses in domains where truthfulness and accuracy are required*" and *"[e]xtreme caution and review is required especially in high-stakes applications such as medicine, transportation, journalism, and attribution of behaviors or language to individuals or organizations*".[29] Such risks are not limited to AI-generated "text". Images or videos may be just as misleading. Plus, also providers of generative AI that has not been specifically trained or that labels content as such (thereby preventing the impression it is human-generated) should be subject to the requirements as such factors do not mitigate the risks. In addition, we question whether the obligations under Article 10 and 52 suffice to effectively address the risk of *AI fakes* being produced and disseminated at mass to manipulate opinions. Where this cannot be effectively monitored and

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28 *Garante Per La Protezione Dei Dati Personali* (Italian Data Protection Authority), 31 March 2023, Press Release, Artificial Intelligence: stop to ChatGPT by the Italian SA. Personal data is collected unlawfully, no age verification system is in place for children, available at https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9870847.

29 *Bubeck* et. all, Microsoft Research, Sparks of Artificial General Intelligence: Early experiments with GPT-4, 13 April 2023, https://arxiv.org/pdf/2303.12712.pdf, p. 83.

prevented, it should be considered to outright prohibit the use of generative AI to autonomously create any media content that may be mistaken as human opinion.

More generally, yet no less importantly, **the AI Act needs to ensure that the primary responsibility and liability for any harm caused lies with** the source of the generative AI systems, **the providers of the foundation models**, rather than any provider of a downstream application. to others, the developers of downstream applications or the users deploying the AI system. As mentioned above, the (few) private owners of foundation models such as Google, Microsoft and OpenAI are trying to delegate responsibility and accountability to others, the developers of downstream applications or the users deploying the AI system. These firms lobby that any obligations and liability should not apply to them but only to any small and medium-sized firms that fine-tune and deploy their "upstream" foundation models for various "downstream" use cases that may be 'risky'. Yet, for several reasons, such regulatory approach would be ill-advised. The private operators of foundation models themselves have presented the **AI value chain as a platform system**: Instead of everyone doing everything, a few companies with the biggest compute resources take a very broad set of data and train a large foundation model that learns to perform a general set of functions. This model is then made available to many other developers, for instance by means of an "plugin" API, that may fine-tune the model to more specific applications and uses (such as a news, translation or podcast generator). Thus, while few companies (like OpenAI) will create or control the foundation models and give access to developers, many developers will build applications on top and tailor them to multiple specific industries or markets. The downstream developers benefit from the large investments into the upstream model, while adding value by means of their own applications.[30] **It is inherent in this system that it will not be downstream developers but the upstream foundation models that determine the overall performance and functionalities of the platform and the AI ecosystem overall**. They pull all the strings. Downstream developers need access to the upstream foundation model. The providers of those models can condition such access on compliance with certain safety requirements and preclude any risky downstream applications. This system has worked effectively for app stores (vis-á-vis app developers) and search engines (vis-á-vis websites and advertisers). Since the provider of foundation models may also determine the boundaries of downstream applications, regulatory obligations to ensure safety should be imposed on them.

"[I]t is paramount to incentivise the providers of systems to think about the safety of these systems from the outset, starting with the difficult question of data quality [and protection]. Otherwise, any potential biases, privacy violations, unlawful uses of content or other instances of unfairness in the data or the model will trickle down into a myriad of possible future applications"[31]. If the AI Act does not subject the foundation models to strict requirements – such as to use non-biased and lawfully obtained training data or to pro-actively tackle disinformation – and a corresponding liability, the incentives for their providers to consider the safety of the system would be "close to zero"[32]. All safety targets can be achieved much more effectively and at lower costs at the upstream foundation level. Crucial responsibilities for safety and trust may not be piled on small developers or even end users of such services[33] who neither have the know-how nor the resources or the necessary access to "fix" any faults that originate in the foundation model's datasets, algorithms and biases. If it is unrealistic that

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30 See *Langston*, 19 May 2020, Microsoft announces new supercomputer, lays out vision for future AI work, available at https://news.microsoft.com/source/features/ai/openai-azure-supercomputer/, quoting OpenAI CEO *Sam Altman*: "*One advantage to the next generation of large AI models is that they only need to be trained once with massive amounts of data and supercomputing resources. A company can take a 'pre-trained' model and simply fine tune for different tasks with much smaller datasets and resources*.".

31 *Helberger/Diakopoulos*, 16 February 2023, ChatGPT and the AI Act, Internet Policy Review 12(1), available at https://policyreview.info/essay/chatgpt-and-ai-act.

32 *Helberger/Diakopoulos*, (n. 31).

33 *Lomas*, 23 February 2023, Report details how Big Tech is leading on EU not to regulate general purpose AIs, available at https://techcrunch.com/2023/02/23/eu-ai-act-lobbying-report/.

downstream players can fix anything, this will expose end users to all the harm caused by the systems, including any liability for spreading AI fakes.

OpenAI's "plugin" solution has already demonstrated that operators of **foundation models** provide a separate B2B service. Contrary to the notion of Article 28 para. 2 of the current draft, providers of foundation models **must be considered as (co-) providers of the AI system, even if a downstream deployer makes substantial modifications.** There is no reason why providers of foundation models and downstream developers could not both be subject to obligations. The upstream provider should bear the majority of the burden and the downstream provider should be responsible for its modifications only. **This approach would be in line with the overall objective of the AI Act to promote downstream competition and to prevent administrative burdens for innovative start-ups.** If all liability is imposed on them the moment they substantially fine-tune a foundation model, they have no incentive to modify anything at all. Yet then there will be no innovation either.

More generally, **the trialogue should consider the following amendments**:

- A distinction between "generative AI" and "general purpose AI". The particularity of generative AI is that it is designed to create new content, which raises specific issues relating to fundamental property rights, cultural diversity and editorial liability.

- Generative AI must be regulated across the entire product cycle, with particular focus on providers of foundation models (large language models and other large foundation models).

- The placing of foundation models for generative AI on European markets should be conditioned on such models demonstrating that they fulfil the following minimum requirements:
  - full transparency about the training material used;
  - sufficient resilience of the training material in terms of veracity, accuracy, objectivity and diversity, in particular documentation that an adequate share of the training material
    - originates from European sources to ensure the necessary cultural and linguistic diversity and avoid biases;
    - originates from professional sources, as compared to user-generated content, to ensure a sufficient level of quality; some with editorial responsibility for the accuracy of their content to ensure credibility and trustworthiness;
  - evidence of a legal basis for the collection and use of the training material, both for personal data (under the General Data Protection Regulation) and non-personal data (under EU Copyright Law);
  - evidence of adoption, implementation, and adherence to an effective and workable system for granular machine-readable communication of usage rights;
  - liability for all content generated and disseminated by the AI, in particular for infringement of personal rights and copyrights, misinformation or discrimination;
  - no algorithmic or other promotion of AI-generated content over human-generated content or defamation of the latter, and reasonable measures to prevent users' overreliance on AI content;
  - structural separation of generation from dissemination of AI output: providers of foundation model shall not simultaneously operate central platform services for the distribution of digital content as defined in the Digital Markets Act, in particular no search engines or social media;
  - a minimum of the inference of the AI system must run on computing infrastructure located in Europe, with the share of domestic data processing increasing over time.

We note that several of these safeguards would reflect the regulatory "measures for the management of generative artificial intelligence services" proposed in China on April 11, 2023.[34] Such proposals placed the copyright of harvested sources and the accuracy of AI-generated information at the core of the regulatory safeguards.[35] This is despite China's ambitions in AI. Considering the high value that European primary law places on the protection of intellectual property, cultural diversity and reliable media, we would expect that the AI Act may not fall short of related safeguards envisaged in China.

VII. The choices you make determine not just our destiny

There should be a sense of urgency everywhere. There certainly is amongst all our members, who have never been more concerned about an emerging technology. The regulatory challenges that generative AI raises in the hands of Big Tech go far beyond mere questions of data governance or monitoring. The choices that the European legislator makes in the end will have far-reaching societal and economic implications, not just for all industries represented by our associations.

Thank you for considering our recommendations.

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34 An English translation can be found here https://digichina.stanford.edu/work/translation-measures-for-the-management-of-generative-artificial-intelligence-services-draft-for-comment-april-2023/.

35 See Article 4 paras 3, 4 & 5; Article 7 No. 2-4; Article 15, 17, 19 of the Chinese Draft Measures; including "The provision of generative AI shall […] respect intellectual property rights.".

C. The impact of generative AI on individual creative industries

In this section, representatives from a variety of organisations and associations outline their first-hand experience regarding the impact of generative AI on their respective sectors. The texts were translated from original press statements of the respective organisations and do not necessarily reflect the views of all members of the Authors' Rights Initiative.

(alphabetical order)

I. Book and Text

Authors and translators are the sources of the entire book publishing sector with its value added of 13.5 billion euros (including 9.3 billion euros in sales in 2022) in Germany, and around 23.5 billion euros within Europe.

In order to develop so-called "artificial intelligence" software products, the professional achievements of writers and translators have been exploited without remuneration and without consent for years. Companies such as Alibaba, Google, Microsoft, Oracle, OpenAI, Nvidia or Apple and Amazon, none of which are located in Europe, have been working for a decade on text generators, machine translation systems and automatic dubbing of text works.

The quality of any generative AI is determined by the quality of its data set – the more texts, images or music an AI "learns". Moreover, the three corpora used for training the machine language programmes, Books1, Books2 and Books3, were partly obtained from illegal sources; the developer of the ChatGPT programme refuses to provide transparent information about the data set. This raises some forward-looking questions: How do automatic processes affect the reception of books and writers? How is AI changing book recommendations – how are manuscripts selected; how are books curated online by monopolies like Amazon eBooks; what is this movement changing in visibility, discoverability of European books and literary quality versus market quantity? What cultural heritage needs to be preserved now and which less frequently spoken and printed languages require protection?

We call for far-reaching regulation of generative AI systems, including transparency and documentation of data and training data and template use, from an ethical, copyright, economic, human rights and personal rights perspective.

This continuing exploitation of our work, our individual and innovative intelligence violates basic human rights. It damages the resources of the entire book and art market and marks the beginning of a social rapture which can only be controlled by an active setting of rules that ensure a social, fair and purposeful development.

Our main demands (extract):
Regulated, remunerated and transparent handling of data sets
1. Reform the TDM exception with a royalty-bearing structure in terms of collecting societies and as already demanded by VG Wort in 2019.
2. Voluntary opt-in management applicable for each author. In the transitional period, implement the legally prescribed and currently dysfunctional "machine-readable opt-out" in an enforceable and applicable manner.
3. An explicit obligation to provide proof and transparency of the "training material" used.

Dealing with AI applications and AI products: AI ACT & transparency obligation

4. An obligation to label press, book and text works produced by means of AI, including translations, as well as audio works such as audiobooks, radio plays, etc., must be introduced.
5. Publishers have the duty to inform authors whether their texts have been (partially) translated by machine.
6. The copyright must remain with the translators, regardless of whether they use a machine themselves or whether their adaptation of the original is based on a machine-generated template from the publisher (or similar).

www.netzwerk-autorenrechte.de

II. Design

Design is the creation of things, communication, spaces, services, and structures. According to the Federal Government's monitoring report, the design market comprises around 266,000 professionals, a significant proportion of whom are self-employed or work in small design offices.

In design, and especially in communication design, designers create visual designs/works that are often protected by copyright. This includes logos, illustrations, fonts, websites, posters, and many other things. – In short: any design of communication. It is already possible to carry out various task sets in design with the help of AI-supported digital tools. These possibilities are already being used in design and have also led to some areas of tasks being taken over by programs. So far, however, the corresponding tools have been too expensive, too complicated, and too specialised for use by a broad public outside the design industry. –

In the foreseeable future, the applications will be so easily accessible and operable for the public that potential clients will be able to produce themselves at the push of a button what designers were otherwise commissioned to do. Designers who work purely operationally or even only repetitively will have to expect a severe drop in orders in the future. Only designers working in the conceptual and strategic sectors will have a better future because they are able to select the few designs that really work.

The AI applications currently coming onto the market have reached their potential through corresponding training with copyright-protected images made by designers. The creators' consent was largely not obtained, let alone that the use of the work was remunerated. Since the companies behind the image generators pursue commercial interests with the exploitation of protected works, affected creators should be able to speak out against the use of their works as AI templates. In addition, the labelling of artificially created works would be a help, if only to enable the tracking of such output by collecting societies.

Allianz Deutscher Designer https://agd.de
BDG Berufsverband Kommunikationsdesign https://bdg.de

III. Film and TV (screenwriting, actors, film dubbing)

Screenwriting

The German screenwriters guild DDV generally welcomes technological innovations, but we do share the concerns of the creative industries when it comes to AI.

Obviously, this fascinating technology will have an enormous political, economic and cultural impact on society.

Our concerns are confirmed by recent scientific research, such as the working paper on Open AI: "GPTs are GPTs: An Early Look at the Labor Market Impact Potential of Large Language Models." from the University of Pennsylvania. (Link: https://arxiv.org/abs/2303.10130)

The fact that hundreds of scientists and entrepreneurs worldwide are calling for a moratorium for AI, shows us that we definitely need more time to better understand the opportunities and risks we are facing.

Out of curiosity we asked "ChatGPT": "What impact will AI have on the work of screenwriters?"
This is one of the answers it came up with:

"With the development of increasingly advanced AI algorithms, it may be possible to create fully automated scripts in the future. These could be created based on data and templates collected by human screenwriters. Some companies have already begun developing such algorithms, but it remains to be seen whether they will ever be able to produce complex and creative scripts."

If screenwriters ever needed a wake-up call to dig deeper into this complex subject matter, we just did.

The German and European guild of screenwriters DDV and FSE have created "task forces" aiming to analyze in depth the opportunities and the risks of this undoubtedly fascinating technology, for screenwriters in particular and the creative industries in general.

www.drehbuchautoren.de

Actors

Acting brings stories to life. The tradition of this art form goes back to antiquity. It has been used for entertainment, education, and communication for thousands of years. Acting expresses and conveys human emotions and experiences. While the "stage" of acting has since evolved through new types of media – cinema, linear television broadcasting and finally streaming – the delivery has remained the same.

The latest technical developments in so-called "artificial intelligence" are challenging this form of art. Various processes are said to enable the 3D and animation of humans, up to and including a "neural actor". The same applies to the artificial generation of voices in the acting sectors of dubbing, radio plays and audio books. Then, the communication of genuine emotions does not take place anymore. The "play" is exhausted in adaptation and imitation. The model for this imitation is the performance of actors. The AI learns from real performances and works by reading out a multitude of movement and voice profiles. In most cases without the knowledge or explicit consent of the actors concerned.

As an actors' union in Germany, the Bundesverband Schauspiel (BFFS) represents around 4,000 actors and actresses in the areas of stage, film/television, and language/synchonisation. The BFFS is particularly committed to maintaining high quality standards in production as well as copyright law protection for actors and actresses in Germany. In the view of the BFFS, the following steps are necessary to deal with AI:
-    Obligatory labelling of AI-generated content.

- Requirement of consent for the use of one's own services for the training of AI as well as corresponding claims for information against the respective users as to whether and to what extent one's own services were and are used for the AI.
- Protection of image and voice profiles against unauthorized use for the training of AI as well as against the use for the generation of synthetic content.
- Compensation in the case of permitted use of the services for the training of AI as well as in the case of permitted use for the generation of synthetic content

Bundesverband Schauspiel (BFFS): www.bffs.de

Film dubbing

Film dubbing is cultural bridge-building. German-language dubbed versions enable viewers to experience foreign-language films and series without barriers, regardless of their individual knowledge of foreign languages.

International distributors are currently working on AI-supported processes to save costs and, above all, time. This does not only apply to the translation of dialogue; in the future, the original voices will be replaced by artificially generated German voices instead of being spoken and played by dub actors.

A dubbed version, however, is not simply a technical adaptation of the dialogue track in post-production, it is a part of the original work – even if it is later in the production. The audience perceives it as part of the whole work, just like special effects and music.

The Bundesverband Synchronregie und Dialogbuch questions the distributors, the politicians and the film and series lovers: Should stories that have been created in years of work by hundreds of creative people be handed over to a computer, when the audience wants nothing more than to be touched at heart by human stories?

The BSD advocates for the preservation of high-quality dubbed versions in Germany and calls for a legal right to remuneration on the input level when copyright-protected works are used to train AI and, on the output level, for compulsory labelling of dubbed versions that have been produced with the help of AI.

Bundesverband Synchronregie und Dialogbuch e.V. (BSD)
www.bsd-synchron.de

IV. Photography

For some months now, there is a lot of talk about the exponential progress in text-to-image AI applications for generating photorealistic images. The fictional images of Trump's arrest or even the Pope in a Balenciaga coat are well known. Apparently, reality can soon be simulated without any special skills.

The effects are disruptive for an estimated 25,000 self-employed photographers and craft enterprises. Many images, e.g. in advertising, symbol photography, etc., will be created by AI in the future. Professional photography may only survive where authenticity is essential, e.g. documentation and news photography, but even in those sensitive areas we already seeing AI-generated images relating to the story.

Profiteers are IT corporations in the USA and China, which use photographs and metadata as training material for AI via agents apparently oriented towards the common good (there is mention of open source and fair use), without the consent and remuneration of authors.

The international image agency Getty Images is taking action against this.36 (.

If AI images can no longer be distinguished from authentic photographs, this will result in disruptive consequences for society as well. Since living beings first had eyes, they have believed what they see. That is why fictional cinema films touch us and why even images recognised as inauthentic have a narrative effect. With the help of AI, lies can be spread, fears and resentments stirred up by anyone on an unprecedented scale.

Therefore, it must be ensured that AI-generated images and photographs can be distinguished by labelling. Content authenticity technology (https://contentauthenticity.org) is already being worked on for photographs. AI generators must also make their images identifiable. Metadata documenting author and origin may no longer be deleted, for example, by social media platforms.

All media - classic media (print and online) as well as social media or messenger services - should visibly mark image material directly on the image according to the type of digital creation (like a copyright notice): Authentic Photo [A], Manipulated Photo [M], Generated Image [G]. The information on this could be automatically read from the metadata in social media and messenger services and published therein. Evidently, this would also be conceivable for promotional image uses.

Of course, it must be ensured that photographs are only used as training material for the AI with the consent and remuneration of the photographer. In principle, transparency and explicability must be guaranteed for AI systems.
You can find more information in the statements of FREELENS: https://freelens.com/politik-medien/eine-gesellschaftliche-debatte-ueber-die-auswirkungen-von-ki-ist-unabdingbar/) and BFF (https://bff.de/news/bff-fordert-umfassende-diskussion-ueber-auswirkungen-von-ki-technologien/ .

V. Illustration

At the least since the release of the text-to-image models DALL-E2 (Jan. 2022) and Stable Diffusion (Aug. 2022), the illustrator scene worldwide has been in an uproar.

Fear of the future:
Generative image AI systems threaten to reduce the demand for human-made illustrations or to replace them completely in some areas. Illustrators working in fundamentally difficult markets with predominantly low fee levels fear loss of revenue and job losses. We see areas where more generic, decorative illustrations are used as being particularly at risk. Likewise, individual styles of illustrators, often enough also their trademark and business foundation, can easily be imitated. Commissions that require deeper conceptual exploration will be hard to replace in the medium term. Likewise, performative offers, e.g., live drawing, are likely to endure.

Data Mining and AI Training:
The works and achievements of creative individuals must also be protected in the digital space. The technical possibility of being able to read works through text and data mining must not legitimise every

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36 https://www.theverge.com/2023/1/17/23558516/ai-art-copyright-stable-diffusion-getty-images-lawsuit.

use. The possibility provided for in copyright law to exclude data mining through a "reservation of use in machine-readable form" is not practicable due to the constantly advancing development of ever new technologies and perverts the meaning of copyright protection.

Loss of diversity and cultural technique:
The products of commercially oriented image generators will shape the digital and public space - the majority of these images will be produced in the future by amateurs untrained in image design. Moreover, the operators will optimise their generators for generic and mass-compatible results. As a result, the world illustrated by and through them will inevitably lack diversity of ideas, richness, and novelty. With the loss of the craft aspect of illustration comes a loss of cultural technique: creative work is a process of active reflection and the basis of understanding. Without time and space to actively shape these processes, there is a threat of loss of knowledge.

We expect politicians and legislators to preserve the protection of personal intellectual creation and thus the basis of the profession of illustrators and the foundation of our cultural diversity.

Illustratoren Organisation (IO): www.illustratoren-organisation.de

Further Links: KI aber fair - Positionspapier der Kreativwirtschaft zum Einsatz von KI - Illustratoren Organisation e.V. Illustratoren Organisation e.V. (illustratoren-organisation.de)

VI. Journalism

The Association of German Journalists („Deutscher Journalisten-Verband") calls for a careful and differentiated approach to artificial intelligence in journalism.

In addition to discovering the diverse application possibilities, it is always important to keep an eye on the effects on our society as well as the journalistic profession. Because one thing is clear: the use of artificial intelligence in the field of journalism has the potential to have an impact on the process of opinion and will formation and thus on both state and society. It will also have profound consequences for the work of journalists. For this reason, the use of artificial intelligence in journalism absolutely needs guidelines to not endanger free democratic society and the journalistic profession.

Just as people must be protected from self-driving cars in road traffic, the uncontrolled use of artificial intelligence must also be prevented in the field of journalism. AI applications operate far from ethics and a value system and are therefore not able to assume the watchdog function that journalists have always had. Editorial responsibility over content also exists for texts generated with the help of a technological solution such as AI. Media companies cannot avoid this responsibility. Under no circumstances should it come to a situation where "AI as a colleague" replaces one or more editors. However, it is to be feared that exclusively profit-oriented media companies will value the economic potential of AI higher than the journalistic quality of their editorial units. This must be discouraged.

Furthermore, journalists must be protected from the uncontrolled exploitation of their work by AI applications. Journalistic content, be it texts, images, or videos, largely forms the data basis for AI applications. So far, however, journalists are rarely asked for their consent or financially involved. This must change as soon as possible. Journalistic content, be it texts, images, or videos, largely forms the data basis for AI applications. So far, however, journalists are rarely asked for their consent or compensated. This must change as soon as possible.

Finally, the use of Artificial Intelligence must always be flagged in order to enable the public to recognize source and potential use of content for building a free will.

www.djv.de

VII. Fine arts

Visual artists are highly qualified. They create their own unique works, often in long creative processes, which are protected by copyright. Artists present their works both analogue and digitally, and their works are disseminated through the media also during ongoing exhibitions.

All AI systems are based on the copyrighted works of countless artists. This intellectual property is stolen without their knowledge and consent and exploited for commercial, if not destructive, purposes. Many visual artists live on the margins of the minimum income. However, artists must be able to live from their works. Through the mass use of AI images, works of art are being pushed out of homes and exhibitions. AI products thus deprive living visual artists of necessary sources of income, destroy young careers and lead to the loss of artistic diversity. Today, AI-generated pictures win art prizes and competitions, fetch top prices at auctions and are shown in renowned exhibition houses.

We demand from developers of generative AI:
- The obligation to contribute to the artist social security system as it applies for all exploiters by law
- Remuneration of uses already made of copyright protected works via collecting societies (AI Training)
- Transparency/Register of Training Data being used
- Reversing the principle used for Crawling: Duty to obtain consent of the creators for AI Training (Opt-In Duty)
- Prohibition of Crawling at first presentation of artistic works
- Prohibition of use of works for disinformation, war, racism, etc
We demand for generative AI products:
- Duty to declare (e.g. *Made by AI*)
- No copyright in AI products
- Prohibition of the use of AI Output for further AI Training

https://www.bbk-bundesverband.de

VIII. Music (creators and performing artists)

Music tells stories, makes tears flow and hearts beat faster. Music holds memories, calms, or activates, creates identity and connects, is communication. Music is as diverse as the cultures of the world; it plays an important social role and is a significant economic good – also in other economic sectors such as film, games, the platform economy, gastronomy as well as radio and television.

When between 60,000 and 100,000 new tracks, i.e., music recordings, are uploaded to platforms and streaming services worldwide every day, one might think that it would make no significant difference if a little more music came onto the market. But all rights to all music originating from the European continent, without exception, are tied to humans as their creators: including the power of disposition and associated value creation. Content generated by AI, which is no longer thought, emotionally felt, and made by humans but by a computer, is not subject to this connection to the creator. So, who will communicate through it – and what will be communicated? Who assumes the (content-related,

commercial, legal) responsibility and who pockets the revenue? These are just a few of countless unanswered questions. Their significance goes far beyond the world of the artistic.

Music creators would not be helped by a fundamental prohibition or prevention of artificial intelligence per se. Machine learning can support and simplify artistic and technical processes and has long been used to produce music.

Our main concerns are the input and output of generative AI. Our works and recordings are used for their training. However, the training of an AI (e.g., with the film music works of the German Oscar winner Volker Bertelmann / Hauschka or the entire oeuvre of Rammstein, to generate corresponding film music or similar songs at the push of a button) interferes with our livelihoods and our artistic identities in a very immediate and temporally unlimited way, often without consent and remuneration. Current AI is already capable of generating simple music for media or writing song lyrics; in the medium term, parts of the low-threshold mass market will lose to AI-generated music products in the foreseeable future. In the long term, our works and thus indirectly we will be replaced, which means that our livelihood will be lost, while our artistic creations will necessarily continue to be indispensable and in demand, if only because the AI is dependent on them. This will pose existential questions for society: What is it that distinguishes humans from machines? How much genericism do we want to accept in generated music – and are we prepared to accept stereotyping and tandardization and the foreseeable consequences for culture? What is it that allows "products", "content" to be art? Are we prepared to question the humanity of music, this "most human of all arts"?

AI has certainly far more power than we currently suspect. But it does not have what makes us human: artistic intelligence. We need to find an adequate way of dealing with the opportunities and risks of this technology, especially since it is in the hands of a few corporations, not one of which is European.

In short, a legal framework is needed that puts people and society at the centre of all regulation – and not corporate interests. The rules must enforce licensing and remuneration, as well as transparency about the type and scope of uses made – for both the input and output of generative AI. They must allocate liability, correct the TDM rules in the interests of creators and the economy, take much greater account of personal rights and replace the dysfunctional Opt-Out- with a binding and enforceable Opt-In rule. Finally, AI-generated content must be labelled and the training data used for it be revealed.

Comprehensive statements available here:
http://www.mediamusic-ev.de/neuigkeiten.html
https://www.promusikverband.de
https://www.textdichter-verband.de

IX. Games authors

The Spiele Autoren Zunft (SAZ) represents over 600 game authors worldwide - most of them in German-speaking countries, Italy, and the Netherlands. We are also very concerned about the rapid development of various forms of artificial intelligence (AI) without clear regulations. Central issues are certainly the fundamental ethical and social problems, as addressed by UNESCO and other institutions, for example.

However, we also see major problems for the protection of copyrighted works. The works of game designers are available in the form of game rules on the websites of game publishers, for example, and can thus also be collected by the crawlers of the AI systems. Without effective opt-out or better opt-in regulations, the works of game authors remain unprotected. Furthermore, fair remuneration models are

needed for the use of copyright-protected content by AI systems. Dealing with AI therefore requires - in addition to all ethical issues - clear, binding and politically as well as technically enforceable regulations for the protection of the copyrights of all creators: within Europe and ideally worldwide.

X. Voice actors

The development of artificially generated voices (so-called AI voices) has been observed for a long time. Especially in areas of application where it is merely a matter of an acoustic reproduction of content, corresponding applications can be a useful supplement to human speakers, if it is the AI version of the voice of a *real* human being. Nevertheless, we plead for the risks of abuse to be considered and avoided. Clear safeguards are necessary so that speakers retain full control over the content and ethical standards.

We are particularly critical of the use of artificial voices in areas that involve an *artistic interpretation* of content. The spoken word decisively determines the effect of what is said - how it is perceived and felt. Books and films, for example, are important cultural assets of mankind. Accordingly, in the fields of audio books or dubbing, for example, an artistic and highly individual approach to interpretation is indispensable to prevent a loss of significance of these cultural assets. At the same time, we are convinced that professional dubbing contributes significantly to better processing and remembering of content.

Artificial voices must be actively co-created and the rights of the speakers to them must be protected. This is especially true since the successfully programmed artificial voice of a speaker can produce an infinite number of subjects and productions. The use of voice recordings for feeding or training purposes of AI must be prohibited in the contracts or general terms and conditions.
Further information from the VDS association here:

https://www.sprecherverband.de/aktuelles/vds-statement-ki-und-sprache/

XI. Translators

Translators have not just only recently started working with technical tools. Computer-assisted assistance systems, integrated glossaries, macros, spelling programmes and much more are regularly used for technical texts as well as audiovisual, literary and non-fiction works to achieve better quality and greater speed. Artificial intelligence is sometimes part of it too, in the form of machine translation systems such as DeepL, Google Translate, ModernMT or OpusCAT. Everyone involved in the chain of creating words and values within the translation industry wants efficiency gains, higher fees, bigger margins, better texts. However, it is crucial that the human being is at the centre of the translation process. Because for the AI, the text has no meaning. Only qualified translators can assess which tool makes sense for which work and how it can be used responsibly. This also means that there are texts for which machine translation systems are not suitable. For translators, machines are like calculators for mathematicians: a support, but not a substitute for the actual work. Those who ask translators to "only" correct a text that has been pre-translated by machine ignore the fact that such editing requires completely different skills than the editing of translations by human hands and that it is sometimes even more time-consuming than a new translation from the translator's own pen. Such assignments limit the diversity of working methods, reduce the creativity, the creative scope and give away the chance of great translations. And neither translators nor the reading public nor - ultimately - the editors benefit from such a loss of quality.

For the associations AVÜ and VdÜ, which are represented in the "Initiative Urheberrecht", translators of creative texts are authors of the target language work even when machine translation systems are used.

The level of creation is still enormous. To meet the ever-increasing demand for cross-linguistic cultural transfer and to find qualified translators for this demanding task, the profession must be upgraded in the public perception.

The umbrella organisation of audiovisual translators AVT Europe has formulated a description of the situation regarding machine translation systems in its "Machine Translation Manifesto" (in English):https://avteurope.eu/avte-machine-translation-manifesto/

Website of AVÜ: https://filmuebersetzen.de/
Website of VdÜ: https://literaturuebersetzer.de/

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